

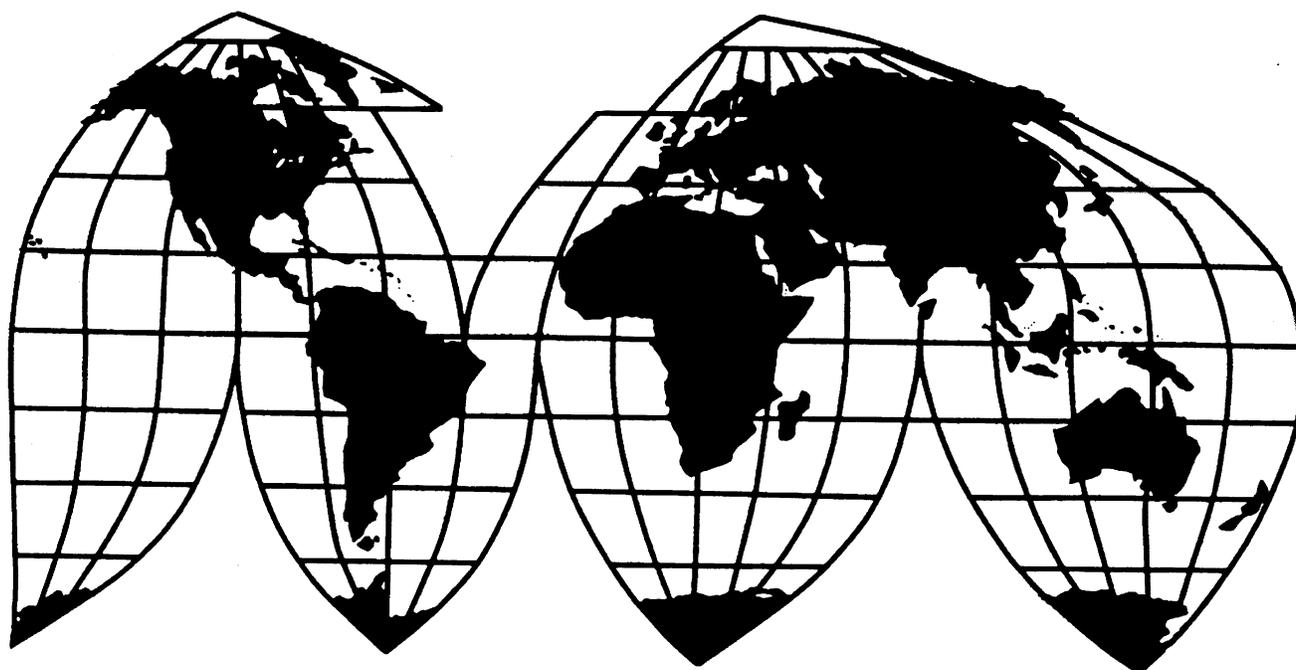
# Potassium Permanganate From China and Spain

Investigations Nos. 731-TA-125-126 (Review)

Publication 3245

October 1999

**U.S. International Trade Commission**



Washington, DC 20436

# U.S. International Trade Commission

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## **Potassium Permanganate From China and Spain**



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Note.—Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report. Such deletions are indicated by asterisks.

# UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigations Nos. 731-TA-125-126 (Review)

## POTASSIUM PERMANGANATE FROM CHINA AND SPAIN

### DETERMINATIONS

On the basis of the record<sup>1</sup> developed in the subject five-year reviews, the United States International Trade Commission determines,<sup>2</sup> pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)), that revocation of the antidumping duty order on potassium permanganate from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. The Commission further determines that revocation of the antidumping duty order on potassium permanganate from Spain would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

### BACKGROUND

The Commission instituted these reviews on November 2, 1998 (63 F.R. 58765) and determined on February 4, 1999 that it would conduct full reviews (64 F.R. 9177, February 24, 1999). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* on March 8, 1999 (64 F.R. 11041). The hearing was held in Washington, DC, on August 31, 1999, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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<sup>1</sup> The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

<sup>2</sup> Commissioner Carol T. Crawford dissenting.



## VIEWS OF THE COMMISSION

Based on the record in these five-year reviews, we determine under section 751(c) of the Tariff Act of 1930, as amended (“the Act”), that revocation of the antidumping duty order covering potassium permanganate from Spain would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. We further determine that revocation of the antidumping duty order covering potassium permanganate from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.<sup>1</sup>

### I. BACKGROUND

On January 6, 1984, the Commission determined that an industry in the United States was being materially injured by reason of less than fair value (“LTFV”) imports of potassium permanganate from Spain.<sup>2</sup> On January 19, 1984, the Department of Commerce (“Commerce”) issued an antidumping duty order on potassium permanganate from Spain.<sup>3</sup> On January 20, 1984, the Commission determined that an industry in the United States was being materially injured by reason of LTFV imports of potassium permanganate from China.<sup>4</sup> Commerce issued an antidumping duty order on potassium permanganate from China on January 31, 1984.<sup>5</sup> The Commission instituted these five-year reviews on November 2, 1998.<sup>6</sup>

In these five-year reviews, the Commission initially determines whether to conduct a full review (which would generally include a public hearing, the issuance of questionnaires, and other procedures) or an expedited review, as follows. First, the Commission determines whether individual responses to the notice of institution are adequate. Second, based on those responses deemed individually adequate, the Commission determines whether the collective responses submitted by two groups of interested parties -- domestic interested parties (producers, unions, trade associations, or worker groups) and respondent interested parties (importers, exporters, foreign producers, trade associations, or subject country governments) -- demonstrate a sufficient willingness among each group to participate and provide information requested in a full review.<sup>7</sup> If the Commission finds the responses from both groups of interested parties to be adequate, or if other circumstances warrant, it will determine to conduct a full review.

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<sup>1</sup> Commissioner Crawford dissenting. *See* Dissenting Views of Commissioner Carol T. Crawford. Commissioner Crawford joins in Sections I, II, III.A., and IV of these Views, except as otherwise noted.

<sup>2</sup> Potassium Permanganate from Spain, Inv. No. 731-TA-126 (Final), USITC Pub. 1474 (Jan. 1984) (“Original Spain Determination”).

Although petitioner, Carus Chemical Co. (“Carus”), simultaneously filed its petitions in the Spain and China investigations, the Commission made its final injury determinations in the investigations two weeks apart due to Commerce’s postponements of its final determination in the China investigation. *See* 48 Fed. Reg. 40771 (Sept. 9, 1983) and 48 Fed. Reg. 45815 (Oct. 7, 1983).

<sup>3</sup> 49 Fed. Reg. 2277 (Jan. 19, 1984).

<sup>4</sup> Potassium Permanganate from China, Inv. No. 731-TA-125 (Final), USITC Pub. 1480 (Jan. 1984) (“Original China Determination”).

<sup>5</sup> 49 Fed. Reg. 3897 (Jan. 31, 1984).

<sup>6</sup> 63 Fed. Reg. 58765 (Nov. 2, 1998).

<sup>7</sup> *See* 19 C.F.R. § 207.62(a); 63 Fed. Reg. 30599, 30602-05 (June 5, 1998).

In these reviews, the Commission received responses to the notice of institution from Carus, the sole domestic producer of potassium permanganate during and since the original investigations, and from Industrial Quimica del Nalon ("IQN"), the sole Spanish producer of potassium permanganate.<sup>8</sup> No producer, exporter, or U.S. importer of potassium permanganate from China filed a response to the notice of institution.<sup>9</sup> On February 4, 1999, the Commission determined that it should proceed to full reviews in both subject five-year reviews.<sup>10</sup> With regard to Spain, the Commission determined that domestic and respondent interested party individual and group responses were adequate.<sup>11</sup> Regarding China, the Commission determined that the domestic interested party individual and group responses were adequate, but that the respondent interested party group response was inadequate because the Commission did not receive a response from any respondent interested party.<sup>12</sup> However, the Commission determined to conduct a full review to promote administrative efficiency in light of its decision to conduct a full review with respect to potassium permanganate from Spain.<sup>13</sup>

On August 31, 1999, the Commission held a hearing in these reviews, at which representatives of Carus and IQN appeared. Carus filed briefs in support of continuation of the antidumping duty orders on subject imports from both China and Spain, and IQN filed briefs urging revocation of the antidumping duty order on subject imports from Spain.

## II. DOMESTIC LIKE PRODUCT AND INDUSTRY

### A. Domestic Like Product

In making its determination under section 751(c), the Commission defines the "domestic like product" and the "industry."<sup>14</sup> The Act defines "domestic like product" as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle."<sup>15</sup> In its final five-year review determinations regarding potassium permanganate from China and Spain, Commerce defined the subject merchandise as "potassium permanganate . . . , an inorganic chemical produced in free-flowing, technical, and pharmaceutical grades [and] classifiable

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<sup>8</sup> At the time of the original investigation, the sole Spanish producer of potassium permanganate was Asturquimica, which was wholly owned by IQN. Original Commission Confidential Report on Potassium Permanganate from Spain, Inv. No. 731-TA-126 (Final) dated December 14, 1983. ("Original Commission Report") at A-14. The Original Commission Report also included most of the information on Potassium Permanganate from China, Inv. No. 731-TA-125 (Final). The supplemental China Report, issued January 6, 1984, will be referenced as "Original China Report."

<sup>9</sup> See Explanation of Commission Determination on Adequacy in Potassium Permanganate from China and Spain (Feb. 18, 1999) ("Adequacy Explanation").

<sup>10</sup> See Adequacy Explanation. See also 64 Fed. Reg. 9177 (Feb. 24, 1999) (notice of Commission determination to conduct full five-year reviews).

<sup>11</sup> See Adequacy Explanation. See also Vote Sheet for Action Request INV-99-504 (Feb. 4, 1999).

<sup>12</sup> See Adequacy Explanation. See also Vote Sheet for Action Request INV-99-504 (Feb. 4, 1999).

<sup>13</sup> See Adequacy Explanation and 64 Fed. Reg. 9177. Commissioner Crawford dissented from the determination to conduct a full review of the order on China. See *id.* and Vote Sheet.

<sup>14</sup> 19 U.S.C. § 1677(4)(A).

<sup>15</sup> 19 U.S.C. § 1677(10). See Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int'l Trade 1996); Torrington Co. v. United States, 747 F. Supp. 744, 748-49 (Ct. Int'l Trade 1990), *aff'd*, 938 F.2d 1278 (Fed. Cir. 1991). See also S. Rep. No. 96-249 at 90-91 (1979).

under item 2841.61.0000 of the Harmonized Tariff Schedule of the United States (HTSUS).”<sup>16</sup> Potassium permanganate exists at room temperature as a dark-purple crystalline solid, and it is a strong oxidizing agent.<sup>17</sup>

In the original investigations, the Commission considered whether there were three like products defined by grade, (*i.e.*, free-flowing, technical and pharmaceutical), or one like product defined as all potassium permanganate. The Commission determined that there was only one like product, potassium permanganate.<sup>18</sup> The Commission made its findings on the basis that all three grades possessed the identical chemical formula and were produced, for the most part, using the same manufacturing process. Further, it found increasing interchangeability of technical and free-flowing grade potassium permanganate for many uses, and “historically similar pricing” of the domestically produced technical grade and free-flowing grade potassium permanganate.<sup>19</sup> At the time of the original investigations, as now, the U.S. industry produced all three grades of potassium permanganate.

The parties in these five-year reviews did not argue for a like product different from that of the original determination.<sup>20</sup> Consistent with the Commission’s prior determinations, as well as with our traditional like product analysis,<sup>21</sup> we find one domestic like product that includes all potassium permanganate. All three grades can be used in water and wastewater treatment applications, which currently account for about 70 to 75 percent of U.S. consumption.<sup>22</sup> Customers who use a dry solution feeder in water and wastewater applications prefer free-flowing grade.<sup>23</sup> However, there is more interchangeability now between free-flowing and technical grades than there was during the original investigations, due to increased use of solution tank feeders that can use technical grade. There are approximately \*\*\* dry feeders and \*\*\* solution feeders currently in use in the United States.<sup>24</sup> Most potassium permanganate destined for water and wastewater treatment applications, regardless of grade, is sold to distributors who in turn sell to governmental water authorities, the largest purchasers, through annual requests or proposals for bids.<sup>25</sup> All three grades of potassium permanganate are produced domestically at the same facilities, using the same equipment and employees,<sup>26</sup> and the major

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<sup>16</sup> 64 Fed. Reg. 16904 (Spain) and 16907 (China) (April 7, 1999). The descriptions are identical in the final Commerce determinations regarding the Spanish and Chinese reviews except that in the Chinese description, Commerce noted that in May 19, 1995, it determined that plastic ignitor spheres containing potassium permanganate were not within the scope of the order. 64 Fed. Reg. 16907, n.1, *citing*, 60 Fed. Reg. 26871 (May 19, 1995).

<sup>17</sup> Confidential Staff Report (“CR”) at I-12-I-13.

<sup>18</sup> Original Spain Determination at 6; Original China Determination at 7. *See also Potassium Permanganate from the People’s Republic of China and Spain*, Invs. Nos. 731-TA-125-126 (Preliminary), USITC Pub. 1369 at 6 (April, 1983) (“Original Preliminary Determination”).

<sup>19</sup> Original Spain Determination at 4-6; Original China Determination at 5-7.

<sup>20</sup> *See* Response of IQN to the Notice of Institution (Dec. 22, 1998) (“IQN’s Response”) at 20; Carus’ Prehearing Brief at 3.

<sup>21</sup> In its like product analysis, the Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes and production employees; and, where appropriate, (6) price. *See Nippon Steel Corp. v. United States*, 19 CIT 450, 455 n.4 (1995).

<sup>22</sup> CR at I-14; PR at I-8.

<sup>23</sup> CR at I-14; PR at I-8.

<sup>24</sup> CR at I-15; PR at I-8.

<sup>25</sup> CR at II-1.

<sup>26</sup> CR at I-13.

manufacturing process for all three grades is similar.<sup>27</sup> Accordingly, we again determine that there is a single domestic like product, consisting of all potassium permanganate, regardless of grade.

### B. Domestic Industry

Section 771(4)(A) of the Act defines the relevant industry as the “domestic producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.”<sup>28</sup> In these five-year reviews, as in the original determinations, we find that the domestic industry consists of Carus, the sole domestic producer of potassium permanganate.

## III. CUMULATION

### A. Framework<sup>29</sup>

Section 752(a) of the Act provides that:

the Commission may cumulatively assess the volume and effect of imports of the subject merchandise from all countries with respect to which reviews under section 1675(b) or (c) of this title were initiated on the same day, if such imports would be likely to compete with each other and with domestic like products in the United States market. The Commission shall not cumulatively assess the volume and effects of imports of the subject merchandise in a case in which it determines that such imports are likely to have no discernible adverse impact on the domestic industry.<sup>30</sup>

Thus, cumulation is discretionary in five-year reviews. However, the Commission may exercise its discretion to cumulate only if the reviews are initiated on the same day and the Commission determines that the subject imports are likely to compete with each other and the domestic like product in the U.S. market.

The statute precludes cumulation if the Commission finds that subject imports from a country are likely to have no discernible adverse impact on the domestic industry.<sup>31</sup> We note that neither the statute nor the SAA provides specific guidance on what factors the Commission is to consider in determining that imports “are likely to have no discernible adverse impact” on the domestic industry.<sup>32</sup> For these

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<sup>27</sup> CR at I-18.

<sup>28</sup> 19 U.S.C. § 1677(4)(A).

<sup>29</sup> Chairman Bragg does not join section III.A of this opinion. See Separate Views of Chairman Lynn M. Bragg Regarding Cumulation in Sunset Reviews.

<sup>30</sup> 19 U.S.C. § 1675a(a)(7).

<sup>31</sup> 19 U.S.C. § 1675a(a)(7).

<sup>32</sup> Vice Chairman Miller and Commissioners Hillman and Koplán note that the legislative history to the URAA provides guidance in the interpretation of this provision. The Senate Report on the URAA clarifies that “it is appropriate to preclude cumulation [in five-year reviews] where imports are likely to be negligible.” S. Rep. 103-412, at 51 (1994). The legislative history further explains that it is not appropriate “to adopt a strict numerical test for determining negligibility because of the extraordinary difficulty in projecting import volumes into the future with precision” and, therefore, “the ‘no discernible adverse impact’ standard is appropriate in sunset reviews.”

(continued...)

reviews, our “no discernible adverse impact analysis” is focused on subject imports and the likely impact of those imports on the domestic industry within a reasonably foreseeable time if the order is revoked.<sup>33</sup>

As stated above, in order to cumulate, the statute requires that subject imports would be likely to compete with each other and with the domestic like product. The Commission has generally considered four factors intended to provide the Commission with a framework for determining whether the imports compete with each other and with the domestic like product.<sup>34 35 36</sup> Only a “reasonable overlap” of competition is required.<sup>37</sup> In five-year reviews, the relevant inquiry is whether there would likely be competition even if none currently exists. Moreover, because of the prospective nature of five-year reviews, we have examined not only the Commission’s traditional competition factors, but also other significant conditions of competition that are likely to prevail if the orders under review are revoked. The Commission has considered factors in addition to its traditional competition factors in other contexts where cumulation is discretionary.<sup>38</sup>

Here, the requirement that both reviews be initiated on the same day is satisfied. Carus urges the Commission to cumulate subject imports from China and Spain,<sup>39</sup> while IQN argues that the Commission should not cumulate because imports from Spain are likely to have no discernible adverse impact on the

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<sup>32</sup> (...continued)

Thus, we understand the “no discernible adverse impact” provision to be largely a negligibility provision without the use of a strict numerical test of the sort now required by the statute in original antidumping and countervailing duty investigations. 19 U.S.C. § 1677(24). Indeed, before enactment of the URAA, cumulation was not required if the subject imports were “negligible and have no discernible adverse impact on the domestic industry.” 19 U.S.C. § 1677(7)(C)(v)(1994). Because of the similarity of the five-year review provision with the pre-URAA test for negligibility, the Commission’s prior negligibility practice may provide some guidance in applying the “no discernible adverse impact” provision in five-year reviews.

<sup>33</sup> For a discussion of Commissioner Askey’s views on the plain meaning of the statutory provision addressing the discernible adverse impact of the subject imports, see her Additional Views.

<sup>34</sup> The four factors generally considered by the Commission in assessing whether imports compete with each other and with the domestic like product are: 1) the degree of fungibility between the imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions; 2) the presence of sales or offers to sell in the same geographical markets of imports from different countries and the domestic like product; 3) the existence of common or similar channels of distribution for imports from different countries and the domestic like product; and 4) whether the imports are simultaneously present in the market.

<sup>35</sup> Commissioner Crawford notes that the Court of International Trade has recognized repeatedly that analyses of substitutability may vary under different provisions of the statute, based upon the requirements of the relevant statutory provision. *E.g.* U.S. Steel Group v. United States, 873 F. Supp. 673, 697 (Ct. Int’l Trade 1994); R-M Industries, Inc. v. United States, 848 F. Supp. 204, 210 n.9 (Ct. Int’l Trade 1994); BIC Corp. v. United States, 964 F. Supp. 391 (Ct. Int’l Trade 1997). Commissioner Crawford finds that substitutability, not fungibility, is a more accurate reflection of the statute.

<sup>36</sup> *See e.g.*, Wieland Werke, AG v. United States, 718 F. Supp. 50 (Ct. Int’l Trade 1989).

<sup>37</sup> *See* Mukand Ltd. v. United States, 937 F. Supp. 910, 916 (Ct. Int’l Trade 1996); Wieland Werke, AG, 718 F. Supp. at 52 (“Completely overlapping markets are not required.”); United States Steel Group v. United States, 873 F. Supp. 673, 685 (Ct. Int’l Trade 1994, *aff’d*, 96 F. 3d 1352 (Fed. Cir. 1996)).

<sup>38</sup> *See, e.g.*, Torrington Co. v. United States, 790 F. Supp. at 1172 (affirming Commission’s determination not to cumulate for purposes of threat analysis when pricing and volume trends among subject countries were not uniform and import penetration was extremely low for most of the subject countries); Metallwerken Nederland B.V. v. United States 728 F. Supp. 730, 741-42 (Ct. Int’l Trade 1989); Asociacion Colombiana de Exportadores de Flores v. United States, 704 F. Supp. 1068, 1072 (Ct. Int’l Trade 1988).

<sup>39</sup> Carus’ Prehearing Brief at 43; Carus’ Posthearing Brief, Attachment A at 7.

domestic industry if the order is revoked.<sup>40</sup> We do not find, as discussed below, that subject imports from Spain are likely to have no discernible adverse impact on the domestic industry if the order is revoked.<sup>41</sup> <sup>42</sup> Furthermore, for the reasons set forth below, we have not exercised our discretion to cumulate subject imports from Spain with those from China.<sup>43</sup>

## B. Discussion<sup>44</sup>

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<sup>40</sup> IQN's Prehearing Brief at 17-18.

<sup>41</sup> Commissioner Crawford finds that subject imports from Spain are likely to have no discernible adverse impact on the domestic industry if the order is revoked. For a full discussion of her analysis on the issue of no discernible adverse impact as it applies to subject imports from Spain, see her dissenting views.

<sup>42</sup> Commissioner Askey does not join in the following discussion with respect to no discernible adverse impact. She has chosen to exercise her discretion under the statute and does not cumulate the subject imports from Spain and China. She notes, however, that the record could support a finding that subject imports from Spain would be likely to have no discernible adverse impact on the domestic industry if the order were revoked. She joins the majority's analysis of its determination to exercise discretion to decumulate imports from Spain and China.

<sup>43</sup> Having determined that subject imports from Spain are likely to have no discernible adverse impact on the domestic industry if the order is revoked, Commissioner Crawford does not reach the question of whether to exercise her discretion to cumulate subject imports from Spain with those from China. Therefore, she does not join the following discussion. In determining whether to cumulate imports from subject countries, she follows a sequential, four-step analytical process that addresses eligibility for cumulation, statutory prohibition, Commission discretion and competition. For a full discussion of her analysis on the issue of cumulation, see her dissenting views.

<sup>44</sup> Chairman Bragg does not join in section III.B of this opinion. To the extent that these Views address the likely impact of imports from Spain (in the event of revocation) before considering whether subject imports compete with each other and with the domestic like product, these Views do not reflect the sequence of Chairman Bragg's analysis. *See* the Separate Views of Chairman Lynn M. Bragg Regarding Cumulation in Sunset Reviews.

In considering whether to cumulate subject imports from Spain and China, Chairman Bragg first determined whether there was likely to be a reasonable overlap of competition between the domestic like product and the subject imports, and among the subject imports, in the event of revocation. The Chairman then proceeded to determine whether any imports would be likely to have no discernible adverse impact on the domestic industry if the orders are revoked.

In assessing whether subject imports compete with each other and with the domestic like product, Chairman Bragg considered the Commission's traditional four-factor test. In this regard, Chairman Bragg first notes that the record indicates, and the parties agree, that potassium permanganate is a fungible, commodity-type product. Three grades of potassium permanganate are produced, and all three grades are interchangeable. Thus, for example, in important applications such as water and wastewater treatment, all three grades can be used, although the free-flowing grade is preferred by customers. Moreover, imports from Spain currently compete with the domestic like product in the U.S. market, and purchasers, importers, and producers report that these products are interchangeable in terms of product characteristics and applications. To the extent that the Chinese now produce free-flowing potassium permanganate, imports from China are likely to be more interchangeable with other imports and with the domestic like product than was evidenced during the original investigation. *See* CR at I-19, II-15.

Second, both the domestic and Spanish producers assert that the potassium permanganate market in the United States is nationwide. Indeed, the U.S. producer ("Carus") and the Spanish producer ("IQN") each bid on sales to large municipalities across the country. To the extent that imports from China will enter the U.S. market upon revocation, the Chinese product would also likely be sold nationwide. *See* CR at II-15 to II-17.

Third, the record indicates that three channels of distribution exist: sales to distributors; sales to end users; and internal consumption. Both Carus and IQN sell to distributors and end users. To the extent that imports from

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## 1. No Discernible Adverse Impact

IQN has argued that imports from Spain are likely to have no discernible adverse impact on the domestic industry. For purposes of applying our “no discernible adverse impact” analysis, we have examined the current volume of imports from Spain and have evaluated the likely volume of imports from Spain if the order is revoked. Imports from Spain represented 22.3 percent of U.S. imports of potassium permanganate in 1997, 14.1 percent in 1998, and 12.0 percent of U.S. imports in interim (January-March) 1999.<sup>45</sup> U.S. shipments of potassium permanganate from Spain were \*\*\* pounds in 1997 and \*\*\* pounds in 1998, representing \*\*\* percent of 1997 apparent domestic consumption and \*\*\* percent of 1998 consumption.<sup>46</sup>

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<sup>44</sup> (...continued)

China will enter the U.S. market upon revocation, the Chinese product will likely be sold both to distributors and end users. *See* CR at II-15 to II-17.

Fourth, throughout the period of review, imports from Spain were simultaneously present in the market with the domestic like product. As for China, subject imports were only sporadically in the market between 1997 and 1998. Chairman Bragg notes, however, that during the original period of investigation, Chinese imports were simultaneously present in the market and competed with both the domestic like product and imports from Spain. *See* Original Commission Report on Spain, Tables 8 and 16.

Based upon the foregoing analysis, Chairman Bragg determines that there is a likely reasonable overlap of competition among subject imports from China and Spain, and between subject imports and the domestic like product, in the event of revocation.

Chairman Bragg then examined whether imports from either China or Spain were likely to have no discernible adverse impact on the domestic industry in the event of revocation.

With regard to Spain, Chairman Bragg notes that although subject imports from Spain have maintained a presence in the U.S. market since imposition of the order, two conditions of competition deriving from the European Union market will provide Spain with an incentive to increase its focus on exporting to that market. As a result, Chairman Bragg finds that imports from Spain are likely to decline, regardless of whether the order is revoked.

Although the majority (i.e., \*\*\*) of Spanish potassium permanganate is exported, \*\*\* of such exports are directed to markets other than the United States, with the primary export markets being \*\*\*. CR at IV-11. In addition, the only other producer of potassium permanganate within the European Union (located in Germany) exited the industry in 1998. The exit of this German producer has left IQN as the sole producer of potassium permanganate within the European Union. IQN also indicated that imports from the Czech Republic do not represent a threat to IQN’s sales in Europe. Both Carus and IQN agree that the sole production facility in the Czech Republic is antiquated. Staff Field Trip Notes (April 26, 1999); File Note from Amelia Preece, Economist; IQN’s Posthearing Brief at 10-11. Moreover, the European Union currently has antidumping measures on imports of potassium permanganate from three of the largest sources of potassium permanganate in the world: i.e., China (1988), India (1998), and Ukraine (1998). CR at IV-12, PR at IV-5.

These two developments effectively provide IQN with the opportunity and incentive to increase market share within the European Union. Furthermore, with IQN currently operating at a \*\*\* capacity utilization rate in 1999, any such increase is likely to come at least in part from a redirection of exports away from other markets such as the United States. Accordingly, Chairman Bragg determines that imports from Spain are likely to have no discernible adverse impact on the domestic industry if the order is revoked. As a result, Chairman Bragg does not cumulate imports from Spain with imports from China in analyzing the likely effects of revocation.

<sup>45</sup> Table IV-1, CR/PR at IV-1.

<sup>46</sup> Table I-1, CR at I-3; PR at I-2. U.S. shipments of imports from Spain fell to \*\*\* pounds in interim 1999 as compared to \*\*\* pounds in interim 1998. *Id.*

We find that current volumes of subject imports from Spain, even with the antidumping duty order in place, exceed levels that would satisfy the “no discernible adverse impact” provision. Nor is there evidence in the record indicating that subject imports from Spain are likely to decline significantly upon revocation of the order. Accordingly, we do not find that subject imports from Spain are likely to have no discernible adverse impact on the domestic industry if the antidumping duty order is revoked.

## 2. Exercise of Commission Discretion to Cumulate

In determining whether to exercise our discretion to cumulate subject imports from Spain with those from China, we examined whether, upon revocation of the antidumping duty orders, subject imports from Spain would likely compete in the U.S. market under similar conditions of competition with subject imports from China and with the domestic like product. As an initial matter, we considered the likelihood of a reasonable overlap of competition among the products from Spain, China, and the United States. In this regard, Carus and IQN as well as U.S. purchasers agreed that the products are generally interchangeable and the record reflects that the products are sold through similar channels of distribution.<sup>47</sup> Further, there is evidence of actual nationwide competitive bidding between Carus and IQN in recent municipal sales,<sup>48</sup> and of competition among Chinese, Spanish and domestic product during the original investigations in 1981-1983.<sup>49</sup> In addition, there is evidence that at least one large Chinese producer can now produce, and would be likely to export to the United States upon revocation of the order, free flowing potassium permanganate, which is the primary grade that competes in the United States market.<sup>50</sup>

As previously stated, our cumulation analysis in a five-year review encompasses more than an examination of whether there would likely be a reasonable overlap of competition of the products in the U.S. market. To aid us in our exercise of discretion, we have also examined the overall similarities in the conditions of competition that would prevail if the orders are revoked.

One factor we have examined is the likely production capacity of the foreign producers because this factor indicates the potential to increase exports. IQN has the capacity to produce \*\*\* pounds of potassium permanganate,<sup>51</sup> whereas the capacity to produce potassium permanganate in China is 79 million pounds.<sup>52</sup> IQN’s capacity has remained static since the original investigation in the early 1980s,<sup>53</sup> whereas China’s capacity has continued to grow. Consequently, China has far greater potential to increase its exports to the U.S. market than does Spain.

In addition, China faces severe restraints in exporting to important markets, namely the European Union and India,<sup>54</sup> whereas Spain does not. There are antidumping measures on imports of potassium permanganate from China in the European Union and in India, and the European Union regulation has

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<sup>47</sup> CR at II-15-17, PR at II-9-11. IQN’s Prehearing Brief at 16. Tr. at 55. CR at II-1-2;V-3; PR at II-1;V-3.

<sup>48</sup> CR at I-22, PR at 12-13; Tr. at 55; IQN’s Hearing Exhibit 4.

<sup>49</sup> Original Commission Report at Table A-16 at A-49 and A-60-A-72; Original China Report at A-6-A-19.

<sup>50</sup> CR at IV-9, and D-7; PR at IV-4 and D-3.

<sup>51</sup> Table IV-5, CR at IV-10;PR at IV-4. IQN asserted late in the investigation that the actual capacity was lower, but for the purposes of our analysis, we relied on the capacity data provided in IQN’s questionnaire response.

<sup>52</sup> CR at IV-7; PR at IV-4. Carus’ Response to Notice of Institution (Dec. 22, 1998), 15-16 & Attachment 8.

<sup>53</sup> Original Commission Report at A-15.

<sup>54</sup> CR at IV-12; PR at IV-5.

recently been tightened.<sup>55</sup> These restraints upon Chinese producers' ability to continue exporting and selling their potassium permanganate in other major markets, which are open to IQN, provide greater incentives for Chinese producers, as opposed to the Spanish producer, to compete in the U.S. market.

Furthermore, Spanish and Chinese potassium permanganate would likely be priced at very different levels in the U.S. market. At the time of the original investigation, prices for subject imports from Spain were generally much higher than prices for subject imports from China.<sup>56</sup> This clear price differential continues to exist as reflected in the average unit values of 1998 total exports from the two countries which were \$0.454 per pound from China and \$0.835 per pound from Spain, as well as in the limited record information regarding Chinese pricing in third country markets.<sup>57</sup>

Thus, the conditions of competition would be significantly different for subject imports from China and Spain if the respective antidumping duty orders were revoked. We consequently find that it is not appropriate to assess cumulatively the likely volume and effects of subject imports from Spain and China. Accordingly, we have not exercised our discretion to cumulate subject imports for purposes of determining whether revocation of the respective antidumping duty orders is likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

#### **IV. LEGAL STANDARD AND CONDITIONS OF COMPETITION**

##### **A. Legal Standard**

In a five-year review conducted under section 751(c) of the Act, Commerce will revoke an antidumping order unless: (1) it makes a determination that dumping is likely to continue or recur, and (2) the Commission makes a determination that revocation of the order "would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time."<sup>58</sup> The Uruguay Round Agreements Act ("URAA") Statement of Administrative Action ("SAA") states that "under the likelihood standard, the Commission will engage in a counterfactual analysis; it must decide the likely impact in the reasonably foreseeable future of an important change in the status quo -- the revocation [of the finding] . . . and the elimination of its restraining effects on volumes and prices of imports."<sup>59</sup> Thus, the likelihood standard is prospective in nature.<sup>60</sup> The statute states that "the Commission shall consider

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<sup>55</sup> CR at IV-12; PR at IV-5. IQN's Posthearing Brief, Attachment 2 at 9-10.

<sup>56</sup> In the original investigation, imports of technical grade from China undersold imports of technical grade from Spain in each of the six periods for which data were available, by margins of underselling ranging from \*\*\* percent to \*\*\* percent. The margin of underselling was \*\*\* percent or more in four of the periods for which data were available. Table 19, Original Commission Report at A-55.

<sup>57</sup> Carus' Prehearing Brief, Exhibits 7 & 8. Statistics regarding exports from China are from World Trade Atlas data and statistics regarding Spain are from Eurostat data. Eurostat is the official statistics office for the European Communities. Eurostat data combined Belgium and Luxembourg data. In Belgium, exports from China had average unit values of \$0.437 per pound in 1998, and exports from Spain had average unit values of \$0.760 per pound. In the Netherlands, exports from China had average unit values of \$0.469 per pound in 1998, and exports from Spain had average unit values of \$0.770 per pound.

<sup>58</sup> 19 U.S.C. § 1675a(a).

<sup>59</sup> SAA, H.R. Rep. No. 103-316, Vol. I, at 883-84 (1994). The SAA states that "[t]he likelihood of injury standard applies regardless of the nature of the Commission's original determination (material injury, threat of material injury, or material retardation of an industry)." SAA at 883.

<sup>60</sup> While the SAA states that "a separate determination regarding current material injury is not necessary," it

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that the effects of revocation . . . may not be imminent, but may manifest themselves only over a longer period of time.”<sup>61</sup> According to the SAA, a “‘reasonably foreseeable time’ will vary from case-to-case, but normally will exceed the ‘imminent’ time frame applicable in a threat of injury analysis [in antidumping and countervailing duty investigations].”<sup>62 63</sup>

Although the standard in five-year reviews is not the same as the standard applied in original antidumping or countervailing duty investigations, it contains some of the same elements. The statute provides that the Commission is to “consider the likely volume, price effect, and impact of imports of the subject merchandise on the industry if the order is revoked.”<sup>64</sup> It directs the Commission to take into account its prior injury determination, whether any improvement in the state of the industry is related to the order under review, and whether the industry is vulnerable to material injury if the order is revoked.<sup>65 66</sup>

## B. Conditions of Competition

In evaluating the likely impact of the subject imports on the domestic industry if an order is revoked, the statute directs the Commission to evaluate all relevant economic factors “within the context

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<sup>60</sup> (...continued)

indicates that “the Commission may consider relevant factors such as current and likely continued depressed shipment levels and current and likely continued prices for the domestic like product in the U.S. market in making its determination of the likelihood of continuation or recurrence of material injury if the order is revoked.” SAA at 884.

<sup>61</sup> 19 U.S.C. § 1675a(a)(5).

<sup>62</sup> SAA at 887. Among the factors that the Commission should consider in this regard are “the fungibility or differentiation within the product in question, the level of substitutability between the imported and domestic products, the channels of distribution used, the methods of contracting (such as spot sales or long-term contracts), and lead times for delivery of goods, as well as other factors that may only manifest themselves in the longer term, such as planned investment and the shifting of production facilities.” *Id.*

<sup>63</sup> In analyzing what constitutes a reasonably foreseeable time, Commissioners Crawford and Koplan examine all the current and likely conditions of competition in the relevant industry. They define “reasonably foreseeable time” as the length of time it is likely to take for the market to adjust to a revocation. In making this assessment, they consider all factors that may accelerate or delay the market adjustment process including any lags in response by foreign producers, importers, consumers, domestic producers, or others due to: lead times; methods of contracting; the need to establish channels of distribution; product differentiation; and any other factors that may only manifest themselves in the longer term. In other words, their analysis seeks to define “reasonably foreseeable time” by reference to current and likely conditions of competition, but also seeks to avoid unwarranted speculation that may occur in predicting events into the more distant future.

<sup>64</sup> 19 U.S.C. § 1675a(a)(1).

<sup>65</sup> 19 U.S.C. § 1675a(a)(1). The statute further provides that the presence or absence of any factor that the Commission is required to consider shall not necessarily give decisive guidance with respect to the Commission’s determination. 19 U.S.C. § 1675a(a)(5). While the Commission must consider all factors, no one factor is necessarily dispositive. SAA at 886.

<sup>66</sup> Section 752(a)(1)(D) of the Act directs the Commission to take into account in five-year reviews involving antidumping proceedings “the findings of the administrative authority regarding duty absorption.” 19 U.S.C. § 1675a(a)(1)(D). Commerce has not issued any duty absorption determinations in either the China or Spain reviews. *See* 64 Fed. Reg. 16904, 16906 (April 7, 1999) (Spain) and 64 Fed. Reg. 16907, 16909 (April 7, 1999) (China).

of the business cycle and conditions of competition that are distinctive to the affected industry.”<sup>67</sup> In performing our analysis under the statute, we have taken into account the following conditions of competition in the U.S. market for potassium permanganate.

The primary end use for potassium permanganate in the U.S. market both during and since the original investigation has been as an oxidizing agent in water and wastewater treatment.<sup>68</sup> This end use currently accounts for about 70 to 75 percent of U.S. consumption.<sup>69</sup> Potassium permanganate is also used in various industrial applications, some of which have changed from time to time. Carus maintains that it has to invest in research to develop new applications to replace phased-out industrial applications.<sup>70</sup> In the United States 85 percent to 90 percent of the potassium permanganate sold is the free-flowing grade, and almost all of the remaining sales are of technical grade.<sup>71</sup>

The United States market for potassium permanganate is the largest in the world.<sup>72</sup> Demand for potassium permanganate in this country has increased since the original determinations. Apparent domestic consumption was \*\*\* pounds in 1980, and \*\*\* pounds in 1981.<sup>73</sup> In 1982, after Carus’ largest customer, Chemagro, ceased purchasing potassium permanganate, apparent domestic consumption declined to \*\*\* pounds.<sup>74</sup> Since then, demand has increased rather steadily to \*\*\* pounds in 1998.<sup>75</sup> The record indicates that demand for potassium permanganate in the U.S. water and wastewater treatment market is currently growing at 3 to 4 percent per year.<sup>76</sup> For some industrial niche applications, which account for smaller shares of consumption, demand is currently growing at \*\*\* percent.<sup>77</sup> Demand for potassium permanganate in water and wastewater treatment is expected to continue increasing for at least the next few years, largely due to the phasing in of stricter federal guidelines on water treatment.<sup>78</sup>

Domestic production and capacity have not increased at the same rate as demand. Domestic capacity has only increased from \*\*\* pounds in 1982 to \*\*\* pounds in 1998. Carus’ capacity is currently \*\*\* U.S. apparent consumption.<sup>79</sup> Carus produced \*\*\* pounds of potassium permanganate in

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<sup>67</sup> 19 U.S.C. § 1675a(a)(4).

<sup>68</sup> CR at I-14-I-17; PR at I-8-10. Original China Determination at 4-5.

<sup>69</sup> CR at I-14; PR at I-8.

<sup>70</sup> Carus’ Prehearing Brief at 42-43. Tr. at 50. CR at II-9, n.41; PR at II-6, n.41; CR at D-6; PR at D-3.

<sup>71</sup> CR at I-13, I-22; PR at I-8, I-13.

<sup>72</sup> Tr. at 14-15.

<sup>73</sup> Table I-1, CR at I-3; PR at I-2.

<sup>74</sup> Table I-1, CR at I-3; PR at I-2. Original Commission Report at A-16-A-17. Carus’ final month of production and shipment to Chemagro occurred in \*\*\*. Total Carus shipments that went to Chemagro decreased from \*\*\* percent in 1980 to \*\*\* percent in 1981 and to zero in 1982. *Id.* at A-17 & n.1.

<sup>75</sup> Table I-1, CR at I-3; PR at I-2. See IQN’s Prehearing Brief, Attachments 4 & 5.

<sup>76</sup> CR at I-17 and II-10; PR at I-10 and II-7.

<sup>77</sup> CR at I-10 and II-10; PR at I-9 and II-7.

<sup>78</sup> CR at I-25 and II-10; PR at I-13 and II-6. The use of potassium permanganate reduces by-products from chlorination that may be carcinogenic. CR at I-25 and II-10; PR at I-13 and II-6. The demand for potassium permanganate in water treatment is seasonal, increasing in the summer months. CR at I-26; PR at I-13.

<sup>79</sup> Table I-1, CR at I-3, PR at I-2. Carus’ capacity \*\*\* U.S. apparent consumption by only \*\*\* percent in 1997 and fell below consumption by \*\*\* percent in 1998. *Id.* and CR at II-4; PR at II-2. Some purchasers claim in these review investigations to have had difficulties getting supplies from Carus. CR at II-5 n.18; PR at II-3, n.18. \*\*\*.

1980, \*\*\* pounds in 1981, and \*\*\* pounds in 1982, compared to \*\*\* pounds in 1998.<sup>80</sup> A substantial percentage of Carus' current production \*\*\*. In 1997 and 1998, approximately \*\*\* percent of Carus' potassium permanganate production was used \*\*\* in an arrangement similar to a \*\*\*.<sup>81</sup>

Now, as during the original investigations, Carus dominates the domestic market.<sup>82</sup> There have also been some additional entrants into the U.S. market, namely India and the Czech Republic.<sup>83</sup> However, evidence in the record indicates that the Czech producer's plant is not a modern facility.<sup>84</sup>

Participants in the U.S. market may compete for sales directly or sell their product to distributorships. Producers such as IQN and Carus \*\*\* in the U.S. market.<sup>85</sup> Therefore, distributors either sell \*\*\*.<sup>86</sup>

The Commission found in the original investigations that potassium permanganate was a fungible, price-sensitive product. That has not changed. Most potassium permanganate destined for water and wastewater treatment applications is sold to distributors who in turn sell to governmental water authorities through transparent public bidding processes where the lowest bidder often wins based on a difference in fractions of a cent per pound.<sup>87</sup> Available data from importers and purchasers indicates a moderate to high degree of substitutability between the domestic like product and subject and nonsubject imports.<sup>88 89</sup>

Based on the record evidence, we find that these conditions of competition in the U.S. potassium permanganate market are not likely to change significantly in the reasonably foreseeable future. Accordingly, we find that current conditions in the U.S. potassium permanganate market provide us with a reasonable basis upon which to assess the likely effects of revocation of the antidumping duty orders within the reasonably foreseeable future.

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<sup>80</sup> Table I-1, CR at I-4, PR at I-2. Table 2, Original Commission Report at A-18.

<sup>81</sup> CR at III-A-3-III-A-4; PR at III-2.

<sup>82</sup> Carus had a domestic market share of \*\*\* percent in 1997 and \*\*\* percent in 1998. CR at I-23; PR at I-13. Its domestic market share was also high in the original investigations, ranging from \*\*\* percent in 1982 to \*\*\* percent in 1980. Table I-1, CR at I-3; PR at I-2.

<sup>83</sup> In the original investigations, only China, Spain and the Ukraine exported potassium permanganate to the United States. During 1997-1998, imports of potassium permanganate entered the United States from China, the Czech Republic, Germany, India and Spain. The German producer ceased production in 1998. CR at IV-11; PR at IV-5.

<sup>84</sup> IQN's Posthearing Brief at 10-11.

<sup>85</sup> Tr. at 133. IQN's Posthearing Brief Attachment 2 at 1. CR at II-2; PR at II-1. Carus also has \*\*\*.

<sup>86</sup> CR at V-3; PR at V-3.

<sup>87</sup> Tr. at 7.

<sup>88</sup> CR at II-15-II-17; PR at II-9-11.

<sup>89</sup> Commissioner Crawford disagrees with the majority's characterization of the level of substitutability between the domestic like product and subject Chinese merchandise. In the original investigation, the lack of potassium permanganate exports from China in the free-flowing grade limited the substitutability of Chinese merchandise with other sources of supply. Currently, there is little evidence on the record that the Chinese now possess significant free-flowing production capacity. Therefore, Commissioner Crawford determines that the degree of substitutability between the domestic like product and subject Chinese merchandise is low. For a full discussion of her analysis on the issue of substitutability, see her dissenting views.

**V. REVOCATION OF THE ANTIDUMPING DUTY ORDER ON POTASSIUM PERMANGANATE FROM SPAIN IS NOT LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME<sup>90</sup>**

**A. Likely Volume of Subject Imports**

In evaluating the likely volume of imports of subject merchandise if the order under review is revoked, the statute directs the Commission to consider whether the likely volume of imports would be significant either in absolute terms or relative to production or consumption in the United States.<sup>91</sup> In doing so, the Commission must consider “all relevant economic factors,” including four enumerated factors: (1) any likely increase in production capacity or existing unused production capacity in the exporting country; (2) existing inventories of the subject merchandise, or likely increases in inventories; (3) the existence of barriers to the importation of the subject merchandise into countries other than the United States; and (4) the potential for product shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products.<sup>92</sup>

In the original determination concerning Spain, the Commission found that subject imports from Spain increased from approximately 975,000 pounds in 1981 to over a million pounds in 1982 and that the ratio of subject imports from Spain to apparent domestic consumption rose substantially from 1981 to 1982.<sup>93</sup>

Subject imports from Spain to the United States peaked at 2.6 million pounds in 1986.<sup>94</sup> Subsequently, imports from Spain declined while imports from other countries increased.<sup>95</sup> U.S. shipments of imports from Spain were \*\*\* pounds in 1997 and fell to \*\*\* pounds in 1998. U.S. shipments of imports from Spain were lower in interim 1999 than they were during the comparable period in 1998.<sup>96</sup>

Our focus in five-year reviews is on the likely volume of subject imports that would enter the United States market if the order were revoked.<sup>97</sup> Based on the facts in the record of this review, we find for several reasons that the volume of imports of potassium permanganate from Spain is not likely to be significant in the reasonably foreseeable future if the order is revoked.

Although IQN had substantial excess capacity in 1997 and 1998, the evidence indicates that IQN is not likely to direct significant volumes of potassium permanganate to the U.S. market, even if the order were to be revoked. IQN’s capacity of \*\*\* pounds has not changed since the original

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<sup>90</sup> Commissioner Crawford does not join the remainder of these Views. Her analysis is set forth separately in her dissenting views.

<sup>91</sup> 19 U.S.C. § 1675a(a)(2).

<sup>92</sup> 19 U.S.C. § 1675a(a)(2)(A)-(D).

<sup>93</sup> Original Spain Determination at 8-9.

<sup>94</sup> Carus’ Prehearing Brief, Exhibit 6, Official Bureau of Census Import statistics.

<sup>95</sup> IQN’s Posthearing Brief, Attachment 1.

<sup>96</sup> U.S. shipments of imports from Spain were \*\*\* in interim 1999 compared to \*\*\* in interim period 1998. Table I-1, CR at I-3; PR at I-2.

<sup>97</sup> See, e.g., Synthetic Methionine from Japan, Inv. No. AA1921-115 (Review), USITC Pub. 3205 (July 1999) at 12; Sebacic Acid from China, Inv. No. 731-TA-653 (Review), USITC Pub. 3189 (May 1999).

investigations, \*\*\*.<sup>98</sup> While IQN's capacity has remained static, the demand for potassium permanganate in the United States has increased substantially. Although IQN's capacity in 1982 was enough to supply \*\*\* percent of U.S. apparent domestic consumption, today the same capacity could only supply \*\*\* percent of U.S. apparent domestic consumption.<sup>99</sup> In addition, evidence in the record indicates that the demand for potassium permanganate in some markets, such as Europe, also continues to grow.

In recent years, IQN has focused on the European market, where it maintains it will continue to focus in the future. IQN states that from 1993 to the first quarter of 1999, it increased its market share of the European potassium permanganate market from 28 percent to 56 percent.<sup>100</sup> IQN reported that its primary export markets are \*\*\*.<sup>101</sup> Eurostat import statistics also indicate that Spain's primary export markets are in Europe.<sup>102</sup> There are no antidumping measures in place regarding importation of Spanish potassium permanganate in markets other than the United States.<sup>103</sup>

In addition, the competitive situation has recently improved for IQN in the European market, and is likely to continue to improve. The German producer of potassium permanganate has recently ceased production, creating an opportunity for IQN to increase its European sales in the future.<sup>104</sup> Demand for potassium permanganate in Europe is growing at approximately 3-5 percent per annum, and new European Union regulations regarding water quality are likely to increase demand in Europe for potassium permanganate in the future.<sup>105</sup> Additionally, the European Union maintains antidumping measures against China, India and Ukraine, and the antidumping measures against China have recently been tightened, limiting potential sales for IQN's competitors in Europe.<sup>106</sup> All of these conditions of competition make it more likely that IQN will continue to focus on Europe as its primary market in the reasonably foreseeable future, rather than the United States. Indeed, comparison of data for interim 1999 with those for interim 1998 supports IQN's assertion. Whereas IQN utilized only \*\*\* percent of its capacity during the first quarter of 1998, during the first quarter of 1999, its capacity utilization increased to \*\*\* percent.<sup>107 108</sup>

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<sup>98</sup> Table IV-5 at CR at IV-10; PR at IV-4. IQN's Posthearing Brief, Attachment 2 at 12.

<sup>99</sup> Table I-1, CR at I-3; PR at I-2.

<sup>100</sup> IQN's Posthearing Brief, Attachment 2 at 9.

<sup>101</sup> CR at IV-11; PR at IV-4.

<sup>102</sup> Carus' Prehearing Brief, Exhibit 8.

<sup>103</sup> Tr. at 108.

<sup>104</sup> CR at IV-11; PR at IV-4. \*\*\*. \*\*\*. Staff Field Trip Notes (April 26, 1999); File Note from Amelia Preece, Economist; IQN's Posthearing Brief at 10-11.

<sup>105</sup> IQN's Posthearing Brief, Attachment 2 at 4 & 6-7.

<sup>106</sup> CR at IV-12; PR at IV-5.

<sup>107</sup> Table IV-5, CR at IV-10; PR at IV-4.

<sup>108</sup> We also note that while Spain's market share and import volume has declined since the original investigation, the market share and import volume for nonsubject imports has increased significantly. In 1982, U.S. shipments of imports from Spain were \*\*\* pounds, representing a market share of \*\*\* percent, whereas U.S. shipments from nonsubject sources were \*\*\* pounds and represented a market share of \*\*\* percent. By contrast, in 1998, U.S. shipments of imports from Spain were \*\*\* pounds representing a market share of \*\*\* percent whereas shipments of imports from nonsubject sources were \*\*\* pounds, representing a market share of approximately \*\*\* percent. Table I-1, CR at I-3; PR at I-2. Indeed, at the same time subject import volumes from Spain sharply declined from 1985 to 1992, nonsubject import volumes substantially increased. IQN's Hearing Exhibit 1. In light of this historical pattern, we find it likely that any increase in U.S. shipments of potassium permanganate from Spain would likely come at the expense of nonsubject imports as well as the domestic like product.

Finally, IQN's end-of-period inventories in Spain dropped from \*\*\* pounds in 1997 to \*\*\* pounds in 1998, and only accounted for, respectively, \*\*\* percent and \*\*\* percent of IQN's total shipments.<sup>109</sup> Further, there is little or no potential for product-shifting.<sup>110</sup>

We therefore conclude that the volume of subject imports from Spain is not likely to reach significant levels within a reasonably foreseeable time if the antidumping duty order is revoked.

#### B. Likely Price Effects of Subject Imports

In evaluating the likely price effects of subject imports if the antidumping duty order is revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared with the domestic like product and whether the subject imports are likely to enter the United States at prices that would have a significant depressing or suppressing effect on the prices of domestic like product.<sup>111</sup>

In the original investigation, the Commission found significant underselling and that dumped imports from Spain caused price suppression.<sup>112</sup> Imports of potassium permanganate from Spain undersold the domestic product by margins ranging from \*\*\* percent to \*\*\* percent.<sup>113</sup> The Commission also found that the domestic producers had lost sales and revenues due to low-priced imports from Spain.<sup>114</sup>

The price data for 1997 and 1998 indicate that IQN's prices in recent years have been generally comparable to prices for Carus' product. Spanish product sold to distributors generally undersold domestic product by small margins ranging from \*\*\* percent to \*\*\* percent, while Spanish product sold to end-users generally oversold domestic product.<sup>115</sup> Although these prices occurred with the antidumping duty order in place, we find that the consistently close range between Spanish and domestic prices as well as the likely limits on any increase in the volume of imports from Spain suggest that any decrease in prices would be modest.

No evidence in the record suggests that IQN has been or is likely to become a price leader in the United States. The record reflects that based on average unit values, prices for Spanish potassium permanganate in the United States are higher than U.S. prices for nonsubject imports from the Czech

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<sup>108</sup> (...continued)

likely come at the expense of nonsubject imports as well as the domestic like product.

<sup>109</sup> Table IV-5, CR at IV-10; PR at IV-4. Moreover, Carus' \*\*\* creates an incentive for distributors to do business with Carus. Thus, Carus requires its distributors to choose between \*\*\*. Carus provides its \*\*\*.

<sup>110</sup> CR at II-8-9; PR at II-5-6. Tr at 108.

<sup>111</sup> 19 U.S.C. § 1675a(a)(3). The SAA states that "[c]onsistent with its practice in investigations, in considering the likely price effects of imports in the event of revocation and termination, the Commission may rely on circumstantial, as well as direct, evidence of the adverse effects of unfairly traded imports on domestic prices." SAA at 886.

<sup>112</sup> Original Spain Determination at 9-10.

<sup>113</sup> Original Commission Report, Table 19 at A-55.

<sup>114</sup> Original Spain Determination at 9-10.

<sup>115</sup> Tables V-1 and V-2, CR at V-5-6; PR at V-4.

Republic, India or Germany.<sup>116</sup> It also reflects that \*\*\* average unit values for exports from Spain \*\*\*.<sup>117</sup> Furthermore, the record reflects that although nonsubject imports have been in the U.S. market for several years, the lower prices of nonsubject imports, even with a combined market share of approximately \*\*\* percent in 1998, have not suppressed or depressed domestic prices. We find, therefore, that even if prices for imports from Spain were to decrease somewhat to compete more effectively with nonsubject imports, given the likely volumes involved, the effects on domestic prices would not be significant.

The record suggests that the revocation of the order on imports of potassium permanganate from Spain would not likely result in IQN significantly changing its current pricing patterns in the United States, as to result in significant price effects for the domestic like product. Accordingly, we conclude that the Spanish product is unlikely to enter the United States at prices that would have a significant depressing or suppressing effect on prices for the domestic like product.

### C. Likely Impact of Subject Imports

In evaluating the likely impact of imports of subject merchandise if the antidumping duty order is revoked, the Commission is directed to consider all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including but not limited to: (1) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity; (2) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and (3) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more advanced version of the domestic like product.<sup>118</sup> All relevant economic factors are to be considered within the context of the business cycle and the conditions of competition that are distinctive to the industry.<sup>119</sup> As instructed by the statute, we have considered the extent to which any improvement in the state of the domestic industry is related to the antidumping duty order at issue and whether the industry is vulnerable to material injury if the order is revoked.<sup>120</sup>

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<sup>116</sup> IQN Prehearing Brief, Attachment 2, (showing average unit values based on Department of Commerce statistics). Average unit values were \$0.882 per pound for imports from the Czech Republic, \$0.763 per pound for imports from Germany, \$0.739 per pound for imports from India, and \$1.015 per pound for imports from Spain.

<sup>117</sup> \*\*\*. Table C-1, CR at C-4; PR at C-3. Average unit values for total exports from Spain were \$0.831 per pound in 1997 and \$0.835 per pound in 1998. Carus' Prehearing Brief, Exhibit 8.

<sup>118</sup> 19 U.S.C. § 1675a(a)(4).

<sup>119</sup> 19 U.S.C. § 1675a(a)(4). Section 752(a)(6) of the Act states that "the Commission may consider the magnitude of the margin of dumping" in making its determination in a five-year review. 19 U.S.C. § 1675a(a)(6). The statute defines the "magnitude of the margin of dumping" to be used by the Commission in five-year reviews as "the dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title." 19 U.S.C. § 1677(35)(C)(iv). *See also* SAA at 887. In its final five-year review determination regarding potassium permanganate from Spain, Commerce determined that the magnitude of the dumping margin that is likely to prevail if the antidumping duty order on Spain were revoked is 5.53 percent. 64 Fed. Reg. 16904, 16906 (April 7, 1999).

<sup>120</sup> The SAA states that in assessing whether the domestic industry is vulnerable to injury if the order is revoked, the Commission "considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they may also demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports." SAA at 885.

Today, Carus dominates a U.S. market that is substantially larger than in 1982. It is operating at a high capacity utilization level with a large market share, and its gross profits, operating income and operating income margins are \*\*\*.<sup>121</sup> Accordingly, we do not find that the domestic industry is in a weakened state, as contemplated by the vulnerability criterion of the statute.<sup>122 123</sup>

We also conclude that the subject imports from Spain are not likely to have an adverse impact on the potassium permanganate industry in the reasonably foreseeable future if the antidumping duty order is revoked. We found above that revocation of the antidumping duty order is not likely to lead either to significant volumes of subject imports from Spain or to significant price effects. These findings in turn indicate that the subject imports from Spain are not likely to have a significant adverse impact on the domestic industry within the reasonably foreseeable future if the order is revoked, particularly in light of the expected growth in the U.S. market. We find it likely that this gradually growing market will absorb any increase in the volume of potassium permanganate from Spain which might follow revocation of the order, without any significant adverse effect on the U.S. industry's utilization of capacity, cash flow, inventories, employment, wages, ability to raise capital and investment or the domestic industry's development and production efforts. Accordingly, we conclude that revocation of the antidumping duty order on imports from Spain would not be likely to lead to significant declines in output, sales, market share, profits, productivity, or return on investments. We therefore find that revocation of the antidumping duty order on Spain is not likely to have a negative impact on the domestic industry in the reasonably foreseeable future.

## **VI. REVOCATION OF THE ORDER ON POTASSIUM PERMANGANATE FROM CHINA IS LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME<sup>124</sup>**

### **A. Likely Volume of Subject Imports**

In evaluating the likely volume of imports of subject merchandise if the order under review is revoked, the statute directs the Commission to consider whether the likely volume of imports would be significant either in absolute terms or relative to production or consumption in the United States.<sup>125</sup> In doing so, the Commission must consider "all relevant economic factors," including four enumerated factors: (1) any likely increase in production capacity or existing unused production capacity in the

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<sup>121</sup> Table I-1, CR at I-3, PR at I-2. Carus' capacity utilization rate was \*\*\* percent in 1997 and \*\*\* percent in 1998, and was \*\*\* percent in interim 1999. Carus in 1998 reported \*\*\* with an operating margin of \*\*\* percent. The domestic producer's market share was \*\*\* percent in 1998.

<sup>122</sup> See SAA at 885 ("The term 'vulnerable' relates to susceptibility to material injury by reason of dumped or subsidized imports. This concept is derived from existing standards for material injury and threat of material injury . . . . If the Commission finds that the industry is in a weakened state, it should consider whether the industry will deteriorate further upon revocation of an order. . . .").

<sup>123</sup> Although the condition of the domestic industry has noticeably improved since imposition of the orders covering Spain and China, given the lack of complete data for many of the intervening years regarding the condition of the industry and the effect of imports in the U.S. market, it is difficult to assess the extent to which the improvement in the state of the industry is related to the orders.

<sup>124</sup> Commissioner Crawford determines that revocation of the antidumping duty order on potassium permanganate from China would not be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. See Dissenting Views of Commissioner Carol T. Crawford.

<sup>125</sup> 19 U.S.C. § 1675a(a)(2).

exporting country; (2) existing inventories of the subject merchandise, or likely increases in inventories; (3) the existence of barriers to the importation of the subject merchandise into countries other than the United States; and (4) the potential for product shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products.<sup>126</sup>

In the original determination concerning China, the Commission found that following a drop in volume between 1980 and 1981, subject imports from China increased from 281,000 pounds in 1981 to 588,000 pounds in 1982 and that during January-August 1983, 1.4 million pounds were imported from China compared to 407,000 pounds in the corresponding period of 1982.<sup>127</sup> It further found that the ratio of imports from China to apparent domestic consumption, excluding purchases by Chemagro, rose from 1980 to 1981, declined from 1981 to 1982, and then more than doubled during the first eight months of 1983 compared to the corresponding period of 1982.<sup>128</sup>

The record reflects that imports from China increased dramatically between 1986 and 1990, surpassing 2.5 million pounds in 1990. Commerce determined in 1991 to increase the dumping margin on imports from China from 39.53 percent to 128.94 percent as a result of administrative reviews.<sup>129</sup> In 1992, imports from China fell to approximately 300,000 pounds. Imports from China then increased significantly between 1992 and 1993, almost reaching the 1990 level. In 1994, Commerce found that potassium permanganate was being transshipped through Hong Kong resellers previously assigned the 39.53 percent margin. As a result, a country-wide margin of 128.94 percent was assigned to all imports from China.<sup>130</sup> Imports from China declined steeply between 1993 and 1994, and have steadily decreased to a minimal level since then.<sup>131</sup>

Current Chinese potassium permanganate exports to the United States are virtually nonexistent.<sup>132</sup> Nevertheless, our focus in five-year reviews is on the likely volume of subject imports that would enter the United States if the order were revoked.<sup>133</sup> Based on the facts in the record of these reviews, we find the likely volume of imports from China would be significant in the reasonably foreseeable future if the order is revoked.<sup>134</sup>

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<sup>126</sup> 19 U.S.C. § 1675a(a)(2)(A)-(D). Available data do not indicate that Chinese producers can switch production between potassium permanganate and other products. CR at II-7; PR at II-4.

<sup>127</sup> Original China Determination at 9-10. Imports from China fell from approximately 1 million pounds in 1980 to 281,000 pounds in 1981. The Commission found, however, that the drop in imports from 1980 to 1981 was in large part due to Carus' loss of Chemagro as a customer, and a consequent drop in Carus' purchases of imported product from China. Carus did not purchase any imports in 1982 or January-August 1983. Original Commission Report at A-23, A-25-A-26, Table 14 at A-41. Nor is there any evidence that Carus has purchased imports from China since the original investigation.

<sup>128</sup> Original China Determination at 10; Table 18, Original Commission Report at A-52. The Commission also made an affirmative critical circumstances finding with respect to imports from China. Original China Determination at 12-14.

<sup>129</sup> 56 Fed. Reg. 19640 (April 29, 1991).

<sup>130</sup> 59 Fed. Reg. 26625 (May 23, 1994). CR at I-8; PR at I-4.

<sup>131</sup> Official Bureau of Census Import Statistics, Carus Prehearing Brief, Exhibit 2; Figure I-1, CR at I-9; PR at I-5.

<sup>132</sup> Table IV-4, CR at IV-8, PR at IV-4. \*\*\* pounds of potassium permanganate were exported to the United States in 1998. *Id.*

<sup>133</sup> See, e.g., Synthetic Methionine from Japan, Inv. No. AA1921-115 (Review), USITC Pub. 3205 (July 1999) at 12; Sebacic Acid from China, Inv. No. 731-TA-653 (Review), USITC Pub. 3189 (May 1999).

<sup>134</sup> Chairman Bragg notes that the statute authorizes the Commission to "use the facts otherwise available" in

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Since the time of the original investigation, Chinese potassium permanganate producers have greatly expanded their capacity. Chinese producers of potassium permanganate had the capacity to supply \*\*\* of the \*\*\* pounds of potassium permanganate consumed in the U.S. market in 1980, and \*\*\* of U.S. consumption in 1982.<sup>135</sup> The record indicates that with the opening of a new plant, and the use of more modern production techniques, Chinese capacity currently is at 79 million pounds.<sup>136</sup> Thus, although U.S. consumption has tripled since 1982, and now stands at \*\*\* pounds, Chinese production can now supply \*\*\* U.S. consumption.<sup>137</sup> Further, the information available in these reviews also indicates that the amount of surplus Chinese production available for export has increased significantly since the period of the original determinations. Both Carus and IQN maintain that China's capacity utilization rate is \*\*\* percent.<sup>138</sup> In addition, the two responding Chinese producers reported that their aggregate inventories in China were \*\*\* pounds at the end of 1998, with the same amount remaining in inventory in the first quarter of 1999.<sup>139</sup> These data indicate a substantial immediate ability to increase exports to the United States.

Second, the record reflects that the Chinese industry is aggressively export-oriented. China's export statistics show an increase of five million pounds in export volumes to non-U.S. markets from 1996 to 1998.<sup>140</sup> Based on responses from the two responding Chinese producers to the Commission's questionnaires, exports to non-U.S. markets comprised \*\*\* percent of total Chinese shipments in 1997 and \*\*\* percent in 1998.<sup>141</sup> At the time of the original investigations, China only produced a technical/pharmaceutical grade<sup>142</sup> that was imported into the United States and sold primarily to

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<sup>134</sup> (...continued)

reaching a determination when: (1) necessary information is not available on the record; or (2) an interested party, or any other person, withholds information requested by the agency, or fails to provide such information in the time or in the form or manner requested, or significantly impedes a proceeding, or provides information that cannot be verified pursuant to section 782(i) of the Act. 19 U.S.C. § 1677e(a). The statute permits the Commission to use adverse inferences in selecting from among the facts otherwise available when an interested party has failed to cooperate by acting to the best of its ability to comply with a request for information. 19 U.S.C. § 1677e(b). Such adverse inferences may include selecting from information contained in the record of the Commission's original investigation or any other information placed on the record in a review. *Id.*

<sup>135</sup> Original Commission Report at A-15-16. China's capacity to produce potassium permanganate was reported to be 12 million pounds a year in 1979 and capacity subsequently declined with the closing of two plants during 1980-1982. *Id.* U.S. consumption declined to \*\*\* million pounds in 1981 and to \*\*\* million pounds in 1982.

<sup>136</sup> CR at IV-7 and IV-9; PR at IV-4; Carus Response to Notice of Institution (Dec. 22, 1998), 15-16 & Attachment 8.

<sup>137</sup> One of the Chinese producers responding to the Commission questionnaire indicated that if the order were revoked, \*\*\*. CR at D-7; PR at D-3. \*\*\* pounds \*\*\* would supply \*\*\* of current U.S. consumption. The record reflects that there are approximately five major producers of potassium permanganate in China. CR at IV-5; PR at IV-3.

<sup>138</sup> CR at II-7; PR at II-4.

<sup>139</sup> Table IV-4, CR IV-8, PR at IV-4.

<sup>140</sup> Tr. at 36. World Trade Atlas export statistics show that Chinese exports were 7,924 metric tons in 1996 (or approximately 17.4 million pounds) and 10,396 metric tons in 1998 (or approximately 22.9 million pounds). The United States is not listed as one of the fifteen destination countries. Carus' Prehearing Brief, Attachment 7.

<sup>141</sup> Table IV-4, CR/PR at IV-8, PR at IV-4. Chinese home market sales were, based on the same data, respectively \*\*\* percent and \*\*\* percent of total shipments in 1997 and 1998. *Id.*

<sup>142</sup> The potassium permanganate produced in China at the time of the original investigations was a high purity product which fulfilled the requirements of pharmaceutical grade, but was often referred to as "technical grade" and  
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industrial users.<sup>143</sup> Now, at least one large Chinese producer manufactures free-flowing grade, the most popular grade in the U.S. market.<sup>144</sup> The ability to supply free-flowing grade to the U.S. market enhances the ability of the Chinese producers to compete in the U.S. market. In addition, each of the two Chinese producers that responded to Commission questionnaires indicated that if the order on imports from China were revoked, they would increase or resume imports of potassium permanganate into the United States.<sup>145</sup>

Further, other factors create additional incentives for Chinese producers to shift exports to the U.S. market if the U.S. antidumping duty order on imports from China were removed. With the tightening of restrictions on imports from China in the European Union, and imposition of restrictions on imports from China in India, Chinese producers face a loss or decline of major markets in which they have been selling their product. We find it likely that were the antidumping duty order on imports into the United States from China to be revoked, Chinese producers would again find the United States an attractive market for their product.<sup>146 147</sup>

In sum, we find that the increased production capacity, large amount of unused capacity, emphasis on export markets, increased product offering, express interest in the U.S. market, and barriers to imports from China in other markets, are evidence of the Chinese producers' willingness and ability to export significant volumes of potassium permanganate to the United States within the reasonably foreseeable future if the antidumping duty order on subject imports from China is revoked. Consequently, we conclude that subject imports from China would likely increase to a significant level, and would regain significant U.S. market share, if the order is revoked.

#### B. Likely Price Effects of Subject Imports

In evaluating the likely price effects of subject imports if the antidumping duty order is revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared with the domestic like product and whether the subject imports are likely to enter the United States at prices that would have a significant depressing or suppressing effect on the prices of domestic like product.<sup>148</sup>

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<sup>142</sup> (...continued)

was not usually used in pharmaceutical applications. Original Commission Report at 4-5.

<sup>143</sup> Original Commission Report at A-53.

<sup>144</sup> CR at II-4; PR at II-2. \*\*\* CR at IV-9; PR at IV-4.

<sup>145</sup> CR at D-7; PR at D-3.

<sup>146</sup> The evidence indicates that increases in Chinese exports of potassium permanganate to the United States have historically correlated to time periods in which the antidumping duties were at relatively low levels, such as prior to Commerce's 1991 increase in the margin and prior to Commerce's elimination of a separate margin for resellers in Hong Kong. CR at I-7-8; PR at I-4; Figure I-1, CR at I-9, PR at I-5. These patterns corroborate the other evidence of the Chinese producers' ability and readiness to significantly increase exports to the United States absent the discipline of the antidumping duty orders.

<sup>147</sup> Chairman Bragg infers that, in the absence of the order, Chinese producers would revert to their historical emphasis on exporting to the United States evidenced in the Commission's original determination and Commerce's administrative reviews. Based upon the record in these reviews, Chairman Bragg finds that this historical emphasis will likely result in significant volumes of subject imports into the United States if the order is revoked.

<sup>148</sup> 19 U.S.C. § 1675a(a)(3). The SAA states that "[c]onsistent with its practice in investigations, in considering the likely price effects of imports in the event of revocation and termination, the Commission may rely on

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The record in this review contains a limited amount of recent pricing data for Chinese potassium permanganate sold in the U.S. market because of extremely low import volumes from China in 1997 and 1998. However, our focus in five-year reviews is on the likely price effects of subject imports from China if the antidumping duty order were revoked. In the original determination, the Commission found significant underselling and price suppression caused by dumped imports from China.<sup>149</sup> Imports of potassium permanganate from China undersold the domestic product in every quarter for which data were available, by margins ranging from \*\*\* percent to \*\*\* percent.<sup>150</sup> The Commission also found that the domestic producers had lost sales and revenues due to low-priced imports from China.<sup>151</sup>

Because potassium permanganate is a commodity product sold in a price-sensitive market, and U.S. prices are substantially higher than those found in other markets, Chinese producers would have an incentive to price their product substantially below the prevailing U.S. price in order to induce U.S. purchasers to switch from domestic to Chinese potassium permanganate.<sup>152</sup> This is the same type of behavior observed in the original investigation.<sup>153</sup> The substantial likely volume of potassium permanganate from China would magnify the likely effect on U.S. prices. We find it likely that the Chinese producers would again offer attractively low prices to U.S. purchasers in order to regain market share if the antidumping duty order were revoked.<sup>154</sup>

This conclusion is based on the behavior of Chinese producers during the period of the original investigation, as well as the limited information on the record regarding current prices for Chinese potassium permanganate in non-U.S. markets and the fact that antidumping measures have been imposed in other countries on imports from China. We find that this aggressive pricing indicates that if the antidumping duty order were revoked, Chinese producers would be likely to significantly undersell the domestic product in the U.S. market. Accordingly, we conclude that potassium permanganate from China is likely to enter the United States at prices that would have a significant depressing or suppressing effect on prices for the domestic like product if the antidumping duty order is revoked.

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<sup>148</sup> (...continued)

circumstantial, as well as direct, evidence of the adverse effects of unfairly traded imports on domestic prices.” SAA at 886.

<sup>149</sup> Original China Determination at 10-11.

<sup>150</sup> Original Commission Report at A-56 & Table 19, A-55.

<sup>151</sup> Original China Determination at 10-11.

<sup>152</sup> Average unit value data show that Chinese potassium permanganate has sold at prices well below prevailing U.S. prices in other markets. According to World Trade Atlas data, Chinese exports of potassium permanganate had an average unit value of \$0.507 per pound in 1997 and \$0.454 per pound in 1998. Carus’ Prehearing Brief at Exhibit 7. Average unit values for Chinese exports of potassium permanganate to Canada, the largest western market for potassium permanganate from China, were \$0.498 per pound in 1997 and \$0.518 per pound in 1998. *Id.* These prices are well below U.S. average unit values for potassium permanganate from any source during the same periods. Table C-1, CR/PR at C-3-4.

<sup>153</sup> Original China Determination at 11.

<sup>154</sup> Chairman Bragg infers that, in the event of revocation, producers in China will revert to aggressive pricing practices in connection with exports of subject merchandise to the United States, as evidenced in the Commission’s original investigation.

### C. Likely Impact of Subject Imports

In evaluating the likely impact of imports of subject merchandise if the antidumping duty order is revoked, the Commission is directed to consider all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including but not limited to: (1) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity; (2) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and (3) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more advanced version of the domestic like product.<sup>155</sup> All relevant economic factors are to be considered within the context of the business cycle and the conditions of competition that are distinctive to the industry.<sup>156</sup> As instructed by the statute, we have considered the extent to which any improvement in the state of the domestic industry is related to the antidumping order at issue and whether the industry is vulnerable to material injury if the order is revoked.<sup>157</sup>

In its original determination, the Commission found that substantially lower prices for the Chinese product in a price-sensitive market allowed imports from China to gain market share and resulted in price suppression, lost sales and revenues, and declines in employment.<sup>158</sup> As noted in our discussion on Spain, the condition of the domestic industry has substantially improved since the imposition of the antidumping duty orders.

As discussed above, based on the record in this review, we conclude that if the order is revoked on subject imports from China, the likely volume of subject imports would be significant and that these imports would have significant adverse price effects. Although we have found that the domestic industry is not currently vulnerable as defined by the statute,<sup>159</sup> we find that the magnitude of the likely volume and price effects from Chinese imports would likely have a significant adverse impact on the domestic industry. As in the original investigation, the domestic producer, if faced with competition from significant volumes of low-priced imports of potassium permanganate from China, would likely lose significant sales and market share, and would be forced to lower its prices to compete with imports from China. The combination of lost sales volume and lost per-pound revenue that the domestic industry would suffer under these circumstances would likely result in substantial declines in the industry's production, shipments, capacity utilization, employment, profitability, return on investment, and research and development efforts. Accordingly, we conclude that, if the antidumping duty order is revoked,

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<sup>155</sup> 19 U.S.C. § 1675a(a)(4).

<sup>156</sup> 19 U.S.C. § 1675a(a)(4). Section 752(a)(6) of the Act states that "the Commission may consider the magnitude of the margin of dumping" in making its determination in a five-year review. 19 U.S.C. § 1675a(a)(6). The statute defines the "magnitude of the margin of dumping" to be used by the Commission in five-year reviews as "the dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title." 19 U.S.C. § 1677(35)(C)(iv). *See also* SAA at 887. In its final five-year review determination regarding potassium permanganate from China, Commerce determined that the magnitude of the dumping margin that is likely to prevail if the antidumping duty order on China were revoked is 128.94 percent. 64 Fed. Reg. 16907, 16910 (April 7, 1999).

<sup>157</sup> The SAA states that in assessing whether the domestic industry is vulnerable to injury if the order is revoked, the Commission "considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they may also demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports." SAA at 885.

<sup>158</sup> Original China Determination at 8-11.

<sup>159</sup> *See* discussion in section V.C above.

subject imports from China would be likely to have a significant adverse impact on the domestic industry within a reasonably foreseeable time.

### **CONCLUSION**

For the foregoing reasons, we determine that revocation of the antidumping duty order on potassium permanganate from Spain would not be likely to lead to continuation or recurrence of material injury to the U.S. potassium permanganate industry within a reasonably foreseeable time. We further determine that revocation of the antidumping duty order on potassium permanganate from China would be likely to lead to continuation or recurrence of material injury to the U.S. potassium permanganate industry within a reasonably foreseeable time.



**SEPARATE VIEWS OF CHAIRMAN LYNN M. BRAGG  
REGARDING CUMULATION IN SUNSET REVIEWS**

*Potassium Permanganate from China and Spain  
Invs. Nos. 731-TA-125-126 (Review)*

The statute provides that the Commission may cumulatively assess the volume and effect of imports of the subject merchandise from all countries with respect to which sunset reviews were initiated on the same day, if such imports would be likely to compete with each other and with domestic like products in the United States market.<sup>1</sup> Cumulation is thus discretionary in sunset reviews, and the Commission may exercise its discretion to cumulate if the statutory criteria are met.

The statute further provides, however, that the Commission shall not cumulatively assess the volume and effects of imports of the subject merchandise in a case in which it determines that “*such imports* are likely to have no discernible adverse impact on the domestic industry.”<sup>2</sup>

**Analytical Framework:**

In my view, the appropriate analysis under the statute begins with an examination of whether subject imports are amenable to cumulation—i.e., whether the two statutory prerequisites for cumulation are satisfied. Thus, in considering whether to cumulate subject imports in a sunset review, I first assess: (1) whether the reviews were initiated on the same day; and, (2) the likelihood of a reasonable overlap of competition among subject imports and between subject imports and domestic like products, in the event the orders are revoked.

If, as a result of the foregoing assessment, I determine that subject imports are amenable to cumulation, I then proceed to examine whether the statutory exception precludes cumulation of *such imports* that are otherwise amenable to cumulation—i.e., I examine whether *such imports* are likely to have no discernible adverse impact on the domestic industry. As I explain further below, I view this latter inquiry into whether *such imports* are likely to have no discernible adverse impact on the domestic industry as requiring both an individual and an aggregate analysis.

*Reasonable Overlap of Competition—*

In the context of Title VII investigations, the Commission generally has considered the following factors in assessing whether subject imports compete with each other and with the domestic like product: (1) the degree of fungibility among subject imports from different countries, and between subject imports and the domestic like product; (2) the presence of sales or offers to sell, in the same geographical markets, of subject imports from different countries and the domestic like product; (3) the existence of common or similar channels of distribution for subject imports from different countries and the domestic

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<sup>1</sup> 19 U.S.C. § 1675a(a)(7).

<sup>2</sup> *Id.* (emphasis added).

like product; and, (4) whether subject imports are simultaneously present in the market.<sup>3</sup> This list is not exhaustive, and no single factor is dispositive.<sup>4</sup> Only a reasonable overlap of competition is required.<sup>5</sup>

Of course, the focus in a sunset review is prospective in nature, and thus the relevant inquiry is whether, upon revocation of the orders, there would likely be a reasonable overlap of competition among subject imports and between subject imports and domestic like products, even if none currently exists.

*No Discernible Adverse Impact—*

I note that neither the statute nor the Statement of Administrative Action (“SAA”) to the Uruguay Round Agreements Act (“URAA”) provides specific guidance regarding what factors the Commission is to consider in determining whether subject imports are likely to have “no discernible adverse impact on the domestic industry” in the event of revocation.

Prior to the enactment of the URAA, the Commission could exercise its discretion not to cumulate subject imports in original Title VII investigations if the Commission determined that such imports were “negligible” and had “no discernible adverse impact on the domestic industry.”<sup>6</sup> Although the Commission could decline to cumulate negligible imports, such imports were, nevertheless, still subject to a country-specific injury determination.<sup>7</sup> In addition, the pre-URAA statute defined negligible imports solely by reference to a number of qualitative factors to be considered by the Commission.<sup>8</sup>

The URAA amended the statute by requiring that an investigation be terminated if the volume of dumped or subsidized imports is negligible.<sup>9</sup> The URAA further amended the statute by providing specific quantitative standards for defining negligible imports.<sup>10</sup> Thus, to the extent that a criterion of “no discernible adverse impact” existed as a statutory bar to cumulation—separate and distinct from the criteria of negligibility—prior to the URAA, that criterion was apparently subsumed into a finding that a volume of subject imports falls within the statutory definition of negligibility as provided in the URAA.

Although the concept of negligibility in the context of a Title VII investigation may offer some limited guidance in the administration of the “no discernible adverse impact” provision applicable in sunset reviews, the legislative history to the URAA makes clear that numerical thresholds are inappropriate for determining whether the likely volume of subject imports will have no discernible adverse impact on the domestic industry in the event of revocation “because of the extraordinary difficulty in projecting import volumes into the future with precision.”<sup>11</sup> Indeed, the “no discernible adverse impact” standard was apparently adopted for sunset reviews in lieu of a quantified negligibility

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<sup>3</sup> See, e.g., Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan, Invs. Nos. 731-TA-278-280 (Final), USITC Pub. 1845 (May 1986), *aff’d*, Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898 (Ct. Int’l Trade 1988), *aff’d*, 859 F.2d 915 (Fed. Cir. 1988).

<sup>4</sup> *Id.*

<sup>5</sup> See Mukand Ltd. v. United States, 937 F. Supp. 910, 916 (Ct. Int’l Trade 1996); United States Steel Group v. United States, 873 F. Supp. 673, 685 (Ct. Int’l Trade 1994), *aff’d*, 96 F.3d 1352 (Fed. Cir. 1996); Wieland Werke, AG v. United States, 718 F. Supp. 50, 52 (Ct. Int’l Trade 1989) (“Completely overlapping markets are not required.”).

<sup>6</sup> 19 U.S.C. § 1677(7)(c)(v) (1994); see also SAA at 185.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> 19 U.S.C. §§ 1671b(a)(1), 1671d(b)(1), 1673b(a)(1), 1673d(b)(1).

<sup>10</sup> 19 U.S.C. § 1677(24).

<sup>11</sup> S. Rep. No. 103-412, at 51 (1994).

standard precisely for this reason.<sup>12</sup> The “no discernible adverse impact” standard thus purposefully reflects the very different analytical context presented by sunset reviews, in contrast to original Title VII investigations.

Indeed, I believe that the *per se* application of numerical benchmarks found in the statutory definition of negligibility is particularly unhelpful in assessing the likely effect of revocation in a grouped sunset review, because such application fails to account for adjustments in the U.S. market following imposition of the orders. Specifically, the imposition of an order does not dictate that subject imports will necessarily depart the U.S. market; rather, the remedial effect of an order simply guarantees that those subject imports which enter the U.S. market do not benefit from any underlying unfair trade advantage. Thus, the existence of any particular current level of subject imports is not relevant to the cumulation inquiry in a sunset review; rather, it is the magnitude of any likely changes in the volume or pricing of such imports, following revocation of the order, which implicates whether such imports are likely to have no discernible adverse impact on the domestic industry.

In short, I find that the assessment of whether imports are likely to have no discernible adverse impact on the domestic industry must be made on a case by case basis, and without reference to numerical benchmarks. A particular import volume may be deemed likely to have no discernible adverse impact for one industry, while not for another. The ultimate determination necessarily rests upon the specific record developed in each grouped sunset review.

The question then arises, however, as to whether any further analysis is required in those instances where imports from two or more subject countries, *individually*, are deemed likely to have no discernible adverse impact on the domestic industry. In my view, consistent with the intent of the statute, the answer to this question must be in the affirmative.

In this regard, I note that the statutory negligibility provision applicable in original Title VII investigations contains exceptions which preclude finding subject imports from a particular country negligible if such imports, when combined with imports from other subject countries that are also deemed *individually* negligible, exceed an *aggregate* statutory negligibility threshold.<sup>13</sup> The statutory definition of negligibility thus reflects a recognition that the domestic industry can be injured by a particular volume of imports regardless of whether those imports come from one source or many sources.<sup>14</sup> Indeed, any failure to account for this economic reality in the statutory definition of negligibility would serve to undermine the very purpose of the cumulation provision.<sup>15</sup>

Similarly, in a grouped sunset review, even if imports from each of several subject countries are likely to have no discernible adverse impact on the domestic industry when analyzed *individually*, economic reality dictates a further assessment of whether such imports, in the *aggregate*, are likely to have no discernible adverse impact on the domestic industry.

This approach simply acknowledges that imports from a subject country may be likely to have a discernible adverse impact on the domestic industry from two perspectives—either individually, or in combination with imports from other similarly situated subject countries. Moreover, this approach is entirely consistent with the statutory language, which states that “[t]he Commission shall not cumulatively assess the volume and effects of imports of *the subject merchandise* in a case in which it

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<sup>12</sup> *See id.*

<sup>13</sup> *See* 19 U.S.C. § 1677(24).

<sup>14</sup> *See* SAA at 177 (discussing cumulative analysis in Title VII investigations).

<sup>15</sup> *Cf.* H.R. Rep. No. 100-576, at 621 (1988) (legislative history to the Omnibus Trade and Competitiveness Act of 1988, which first added a negligibility exception to the statute, stating that “[t]he Committee does not intend for [the negligibility] exception to subvert the purpose and general application of the cumulation requirement”).

determines that *such imports* are likely to have no discernible adverse impact on the domestic industry.”<sup>16</sup> Because the statutory exception to cumulation is based upon an assessment of imports of “the subject merchandise” and is not limited to an assessment of imports from each subject country individually, I consider the approach which I adopt to provide the most complete administration of the statutory provision governing cumulation in sunset reviews.<sup>17</sup>

In sum, I regard the scope of the “no discernible adverse impact” standard broadly, so as to encompass an assessment of the likely impact of imports from each subject country individually in a grouped sunset review, as well as an assessment *in the aggregate* of the likely impact of those imports which are first deemed likely to have no discernible adverse impact on an individual basis. In the absence of express statutory guidance, I find that this approach comports most fully with the intent of the trade laws generally, and with the sunset review provision in particular.

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<sup>16</sup> 19 U.S.C. § 1675a(a)(7) (emphasis added).

<sup>17</sup> I note that, in addressing cumulative analysis in sunset reviews, the SAA states that “[t]he Commission shall not cumulate imports from any country if those imports are likely to have no discernable adverse impact on the domestic industry.” SAA at 217. Because I consider that, upon revocation of an order, imports from a subject country may be likely to have a discernible adverse impact on the domestic industry *either* individually or in combination with imports from other similarly situated subject countries, my approach is in accord with the SAA.

## ADDITIONAL VIEWS OF COMMISSIONER THELMA J. ASKEY

This review raises a significant new issue concerning the Commission's decision to cumulate imports in sunset reviews. This review is one of four sunset reviews to date in which the Commission has considered whether to cumulate imports.<sup>1</sup> In these reviews, the Commission has addressed several cumulation-related issues in our sunset analysis. Amongst other things, the Commission has considered in these reviews whether imports from a subject country are likely to have "no discernible adverse impact on the domestic industry" upon revocation of the order covering the imports. Because of the relative novelty of this issue and the complexity of the overall analysis required in sunset reviews, I am taking the opportunity to address this issue in this proceeding.

My analysis of the meaning of the phrase "no discernible adverse impact on the domestic industry" begins with the plain language of section 752(a)(7) of the Tariff Act of 1930, which is the statutory provision governing the Commission's cumulation analysis in sunset reviews. Section 752(a)(7) provides that:

[T]he Commission may cumulatively assess the volume and effect of imports of the subject merchandise from all countries with respect to which reviews under section 1675(b) or (c) of this title were initiated on the same day, if such imports would be likely to compete with each other and with domestic like products in the United States market. The Commission shall not cumulatively assess the volume and effects of imports of the subject merchandise in a case in which it determines that such imports are likely to have no discernible adverse impact on the domestic industry.<sup>2</sup>

As can be seen, section 752(a)(7) clearly states that the Commission has the discretion to cumulate the subject imports in its sunset analysis, as long as the statutory requirement of competition between the subject countries and the domestic like product is satisfied.<sup>3</sup> Section 752(a)(7) also clearly states, however, that the Commission is precluded from exercising this discretion if imports from a country subject to review are likely to have "no discernible adverse impact on the domestic industry" upon revocation of the order.<sup>4</sup>

Thus, under this provision, the Commission must find that the subject imports from a country will have a "discernible adverse impact on the domestic industry" after revocation of the order before cumulating those imports with other subject imports. Accordingly, our task under this provision is a straightforward one. To determine whether we are precluded from cumulation, we must focus on how significantly the imports will impact the condition of the industry as a result of revocation, and not

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<sup>1</sup> See Sugar from the European Union; Sugar from Belgium, France and Germany; and Sugar and Syrups from Canada; Inv. Nos. 104-TAA-7; AA1921-198-200 & 731-TA-3 (Reviews), USITC Pub. 3238 at 16-17 (September 1998); Potassium Permanganate from China and Spain, Invs. Nos. 731-TA-125-26 (Reviews); Solid Urea from Armenia, Belarus, Estonia, Lithuania, Romania, Russia, Tajikistan, Turkmenistan, Ukraine and Uzbekistan, Inv. Nos. 731-TA-339 (Reviews); and Iron Metal Castings from India, Heavy Iron Construction Castings from Brazil, and Iron Construction Castings from Brazil, Canada, and China, Invs. Nos. 303-TA-13, 701-TA-249 & 731-TA-262, 263, and 265 (Reviews). The Commission made its determinations in the sugar proceeding in September 1998 and voted on the three remaining cases last week.

<sup>2</sup> 19 U.S.C. § 1675a(a)(7).

<sup>3</sup> Of, course, the Commission may only cumulate imports from a subject country if reviews for those imports were initiated on the same day as well. Id.

<sup>4</sup> 19 U.S.C. § 1675a(a)(7).

simply on whether there will be a small volume of imports after revocation, that is, by simply assessing their negligibility after revocation of the order. Indeed, it is important to note that the language of the statute does not contain any language indicating that the Commission should limit its analysis under this provision to an assessment of whether subject import volume levels are likely to be minimal after revocation of the order.

Of course, I agree that, in many cases, a minimal volume of subject imports will not be likely to have a discernible adverse impact on the industry as a result of revocation. Nonetheless, the language of section 752(a)(7) does not limit the section's scope to this form of volume-based analysis. This distinction is important because the level of adverse impact on an industry will not always be linked to the actual volume of subject imports. For example, a minimal volume of imports that would otherwise qualify as "negligible" under the current provisions of the statute<sup>5</sup> might have a discernible adverse impact on an industry if the merchandise in question is highly price-sensitive. Similarly, a non-negligible level of imports might not always have a "discernible adverse impact" on the industry after revocation of an order if conditions of competition are such that the volume and price effects of the imports will not change discernibly after revocation. Given this, I believe that it would not be appropriate under section 752(a)(7) to make an affirmative finding of discernible adverse impact on the industry unless there would be a discernible change in the industry's condition by reason of imports as a result of revocation of the order.

This reading of section 752(a)(7) is supported by its legislative history. The Statement of Administrative Authority for the URAA -- the binding expression of intent with respect to the meaning of the URAA -- contains no suggestion that the "discernible adverse impact" analysis is to be equated with some form of negligibility analysis.<sup>6</sup> Indeed, the only piece of legislative history addressing the appropriateness of a negligibility approach under section 752(a)(7) is the Senate's joint report on the URAA.<sup>7</sup> However, that language simply indicates that section 752(a)(7) allows the Commission to use a "negligibility" approach as one possible component of its "discernible adverse impact" analysis.<sup>8</sup> Moreover, the Senate report states specifically that it would not be "appropriate to adopt a strict numerical test for determining negligibility because of the extraordinary difficulty in projecting import volumes into the future with precision."<sup>9</sup> This clearly indicates that Congress intended the "discernible adverse impact" analysis under 752(a)(7) to differ from the negligibility analysis set forth in the current statute. I would add that the House report, like the SAA, contains no statement about the need for a negligibility-based analysis under section 752(a)(7).<sup>10</sup>

A comparison of the provisions of section 752(a)(7) with the negligibility provisions of the statute that were in existence prior to the URAA is also useful. Before the URAA, the Commission was given discretion not to cumulate imports from subject countries that competed with each other and the domestic merchandise if the imports were "negligible and ha[d] no discernible adverse impact on the

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<sup>5</sup> 19 U.S.C §1677(24).

<sup>6</sup> In fact, the only statement in the SAA discussing this provision states that "the Commission shall not cumulate imports from any country if those imports are likely to have no discernible impact on the domestic industry." SAA at 887. This sentence appears to imply that the discernible adverse impact analysis must be performed on an individual country basis.

<sup>7</sup> S. Rep. 103-412 at 51 (stating that the "Committee believes that it is appropriate to preclude cumulation where imports are negligible"). The report is a joint report of the Senate Committee on Finance, the Senate Committee on Agriculture, Nutrition and Forestry, and the Senate Committee on Governmental Affairs.

<sup>8</sup> Id.

<sup>9</sup> Id.

<sup>10</sup> H. Rep. 103-826 at 62.

domestic industry.”<sup>11</sup> When enacting section 752(a)(7), however, Congress chose to include in section 752(a)(7) only the “discernible adverse impact” language from the prior law and specifically declined to include in the provision any reference to “negligibility” or “likely negligibility” as a requirement for not cumulating subject imports in a sunset proceeding. This clearly indicates that Congress did not intend the discernible adverse impact analysis required by 752(a)(7) to be equated with a negligibility analysis.

In sum, I believe that the statute clearly requires that the Commission to find that revocation of an antidumping or countervailing duty order will result in a discernible adverse impact on the industry by the subject imports from an individual country before cumulating those imports with other imports in its sunset analysis. In my view, the language of the statute simply does not allow the Commission to examine current or likely volumes of imports and assess whether those volumes are likely to be “discernible” without also considering whether revocation of the order would result in a change of the price or volume levels of imports such that they will have a discernible adverse impact on the industry. I believe this interpretation of the law is consistent with the clear language of the statute and the language of the SAA as well as with the general policy underlying the cumulation provision of the sunset portions of the statute.

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<sup>11</sup> 19 U.S.C. §1677(7)(c)(v) (1994).



## DISSENTING VIEWS OF COMMISSIONER CAROL T. CRAWFORD

Section 751(d) of the Act requires that the Department of Commerce (Commerce) revoke a countervailing duty or an antidumping order in a five-year (sunset) review unless Commerce determines that dumping or a countervailable subsidy would be likely to continue or recur and the Commission determines that material injury would be likely to continue or recur within a reasonably foreseeable time.<sup>1</sup> In these reviews of the antidumping orders on potassium permanganate from China and Spain, I find that material injury would not be likely to continue or recur within a reasonably foreseeable time if the orders are revoked.

I join my colleagues in their discussion regarding the domestic like product and the domestic industry, and in their explanation of the relevant legal standard. I also join in their discussion of the relevant conditions of competition, except as otherwise noted in that section. I add further observations regarding such conditions of competition below.

However, unlike the majority, with respect to the discussion regarding cumulation, I have determined that revocation of the existing order covering subject imports from Spain likely would have no discernible adverse impact on the domestic industry producing potassium permanganate within a reasonably foreseeable time. In light of this determination, I find that revocation of the order would not be likely to lead to a continuation or recurrence of material injury within a reasonably foreseeable time. A full discussion of my views on this issue is provided below.

In addition, I note as a preliminary matter that with respect to the order covering subject imports from China, no foreign producer, exporter, or U.S. importer of potassium permanganate from China responded to the notice of institution. Although two producers accounting for nearly \*\*\* of all Chinese production of potassium permanganate did respond to Commission questionnaires,<sup>2</sup> in a review such as this, where only one party actively participates (*i.e.*, the domestic interested party), that party has an advantage in terms of being able to present its information to the Commission without rebuttal from the other side. However, the statute obligates the Commission both to investigate the matters at issue and to evaluate the data before it in terms of the statutory criteria.<sup>3</sup> Therefore, the Commission cannot merely accept the participating party's information and characterizations thereof without question and without evaluating other available information.<sup>4</sup>

### I. CUMULATION

#### A. Framework

As noted earlier, my approach to the issue of cumulation differs from the approach outlined in the majority opinion. To the extent that my analysis differs from the approach taken by the majority, the following discussion shall serve as a framework for an analysis of the issue of cumulation under my reading of the statute. In determining whether to cumulate imports from subject countries, I follow a

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<sup>1</sup> 19 U.S.C. §§ 1675(d)(2), 1675a(a)(1).

<sup>2</sup> Chongqing Jialing Chemical Factory and Guizhou Province Zunyi Chemical Plant responded to the Commission's questionnaires. These two firms estimated that they account for \*\*\* percent of the potassium permanganate produced in China. CR at IV-5-6; PR at IV-3.

<sup>3</sup> See 19 U.S.C. §§ 1675(c)(1), 1675a(a).

<sup>4</sup> See, *e.g.*, Alberta Pork Producers' Mktg. Bd. v. United States, 669 F. Supp. 445, 459 (Ct. Int'l Trade 1987) ("Commission properly exercised its discretion in electing not to draw an adverse inference from the low response rate to questionnaires by the domestic swine growers since the fundamental purpose of the rule to ensure production of relevant information is satisfied by the existence of the reliable secondary data.").

sequential, four-step analytical process that addresses eligibility for cumulation, statutory prohibition, Commission discretion, and competition.

The first question presented in my analysis is whether the imports from the subject countries are eligible for cumulation. In Sugar from the European Union; Sugar from Belgium, France, and Germany; and Sugar and Syrups from Canada, Inv. Nos. 104-TAA-7 (Review); AA1921-198-200 (Review); and 731-TA-3 (Review), USITC Pub. 3238, (Sept. 1999), I determined that the statute precludes the Commission from cumulatively assessing the volume and effect of imports from two or more countries when such imports do not consist of the same subject merchandise.<sup>5</sup> In my view, section 752(a)(7) of the Tariff Act of 1930, as amended, gives the Commission discretion to assess cumulatively the volume and effect of imports of “the subject merchandise” from all countries as to which reviews were initiated on the same day, “if such imports would be likely to compete with each other and with the domestic like products in the United States market.”<sup>6</sup> The statute specifically defines the term “the subject merchandise” as “the class or kind of merchandise that is within the scope of an investigation....”<sup>7</sup> Thus, where the classes or kinds of merchandise that are within the scopes of the orders under review are not the same, the Commission shall not cumulate such imports. In addition, the statute clearly states that the Commission may cumulate only where the reviews of the orders are initiated on the same day.<sup>8</sup>

The second question in my analysis is whether there is a statutory prohibition on cumulation. The statute clearly prohibits cumulation where the subject imports are likely to have no discernible adverse impact on the domestic industry.<sup>9</sup> Third, where subject imports are eligible for cumulation and are not covered by the statutory prohibition on such cumulation, the Commission has the statutory discretion to cumulate such imports. The fourth and final question I address is whether the subject imports to be cumulated are likely to compete with each other and with the domestic like product.<sup>10</sup>

## B. Discussion

In these sunset reviews, I note that the classes or kinds of merchandise within the scopes of the orders on China and Spain are identical. Moreover, both of these reviews were initiated on the same day. Therefore, subject imports from China and Spain are eligible for cumulation with each other under the plain reading of the statute. However, I determine that revocation of the order on subject imports from Spain likely would have no discernible adverse impact on the domestic industry producing potassium permanganate. Therefore, I do not cumulate subject imports from Spain and China. Accordingly, I do not reach a determination on whether to exercise my discretion to cumulate such imports, or whether such imports compete with each other and the domestic like product in the U.S. market.

I base my decision on the fact that current import quantities from Spain are minimal and likely will continue to be minimal within a reasonably foreseeable time if the order is revoked. In 1982, U.S. imports of subject potassium permanganate from Spain were \*\*\* million pounds.<sup>11</sup> In 1986, several years after the antidumping duty order went into effect, U.S. imports of subject potassium permanganate from Spain peaked at 2.6 million pounds.<sup>12</sup> Since then, imports of subject merchandise from Spain have

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<sup>5</sup> See *id.* at 16 n.83.

<sup>6</sup> 19 U.S.C. § 1675a(a)(7).

<sup>7</sup> 19 U.S.C. § 1677(25).

<sup>8</sup> 19 U.S.C. § 1675a(a)(7).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> CR/PR at Table I-1.

<sup>12</sup> Carus' Prehearing Brief, Exhibit 6.

decreased while imports from other countries have increased.<sup>13</sup> In 1997, U.S. shipments of imports from Spain were \*\*\* pounds. In 1998, such shipments were \*\*\* pounds.<sup>14</sup>

Spanish production capacity has not increased since the original investigation.<sup>15</sup> Moreover, Industrial Quimica del Nalon, S.A. (IQN), the sole producer of potassium permanganate in Spain, reports that it has \*\*\*.<sup>16</sup> Meanwhile, although IQN's capacity did not change from 1997 to 1998, actual production increased by \*\*\* percent or \*\*\* pounds.<sup>17</sup> IQN's nominal capacity utilization was just \*\*\* percent in 1998,<sup>18</sup> although its practical capacity utilization is reportedly substantially higher.<sup>19</sup> Thus, IQN apparently possesses sufficient excess capacity to increase its export sales. However, this increase in production has not been directed to the U.S. market; nor does the available evidence suggest that IQN likely would direct significant future volumes of subject merchandise to the U.S. market in the absence of the existing order. In 1997, subject imports from Spain accounted for \*\*\* percent of apparent domestic consumption. In 1998, these subject imports accounted for \*\*\* percent of apparent domestic consumption.<sup>20</sup> As a percentage of all U.S. imports, Spain accounted for 22.3 percent in 1997, and 14.1 percent in 1998.<sup>21</sup>

IQN's "natural" market is Europe. The fact that the European market is a growing and increasingly attractive market for IQN's product is logical in light of the recent departure of a large German producer and the recent imposition of antidumping measures in the European Union (EU) on potassium permanganate imports from China, India and Ukraine.<sup>22</sup> At the same time, other than the existing U.S. antidumping order under review, there are no other barriers to the importation of Spanish potassium permanganate in other countries.<sup>23</sup>

Over the 1997-98 period, IQN's ratio of exports of potassium permanganate to the United States fell from \*\*\* percent to \*\*\* percent of total production, while its exports to all other markets increased from \*\*\* percent to \*\*\* percent of total production.<sup>24</sup> Furthermore, in the unlikely event that IQN were to abandon its plans to expand its European market share and double its exports to the United States in the wake of a revocation of the existing order, the ratio of IQN's imports to U.S. shipments would still be only about \*\*\* percent.<sup>25</sup> Moreover, any shift in demand toward IQN's product in the wake of such a revocation likely would also come at the expense of nonsubject imports of potassium permanganate.

Given the fact that the inquiry in any sunset review is prospective in nature, and the fact that the weight of the available evidence indicates that current import quantities from Spain are minimal and will continue to be so, I conclude that revocation of the existing order likely would not lead to a significant shift in demand away from domestically produced potassium permanganate and toward subject imports from Spain. Therefore, I determine that subject imports from Spain are likely to have no discernible

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<sup>13</sup> IQN's Posthearing Brief, Attachment 1.

<sup>14</sup> Moreover, interim data for 1999 show a continuing decline in U.S. shipments of imports from Spain. In the first quarter of 1999, U.S. shipments of potassium permanganate from Spain fell to \*\*\* pounds as compared to \*\*\* pounds in the first quarter of 1998. CR/PR at Table I-1.

<sup>15</sup> See CR/PR Table IV-5 and Original Staff Report at A-15.

<sup>16</sup> IQN's Posthearing Brief, Attachment 2 at 12.

<sup>17</sup> CR at IV-9; PR at IV-4.

<sup>18</sup> CR at Table IV-5.

<sup>19</sup> \*\*\*. CR at II-8 n.31. In addition, IQN reports its capacity utilization is over 80 percent for the first quarter of 1999. CR at II-8; PR at II-5.

<sup>20</sup> CR/PR at Table I-1.

<sup>21</sup> In the first quarter of 1999, subject imports from Spain accounted for 12.0 percent of potassium permanganate imports. CR/PR at Table IV-1.

<sup>22</sup> See CR at IV-11-12; PR at IV-5.

<sup>23</sup> Tr. at 108.

<sup>24</sup> CR/PR at Table IV-5.

<sup>25</sup> IQN's Prehearing Brief at 18; see CR/PR at Table I-1.

adverse impact on the domestic industry if the order is revoked, and I conclude that subject imports from China and Spain should not be cumulated for purposes of these reviews.

## II. CONDITIONS OF COMPETITION

In evaluating the impact of subject imports on the domestic industry if the order is revoked, the statute directs the Commission to evaluate all the relevant economic factors “within the context of the business cycle and the conditions of competition that are distinctive to the affected industry.”<sup>26</sup> Discussed below are the additional conditions of competition that weigh significantly in my determination that revocation of the order on China is not likely to lead to continuation or recurrence of material injury to the domestic potassium permanganate industry within a reasonably foreseeable time.

### A. Substitutability

In contrast with the majority, I find a low degree of substitutability between the domestic like product and subject Chinese imports. While there are a variety of factors influencing purchasing decisions for potassium permanganate, according to Commission questionnaire responses, quality and conformation with certain technical specifications are the most important considerations for distributors and end-use purchasers of this product.<sup>27</sup> In addition, most end-use purchasers of potassium permanganate reported that they require distributors to certify or pre-qualify their product to meet these specifications prior to purchase. Moreover, nearly half of the end-users reporting their requirements noted that they required a free-flowing product.<sup>28</sup>

The sole domestic producer (Carus Chemical Co.) and all three responding importers of potassium permanganate reported that the domestic and subject Chinese products could be used interchangeably in the same applications. However, only two purchasers reported buying any potassium permanganate from China after 1984.<sup>29</sup> Of these purchasers, only one compared the domestic and subject Chinese products on the 14 requested factors submitted by the Commission. This purchaser noted that domestic potassium permanganate is superior in terms of its product consistency, quality, range, reliability of supply, and technical support.<sup>30</sup>

During the original investigation China did not export the free-flowing grade of potassium permanganate. New information collected in the present review indicates that one Chinese producer now manufactures free-flowing potassium permanganate.<sup>31</sup> However, there is no direct evidence regarding Chinese capacity to produce this particular grade of potassium permanganate.

Over the 1997-98 period of review, U.S. firms imported no potassium permanganate in 1997 and only 2,000 pounds of the subject merchandise in 1998.<sup>32</sup> In the United States, most purchasers buy the free-flowing grade of potassium permanganate. In fact, the free-flowing grade accounts for 85-90 percent of all U.S. consumption.<sup>33</sup> Given the available information, the lack of Chinese imports of potassium permanganate likely reflects the poor substitutability between the domestic like product and subject Chinese merchandise. Because no free-flowing material was exported from China in the period examined in the original investigation, and since the production capacity for the this grade of potassium

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<sup>26</sup> 19 U.S.C. § 1675a(a)(4).

<sup>27</sup> CR at II-13-14; PR at II-8-9.

<sup>28</sup> CR at II-15; PR at II-9.

<sup>29</sup> Id.

<sup>30</sup> Id. at n.55.

<sup>31</sup> CR at I-19, IV-9; PR at I-11, IV-4.

<sup>32</sup> CR/PR at Table I-1.

<sup>33</sup> CR at I-13, I-22; PR at I-8, I-13.

permanganate in China is unknown, I find that the available evidence supports a conclusion that the level of substitutability between the domestic like product and subject Chinese merchandise is “low.”

In addition, as stated in the majority opinion, a substantial portion of Carus’ current production \*\*\*. In 1998, such \*\*\* accounted for approximately \*\*\* percent of its potassium permanganate production.<sup>34</sup> Because these \*\*\* represent a significant share of the domestic market that is not available to alternative supplies, including subject Chinese merchandise, I find that this condition of competition further limits any substitutability between the domestic like product and subject Chinese imports.

### B. Demand

Cost share data for potassium permanganate in downstream production is difficult to interpret given the wide variations in reported data. However, because the large majority of potassium permanganate is used in municipal water treatment, it is reasonable to assume the estimated cost share for such use is a reliable predictor for the overall cost share of potassium permanganate in downstream production. The reported data indicates that potassium permanganate is about 8-10 percent of the cost of chemicals used in municipal water treatment and that potassium permanganate was well under 1 percent of the cost of such water treatment.<sup>35</sup> This relatively low cost share is evidence of a fairly low elasticity of demand.

An additional consideration in assessing the elasticity of demand is the availability of alternative products for potassium permanganate. There are few alternative products which can serve the same broad functions as potassium permanganate. One-half of the purchasers and two-thirds of the responding importers could not identify any alternative products for potassium permanganate. Moreover, alternative products that may be substituted for potassium permanganate generally require greater capital expenditures related to new equipment or on-site processing.<sup>36</sup> The limited availability of alternative products suggests a relatively lower elasticity of demand.

Overall, based on its low cost share and the availability of few viable alternative products, I conclude that the elasticity of demand for potassium permanganate is relatively low. That is, purchasers likely will not alter the amount of potassium permanganate they buy in response to significant fluctuations in the price for this product.

### C. Supply

Carus had a capacity utilization rate of \*\*\* percent in 1997 and \*\*\* percent in 1998. In absolute terms, the domestic industry maintained an average production capacity of \*\*\* pounds between 1997-98. In 1997, its unused capacity was \*\*\* pounds. In 1998, it was \*\*\* pounds.<sup>37</sup> Carus’ inventories and export shipments are limited. In both 1997 and 1998, exports were approximately \*\*\* pounds.<sup>38</sup> Similarly, inventories were \*\*\* pounds and \*\*\* pounds in 1997 and 1998, respectively.<sup>39</sup> Based on the capacity utilization figures, small export shipments, and low levels of product inventory, Carus’ ability to supply potassium permanganate is fairly inelastic.

There is little data on supply considerations involving subject Chinese merchandise. No Chinese producers are currently exporting substantial amounts of potassium permanganate into the U.S. market. However, both Chinese producers responding to Commission questionnaires expected to sell \*\*\*

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<sup>34</sup> CR at III-A-3-4; PR at III-1-2.

<sup>35</sup> CR at II-12; PR at II-7.

<sup>36</sup> CR at II-11-12; PR at II-7.

<sup>37</sup> CR/PR at Table I-1.

<sup>38</sup> CR at Table III-A-2; PR at Table III-2.

<sup>39</sup> CR at Table III-A-4; PR at Table III-4.

potassium permanganate in the United States if the existing order is revoked.<sup>40</sup> These same producers reported aggregate capacity utilization rates of \*\*\* percent in 1997 and \*\*\* percent in 1998.<sup>41</sup> Carus, however, estimates the Chinese aggregate capacity utilization rate to be \*\*\* percent, while IQN estimates the rate at \*\*\* percent. IQN also reports that China alone has sufficient production capacity \*\*\*. Carus and IQN both estimate China's annual capacity to produce potassium permanganate at 36,000 metric tons (approximately 79 million pounds).<sup>42</sup>

According to the available data, between \*\*\* percent and \*\*\* percent of production in China is absorbed by the Chinese market. Moreover, the two responding producers from China both listed \*\*\* as principal export markets. These firms also separately listed \*\*\* as export markets.<sup>43</sup> The record indicates that there are antidumping duties imposed on Chinese potassium permanganate sold in the EU and India.<sup>44</sup>

Despite the incomplete nature of the data regarding Chinese potassium permanganate supply, the data indicate that such supply is relatively elastic. However, as previously discussed, there is little current information on the record regarding the capability of Chinese producers to manufacture the free-flowing grade of potassium permanganate.

### **III. REVOCATION OF THE ANTIDUMPING DUTY ORDER ON POTASSIUM PERMANGANATE FROM SPAIN IS NOT LIKELY TO LEAD TO A CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME**

Given my conclusion that subject imports from Spain are likely to have no discernible adverse impact on the domestic industry if the order is revoked, there likely would be no continuation or recurrence of material injury within a reasonably foreseeable time if the existing order on subject imports from Spain is revoked. Consequently, I make a negative determination with respect to the order covering subject imports from Spain.

### **IV. REVOCATION OF THE ANTIDUMPING DUTY ORDER ON POTASSIUM PERMANGANATE FROM CHINA IS NOT LIKELY TO LEAD TO A CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME**

#### **A. Likely Volume of Subject Imports**

The Commission is to consider whether the likely volume of subject imports if the order under review is revoked would be significant either in absolute terms or relative to production or consumption in the United States.<sup>45</sup> <sup>46</sup> In so doing, the Commission shall consider "all relevant economic factors," including four enumerated in the statute: (1) any likely increase in production capacity or existing unused production capacity in the exporting country; (2) existing inventories of the subject merchandise,

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<sup>40</sup> CR at II-6; PR at II-4.

<sup>41</sup> CR/PR at Table IV-4. CR at II-6; PR at II-4.

<sup>42</sup> CR at IV-7; PR at IV-4.

<sup>43</sup> CR at IV-6-7; PR at IV-3.

<sup>44</sup> CR at II-7; PR at II-5.

<sup>45</sup> 19 U.S.C. § 1675a(a)(2).

<sup>46</sup> In analyzing whether revocation of an order would be likely to lead to a continuation or recurrence of material injury within a reasonably foreseeable time, I take as my starting point the date on which the revocation would actually take place. In this review, the order would be revoked in January 2000. 19 U.S.C. § 1675(c)(6)(iv).

or likely increases in inventories; (3) the existence of barriers to the importation of the subject merchandise in countries other than the United States; and (4) the potential for product shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products.<sup>47</sup>

The focus in a sunset review is whether subject import volume is likely to be significant within a reasonably foreseeable time if the antidumping order is revoked. Although the available data suggest that the existing antidumping order in this review has had a significant impact on the market penetration of subject imports, the existing domestic share of the U.S. market is not likely to be adversely affected if the order is revoked. Domestic consumption of potassium permanganate has increased markedly since the period examined in the original investigation, while U.S. production of such merchandise over the period has continued to be concentrated within the operations of a single domestic producer.

Subject imports from China accounted for a zero or minimal share of U.S. consumption quantity in both 1997 and 1998. By comparison, nonsubject imports and those from Spain maintained a combined market share of \*\*\* percent in 1997 and \*\*\* percent in 1998, while the domestic industry controlled market shares of \*\*\* percent and \*\*\* percent, respectively.<sup>48</sup> According to Carus, subject imports from China would increase significantly in the absence of the existing order. Carus argues that Chinese producers have expanded their production capacity, and that the U.S. market is a prime target for excess Chinese production capacity.

I determine from the available evidence that any increases in the volume of subject imports from China associated with a revocation of the existing order likely would not be significant either in absolute terms or relative to the level of U.S. production or consumption. I base this conclusion on the lack of evidence that there is any significant product grade substitutability between the subject Chinese merchandise and the U.S. product.

Over the 1997-98 period of review, very little Chinese potassium permanganate was imported into the United States. The lack of subject Chinese imports likely reflects the poor substitutability between the domestic like product and subject Chinese merchandise. In addition, given the fact that \*\*\* percent of Carus' current production is dedicated to \*\*\*, a significant share of the domestic market is unavailable to alternative supplies, including subject Chinese merchandise. As previously discussed, these \*\*\* further reduce the level of substitutability between the domestic like product and subject Chinese merchandise and further shield the domestic industry from any volume effects associated with a revocation of the existing order.

Moreover, as outlined above, I have concluded that the elasticity of demand for potassium permanganate is quite low. Thus, lowering the price of potassium permanganate likely would not result in a significant increase in the overall demand for this product. Because the existing record indicates that the domestic like product and subject Chinese imports are poor substitutes, any decrease in the price of subject Chinese imports resulting from the revocation of the existing order likely would not lead to a significant shift in demand toward the subject merchandise and away from the domestic product within a reasonably foreseeable time. Finally, although there are dumping duties assigned to subject Chinese merchandise in the EU and India, the available record indicates that significant alternative markets currently absorb Chinese exports of the subject merchandise.

Consequently, I find that revocation of the existing antidumping order likely would not lead to a significant increase in the volume of subject imports from China within a reasonably foreseeable time.

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<sup>47</sup> 19 U.S.C. § 1675(a)(2)(A)-(D).

<sup>48</sup> CR/PR at Table I-1. The market share of nonsubject merchandise was substantially larger at \*\*\* percent in 1997 and \*\*\* percent in 1998, than was the market share of imports from Spain at \*\*\* percent and \*\*\* percent, respectively. Id.

### B. Likely Price Effects of Subject Imports

In evaluating the likely price effects of the subject merchandise in the event of revocation, the Commission shall consider (1) whether imports are likely to be sold at a significantly lower price than the domestic like product, and (2) whether imports are likely to enter the United States at prices that otherwise would have a significant depressing or suppressing effect on the price of domestic like product.<sup>49</sup>

I have already concluded that the likely volume of subject imports would not be significant in the absence of the existing order. Given the lack of any significant increase in the volume of subject Chinese merchandise, such imports likely would not have significant price effects in the domestic market as such volume likely would be too small to have a significant price suppressing or depressing effect in the domestic market within a reasonably foreseeable time.

Consequently, in light of my conclusion regarding the likely volume of subject merchandise in the absence of the existing order, I find that the volume of such subject imports from China likely would be too small to have any significant adverse price effects within a reasonably foreseeable time.

### C. Likely Impact of Subject Imports

When considering the likely impact of subject imports, the Commission is to consider all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including: (1) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity; (2) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and (3) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more enhanced version of the domestic like product.<sup>50</sup>

Subject imports from China likely would not have a significant adverse impact on the domestic industry producing potassium permanganate if the order is revoked. I have already concluded that any increase in subject imports resulting from a revocation of the existing order would be simply too small to have any significant volume or price effects on the domestic industry within a reasonably foreseeable time. In addition, the domestic industry accounted for \*\*\* percent of domestic consumption in 1998, with nonsubject imports and imports from Spain accounting for the remaining \*\*\* percent.<sup>51</sup> In light of the existing nonsubject and Spanish market share, I also conclude that any increase in subject import market share that might result from revocation likely would also come at the expense of nonsubject imports, and imports from Spain, rather than exclusively at the expense of the domestic industry. Thus, I find that revocation likely would not have a significant adverse impact on the domestic industry because subject imports would have to increase significantly over pre-order levels in order to have such an impact. As previously discussed, I find this likely would not occur based on the poor substitutability between the domestic like product and subject imports from China.

Therefore, I find that subject imports likely would not have a significant impact on the domestic industry's cash flow, inventories, employment, wages, growth, ability to raise capital, or investment, within a reasonably foreseeable time in the event the existing order is revoked. In conjunction with my conclusions regarding the likely volume and price effects, I also find that revocation likely would not lead to a significant reduction in the domestic industry's output, sales, market share, profits, or productivity, within a reasonably foreseeable time.

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<sup>49</sup> 19 U.S.C. § 1675a(3).

<sup>50</sup> 19 U.S.C. § 1675a(a)(4).

<sup>51</sup> CR/PR at Table I-1.

In this analysis, I have also considered the other statutory factors that the Commission is directed to take into account.<sup>52</sup> However, my consideration of these factors does not have any effect on my determination. Consequently, I find that revocation of the existing order covering subject imports from China likely would not have a negative impact on the domestic industry within a reasonably foreseeable time.

#### D. Conclusion

Subject imports of potassium permanganate from China likely would not have significant volume or price effects in the event of a revocation of the existing order, and therefore likely would not have a negative impact on the domestic industry within a reasonably foreseeable time. Therefore, I find that material injury would not be likely to continue or recur within a reasonably foreseeable time if the antidumping duty order is revoked. Consequently, I make a negative determination with respect to the order covering subject imports from China.

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<sup>52</sup> 19 U.S.C. § 1675a(a)(1). We are to take into account the Commission's prior injury determinations, consider whether any improvement in the state of the industry is related to the order, consider whether the industry is vulnerable to material injury in the event of revocation, and consider any duty absorption orders made by Commerce. Id. Commerce has not issued a duty absorption finding, therefore it is not an issue in this review. The statute also provides that the Commission may consider the margin of dumping when making its determination. 19 U.S.C. § 1675a(a)(6). The country-wide margin of dumping that Commerce found likely to prevail if the existing order on China is revoked is 128.94 percent. 64 Fed. Reg. 16907, 16910 (April 7, 1999).



## PART I: INTRODUCTION AND OVERVIEW

### BACKGROUND

On November 2, 1998, the Commission gave notice that it had instituted reviews to determine whether revocation of the antidumping duty orders on potassium permanganate from China and Spain would be likely to lead to continuation or recurrence of material injury to a domestic industry.<sup>1</sup> On February 4, 1999, the Commission determined that full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (the Act) should proceed in the subject 5-year reviews.<sup>2</sup> Information relating to the background and schedule of the reviews is provided below.

<i>Date</i>	<i>Action</i>
January 19, 1984	Commerce issued antidumping duty order on potassium permanganate from Spain (49 FR 2277)
January 31, 1984	Commerce issued antidumping duty order on potassium permanganate from China (49 FR 3897)
November 2, 1998	Commission instituted the 5-year reviews
February 4, 1999	Commission determination to conduct full 5-year reviews
April 7, 1999	Commerce issued final results of expedited sunset reviews on potassium permanganate from Spain (64 FR 16904) and China (64 FR 16907)
August 31, 1999	Date of the Commission's hearing <sup>1</sup>
October 13, 1999	Date of the Commission's vote
October 27, 1999	Commission's determinations and views transmitted to Commerce
<sup>1</sup> A list of witnesses at the Commission's hearing is presented in app. B.	

### The Original Investigations

The Commission completed its original investigation on potassium permanganate from China on January 20, 1984, determining that an industry in the United States was materially injured by reason of the importation from China of potassium permanganate that was found by Commerce to be sold at less than fair value (LTFV). The Commission completed its original investigation on potassium permanganate from Spain on January 6, 1984, determining that an industry in the United States was

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<sup>1</sup> 63 FR 58765, Nov. 2, 1998. All interested parties were requested to respond to this notice by submitting the information requested by the Commission.

<sup>2</sup> 64 FR 9177, Feb. 24, 1999. The Commission's notice of institution, notice to conduct full 5-year reviews, scheduling notice (64 FR 11041, Mar. 8, 1999), and statement on the adequacy of the responses to its notice of institution appear in app. A and may also be found at the Commission's web site (Internet address <http://www.usitc.gov>). The Commissioner votes on whether to conduct expedited or full investigations may also be found at the web site.

materially injured by reason of the importation from Spain of potassium permanganate that was found by Commerce to be sold at LTFV. The Commission had instituted its investigations (invs. Nos. 731-TA-125-126) after receiving advice from Commerce that potassium permanganate from China and Spain was being, or was likely to be, sold at LTFV. Commerce published its findings of sales at LTFV on August 9, 1983 (48 FR 36175 and 48 FR 36177).

A summary of data from the original investigations and from these reviews is presented in table I-1.<sup>3</sup>

Table I-1

Potassium permanganate: Summary data presenting selected items from the original and current investigations, 1980-82, 1997-98, Jan.-Mar. 1998, and Jan.-Mar. 1999

\* \* \* \* \*

### STATUTORY CRITERIA

Section 751(c) of the Tariff Act of 1930 requires Commerce and the Commission to conduct a review no later than five years after the issuance of an antidumping or countervailing duty order or the suspension of an investigation to determine whether revocation of the order or termination of the suspended investigation “would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.”<sup>4</sup>

Section 752(a)(1) of the Act states that the Commission “shall consider the likely volume, price effect, and impact of imports of the subject merchandise on the industry if the order is revoked or the suspended investigation is terminated. The Commission shall take into account—

- (A) its prior injury determinations, including the volume, price effect, and impact of imports of the subject merchandise on the industry before the order was issued or the suspension agreement was accepted,
- (B) whether any improvement in the state of the industry is related to the order or the suspension agreement,
- (C) whether the industry is vulnerable to material injury if the order is revoked or the suspension agreement is terminated, and
- (D) in an antidumping proceeding, Commerce’s findings regarding duty absorption.”

Section 752(a)(2) of the Act states that “[I]n evaluating the likely volume of imports of the subject merchandise if the order is revoked or the suspended investigation is terminated, the Commission shall consider whether the likely volume of imports of the subject merchandise would be significant if the order is revoked or the suspended investigation is terminated, either in absolute terms or relative to

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<sup>3</sup> A more extensive summary of data collected in the current investigations is presented in app. C.

<sup>4</sup> Certain transition rules apply to the scheduling of reviews (such as this one) involving antidumping or countervailing duty orders and suspensions of investigations that were in effect prior to January 1, 1995 (the date the WTO Agreement entered into force with respect to the United States). Reviews of these transition orders will be conducted over a three-year transition period running from July 1, 1998 through June 30, 2001. Transition reviews must be completed not later than 18 months after institution. No transition order may be revoked before January 1, 2000.

production or consumption in the United States. In so doing, the Commission shall consider all relevant economic factors, including—

- (A) any likely increase in production capacity or existing unused production capacity in the exporting country,
- (B) existing inventories of the subject merchandise, or likely increases in inventories,
- (C) the existence of barriers to the importation of such merchandise into countries other than the United States, and
- (D) the potential for product-shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products.”

Section 752(a)(3) of the Act states that “[I]n evaluating the likely price effects of imports of the subject merchandise if the order is revoked or the suspended investigation is terminated, the Commission shall consider whether—

- (A) there is likely to be significant price underselling by imports of the subject merchandise as compared to domestic like products, and
- (B) imports of the subject merchandise are likely to enter the United States at prices that otherwise would have a significant depressing or suppressing effect on the price of domestic like products.”

Section 752(a)(4) of the Act states that “[I]n evaluating the likely impact of imports of the subject merchandise on the industry if the order is revoked or the suspended investigation is terminated, the Commission shall consider all relevant economic factors which are likely to have a bearing on the state of the industry in the United States, including, but not limited to—

- (A) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity,
- (B) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment, and
- (C) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more advanced version of the domestic like product.

The Commission shall evaluate all [such] relevant economic factors within the context of the business cycle and the conditions of competition that are distinctive to the affected industry.”

Section 752(a)(6) of the Act states that in making its determination, “the Commission may consider the magnitude of the margin of dumping or the magnitude of the net countervailable subsidy. If a countervailable subsidy is involved, the Commission shall consider information regarding the nature of the countervailable subsidy and whether the subsidy is a subsidy described in Article 3 or 6.1 of the Subsidies Agreement.”

Information obtained during the course of the reviews that relates to the above factors is presented throughout this report. Responses by U.S. producers, importers, and purchasers of potassium permanganate and producers of the product in China and Spain to a series of questions concerning the significance of the existing antidumping duty orders and the likely effects of their revocation are presented in appendix D.

## NATURE AND EXTENT OF SALES AT LTFV

### Administrative Reviews for Potassium Permanganate from China

The original antidumping duty margin in 1984 for potassium permanganate from China was 39.63 percent for the China National Chemicals Import and Export Corp. (Sinochem) and all other manufacturers/producers/exporters. Since the antidumping duty order was issued in 1984, Commerce has conducted two administrative reviews on potassium permanganate from China. The published results of the administrative reviews are shown below.

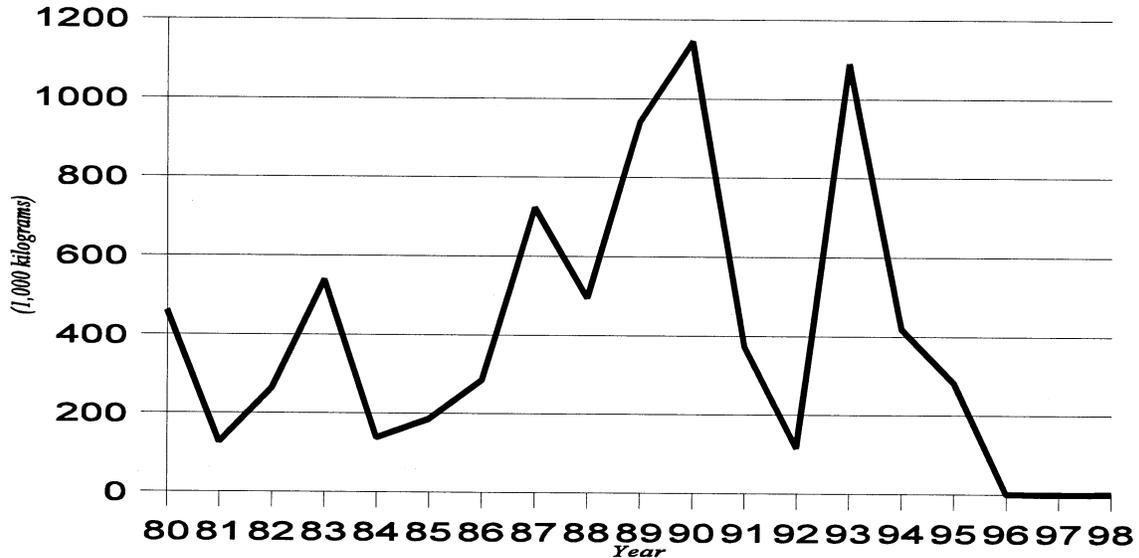
Company	Period of review (Federal Register reference)	
	1/1/89 - 12/31/89 (56 FR 19640)	1/1/90 - 12/31/90 (59 FR 26625)
<i>(Margin in percent)</i>		
Far Ocean Trading	128.94	( <sup>1</sup> )
Go Up Company	39.53	( <sup>1</sup> )
Hip Fung Trading Company	39.53	( <sup>1</sup> )
K L & Company	128.94	( <sup>1</sup> )
Landyet Company	128.94	( <sup>1</sup> )
Sam Wing International	128.94	( <sup>1</sup> )
Sinochem	128.94	( <sup>1</sup> )
Tin Sing Chemical Engineers	39.53	( <sup>1</sup> )
Yue Pak Company	128.94	( <sup>1</sup> )
All other manufacturers/exporters/producers in China	128.94	( <sup>1</sup> )
All manufacturers/producers/exporters in China	( <sup>2</sup> )	128.94
<sup>1</sup> In 1990, Commerce found that potassium permanganate was being transhipped through Hong Kong resellers previously assigned the 39.53 margin. As a result, a country-wide margin of 128.94 percent was assigned to China. <sup>2</sup> Not applicable.		

Actual duties collected for potassium permanganate imports from China for fiscal years 1993-98, as reported by the U.S. Customs Service, are presented below:

Item	1993	1994	1995	1996	1997	1998
<i>Value (1,000 dollars)</i>						
Total duty	388	522	***	( <sup>1</sup> )	***	***
Total value	1,351	847	***	( <sup>1</sup> )	***	***
<sup>1</sup> No imports in the specified period.						

Potassium permanganate imports from China are presented in the figure below:

Figure I-1  
Potassium permanganate: Imports from China, 1980-98



Source: Official statistics of the U.S. Department of Commerce.

#### Administrative Reviews for Potassium Permanganate from Spain

The original antidumping duty margin for potassium permanganate from Spain was 5.49 percent for Asturquimica and all other manufacturers/producers/exporters. Since the antidumping duty order was issued in 1984, Commerce has conducted three administrative reviews of the antidumping duty order on potassium permanganate from Spain. The published results of the reviews are presented in the next tabulation:

Company	Period of review ( <i>Federal Register</i> reference)		
	8/9/83 - 1/10/84 (49 FR 2277) <sup>1</sup>	1/1/86 - 12/31/86 (53 FR 21504) <sup>2</sup>	1/1/89 - 12/31/89 (56 FR 58361) <sup>1</sup>
<i>(Margin in percent)</i>			
Asturquimica	0.0	16.16	( <sup>3</sup> )
Industrial Quimica del Nalon <sup>4</sup>	( <sup>3</sup> )	( <sup>3</sup> )	3.96
<sup>1</sup> Review requested by Asturquimica. <sup>2</sup> Review requested by Carus Chemical Co. <sup>3</sup> Not applicable. <sup>4</sup> Industrial Quimica del Nalon is the successor company to Asturquimica.			

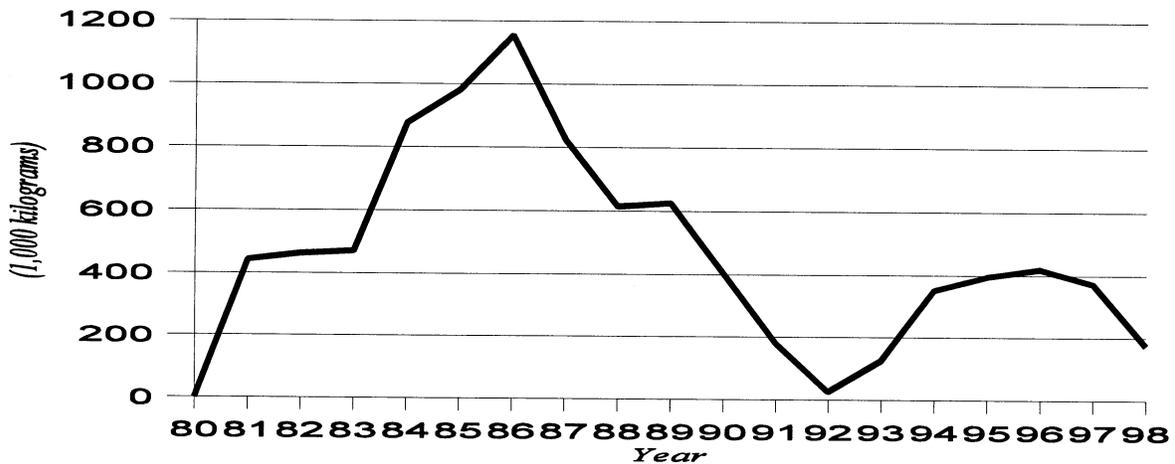
A history of actual duties collected for potassium permanganate from Spain for fiscal years 1993-98, as reported by the U.S. Customs Service, is presented below:

Item	1993	1994	1995	1996	1997	1998
<i>(Value 1,000 dollars)</i>						
Total duty	***	***	***	***	***	***
Total value	***	***	***	***	***	***

Potassium permanganate imports from Spain are shown in the figure below:

Figure I-2

Potassium permanganate: Imports from Spain, 1980-98



Source: Official statistics of the U.S. Department of Commerce.

### Commerce's Final Results of Expedited Sunset Reviews

On April 7, 1999, Commerce released the final results of its expedited sunset reviews on potassium permanganate from China (64 FR 16907, April 7, 1999) and Spain (64 FR 16904, April 7, 1999). Commerce determined that dumping is likely to continue if the antidumping orders are revoked. The margins of dumping that Commerce found likely to prevail if the orders are revoked are 128.94 percent for China and 5.53 percent for Spain.

## THE SUBJECT PRODUCT<sup>5</sup>

### Description and Uses

Commerce has defined the scope of the reviews as follows:

Imports covered by this order are shipments of potassium permanganate, an inorganic chemical produced in free-flowing, technical, and pharmaceutical grades. During this review period, potassium permanganate is classifiable under item 2841.61.00 of the Harmonized Tariff Schedule (HTS).<sup>6</sup> The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.<sup>7</sup>

Potassium permanganate, or permanganate of potash, is the compound of manganese, potassium, and oxygen which has the chemical formula  $KMnO_4$ . It exists at room temperature as a dark-purple crystalline solid of rhombic shape with a blue metallic sheen. Potassium permanganate has a sweetish, astringent taste; is soluble in water, acetone, and methanol; and decomposes in alcohol. It is highly toxic by ingestion or inhalation, is a strong irritant to tissue, and is a dangerous fire risk when in contact with organic material because of its strength as an oxidizing agent.

Potassium permanganate produced by Carus Chemical Co., the U.S. producer, and Industrial Quimica del Nalon, the Spanish producer (which employ similar manufacturing processes) is classifiable into three grades: free-flowing, technical, and USP or pharmaceutical grade (high-purity). In addition, Carus produces two other grades.<sup>8</sup> China, which at one time did not produce the free-flowing grade, now produces a free-flowing grade, a technical grade, and a USP grade. Each grade has the same chemical formula and is available in a variety of particle sizes, although particle size is seldom an important determinant of end use. All three grades of potassium permanganate are produced domestically only by Carus, at the same facilities and using the same equipment and employees.<sup>9</sup>

The technical grade product must be at least 97 percent potassium permanganate by weight, although much of the technical grade has a higher assay of 99 percent. The free-flowing grade is produced by adding an anticaking agent to the technical grade, preventing the particles from sticking

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<sup>5</sup> In its original determinations, the Commission defined the domestic like product as potassium permanganate. No domestic like product issues have been raised by either domestic or foreign producers in this review. The Commission's decision regarding the appropriate domestic products that are "like" the subject imported products is based on a number of factors including (1) physical characteristics and uses; (2) common manufacturing facilities and production employees; (3) interchangeability; (4) customer and producer perceptions; (5) channels of distribution; and, where appropriate, (6) price.

<sup>6</sup> Subheading 2841.61.00 of the HTS covers potassium permanganate, with a bound general duty rate of 5 percent *ad valorem*. Special duty rates apply to eligible products of selected countries and country groupings. Prior to 1996, the statistical reporting number that covered potassium permanganate was 2841.60.0010. Prior to the implementation of the HTS, the classification code for potassium permanganate (used during the original investigations) under the former Tariff Schedules of the United States was item 420.28. The column 1 (general) duty rate in 1983, the year the final phase of the antidumping investigations was instituted, was 6.4 percent *ad valorem*. Duties were staged down from 7.5 percent *ad valorem* effective Jan. 1, 1980, to 5 percent *ad valorem* effective Jan. 1, 1987; the rate is not scheduled for additional reductions.

<sup>7</sup> On May 19, 1995, Commerce determined that plastic ignitor spheres containing potassium permanganate are not within the scope of the order relating to China.

<sup>8</sup> These two grades are not, however, recognized as standard product grades by consumers \*\*\*.

<sup>9</sup> Telephone conversation with \*\*\*, Sept. 17, 1999.

together when in contact with moisture. As a result of the addition of the anticaking agent, the free-flowing grade is slightly less concentrated than the technical or pharmaceutical grades. The minimum assay is 95 percent, but the product is usually assayed at 97 or 98 percent. In the United States, 85 percent to 90 percent of the permanganate sold is the free-flowing grade because it flows freely and it is easier to put into a feeder.<sup>10</sup> \*\*\*.<sup>11</sup>

The pharmaceutical grade product must be at least 99 percent potassium permanganate by weight in order to conform with the requirements specified in the United States Pharmacopeia (U.S.P.) and the British Pharmacopeia (B.P.). It is the only grade approved by the Food and Drug Administration for use in applications involving contact with food and for pharmaceutical use. The pharmaceutical grade, typically 99.9 percent pure,<sup>12</sup> usually requires more testing than the other grades and requires recrystallization to remove additional impurities or to meet customer specifications. Consequently, the cost of production and the price of the pharmaceutical grade are higher than those of the technical or free-flowing grades.

The three grades of potassium permanganate are generally interchangeable in their various applications. One exception involves pharmaceutical applications, which, according to Carus, account for approximately \*\*\* percent of domestic consumption.<sup>13</sup> The free-flowing grade cannot be used in such applications because it does not meet the 99-percent assay requirement.

In the important applications of water and wastewater treatment, which together currently account for about 70-75 percent of U.S. consumption, all three grades can be used, but the free-flowing grade is preferred by customers that use a dry chemical feeder to inject the potassium permanganate into the water. The other grades have a tendency to "cake up" in the feeder, prohibiting a smooth, even injection into the water. The alternative is a solution tank feeder system which can efficiently use any of the three grades. Carus, as a practice, has provided both dry chemical and solution tank feeders to new customers for a trial period, following which the feeders are offered for sale or lease.<sup>14</sup> Although some have retained the dry chemical feeders, others have switched to solution feeders for a variety of reasons. The dry chemical feeder is a more complex piece of equipment, is more susceptible to mechanical failure, and has caused a number of fires. There are approximately \*\*\* dry feeders and \*\*\* solution feeders in use in the United States.<sup>15</sup> For relatively low volumes, dry feeders tend to be used and for relatively large volumes, solution feeders are preferred. The costs of a solution feeder can range from \*\*\* to \*\*\* for a large and complex system.<sup>16</sup>

For potable water applications, the use of potassium permanganate and other water purifying chemicals is typically regulated by the states. The American Water Works Association and NSF International are two organizations which provide information on maintaining standards and guidelines on using water purification chemicals.

Potassium permanganate is used principally as an oxidizing agent in the following applications:

1. Municipal water treatment: Removes iron, manganese, and hydrogen sulfide; eliminates taste, odor, and color; and controls algae growth. Growing applications for potassium permanganate are as a substitute for prechlorination to prevent the

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<sup>10</sup> Inga Carus, Vice President, Sales and Marketing, Carus, hearing transcript, p. 88.

<sup>11</sup> \*\*\*.

<sup>12</sup> Inga Carus, hearing transcript, p. 88.

<sup>13</sup> Telephone conversation with \*\*\*, Sept. 17, 1999.

<sup>14</sup> Inga Carus, hearing transcript, pp. 99-100.

<sup>15</sup> Telephone conversation with \*\*\*, Aug. 16, 1999.

<sup>16</sup> Ibid.

formation of trihalomethane (THM), a possible carcinogen, and as an inhibitor of zebra mussel attachment.

2. Wastewater treatment:
  - (a) Municipal—oxidizes organic and inorganic contaminants, removes toxic and corrosive hydrogen sulfide from sanitary sludge, deodorizes wastewater streams, and dewater sludge; and
  - (b) Industrial—removes soluble iron and manganese from acid mine wastes, removes hydrogen sulfide from sludge, and dewater sludge; controls phenol and other industrial pollutants.
3. Chemical manufacture and processing: Aids in synthesis of organic products for the chemical process and pharmaceutical industries.
4. Aquaculture (fish farming): Controls fish diseases and parasites, and detoxifies poisons while relieving oxygen depletion in fish ponds.
5. Metal processing: Removes oxides, mill scale, and carbon residues on steel.
6. Air and gas purification: Removes pollutants from air and impurities from industrial gases, and quenches slag from foundry operations.

In addition to the above, potassium permanganate is used as a decoloring and bleaching agent in the textile and tanning industries, as an oxidizer in the decontamination of radioactive wastes, as an aid in flotation processes used in mining, in cleaning printed circuit boards, and in numerous other applications. In general, use of potassium permanganate in some industrial applications and in some applications not related to water purification has tended to be fairly erratic.<sup>17</sup> Alternate technologies have, at times, replaced potassium permanganate, in part because potassium permanganate is a fairly difficult chemical to handle and to use because it is dusty and the material has relatively limited solubility.<sup>18</sup> On the other hand, potassium permanganate is an excellent and rapidly-acting oxidant and when used properly is stable and safe. Because potassium permanganate is used in the purification of cocaine, sales of the chemical are monitored by the Drug Enforcement Agency.

Recent growth of end uses for potassium permanganate varies by end use. For example, use of potassium permanganate in municipal wastewater treatment has recently increased at a modest rate of about 3 to 5 percent per year. There are no products that compete with potassium permanganate over the complete range of applications in which it is used. However, there are competing products or alternative processes for specific end uses. Substitutes for potassium permanganate in drinking water and wastewater treatment include aeration, activated carbon, hydrogen peroxide, ozone, chlorine, iron salts, and nitrates. For example, growth of use of potassium permanganate in potable water has been significantly curtailed because of competition from other oxidants, especially ozone and hydrogen peroxide. On the other hand, increasingly stringent regulations related to environmental and safety

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<sup>17</sup> Applications for potassium permanganate which have seen a spurt of growth followed by an equally sharp decline include use of the chemical in the production of saccharin and washed jeans (Inga Carus, hearing transcript, p. 49).

<sup>18</sup> Inga Carus, hearing transcript, pp. 49-50.

issues have resulted in increased consumption of potassium permanganate for certain applications. As discussed above, concern about the formation of trihalomethane (THM), a possible carcinogen, is spurring increased use of potassium permanganate to substitute for prechlorination. New OSHA requirements regulating hydrogen sulfide levels are spurring increased use of potassium permanganate to oxidize hydrogen sulfide.

Estimated end uses of potassium permanganate for 1998, in terms of percentages of consumption, are as follows: wastewater treatment (\*\*\*) percent), drinking water treatment (\*\*\*) percent), chemical management and processing (\*\*\*) percent), air and gas purification (\*\*\*) percent), aquaculture (\*\*\*) percent), metal processing (\*\*\*) percent), and other uses (\*\*\*) percent).

In Europe, potassium permanganate is not used as widely as in the United States for water treatment. Instead, more capital intensive technologies such as ozone treatment are used.

According to most of the questionnaire responses, the potassium permanganate produced domestically and the potassium permanganate imported from Spain, China, and nonsubject countries were generally found to be interchangeable (see Part II of the report). Some users, however, reported that there were quality problems associated with imported potassium permanganate.

In addition to monitoring quality, a producer also competes by providing services to its customers. According to Carus, providing technical services is an important consideration to help a potential customer understand and compare various oxidation technologies with potassium permanganate or to persuade an existing customer to continue to use potassium permanganate and not to switch to other technologies. \*\*\*.<sup>19</sup>

### **Manufacturing Process and Production Employees**

Potassium permanganate is manufactured by the oxidation of potassium manganate ( $K_2MnO_4$ ), which is prepared by the fusion of pyrolusite (black manganese dioxide) and potassium hydroxide. The manganese ion in potassium manganate is oxidized to potassium permanganate ( $KMnO_4$ ). The oxidation may be accomplished by one of two methods. The first is by treating a hot solution of potassium manganate with carbon dioxide, which forms crystals when cooled. This method is very old and is not currently used to manufacture commercial quantities of potassium permanganate anywhere in the world, with the possible exception of China. It is, however, a method sometimes used to make laboratory quantities of this material.

The commercial manufacturing process used in the United States and Spain is as follows:

- oxidation at high temperatures of potassium hydroxide (KOH) and manganese dioxide ( $MnO_2$ ) or manganese ore to produce potassium manganate ( $K_2MnO_4$ ).
- continuous electrolysis of a solution of potassium manganate with continuous crystallization, resulting in the production of potassium permanganate and the by-products potassium hydroxide and hydrogen gas, according to the reaction--



- Crystallization of the potassium permanganate out of the solution.

The production process used by Carus \*\*\*.

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<sup>19</sup> \*\*\*.

The potassium permanganate crystals formed through these processes are packaged for shipment in steel drums or in bulk. The most common sizes of drums are 50 kilogram (kg) and 150 kg, although some shipments are made in 25-kg drums.

Because of the large number of producers of potassium permanganate in China, the manufacturing process for potassium permanganate and its precursor, potassium manganate, has received a lot of attention by Chinese scientists. For example, a new method for producing potassium manganate was invented that facilitates large-scale production of potassium permanganate. Despite these advances, less efficient production methods continue to be used in China and the equipment and processes used to produce potassium permanganate are not of uniform quality and efficiency.

### **Interchangeability**

Domestic and Spanish product compete in the United States and purchasers, importers, and producers report that these products are interchangeable. Little mention is made by purchasers, importers, and producers on the interchangeability of Chinese product because little Chinese product is sold in the U.S. market. Nonsubject imported product was reported to be interchangeable with domestic and subject product. In the original investigations, free-flowing potassium permanganate, the most common form of potassium permanganate in the United States, was not imported from China. The lack of free-flowing grade potassium permanganate limited the interchangeability of Chinese product. Now, at least one producer in China produces the free-flowing grade. \*\*\*.

### **Price**

Based on questionnaire information obtained from Carus on its 1998 U.S. sales of product to distributors, free-flowing potassium permanganate ranged in average unit value from a low of \$\*\*\* per pound for 50-kg containers in January-March of 1997 to a high of \$\*\*\* per pound for 50-kg containers in October-December of 1998; technical grade prices ranged from a low of \$\*\*\* per pound in April-June of 1998 to a high of \$\*\*\* per pound in January-March of 1997. Prices of technical grade tended to be below those of free-flowing.

As stated earlier, due to higher production costs, the price range of pharmaceutical grade is higher than those of the technical or free-flowing grades.<sup>20</sup>

### **Channels of Distribution**

There are three channels of distribution: sales to distributors, sales to end users, and internal consumption. A discussion of these channels is included in the Channels of Distribution section of Part II.

### **Customer and U.S. Producer Perceptions**

Carus and a number of customers indicate that the free-flowing grade is required for certain end uses. A further discussion of customer and producer perceptions is included in the Factors Affecting Purchasing Decisions section of Part II.

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<sup>20</sup> \*\*\*.

## U.S. MARKET PARTICIPANTS

### U.S. Producer

The sole U.S. manufacturer of potassium permanganate is Carus Chemical Co., located in La Salle, IL. Carus Chemical Co. is a division of the Carus Corp., a small, privately-held corporation. Carus Chemical Co. is the world's largest producer of potassium permanganate and a leader in the chemistry of permanganate and manganese.

Carus Chemical Co. has produced potassium permanganate since 1915. During World War I, there were more than 20 U.S. manufacturers of potassium permanganate. After the war, there was a sharp drop in the price of potassium permanganate, resulting in the exodus of all U.S. companies except Carus Chemical from potassium permanganate manufacturing. Carus Chemical was the sole remaining U.S. potassium permanganate manufacturer beginning in 1920.

Carus opposes the revocation of the antidumping orders. According to Carus in its response to the questionnaire, \*\*\*.

Until recently, Carus Corp. included a publishing division - Carus Publishing. Carus publishing consisted of the Open Court Publishing Co. and the Cricket Magazine Group. Open Court is a book publisher focusing on philosophy and religion. The Cricket magazine Group publishes children's books.

### U.S. Importers

The Commission sent questionnaires to four importers and received responses from all of them. These importers were identified as the importers of all potassium permanganate from China and Spain, and the vast majority of potassium permanganate imported from all other sources in 1997 and 1998, as reported by the U.S. Department of Commerce.

One importer, American International Chemical, Natick, MA, imported all of the Spanish product in 1997 and 1998.<sup>21</sup> One importer, \*\*\*, imported all of the Chinese product in 1998; no Chinese product was imported in 1997. In 1997, \*\*\* imported virtually all (more than 99 percent by quantity) potassium permanganate from nonsubject sources. \*\*\* imported virtually all potassium permanganate from nonsubject sources in 1998.

There has been a sharp decrease in the number of importers since the original investigation. In the original investigation, there were nine importers of Spanish product - now there is one. There were eight importers of Chinese product during the original investigation - now there is one.

\*\*\*, the sole importer of Chinese product in 1998, \*\*\*. The only importation of Chinese product during 1997 and 1998 consisted of a one metric ton shipment in the first quarter of 1998.

### U.S. Purchasers

Purchasers of potassium permanganate are primarily distributors and water treatment authorities. Five distributors, six water treatment authorities, and three other end users, totaling 14 purchasers, completed the Commission questionnaires. Four purchasers are located in the Middle Atlantic States, one is in the Northeast, four purchasers are in the Southeast, one is in the Midsouth, three are in the Midwest, and one is in the West.

Eleven purchasers reported purchasing only domestically produced product, in the amount of 5.9 million pounds. Of the remaining three purchasers, one purchased Chinese, Spanish, and nonsubject

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<sup>21</sup> American International Chemical has an exclusive importing arrangement with Industrial Quimica del Nalon.

product and two purchased Spanish product only. Potassium permanganate produced in Spain accounted for \*\*\* pounds and potassium permanganate produced in China accounted for only \*\*\* pounds of product purchased by these purchasers.

Most purchasers buy the free-flowing grade of potassium permanganate. Technical grade purchases run a distant second to the free-flowing grade, and pharmaceutical grade purchases represent an extremely small amount. Purchasing of potassium permanganate is widely dispersed among the purchasers, with no purchaser dominating the potassium permanganate market.

The reporting purchasers represented approximately \*\*\* percent (\*\* million pounds) of apparent U.S. consumption in 1998.

### APPARENT U.S. CONSUMPTION AND MARKET SHARES

Apparent U.S. consumption of potassium permanganate increased by \*\*\* pounds (\*\* percent) in terms of quantity between 1997 and 1998, as shown in table I-2. The share of consumption, by quantity, accounted for by Carus was \*\*\* percent in 1997 and \*\*\* percent in 1998, with most of the remainder accounted for by nonsubject imports. The share of apparent U.S. consumption accounted for by potassium permanganate from China was zero in 1997 and less than \*\*\* percent in 1998. The share of the volume of apparent U.S. consumption accounted for by potassium permanganate from Spain was \*\*\* percent in 1997 and \*\*\* percent in 1998.

Table I-2

Potassium permanganate: U.S. shipments of domestic product, imports by source, apparent consumption, and market shares, 1997-98, Jan.-Mar. 1998, and Jan.-Mar. 1999

\* \* \* \* \*

The primary market for potassium permanganate in the United States is for its use in the treatment of drinking water and wastewater. The use of potassium permanganate reduces the amount of chlorine needed for water treatment. Water chlorination produces chlorine by-products that may be carcinogenic. Guidelines for water treatment are becoming stricter and will require reduction of these chlorine by-products. These tighter guidelines are expected to cause an increase in U.S. demand for potassium permanganate for at least the next few years.

There is some seasonality in the demand for potassium permanganate. Potassium permanganate is useful in water treatment for controlling the growth of algae, zebra mussels, and other undesirable organisms. Growth of these organisms increases during the summer months, resulting in an increased demand for potassium permanganate during the summer.



## **PART II: CONDITIONS OF COMPETITION IN THE U.S. MARKET**

### **U.S. MARKET SEGMENTS**

The main type of potassium permanganate used in the U.S. market is free-flowing. \*\*\*.

### **CHANNELS OF DISTRIBUTION**

Three channels of distribution exist: sales to distributors; sales to end users; and internal consumption. Most product is sold to distributors, who typically sell a complete range of water purification chemicals to both water purifiers (who produce tap water) and wastewater treatment facilities.<sup>1</sup> Both public and industrial wastewater treatment can use potassium permanganate. Carus reports that when it sells directly, it is \*\*\*.<sup>2</sup> Potassium permanganate is also used internally by Carus in a \*\*\*.

Carus sells potassium permanganate in 25-, 50-, or 100-kg plastic containers, 150- and 1,500-kg stainless steel recycle bins, and in bulk by the truckload. Distributors and end users that purchase directly from Carus purchase in the same range of containers. Distributors sell predominantly through contracts, \*\*\* when selling directly to end users. The largest purchasers, agencies that purify drinking water and clean wastewater, typically buy through annual requests for proposals or requests for bids. In any local area there tend to be a number of distributors selling potassium permanganate, most of whom sell domestic product.<sup>3</sup> However, distributors report that in most major request for bids, at least one distributor of imported product will bid.<sup>4</sup> The bids are made public. As a result, other buyers and sellers can find out the price and conditions of the successful sale. Smaller municipalities tend to have less formal bidding processes or may purchase on the spot market. Other types of large purchasers may also have contracts.

When Carus bids on a sale it may either sell potassium permanganate directly to the customer or it may \*\*\*.<sup>5</sup>

### **MARKET STRUCTURE**

#### **Participants**

The potassium permanganate market in the United States has changed somewhat since the implementation of the antidumping duty on imports from China and Spain in 1983. The three responding importers all reported changes in the market since 1984, including statements that the U.S. producer is a "monopolist," that the importer was now selling Czech material, and that \*\*\* introduced environmentally friendly recyclable drums. In 1987-88, Carus moved to using \*\*\*.<sup>6</sup>

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<sup>1</sup> Distributors also reportedly sell for use in metal finishing and denim bleaching.

<sup>2</sup> Of the 15 purchasers responding to the Commission's questionnaire, 7 were distributors and 8 were end users; 3 of the end users were not water authorities. \*\*\*.

<sup>3</sup> Staff discussions with distributors, Apr. 26, 1999.

<sup>4</sup> Ibid.

<sup>5</sup> Staff discussions with \*\*\*, Aug. 24, 1999.

<sup>6</sup> Carus reported that \*\*\*. Discussions with staff, Apr. 26, 1999.

At the time of the original investigations, there were 8 Chinese producers of potassium permanganate. In the current investigations, Carus estimated that there are as many as 14 Chinese producers. Other sources report that there are 11 active Chinese producers,<sup>7</sup> and the responding Chinese producers report that there are 5 major Chinese producers. There has been one Spanish producer, Industrial Quimica del Nalon (IQN), since the original period of investigation.

### Production

U.S. consumption of potassium permanganate has grown significantly since 1983. During 1983-85 and in 1997-98, Carus was able to \*\*\* U.S. market if it produced at full capacity.<sup>8</sup> However, by 1997 U.S. consumption was \*\*\* Carus' capacity.

In 1983, the U.S. potassium permanganate industry was roughly 1.5 times the size of the Chinese and Spanish industries combined in terms of capacity. By 1997, Carus estimated that capacity in China was \*\*\* times the U.S. capacity, with Chinese and Spanish capacity combined equaling \*\*\* times the U.S. capacity. \*\*\* reported that the world capacity has not grown more than overall demand. Growth in Chinese production has been offset by rising world demand and falling production in other countries.<sup>9</sup> Most recently, in 1998, the German producer stopped production. IQN reported that it "believes that the Czech producer has a limited life. It has many environmental problems and its facilities are 100 years old."<sup>10</sup> IQN, however, did not provide any documentation in support of these assertions.

### Product

The product itself has remained unchanged since 1983. The Chinese did not sell free-flowing potassium permanganate during the initial investigation, but one Chinese producer now reports that it is able to produce the free-flowing product.<sup>11</sup> Only one importer reported importing Chinese product in 1997 through the first quarter of 1999. It imported \*\*\* technical grade.

### U.S. Market Leadership

Carus dominates the U.S. market and sold \*\*\* and \*\*\* percent of U.S. commercial consumption in 1997 and 1998, respectively. Including internal consumption, Carus accounted for \*\*\* and \*\*\* percent of U.S. consumption in 1997 and 1998, respectively. Carus' capacity \*\*\* U.S. consumption by only \*\*\* in 1997 and \*\*\* consumption by \*\*\* percent in 1998; therefore it would \*\*\* to provide all U.S. consumption. The industry's Herfindahl index (excluding internal consumption) is high, at \*\*\* percent in 1997 and \*\*\* percent in 1998.<sup>12</sup>

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<sup>7</sup> Reported in the translation of a Chinese article, \*\*\*.

<sup>8</sup> Carus' excess capacity in 1983 was mainly the result of the loss of a major customer in 1982. Edward Gerwin, counsel for Carus, hearing transcript, p. 153.

<sup>9</sup> \*\*\* reported that production in Japan, Brazil, the United Kingdom, France, and Russia stopped in the early 1990s and that Ukraine's production is limited due to energy and environmental problems.

<sup>10</sup> IQN's posthearing brief, p. 11.

<sup>11</sup> \*\*\* foreign producer's questionnaire, p. 13. Firms were not asked whether they could produce free-flowing product in their questionnaire, \*\*\*.

<sup>12</sup> The Herfindahl index is the sum of the square of the producers' market share; a monopoly would have a Herfindahl index of 100 percent. Inclusion of internal consumption would increase Carus' Herfindahl index

(continued...)

Importers and purchasers were asked if individual firms affected price. Six purchasers answered the question; of these, three reported that the U.S. producer affected or controlled price, and the remaining three reported that imports affected price.<sup>13</sup> Three importers responded: one reported that no firm affected price; one reported that individual firms had affected price, but did not elaborate; and the third reported that \*\*\*.

### **Pricing**

Carus reported that \*\*\*.<sup>14</sup> Importers were asked to compare pricing in the U.S. market to non-U.S. markets; one responded that prices were lower in markets where Chinese product is sold.<sup>15</sup> IQN reported that although European prices were lower than U.S. prices, some of this was due to less expensive packaging used in Europe.<sup>16</sup> IQN also reported that it expected European prices to rise in the future with reduced competition both as a result of the German producer halting production and from improved antidumping enforcement in Europe.<sup>17</sup>

## **SUPPLY AND DEMAND CONSIDERATIONS**

### **U.S. Supply**

#### **Domestic Production**

Based on available information, Carus is likely to respond to changes in price with moderate changes in the quantity of shipments to the U.S. market. Carus reports that it had been able to \*\*\*. Few factors constrain Carus' ability to reduce production; however, Carus has an overall capacity constraint which will make it \*\*\* to increase quantity much in the short run.

#### **Industry capacity**

Carus reported capacity utilization rates of \*\*\* percent and \*\*\* percent for 1997 and 1998 respectively.<sup>18</sup> Carus has not increased capacity in recent years \*\*\*.

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<sup>12</sup> (...continued)  
numbers to \*\*\* percent in 1997 and \*\*\* percent in 1998.

<sup>13</sup> One reported that once it opened its bids up to imports, the price of the U.S. product fell; one reported that import pricing had reduced the price in some markets; and one reported that it assumed imports affected pricing.

<sup>14</sup> Carus reported that the only other instance with slightly higher prices consisted of \*\*\*. Carus' response to the notice of institution, pp. 22 and 26. Also see Carus' posthearing brief, p. 20.

<sup>15</sup> The other 2 importers reported that they did not know.

<sup>16</sup> Dennis James, counsel for IQN, reported that more expensive packaging for the U.S. market accounts for approximately \$\*\*\* per pound difference in price. Discussion with staff, Sept. 7, 1999.

<sup>17</sup> Dennis James, hearing transcript, pp. 107-108.

<sup>18</sup> Although overall capacity utilization fell between 1997 and 1998, in the first quarter of 1999 both Carus' declining inventories, which fell to \*\*\*, and the reports by 3 purchasers of difficulties getting supplies indicate that actual production capacity may have been a greater constraint than the capacity utilization figures indicate. IQN also reported that its importer had heard that Carus is \*\*\*. IQN's prehearing brief, p. 14.

### ***Export markets***

Carus exported \*\*\* percent of its production in 1997 and \*\*\* percent in 1998. Carus reported exporting to the following markets: Canada, Mexico, Europe, the Middle East, and Asia.<sup>19</sup> Carus would likely have little difficulty selling more of its product in alternative markets. The product is relatively homogeneous and, according to \*\*\*, supplier/purchaser relationships in Europe tend not to be very tight.<sup>20</sup> The prices of Carus' exports, however, are lower than the price it receives in the United States.<sup>21</sup>

### ***Production alternatives***

Carus reports that it \*\*\*.<sup>22</sup>

### **Chinese Production**

Based on available information, Chinese potassium permanganate producers are likely to respond with increased sales to the U.S. market if the antidumping order is removed. No Chinese producer is currently exporting substantial amounts into the U.S. market. Both responding Chinese producers, however, anticipated selling \*\*\* potassium permanganate in the United States if the antidumping duty were removed. One of these reported that if the U.S. market was not covered by the dumping duty “\*\*\* to the United States per year.”<sup>23</sup>

### ***Industry capacity***

Available data about Chinese producers are difficult to analyze. The two responding Chinese producers had aggregate capacity utilization rates of \*\*\* percent in 1997 and \*\*\* percent in 1998 and thus have little ability to expand production. Data on the other producers were not available from questionnaires. Carus, however, estimated that capacity utilization rates for all Chinese firms was \*\*\* percent in 1997.<sup>24</sup> Carus also reported that Chinese capacity had increased in March 1997, and that Chinese capacity was half the world's total capacity.<sup>25</sup> IQN agrees with Carus' estimate of capacity utilization in China, reporting that China's capacity utilization rate was \*\*\* percent. IQN also reports that China alone has enough capacity \*\*\*.<sup>26</sup>

Information was available on Chinese inventories for two firms; these firms reported aggregate inventories of \*\*\* percent of their production in both 1997 and 1998. Available data indicate that Chinese producers cannot switch production between potassium permanganate and other products in response to a relative price change in the price of potassium permanganate vis-a-vis the price of other products, using the same equipment and labor.

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<sup>19</sup> Inga Carus, hearing transcript, p. 28.

<sup>20</sup> \*\*\*.

<sup>21</sup> Inga Carus, hearing transcript, pp. 28-29.

<sup>22</sup> Carus' questionnaire, p. 6.

<sup>23</sup> \*\*\* questionnaire, p. 7.

<sup>24</sup> “We don't know if that overcapacity is 100 percent or 50 percent, and that's largely because of China. We don't know how many plants really are there.” Inga Carus, hearing transcript, p. 47.

<sup>25</sup> \*\*\*.

<sup>26</sup> \*\*\*.

### *Alternative markets*

Information obtained on two Chinese producers' shipments of potassium permanganate indicate that the home market absorbed \*\*\* and \*\*\* percent of their production in 1997 and 1998, respectively. Sales to export markets other than the United States accounted for almost all of the remainder of their total shipments.<sup>27</sup> The Chinese producers reported that export markets included \*\*\*. The Chinese have faced antidumping duties for their sales to the European Union (EU) and India since 1988 and 1995, respectively.

The Chinese producers reported that demand is growing in China and in much of the world as standards of water quality improve and as environmental requirements increase. This agreed with \*\*\* report of growing demand between 1985 and 1999, particularly in Asia and "other markets".<sup>28</sup>

### **Spanish Production**

Based on IQN's questionnaire response, it has the ability to increase shipments to the U.S. market if the antidumping order is removed. IQN reports in its questionnaire that it expected to be able to \*\*\* if the antidumping duties are removed, and \*\*\*.<sup>29</sup> IQN also reports that \*\*\*.<sup>30</sup>

### *Industry capacity*

In its questionnaire responses, IQN indicates that it has a \*\*\* ability to increase production without further investment in production facilities. Its reported capacity utilization rates were \*\*\* percent in 1997 and \*\*\* percent in 1998.<sup>31</sup> In the first quarter of 1999, however, IQN reported that its capacity utilization was over 80 percent.<sup>32</sup> IQN reported \*\*\* inventory levels in 1997 and 1998, but \*\*\* in January-March 1999, and \*\*\*. End-of-period inventories equaled \*\*\* percent in 1997, \*\*\* percent in 1998, and \*\*\* percent on January-March 1999 of its total commercial shipments.

### *Alternative production*

Available data indicate that IQN cannot switch production between potassium permanganate and other products in response to a relative price change in the price of potassium permanganate vis-a-vis the price of other products, using the same equipment and labor.<sup>33</sup>

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<sup>27</sup> In 1997 no material was imported into the United States from China; in 1998, \*\*\* pounds were imported. Carus' questionnaire response, attachment 4, and importer questionnaires.

<sup>28</sup> \*\*\*.

<sup>29</sup> IQN's questionnaire, p. 15-2.

<sup>30</sup> IQN's questionnaire, p. 15-1.

<sup>31</sup> \*\*\*. IQN's questionnaire, p. 15-1. Although IQN reported in its questionnaire that its capacity is \*\*\*, in its posthearing brief IQN stated that realistic capacity is \*\*\*. IQN's posthearing brief, attachment pp. 5, 12, and 13.

<sup>32</sup> Dennis James, hearing transcript, p. 107.

<sup>33</sup> \*\*\*.

## *Alternative markets*

Shipments in the home market accounted for \*\*\* percent of IQN's total shipments in both 1997 and 1998.<sup>34</sup> Sales to export markets other than the United States accounted for a \*\*\* of the remainder of total shipments. IQN reports that the European market is its main market for potassium permanganate.<sup>35</sup> There are EU antidumping orders (called "regulations" by the EU) against potassium permanganate from China, India, and Ukraine.<sup>36</sup> IQN reported that as a result of these antidumping orders and the end of German production, it expects prices in Europe to rise because there is less competition.<sup>37</sup> IQN reported that its other major export market was \*\*\*. IQN reported that in Spain and the rest of Europe, the use of potassium permanganate in water treatment was likely to grow.<sup>38</sup> However, it also reported substitution of \*\*\* for potassium permanganate in water treatment.<sup>39</sup> IQN reported that "\*\*\*\*."<sup>40</sup>

## **U.S. Demand**

### **Demand Characteristics**

Demand for potassium permanganate has grown mainly with its growing use in the water purification and wastewater treatment industries.<sup>41</sup> Other uses include chemical purification and synthesis, metal cleaning, aquaculture, and hazardous waste remediation.<sup>42</sup> Demand for potassium permanganate in water purification and wastewater treatment increases with hot weather. Of the 15 purchasers responding, 6 reported that there was no variation in the course of a year, and the remaining 9 reported greater use in summer or hot weather, or less use in winter.

The main uses for potassium permanganate in water treatment are to improve the taste and smell, or to remove iron and manganese.<sup>43</sup> It is also useful to eliminate organic matter, kill microbes, reduce the problems from clams and mussels (these tend to collect on and clog water intake lines), and deal with pollution (when pollution of the source water occurs). Potassium permanganate is typically used because it can address a number of these problems more cost effectively than other types of treatment.

U.S. consumption of potassium permanganate rose from \*\*\* million pounds in 1982 to \*\*\* million pounds in 1998. This was mainly in response to increased demand resulting from growing health, safety, and pollution concerns in the United States. By 2001 new federal water treatment quality requirements that require less by-products from the chlorine in water will be in force. \*\*\* reported that he believed that this new regulation will increase demand for potassium permanganate. Potassium permanganate's use in water and wastewater was growing rapidly in 1982, but according to Carus,

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<sup>34</sup> \*\*\*.

<sup>35</sup> Dennis James, hearing transcript, p. 128.

<sup>36</sup> Dennis James, hearing transcript, p. 117.

<sup>37</sup> *Ibid.*, pp. 117-118.

<sup>38</sup> \*\*\*.

<sup>39</sup> \*\*\*.

<sup>40</sup> Questionnaire, p. 11.

<sup>41</sup> In the past there have been other uses for potassium permanganate in which it has been replaced or where demand for the end product has fallen. For example, one of the important uses in the 1950s and 1960s was in the manufacture of saccharin, but this use was not reported by any of the current purchasers. Inga Carus, hearing transcript, p. 47, and purchaser questionnaires.

<sup>42</sup> \*\*\*.

<sup>43</sup> Discussions with \*\*\*, July 1, 1999.

demand for potassium permanganate for drinking water and wastewater treatment is currently growing at only 3 to 4 percent per year.<sup>44</sup> Carus reports, however, that in some industrial niche uses, demand is currently growing at \*\*\* percent. Carus also reports that \*\*\*.

### Substitute Products

Producers, importers, and purchasers were asked if there are any possible substitutes for potassium permanganate. Half of the purchasers (7 of 14) and 2 of the 3 responding importers did not know of any substitutes for potassium permanganate. The remaining purchasers and importer indicated that substitutes existed, including copper sulfide, ferrous sulfite, ozone, nitric acid, aeration, chlorine, peroxide, chlorine dioxide, sodium hydroxide, and activated charcoal; however, 6 of the purchasers also reported that these substitutes were inferior.<sup>45</sup> Carus reported that \*\*\*.<sup>46</sup> For example, ozone is an excellent oxidizer, destroying microbes that potassium permanganate and chlorine do not destroy, but ozone must be manufactured on site. Ozone users need to invest in substantial amounts of equipment and the maintenance it requires. Ozone is extremely unstable and so cannot be used, for example, to control clams or mussels in water traveling to water facilities.

The majority of responding purchasers (5 of 8) indicated that the prices for the alternatives to potassium permanganate had changed since January 1, 1997, but with the large number of substitutes listed they gave no consistent direction of price change.<sup>47</sup> Two purchasers reported either they or other purchasers were using substitutes to replace potassium permanganate. One purchaser reported that there had been increased use of ozone to replace potassium permanganate, and that ozone had become more prevalent because of increased reliability.<sup>48</sup> The other reported that it had reduced its use of potassium permanganate when it had upgraded its plant. This purchaser \*\*\*.<sup>49</sup>

### Cost Share

Purchasers were asked what share of the total cost of their product was made up by potassium permanganate. Their responses are difficult to interpret.<sup>50</sup> The share of cost varied by end use; however the ranges reported were enormous. For drinking water, the cost share of potassium permanganate ranged from 7 to 77 percent, for industrial water it ranged from 2 to 23 percent, and for wastewater and \*\*\* production, two firms reported potassium permanganate's cost share to be 4 percent and less than 1 percent, respectively. \*\*\* reported that potassium permanganate was about 8-10 percent of the cost of chemicals used in water treatment and that potassium permanganate was well under 1 percent of the total cost of water treatment.

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<sup>44</sup> Inga Carus, hearing transcript, p. 49.

<sup>45</sup> Reasons substitutes were reportedly inferior included possible fish kills, environmental concerns, water quality, and overall performance. Purchasers' questionnaire questions II-13 and III-8.

<sup>46</sup> Carus questionnaire, p. 23.

<sup>47</sup> Two reported that prices had gone up for some substitutes and down for others, 1 each reported that the price of a substitute had increased (or fallen), and 1 did not tell the direction of the change.

<sup>48</sup> Ozone is not always used as a substitute for potassium permanganate. It may be used at a different stage of the purification process \*\*\*. \*\*\*, July 1, 1999.

<sup>49</sup> Discussion with staff, Aug. 30, 1999.

<sup>50</sup> Nine firms answered the question; 5 reported that the cost of potassium permanganate was 100 percent of cost and 4 reported the percentages presented above.

## TRENDS IN U.S. SUPPLY AND DEMAND

Producers, importers, and purchasers were asked to discuss any supply factors that affected the availability of potassium permanganate in the U.S. market since 1984. Two of three responding importers reported changes in supply: one of these reported the effect of the antidumping duty, the other reported increased competition from imports from Germany and the Czech Republic. Only three of the 12 responding purchasers reported changes in supply; all 3 of these reported Carus' shortages in 1998-99. Carus reported no significant changes in supply since 1984 \*\*\*.

Carus, importers, and purchasers were asked to discuss how demand for potassium permanganate has changed in the U.S. market since 1984. Of the 13 responding purchasers, 7 did not know or did not report the direction of change, 5 reported that demand had increased, and 1 reported that demand had fallen. Two of the three importers reported demand growth, and the other did not know. Carus reported that demand in drinking and wastewater treatment is growing at \*\*\* percent per year but in some niche products demand growth was expected to be \*\*\* percent annually.

Of the 11 purchasers responding, 2 reported that they expected no change in future demand, 4 reported that they expected increased demand, and 1 reported that it expected its own use to fall.<sup>51</sup> The main reasons purchasers reported for increased demand consisted of water quality issues. Importers did not report any expected changes in demand.<sup>52</sup>

## SUBSTITUTABILITY ISSUES

The degree of substitution between domestic and imported potassium permanganate depends on such factors as relative prices, quality (being American Water Works Association (AWWA) certified, packaging, purity, reliability of supply, etc.), availability in the grades required (free-flowing, pharmaceutical, and technical), and conditions of sale (e.g., price discounts, lead times, payment terms, value added services, etc.). Based on available data, staff believes that there would be a moderate to high degree of substitution between the domestic potassium permanganate and the Spanish and Chinese potassium permanganate if these were to enter the U.S. market in meaningful quantities (to the extent that the Chinese producers are able to produce free-flowing potassium permanganate).

### Factors Affecting Purchasing Decisions

Available data indicate that there are a variety of factors that influence purchasing decisions for potassium permanganate. Purchasers were asked to list the top three factors that they consider when choosing a supplier of potassium permanganate. Table II-1 summarizes responses to this question. As indicated in the table, a majority of purchasers reported that quality/conformation with AWWA or National Sanitation Foundation (NSF) specifications was the most important consideration in their purchasing decisions. This question was answered by 7 distributors and 8 end users.<sup>53</sup> The most important factor in determining from whom to purchase differed depending on whether the purchaser was a distributor or an end user. Quality was the most important factor to 5 end users and 3 distributors;

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<sup>51</sup> In addition, 4 did not know or did not report the direction of change.

<sup>52</sup> Of the 3 importers responding, 2 reported they did not know of any future changes and 1 reported on future reductions in supply, not demand.

<sup>53</sup> This includes \*\*\* as an end user. \*\*\* it reported that quality was the most important characteristic. Some of the responding firms reported only the most important factor.

3 distributors reported contracts were the most important factor, presumably because they had \*\*\*, and 3 end users and 1 distributor reported that price was the most important factor.

<b>Table II-1 Potassium permanganate: Ranking of factors used in purchasing decisions, as reported by U.S. purchasers</b>			
<b>Factor</b>	<b>Number one factor</b>	<b>Number two factor</b>	<b>Number three factor</b>
	<i>Number of firms reporting</i>		
<b>Quality/conforms to AWWA/NSF specs</b>	8	3	2
<b>Price</b>	4	5	0
<b>Prearranged contract</b>	3	1	3
<b>Availability/consistent supply</b>	0	2	4
<b>Other <sup>1</sup></b>	0	1	3

<sup>1</sup> Other factors include range of supplier product line, technical/equipment support, approved manufacturer, and traditional supplier.

Source: Compiled from data submitted in response to Commission questionnaires.

The results depicted in table II-1 are further supported by purchasers' responses to the question on how often their firm's purchasing decisions for potassium permanganate are mainly based on price. Six purchasers reported never, 4 purchasers stated usually, 3 purchasers reported always, and 3 purchasers indicated sometimes. Of the 12 responding that purchases were not always based on price, the two other most important considerations were quality and prearranged contracts. A number of these had \*\*\*.

Most purchasers (11 of 14) required suppliers to become certified or prequalified. Of the 11 requiring prequalification, 9 required it on 100 percent of their product, 1 required lab results with every load, and 1 required prequalification on 62 percent of their product. Eleven firms also reported their requirements; the most common requirements were that the potassium permanganate meet the AWWA and/or NSF standards, required by 6 firms, and that it be free-flowing product, required by 5.<sup>54</sup>

### **Comparisons of Domestic Product and Imports from China**

Very little Chinese potassium permanganate was imported in the last two years. Questionnaire respondents were asked to discuss the interchangeability between the U.S.-produced potassium

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<sup>54</sup> Three of these purchasers required both free-flowing product and certification. In addition, one firm reported that the product must be certified by a certificate for analysis to meet the customer's specifications. One firm, not included in the 11 firms discussed above, reported that Carus' specifications seemed to be standard.

permanganate and the Chinese-produced product. Carus and all three responding importers reported that the U.S. product and the Chinese product could be used interchangeably. Three purchasers compared U.S. and Chinese potassium permanganate; all 3 reported that they could be used in the same applications. One purchaser compared U.S. and Chinese potassium permanganate on 14 factors requested; the U.S. product was superior in 5 characteristics, comparable in 8 factors, and inferior in 1 factor, price.<sup>55</sup> Only two purchasers reported purchasing potassium permanganate from China after 1984.

### **Comparisons of Domestic Product and Imports from Spain**

Unlike China, potassium permanganate produced in Spain was imported into and sold in the United States throughout 1997 and 1998. Questionnaire respondents were asked to discuss the interchangeability between the U.S.-produced and Spanish-produced potassium permanganate. Carus and the 2 responding importers reported that the U.S. product and the Spanish product could be used interchangeably. All 4 responding purchasers reported that U.S. and Spanish product could be used in the same applications. Three purchasers compared U.S. and Spanish potassium permanganate according to the 14 factors requested. One of these firms reported that the U.S. product was superior in all characteristics, one reported that U.S. and Spanish product were comparable in all factors, and one reported that they were comparable in all but 4 factors and that U.S. product was inferior in lowest price.<sup>56</sup> In response to other questions, 2 other purchasers reported that they had purchased Spanish material, but stopped because of quality problems.<sup>57</sup>

### **Comparisons of Domestic Product and Nonsubject Imports**

Imports of potassium permanganate are available from a few sources that are not subject to the antidumping orders under review, mainly the Czech Republic, Germany, and India.<sup>58</sup> Between 1997 and 1998, nonsubject imports fell from \*\*\* percent to \*\*\* percent of all domestic consumption. Carus and all three responding importers reported that domestic potassium permanganate and nonsubject potassium permanganate can be used interchangeably. The purchasers were asked to compare potassium permanganate from any producing countries they knew about. For all country pairs, all reported that they were used in the same applications.

Carus and the 2 responding importers agreed that there are no differences in product characteristics or sales conditions (other than price) between the domestically produced potassium permanganate and nonsubject imported potassium permanganate that are a significant factor in terms of competition among these products.

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<sup>55</sup> This firm reported that the factors in which the U.S. product was superior were product consistency, product quality, product range, reliability of supply, and technical support. U.S. and Chinese products were comparable in availability, delivery terms, delivery time, discounts offered, minimum quantity requirement, packaging, transportation network, and U.S. transportation costs.

<sup>56</sup> The factors that U.S. product was considered superior in by 2 firms were packaging, product consistency, and technical support.

<sup>57</sup> One of these reported that it stopped because of quality and limited use at the time.

<sup>58</sup> The German producer no longer is producing potassium permanganate but still has inventories that it is selling. There is also a small amount of production in Ukraine.

## Comparisons of Imports from China and Spain with Nonsubject Imports

\*\*\* that subject imports of potassium permanganate from China and Spain and nonsubject imports can be used interchangeably. \*\*\*. Two importers answered this question; 1 reported that there was no difference between subject and nonsubject imports, and the other reported that there was a difference in their tariff treatment.

\*\*\*<sup>59</sup> \*\*\*<sup>60</sup>

## MODEL DISCUSSION

While simulation models are frequently used by economists to estimate the likely impact of trade policy changes such as tariff increases/reductions or the imposition of quotas, particular difficulties with the most common methodologies arise when imports are imperfect substitutes for domestic goods and their baseline market share is zero or close to zero. The most significant problem relates to measuring the effects of trade policy changes as percentage changes from baseline levels. When the baseline value of the import market share is zero or close to zero, it is no longer possible to estimate changes in import levels as a percentage of the baseline values. The typical methodology employed by staff to estimate the likely impact of the recurrence or continuation of dumping in review investigations suffers from these same limitations. In the current (baseline) situation, the U.S. market share for potassium permanganate from China is \*\*\* percent and for Spain is \*\*\* percent. As a result, no formal simulation modeling was conducted by staff.<sup>61</sup>

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<sup>59</sup> Staff discussion with \*\*\*, Sept. 7, 1999.

<sup>60</sup> Staff discussion with \*\*\*, Sept. 10, 1999.

<sup>61</sup> The simulation models typically used by the Commission are partial equilibrium models that assume domestic and imported products are less than perfect substitutes. Such models, also known as Armington models, are relatively standard in applied trade policy analysis and are used for the analysis of trade policy changes in both partial and general equilibrium. When used, staff selects a range of estimates that represent price-supply, price-demand, and product-substitution relationships (i.e., supply elasticity, demand elasticity, and substitution elasticities) in the U.S. market. Along with these estimates, the models may use data on market shares, growth in exogenous demand, and Commerce's determination on the expected level of dumping or subsidy should the antidumping/countervailing finding be revoked.



### PART III: U.S. PRODUCER'S TRADE AND FINANCIAL DATA

Carus, the sole U.S. producer, provided trade, employment, and financial data in response to the Commission's questionnaire.

#### U.S. PRODUCER'S CAPACITY, PRODUCTION, AND CAPACITY UTILIZATION

Carus' potassium permanganate capacity, production, and capacity utilization during the period for which data were obtained in the investigations are shown in table III-1. Between 1997 and 1998, capacity remained unchanged, production decreased by \*\*\* percent, and capacity utilization decreased by \*\*\* percentage points. Between January-March 1998 and January-March 1999, capacity remained unchanged, production increased by \*\*\* percent, and capacity utilization increased by \*\*\* percentage points.

Table III-1

Potassium permanganate: U.S. producer's capacity, production, and capacity utilization, 1997-98, Jan.-Mar. 1998, and Jan.-Mar. 1999

\* \* \* \* \*

Carus stated in its questionnaire response that \*\*\*.

#### U.S. PRODUCER'S SHIPMENTS

Carus' shipments, as shown in table III-2, increased by \*\*\* percent, or by \*\*\* pounds, in 1998. Its commercial shipments increased by \*\*\* percent (\*\*\*) pounds, and internal shipments rose by \*\*\* percent (\*\*\*) pounds. Export shipments also increased, by \*\*\* percent, or \*\*\* pounds; principal export markets reported by Carus were \*\*\*.

Table III-2

Potassium permanganate: U.S. producer's shipments, by type, 1997-98, Jan.-Mar. 1998, and Jan.-Mar. 1999

\* \* \* \* \*

Table III-3, U.S. producer's U.S. shipments by grade, shows that shipments of the free-flowing grade increased by \*\*\* percent or by \*\*\* pounds in 1998. Carus' U.S. shipments of the technical grade increased by \*\*\* percent or by \*\*\* pounds, and its shipments of the pharmaceutical grade decreased by \*\*\* percent or by \*\*\* pounds. In 1997, Carus' U.S. shipments by grade were: \*\*\* percent free-flowing grade by quantity (\*\*\*) pounds, \*\*\* percent technical grade (\*\*\*) pounds, and \*\*\* percent pharmaceutical grade (\*\*\*) pounds. In 1998, Carus' U.S. shipments by grade were: \*\*\* percent free-flowing grade (\*\*\*) pounds, \*\*\* percent technical grade (\*\*\*) pounds, and \*\*\* percent pharmaceutical grade (\*\*\*) pounds).

Table III-3

Potassium permanganate: U.S. producer's U.S. shipments, by product grade, 1997-98, Jan.-Mar. 1998, and Jan.-Mar. 1999

\* \* \* \* \*

A \*\*\* portion of Carus' domestic shipments is consumed internally. Internal consumption accounted for \*\*\* and \*\*\* percent, respectively, of Carus' domestic shipments in 1997 and 1998. Potassium permanganate is consumed internally \*\*\*. \*\*\*.<sup>1</sup> \*\*\*.<sup>2</sup> Carus reported that a purchaser of \*\*\* recently stated that \*\*\*.

### U.S. PRODUCER'S END-OF-PERIOD INVENTORIES

Carus' end-of-period inventories decreased by \*\*\* percent (\*\*\*) pounds) from 1997 to 1998, as shown in table III-4, and decreased by \*\*\* percent in January-March 1999 compared with January-March 1998.

Table III-4

Potassium permanganate: U.S. producer's end-of-period inventories, 1997-98, Jan.-Mar. 1998, and Jan.-Mar. 1999

\* \* \* \* \*

### U.S. PRODUCER'S EMPLOYMENT, WAGES, AND PRODUCTIVITY

The number of production and related workers employed by Carus increased during 1997-98 from \*\*\* to \*\*\*, a \*\*\* percent increase, as shown in table III-5. Hours worked also increased, by \*\*\* percent. Hourly wages rose by \*\*\* percent, while productivity declined by \*\*\* percent and unit labor costs rose by \*\*\* percent.

Table III-5

Potassium permanganate: Average number of production and related workers (PRWs), hours worked, wages paid to such employees, hourly wages, productivity, and unit labor costs, 1997-98, Jan.-Mar. 1998, and Jan-Mar. 1999

\* \* \* \* \*

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<sup>1</sup> Carus' posthearing brief, p. 21.

<sup>2</sup> Telephone conversation with \*\*\*, Sept. 17, 1999.

## FINANCIAL CONDITION OF THE U.S. PRODUCER

### Background

The sole U.S. producer of potassium permanganate, Carus Chemical Co., provided usable financial data.<sup>3</sup> The company manufactures primarily potassium permanganate, which is used mainly in waste and drinking water treatment, and is sold through the company's Industrial Division and Municipal Division.<sup>4</sup> Net sales of potassium permanganate (all types) comprised \*\*\* percent of Carus' revenues in 1998, \*\*\* on total company revenues of \*\*\*; potassium permanganate comprised \*\*\* of Carus' operating profit, \*\*\* compared with a company-wide operating profit of \*\*\*.<sup>5</sup>

### Operations On Potassium Permanganate

Total sales of Carus are composed of trade sales and intracompany transfers of potassium permanganate.<sup>6</sup> Carus sells 3 grades of potassium permanganate: free-flowing, which accounted for \*\*\* of total shipments by value in 1997 and 1998, but \*\*\* during January-March 1998-99; technical grade, which accounted for \*\*\* of shipments by value during 1997-98 and \*\*\* during January-March 1998-99, respectively; and \*\*\* of pharmaceutical grade potassium permanganate.<sup>7</sup>

The results of Carus' potassium permanganate operations are presented in table III-6. Total sales quantities increased between 1997 and 1998 as well as between January-March 1998 and the same period in 1999, leading to a higher value of sales. A \*\*\* price increase in \*\*\* was counteracted by a decrease in \*\*\*, and the average unit price of total sales \*\*\* during 1997-98 at \*\*\*. Transfers accounted for a greater proportion of total sales during each of the 3-month periods compared to 1997 or 1998 because of the seasonality of trade sales. Also, because the average unit price of transfers is \*\*\* than that of trade sales, the average unit price of total sales was \*\*\* in the interim periods at \*\*\* than in either full year. Operating income and margins \*\*\* between 1997 and 1998. However, these two indicators \*\*\* between January-March 1998 and the same period in 1999.

Table III-6

Results of operations of Carus Chemical Co. in the production of potassium permanganate, fiscal years 1997-98, Jan.-Mar. 1998, and Jan.-Mar. 1999

\* \* \* \* \*

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<sup>3</sup> Carus provided trade and financial data in response to the Commission's questionnaire. Selected data were modified as a result of verification conducted by Commission staff.

<sup>4</sup> Carus manufactures other inorganic chemicals which it sells through the same sales force as it uses for the sale of potassium permanganate. The production of these other products occurs at facilities that are separate from the one used for the production of potassium permanganate.

<sup>5</sup> Carus Chemical Co., *Annual Report for 1998*, p. 8. Carus has a fiscal year-end of December 31.

<sup>6</sup> Company transfers represent transfers of potassium permanganate that are used to produce \*\*\* at the company's plant. The \*\*\* is then sold to \*\*\*. According to Carus's chief financial officer, these transfers correspond to \*\*\* potassium permanganate, and the sales values incorporate a profit margin appropriate for \*\*\*. The unit values of these transfers correspond roughly to unit values of the company's \*\*\*, but \*\*\* the average unit net sales values. Telephone conversation with \*\*\* of Carus Chemical Co., June 21, 1999.

<sup>7</sup> Shipments of free-flowing grade potassium permanganate accounted for about \*\*\* of total shipments of the product, by quantity, during 1997-98, but \*\*\* during Jan.-Mar. 1998-99; shipments of technical grade comprised \*\*\* of total product shipments by quantity during 1997-98 and \*\*\* during Jan.-Mar. 1998-99, respectively. Shipments of pharmaceutical grade potassium permanganate made up the balance.

The average per-pound total sales value, as shown in table III-6, remained the same in 1998 compared to 1997 (\$\*\*\* per pound), but declined \*\*\*, from \$\*\*\* to \$\*\*\* per pound, between January-March 1998 and the same period in 1999. Operating income remained at \$\*\*\* per pound during 1997, 1998, and January-March 1998, but decreased to \$\*\*\* per pound during January-March 1999; the ratio of operating income to net sales \*\*\* between 1997 and 1998, but \*\*\*. The cost of goods sold (COGS) and selling, general, and administrative expenses (SG&A) increased between 1997 and 1998 and between January-March 1998 and the same period in 1999:

The increase in COGS of about \*\*\* is attributable to \*\*\* in 1998 compared with 1997. The increase in the costs of raw materials is attributable to the company's 1998 sales \*\*\*.<sup>8</sup>

Expenses related to factory overhead increased during the four periods investigated, resulting from the allocation of a greater proportion of total company fixed costs (which rose by over \*\*\* between 1997 and 1998) to potassium permanganate because it accounted for \*\*\*.<sup>9</sup>

Similarly, a greater proportion of overall company costs were \*\*\*.<sup>10</sup>

Changes in Carus' operating income are further evidenced by the variance analysis that shows the effects of prices and volume on net sales and of costs and volume on its total costs (table III-7). This analysis shows that the increase in operating income between 1997 and 1998 of \*\*\* was attributable to \*\*\*. A decrease in operating income between January-March 1998 and the same period in 1999 of \$\*\*\* was attributable to \*\*\*.<sup>11</sup>

Table III-7

Variance analysis for the potassium permanganate operations of Carus Chemical Co., fiscal years 1997-98 and Jan.-Mar. 1998-99

\* \* \* \* \*

### Business Plans And Projected Revenues

Carus stated in its questionnaire response that it \*\*\*. In its answers to other questions, however, it stated that its production capacity \*\*\* during 1999 and 2000. Also, during this period it will undertake efforts to \*\*\*.<sup>12</sup> Carus estimated that these efforts would thereby \*\*\*.

However, because the market for potassium permanganate is mature, Carus estimated that if the antidumping orders on imports of potassium permanganate from Spain and China were revoked, it would \*\*\*.<sup>13</sup> It would \*\*\*.

<sup>8</sup> Data provided by Carus show a \*\*\* reduction in inventory between 1997 and 1998 of about \*\*\*.

<sup>9</sup> Telephone conversation with \*\*\*, Carus Chemical Co., July 13, 1999.

<sup>10</sup> Carus Chemical Co., *Annual Report for 1998*, note number 10 on p. 12.

<sup>11</sup> The variance analysis may have been affected by changes in the mix of the various grades of potassium permanganate.

<sup>12</sup> Also, see statement by Aziz I. Asphahani, President and Chief Executive Officer, in Carus Chemical Co.'s *Annual Report for 1998*, p. 5.

<sup>13</sup> For example, see "Break-Even Analysis of Carus Profitability, Impact of Revocation of AD Orders," exh. 9 in Carus' prehearing brief, Aug. 20, 1999.

**Capital Expenditures, R&D Expenses,  
and Investment in Productive Facilities**

Capital expenditures, R&D expenses, and the original cost and book value of property, plant, and equipment used in the production of potassium permanganate are shown in table III-8. Capital expenditures amounted to \*\*\* and \*\*\* in 1997 and 1998, respectively. These capital expenditures reportedly were directed to upgrading the company's manufacturing facilities. The year-end original cost and book value of fixed assets increased in 1998 as a result of the capital expenditures. Between 1997 and 1998, depreciation expense increased by \*\*\* as a result of the increase in \*\*\*. R&D expenses increased by about \*\*\* in 1998 compared to 1997.

Table III-8

Capital expenditures, research and development expenses, and the value of assets of Carus Chemical Co. with respect to potassium permanganate, fiscal years 1997-98, Jan.-Mar. 1998, and Jan.-Mar. 1999

\*   \*   \*   \*   \*   \*   \*

**Capital and Investment**

Carus' comments regarding the significance of the existing antidumping duty order on imports of potassium permanganate from China and/or Spain on the firm's revenues, costs, profits, cash flow, capital expenditures, research and development expenditures, and asset values (question III-8) are in app. D. Carus' comments regarding any anticipated changes in these indicators that might occur in the future if the antidumping duty order on imports of potassium permanganate from China and/or Spain were revoked (question III-9) also are in app. D.



## PART IV: U.S. IMPORTS AND THE FOREIGN INDUSTRIES

### U.S. IMPORTS

U.S. imports of potassium permanganate from all sources decreased from 3.7 million pounds in 1997 to 2.7 million pounds in 1998 (table IV-1). Imports from Spain and from all other sources decreased from 1997 to 1998. Only imports from China increased from 1997 to 1998, and those were very small.

Table IV-1

Potassium permanganate: U.S. imports, 1997-98, Jan.-Mar. 1998, and Jan.-Mar. 1999

Item	1997	1998	January-March	
			1998	1999
<i>Quantity (1,000 pounds)</i>				
China	0	2	2	0
Spain	825	385	44	87
Other sources	2,868	2,336	561	634
Total	3,693	2,724	607	720
<i>Value (1,000 dollars)</i>				
China	<sup>(1)</sup>	2	2	<sup>(1)</sup>
Spain	952	428	50	97
Other sources	2,618	2,093	515	551
Total	3,570	2,523	566	648
<i>Unit value (per pound)</i>				
China	<sup>(1)</sup>	\$0.83	\$0.83	<sup>(1)</sup>
Spain	\$1.15	1.11	1.14	\$1.12
Other sources	0.91	0.90	0.92	0.87
Average	0.97	0.93	0.93	0.90
<i>Share of quantity (percent)</i>				
China	0.0	0.1	0.4	0.0
Spain	22.3	14.1	7.2	12.0
Other sources	77.7	85.8	92.4	88.0
Total	100.0	100.0	100.0	100.0
<i>Share of value (percent)</i>				
China	<sup>(1)</sup>	0.1	0.3	<sup>(1)</sup>
Spain	26.7	17.0	8.8	15.0
Other sources	73.3	82.9	90.9	85.0
Total	100.0	100.0	100.0	100.0
<sup>1</sup> Not applicable. No imports during specified period.				
Note: Figures may not add up to totals due to rounding.				
Source: Official statistics of the U.S. Department of Commerce.				

Based on questionnaire data, most of the imports (\*\*\*) and (\*\*\*) percent respectively, by quantity, in 1997 and 1998) were made by (\*\*\*) and (\*\*\*) from nonsubject countries. (\*\*\*) imports were from the Czech Republic and constituted (\*\*\*) percent and (\*\*\*) percent, respectively, of 1997 and 1998 imports from all sources, by weight. (\*\*\*) imported from (\*\*\*). Its imports represented (\*\*\*) and (\*\*\*) percent, respectively, of 1997 and 1998 imports from all sources, by weight. Subject imports, virtually all of which were from Spain, decreased from (\*\*\*) pounds in 1997 to (\*\*\*) pounds in 1998, or by (\*\*\*) percent.

Only one importer, American International Chemical (AIC), reported imports from Spain. In the original investigations, AIC (\*\*\*) AIC is the exclusive U.S. importer of product from Industrial Quimica del Nalon (IQN), the sole Spanish producer of potassium permanganate. According to official statistics of the U.S. Department of Commerce, imports from Spain decreased from 825,000 pounds in 1997 to 385,000 pounds in 1998, representing a 53.3 percent decrease by quantity. The quantity of AIC's domestic shipments of imports is (\*\*\*) In 1997, AIC reported imports of (\*\*\*) pounds of potassium permanganate. Its domestic shipments of imported potassium permanganate in 1997 included (\*\*\*) AIC imported (\*\*\*) pounds of potassium permanganate in 1998. Domestic shipments of imported product for 1998 included (\*\*\*)

Only one importer, (\*\*\*) reported imports from China. (\*\*\*) Imports from China increased from zero in 1997 to (\*\*\*) pounds in 1998. (\*\*\*)

Transshipment became an issue during the 1990 administrative review of the antidumping order on imports from China. From 1984 to 1990, there were two dumping margins: 128.94 percent for Sinochem and all other manufacturers, and 39.53 percent for certain resellers in Hong Kong. During the review, Commerce found that Chinese product was being transhipped through Hong Kong to resellers assigned the 39.53 margin. As a result, a country-wide margin of 128.94 percent was assigned to China. During 1997 and 1998, and in the January-March (interim) periods, there were no imports from Hong Kong or Macao.

### U.S. IMPORTERS' INVENTORIES

End-of-period inventories of potassium permanganate imports from China and Spain are listed in table IV-2. Data are not provided on end-of-period inventories for nonsubject product because (\*\*\*) a major reporting importer of nonsubject product, did not provide inventory data. The importer of Chinese product, (\*\*\*) keeps (\*\*\*) inventory of imported product. The remaining importers, (\*\*\*) do keep (\*\*\*) inventories of imported potassium permanganate.

Table IV-2

Potassium permanganate: U.S. importers' end-of-period inventories of imports from China and Spain, 1997-98, Jan.-Mar. 1998, and Jan.-Mar. 1999

\* \* \* \* \*

### THE INDUSTRY IN CHINA

The current number of potassium permanganate producers in China is unknown. Neither the Chinese Embassy in Washington, DC, the China National Chemicals Import and Export Corp. (Sinochem) in New York, NY, nor the Chinese Chamber of Commerce in Beijing could supply that information. In the staff report of the original investigation, eight Chinese producers were cited:

- (1) Beijing plant, Beijing;
- (2) Changsha plant, Changsha, Hunan;
- (3) Guizhou plant, Guangxi;
- (4) Hong Wui Electrochemical plant, Kwangchow;
- (5) Jiangsu plant, Nanjing, Jiangsu;
- (6) Jinan Huaiying Chemical Factory, Jinan, Shandong;
- (7) Shanghai plant, Shanghai; and
- (8) Tianjin plant, Tianjin.

According to \*\*\*, there are currently five major producers of potassium permanganate in China:

- (1) Chongqing Jialing Chemical Factory, Chongqing, Sichuan;
- (2) Guangzhou Tongji Chemical Factory, Guangzhou, Guangdong;
- (3) Guizhou Province Zunyi Chemical Plant, Zunyi, Guizhou;
- (4) Hunan Shaoyang Chemical General Factory, Shaoyang, Hunan; and
- (5) Jinan Huaiying Chemical Factory, Jinan, Shandong.

The Directory of Chemical Producers - China 1997/1998 lists the following firms as major potassium permanganate producers in China:

- (1) Chongqing Jialing Chemical Factory, Chongqing, Sichuan;
- (2) Guangzhou Chemical Group Company, Guangzhou, Guangdong;
- (3) Huainan Chemical Plant, Huainan, Anhui;
- (4) Hunan Shaoyang Chemical General Factory, Shaoyang, Hunan; and
- (5) Jinan Spring Chemical Products Company, Jinan, Shandong.

Questionnaires were sent to over 20 possible producers of potassium permanganate in China, including the firms mentioned by \*\*\* and the companies listed in the Directory of Chemical Producers - China 1997/1998. It is probable that all major potassium permanganate producers in China received questionnaires. Responses were received from only two producers: Chongqing Jialing Chemical Factory (Chongqing Jialing) and Guizhou Province Zunyi Chemical Plant (Zunyi). These two firms estimated that they produce \*\*\* percent of the potassium permanganate in China. Selected data on their operations in 1998 are shown in table IV-3.

Table IV-3

Potassium permanganate: Selected data on capacity, production, inventories, and shipments for the Chongqing Jialing and Guizhou Province Zunyi chemical plants in China, 1997-98, Jan.-Mar. 1998, and Jan.-Mar. 1999

\* \* \* \* \*

According to \*\*\*, its principal export markets are \*\*\*. \*\*\* does not export to the United States, stating \*\*\*.

\*\*\* reported that its principal export markets are \*\*\*. \*\*\* exported \*\*\* pounds of potassium permanganate to the United States in 1998, and \*\*\* in 1997. The company stated \*\*\*.

\*\*\* estimates that \*\*\* percent of its total sales were represented by sales of potassium permanganate; \*\*\* estimates \*\*\* percent of its total sales. Aggregate data on the operations of these two

plants is shown in table IV-4.

According to official Chinese export statistics, in 1998 China exported 10,396 metric tons (approximately 23 million pounds) of potassium permanganate, with an average unit value of \$0.45 per pound.<sup>1</sup> Principal export markets, which collectively accounted for approximately 80 percent of export volume, were Hong Kong, Japan, Iran, Indonesia, and Canada.

Carus and IQN both estimate China's capacity to produce potassium permanganate to be 36,000 metric tons (approximately 79 million pounds) per year.<sup>2</sup>

Table IV-4

Potassium permanganate: Aggregate data for the two responding producers in China, 1997-98, Jan.-Mar. 1998, and Jan.-Mar. 1999

\* \* \* \* \*

Potassium permanganate manufacturing technology in China has advanced since the original investigation. According to \*\*\*.

During the original investigation, China did not export free-flowing grade potassium permanganate to the United States. According to \*\*\*, "\*\*\*\*."

The \*\*\* U.S. export shipment made by \*\*\* during 1997-98 was shipped to \*\*\*. \*\*\*. \*\*\* has a relationship with an American trading company. According to \*\*\*, \*\*\*.

#### THE INDUSTRY IN SPAIN

One firm, Industrial Quimica del Nalon (IQN), produces all of the potassium permanganate in Spain. Data on its operations are shown in table IV-5. Production of potassium permanganate accounted for \*\*\* percent of its total sales. Although capacity is unchanged from 1997 to 1998, production increased during this period by \*\*\* percent (\*\*\*) pounds.<sup>3</sup> The Spanish producer in the original investigation was Asturquimica. Asturquimica has been bought by IQN since the original investigation. IQN reports that \*\*\*.

Table IV-5

Potassium permanganate: Salient data for the sole producer in Spain, 1997-98, Jan-Mar. 1998, and Jan.-Mar. 1999

\* \* \* \* \*

Most shipments of potassium permanganate from Spain are \*\*\*. Exports account for about \*\*\* percent of IQN's total shipments for 1997 and 1998. Chemie Bitterfeld, a German (former East German) producer of potassium permanganate, closed in 1998. \*\*\*. IQN reported that its primary export markets are \*\*\*. Exports to the United States as a percentage of total exports have declined \*\*\* since the

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<sup>1</sup> Official statistics presented in Carus' prehearing brief, exh. 7.

<sup>2</sup> Carus' prehearing brief, p. 17, and IQN's prehearing brief, p. 16.

<sup>3</sup> Although IQN reported in its questionnaire response that its capacity is \*\*\*, in its posthearing brief IQN stated that \*\*\*. IQN posthearing brief, responses to questions from Commissioners and Commission staff, pp. 5, 12, and 13.

original investigation. From 1980 to 1982, exports to the United States rose from \*\*\* percent of total exports to \*\*\* percent of total exports. In 1997, exports to the United States were \*\*\* percent of total exports; in 1998, the share of U.S. exports decreased to \*\*\* percent of total exports.

According to official statistics, in 1998 Spain exported 1,487 metric tons (approximately 3.3 million pounds) of potassium permanganate, with an average unit value of \$0.835 per pound.<sup>4</sup> Principal export markets, which collectively accounted for approximately 74 percent of export volume, were Italy, Belgium and Luxembourg, the United States, the Netherlands, and Germany.

### THE INDUSTRY WORLDWIDE

In 1995, potassium permanganate was produced in seven countries: China, the Czech Republic, Germany, India, Spain, Ukraine, and the United States.<sup>5</sup> The plant in Germany closed in 1998, leaving six countries as current producers of potassium permanganate. In the original investigation, only China, Spain, and Ukraine exported to the United States. During 1997-98, imports of potassium permanganate entered the United States from China, the Czech Republic, Germany, India, and Spain. \*\*\* imported product from \*\*\*, AIC imported Spanish product, \*\*\* reported imports from \*\*\*, and \*\*\* received imported product from the Czech Republic.

The European Union has antidumping duty orders (termed “regulations” in the European Union) in effect on imports of potassium permanganate from China, India, and Ukraine.<sup>6</sup> An antidumping duty order on product from China was issued in 1988, and in November 1994 a more stringent, per-kilogram duty was imposed in the amount of 1.26 ECU per kilogram.<sup>7</sup> Antidumping orders on product from India and Ukraine, with margins of 5.6 percent and 36.2 percent respectively, were issued in 1998.

India also has had an antidumping duty order, in effect since 1995, on imports of potassium permanganate from China. The duty is Rs. 5.992 per metric ton. India initiated a review of the order on January 16, 1998, and the review is still in progress.<sup>8</sup>

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<sup>4</sup> Official statistics presented in Carus’ prehearing brief, exh. 8.

<sup>5</sup> *Encyclopedia of Chemical Technology*, Kirk-Othmer, John Wiley & Sons, New York, 4<sup>th</sup> ed., vol. 15, p. 1207.

<sup>6</sup> Data compiled by the National Board of Trade in Sweden, Internet address <http://www.kommers.se/adeng.htm>, retrieved on Sept. 20, 1999.

<sup>7</sup> The amount translates into 108 percent of the average 1996 import value of 1.17 ECU per kilogram of the imports from China in 1996. Carus’ prehearing brief, p. 20, footnote 48.

<sup>8</sup> Data compiled by the World Trade Organization, Internet address <http://wto.org>, retrieved on Sept. 20, 1999.



## **PART V: PRICING AND RELATED DATA**

### **FACTORS AFFECTING PRICING**

#### **Raw Material Costs**

The U.S. and Spanish producers report that the costs of raw materials have not changed significantly between January 1997 and March 1999. The Chinese producers, however, report that the price of their inputs fell between \*\*\* and \*\*\* percent. The cost to Carus of the chief raw materials, manganese ore and potassium hydroxide, was \$\*\*\* per pound in both 1997 and 1998. Total raw material costs amounted to \$\*\*\* per pound in both 1997 and 1998.

#### **Transportation Costs to the U.S. Market**

Based on 1998 official statistics, transportation charges from China to the U.S. market are estimated to be 20.9 percent of customs values. Transportation charges from Spain to the U.S. market are estimated to be 4.4 percent of customs values.

#### **U.S. Inland Transportation Costs**

Carus reported that U.S. inland transportation costs account for \*\*\* percent of the total delivered price of potassium permanganate. Two importers reported transportation costs; these costs accounted for between 6 percent, \*\*\*, and 20 percent, \*\*\*, of the delivered price of potassium permanganate.<sup>1</sup>

#### **Tariff Rates**

Potassium permanganate is covered by subheading 2841.61.00 of the HTS. The normal trade relations tariff rate for the subheading is 5 percent.

#### **Exchange Rates**

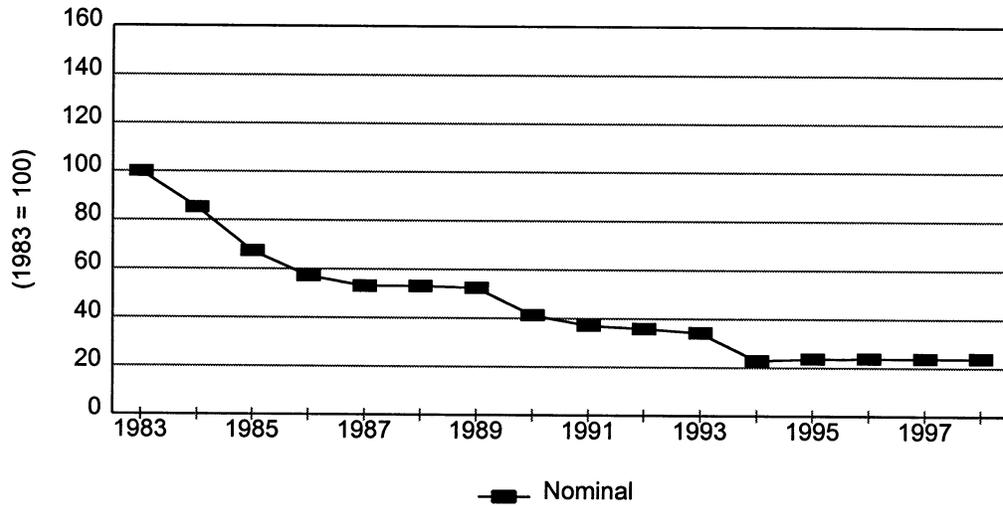
Quarterly exchange rates reported by the International Monetary Fund for China and Spain during the period 1983-98 are shown in figure V-1.

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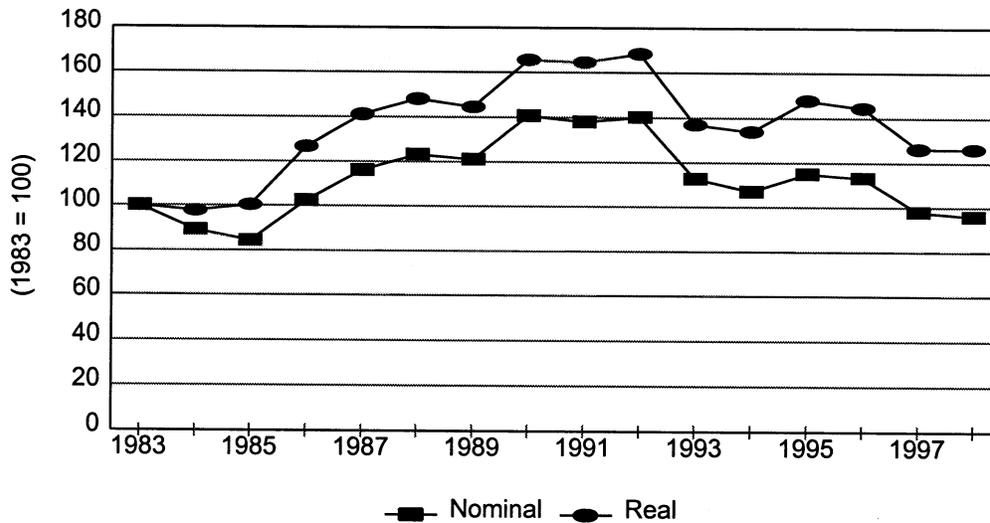
<sup>1</sup> In addition, one importer reported that transportation accounted for 0 percent of the delivered cost of potassium permanganate; however, this firm also reported that the purchaser paid for transportation.

Figure V-1

Exchange rates: Index of the nominal exchange rate of the Chinese yuan relative to the U.S. dollar, by year, 1983-98



Exchange rates: Indexes of the nominal and real exchange rates of the Spanish peseta relative to the U.S. dollar, by year, 1983-98



Source: International Monetary Fund, *International Financial Statistics*, May 1999.

### PRICING PRACTICES

Potassium permanganate is sold in three grades. The most important of these is the free-flowing grade. The free-flowing grade has about \*\*\* added to prevent caking. Potassium permanganate sold in the

United States tends to be between 99.9 and 97 percent pure potassium permanganate. When produced, potassium permanganate is 98 percent or more pure, but when \*\*\* is added to create the free-flowing grade, the potassium permanganate content falls to as low as 97 percent.

In 1998, \*\*\* percent of Carus' product was sold through distributors; the remaining \*\*\* percent of commercial shipments of potassium permanganate produced in the United States was sold directly to end users.<sup>2</sup> Chinese and Spanish producers each sold potassium permanganate through a single importer. These importers also sold both directly to end users and to distributors.

Potassium permanganate is sold in a number of sizes of containers. The most important of these are 25-, 50-, and 100-kg containers; however, it is also frequently sold in bulk by the truckload and in larger reusable containers. Importers, however, do not sell in bulk.<sup>3</sup> Carus reported that its per-pound bulk prices tend to be lower because containers are relatively expensive.<sup>4</sup> Some purchasers prefer to buy in bulk.

Carus currently sells either directly to end users or to \*\*\* dealers in the United States. Distributors in the United States therefore typically either sell \*\*\*.<sup>5</sup> Carus has a price list but reported that competitive bidding drove prices in \*\*\* percent of its volume. It reported that it provided \*\*\*. In addition, Carus reported that prices for \*\*\*. None of the importers reported discounts; instead they reported that their prices were normally determined using bids.

Carus reported selling on a \*\*\*. One of the three responding importers sold on a delivered basis, and the remaining two sold on both f.o.b. and delivered bases.

#### PRICE DATA

The Commission requested Carus and U.S. importers to provide quarterly quantity and value data both for sales to end users and to distributors between January 1997 and March 1999 for the following products:

**Product 1.**--Free-flowing grade potassium permanganate in 25-kg containers

**Product 2.**--Free-flowing grade potassium permanganate in 50-kg containers

**Product 3.**--Technical grade potassium permanganate

Carus and importers who sold potassium permanganate were asked to provide delivered values for the product.

Carus and two importers provided usable price data for sales of the requested products in the U.S. market, with only one importer reporting data for each country. The Chinese importer did not provide prices separately for distributors and end users. The importers were not able to provide data for all products or all quarters. Average pricing data and margins of under/overselling are presented in tables V-1 to V-3 and figure V-2. Usable pricing data accounted for about \*\*\* percent of U.S. commercial shipments of domestic potassium permanganate between January 1997 and March 1999 and about \*\*\* percent of shipments of potassium permanganate from Spain and China sold in the U.S. market.

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<sup>2</sup> Sales through distributors include product sold under the \*\*\*. Carus' discussions with Commission staff, Aug. 26, 1999.

<sup>3</sup> IQN reported that it \*\*\*. IQN's prehearing brief, p. 14.

<sup>4</sup> Carus reported that \*\*\*. Attachment 3 to Carus' questionnaire response.

<sup>5</sup> \*\*\*.

Table V-1

Potassium permanganate: Weighted-average net delivered prices (per pound) and quantities for sales to unrelated U.S. customers for product 1 reported by the U.S. producer and importers, and margins of underselling/(overselling), by quarters, Jan. 1997-Mar. 1999

\* \* \* \* \*

Table V-2

Potassium permanganate: Weighted-average net delivered prices (per pound) and quantities for sales to unrelated U.S. customers for product 2 reported by the U.S. producer and importers, and margins of underselling/(overselling), by quarters, Jan. 1997-Mar. 1999

\* \* \* \* \*

Table V-3

Potassium Permanganate: Weighted-average net delivered prices (per pound) and quantities for sales to unrelated U.S. customers for product 3 reported by the U.S. producer and importers, and margins of underselling/(overselling), by quarters, Jan. 1997-Mar. 1999

\* \* \* \* \*

Figure V-2

Weighted-average net delivered prices (per pound) of product 1, by quarters, Jan. 1997-Mar. 1999

\* \* \* \* \*

Weighted-average net delivered prices (per pound) of product 2, by quarters, Jan. 1997-Mar. 1999

\* \* \* \* \*

Weighted-average net delivered prices (per pound) of product 3, by quarters, Jan. 1997-Mar. 1999

\* \* \* \* \*

### U.S. Producer's and Importers' Prices

#### U.S. Product

The U.S. producer's prices for product 1 sold to distributors ranged from a high of \$\*\*\* per pound to a low of \$\*\*\* per pound. Product 1 sold to end users ranged from \$\*\*\* to \$\*\*\* per pound. Product 2 prices ranged from \$\*\*\* to \$\*\*\* per pound for sales to distributors and from \$\*\*\* to \$\*\*\* for end users. Product 3 prices ranged from \$\*\*\* to \$\*\*\* per pound for sales to distributors and from \$\*\*\* to \$\*\*\* per pound for sales to end users.

Product 1's price to distributors peaked in the second quarter of 1997 and the fourth quarter of 1998; the lowest prices were reported in the first and fourth quarters of 1997 and in the first quarter of 1999. Product 1's price to end users peaked in the first quarter of 1997 and the lowest prices were reported

in the fourth quarter of 1997 and the third quarter of 1998. Product 2's price to distributors peaked in the fourth quarter of 1998 and was lowest in the first quarter of 1997. Product 2's price to end users peaked in the second and fourth quarters of 1998 and reached its minimum in the third quarter of 1997. Product 3's price to distributors peaked in the first quarter of 1997 and reached its minimum in the second quarter of 1998. Product 3's price to end users peaked in the first quarter of 1997, reaching its minimum in the first quarter of 1999.

Between January-March 1997 and January-March 1999, prices for product 1 sold to distributors were stable while the price of product 1 sold to end users fell by \*\*\* percent. Prices for product 2 sold to distributors and end users rose by \*\*\* and \*\*\* percent respectively. Prices for product 3 fell for distributors and end users by \*\*\* and \*\*\* percent respectively.

### **Chinese Product**

Price data for Chinese sales of potassium permanganate were only available for product 3 for three quarters and were not available separately for distributors and end users. The price of Chinese potassium permanganate was \$\*\*\* per pound in the first quarters of 1997 and 1998 and \$\*\*\* per pound in the final quarter of 1998. Over the period for which prices were available, the spot price of product 3 fell by \*\*\* percent.

### **Spanish Product**

No price data were available for sales of Spanish product 3. The distributor price for Spanish product 1 ranged from \$\*\*\* at its peak in the fourth quarter of 1998 to \$\*\*\* per pound in the first quarter of 1999. The end user price for product 1 ranged from \$\*\*\* at its peak in the second and fourth quarters of 1997 and the first quarter of 1998 to \$\*\*\* per pound in the first quarter of 1997 and the second, third, and fourth quarters of 1998. The distributor price for product 2 ranged from \$\*\*\* at its peak in the third quarter of 1997 to \$\*\*\* per pound in the second and fourth quarters of both 1997 and 1998 and in the first quarter of 1999. The end user price for Spanish product 2 ranged from \$\*\*\* at its peak in the second quarter of 1998 to \$\*\*\* per pound in the third quarter of 1997. Over the period of investigation, the price of product 1 sold to distributors fell by \*\*\* percent and the price of product 1 sold to end users was unchanged. The price of product 2 sold to distributors and end users fell by \*\*\* and \*\*\* percent respectively.

### **Price Comparisons**

Tables V-1 to V-3 show the margins of underselling/(overselling) for potassium permanganate from January-March 1997 through January-March 1999 for the subject countries. Chinese product 3 undersold U.S. product 3 in all 3 quarters for which data are available, with margins of underselling ranging from \*\*\* percent to \*\*\* percent.

For Spanish product 1 sold to distributors there were 8 instances of underselling and 1 of overselling; for end users there were 8 instances of overselling (in the remaining quarter no Spanish product was sold to end users). Margins of underselling for product 1 sold to distributors ranged from \*\*\* percent to \*\*\* percent, and the margin of overselling was \*\*\* percent; overselling occurred in the final quarter of 1998. Margins of overselling for product 1 sold to end users ranged from \*\*\* percent to \*\*\* percent. For Spanish product 2 sold to distributors there were 6 instances of underselling and 3 of overselling, and for end users there were 1 instance of underselling and 8 of overselling. Margins of

underselling for product 2 sold to distributors ranged from \*\*\* percent to \*\*\* percent, and the margins of overselling ranged from \*\*\* percent to \*\*\* percent; overselling occurred in 2 quarters of 1997 and in the first quarter of 1998. Margins of overselling for product 2 sold to end users ranged from \*\*\* percent to \*\*\* percent, and the margin of underselling was \*\*\* percent; underselling occurred in the first quarter of 1999.

APPENDIX A

*FEDERAL REGISTER* NOTICES AND ADEQUACY STATEMENT



adequacy of responses may be filed with the Commission by January 14, 1999.

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 F.R. 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at <http://www.usitc.gov/rules.htm>.

**EFFECTIVE DATE:** November 2, 1998.

**FOR FURTHER INFORMATION CONTACT:** Mary Messer (202-205-3193) or Vera Libeau (202-205-3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<http://www.usitc.gov>).

**SUPPLEMENTARY INFORMATION:**

**Background**

On January 19, 1984, the Department of Commerce issued an antidumping duty order on imports of potassium permanganate from Spain (49 F.R. 2277). On January 31, 1984, the Department of Commerce issued an antidumping duty order on imports of potassium permanganate from China (49 F.R. 3897). The Commission is conducting reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

**Definitions**

The following definitions apply to these reviews:

(1) Subject Merchandise is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The Subject Countries in these reviews are China and Spain.

(3) The Domestic Like Product is the domestically produced product or products which are like, or in the

absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determinations, the Commission defined the Domestic Like Product as potassium permanganate.

(4) The Domestic Industry is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission defined the Domestic Industry as producers of potassium permanganate.

(5) The Order Dates are the dates that the antidumping duty orders under review became effective. In these reviews, the Order Dates are January 19, 1984, for potassium permanganate from Spain and January 31, 1984, for potassium permanganate from China.

(6) An Importer is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

**Participation in the reviews and public service list**

Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

**Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list**

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. § 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

**INTERNATIONAL TRADE COMMISSION**

[Investigations Nos. 731-TA-125-126 (Review)]

**Potassium Permanganate From China and Spain**

**AGENCY:** United States International Trade Commission.

**ACTION:** Institution of five-year reviews concerning the antidumping duty orders on potassium permanganate from China and Spain.

**SUMMARY:** The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)) (the Act) to determine whether revocation of the antidumping duty orders on potassium permanganate from China and Spain would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; the deadline for responses is December 22, 1998. Comments on the

### Certification

Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

### Written Submissions

Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is December 22, 1998. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is January 14, 1999. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

### Inability To Provide Requested Information

Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation

of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information to be Provided in Response to this Notice of Institution: If you are a domestic producer, union/worker group, or trade/business association; import/export Subject Merchandise from more than one Subject Country; or produce Subject Merchandise in more than one Subject Country, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent Subject Country. As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty orders on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. § 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. § 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Countries that currently export or have exported Subject Merchandise to the United States or other countries since 1983.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 1997 (report quantity data in thousands of pounds and value data in thousands of U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production; and

(b) the quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 1997 (report quantity data in thousands of pounds and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Countries accounted for by your firm's(s') imports; and

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Countries.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 1997 (report quantity data in thousands of pounds and value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties).

If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Countries accounted for by your firm's(s') production; and

(b) the quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Countries accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Countries since the Order Dates, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Countries, and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

**Authority:** These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: October 21, 1998.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 98-29294 Filed 10-30-98; 8:45 am]

BILLING CODE 7020-02-P

**INTERNATIONAL TRADE  
COMMISSION****[Investigations Nos. 731-TA-125-126  
(Review)]****Potassium Permanganate From China  
and Spain****AGENCY:** United States International  
Trade Commission.**ACTION:** Notice of Commission  
determination to conduct full five-year  
reviews concerning the antidumping  
duty orders on potassium permanganate  
from China and Spain.**SUMMARY:** The Commission hereby gives  
notice that it will proceed with full  
reviews pursuant to section 751(c)(5) of  
the Tariff Act of 1930 (19 U.S.C.  
§ 1675(c)(5)) to determine whether  
revocation of the antidumping duty  
orders on potassium permanganate from  
China and Spain would be likely to lead  
to continuation or recurrence of material  
injury within a reasonably foreseeable  
time. A schedule for the reviews will be  
established and announced at a later  
date.

For further information concerning  
the conduct of these reviews and rules  
of general application, consult the  
Commission's Rules of Practice and  
Procedure, part 201, subparts A through  
E (19 CFR part 201), and part 207,  
subparts A, D, E, and F (19 CFR part  
207). Recent amendments to the Rules  
of Practice and Procedure pertinent to  
five-year reviews, including the text of  
subpart F of part 207, are published at  
63 FR 30599, June 5, 1998, and may be  
downloaded from the Commission's  
World Wide Web site at [http://  
www.usitc.gov/rules.htm](http://www.usitc.gov/rules.htm).

**EFFECTIVE DATE:** February 4, 1999.**FOR FURTHER INFORMATION CONTACT:**  
George Deyman (202-205-3197), Office  
of Investigations, U.S. International  
Trade Commission, 500 E Street SW,  
Washington, DC 20436. Hearing-  
impaired persons can obtain  
information on this matter by contacting  
the Commission's TDD terminal on 202-  
205-1810. Persons with mobility  
impairments who will need special  
assistance in gaining access to the  
Commission should contact the Office  
of the Secretary at 202-205-2000.  
General information concerning the  
Commission may also be obtained by  
accessing its internet server ([http://  
www.usitc.gov](http://www.usitc.gov)).**SUPPLEMENTARY INFORMATION:** On  
February 4, 1999, the Commission  
determined that it should proceed to  
full reviews in the subject five-year  
reviews pursuant to section 751(c)(5) of  
the Act.

With respect to potassium permanganate from Spain, Inv. No. 731-TA-126 (Review), the Commission found that both the domestic interested party group response and the respondent interested party group response to its notice of institution<sup>1</sup> were adequate and voted to conduct a full review.

With respect to potassium permanganate from China, Inv. No. 731-TA-125 (Review), the Commission found that the domestic interested party group response was adequate and the respondent interested party group response was inadequate. The Commission also found that other circumstances warranted conducting a full review.<sup>2</sup>

A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

**Authority:** This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: February 18, 1999.

**Donna R. Koehnke,**  
*Secretary.*

[FR Doc. 99-4569 Filed 2-23-99; 8:45 am]

BILLING CODE 7020-02-P

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<sup>1</sup> The notice of institution for both of the subject reviews was published in the **Federal Register** on Nov. 2, 1998 (63 FR 58765).

<sup>2</sup> Commissioner Crawford dissenting.

<sup>3</sup> The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

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**INTERNATIONAL TRADE COMMISSION**

[Investigations Nos. 731-TA-125-126 (Review)]

**Potassium Permanganate From China and Spain**

**AGENCY:** United States International Trade Commission.

**ACTION:** Scheduling of full five-year reviews concerning the antidumping duty orders on potassium permanganate from China and Spain.

**SUMMARY:** The Commission hereby gives notice of the scheduling of full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the antidumping duty orders on potassium permanganate from China and Spain would be likely to lead to continuation or recurrence of material injury. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at <http://www.usitc.gov/rules.htm>.

**EFFECTIVE DATE:** March 1, 1999.

**FOR FURTHER INFORMATION CONTACT:** Karen Taylor (202-708-4101), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by

accessing its internet server (<http://www.usitc.gov>).

**SUPPLEMENTARY INFORMATION:**
**Background**

On February 4, 1999, the Commission determined that responses to its notice of institution of the subject five-year reviews were such that full reviews pursuant to section 751(c)(5) of the Act should proceed (64 FR 9177, February 24, 1999). A record of the Commissioners' votes and the Commission's statement on adequacy are available from the Office of the Secretary and at the Commission's web site.

**Participation in the Reviews and Public Service List**

Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in these reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the reviews need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

**Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List**

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the reviews. A party granted access to BPI following publication of the Commission's notice of institution of the reviews need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

**Staff Report**

The prehearing staff report in the reviews will be placed in the nonpublic record on August 4, 1999, and a public version will be issued thereafter.

pursuant to section 207.64 of the Commission's rules.

**Hearing**

The Commission will hold a hearing in connection with the reviews beginning at 9:30 a.m. on August 31, 1999, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before August 24, 1999. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on August 26, 1999, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony in *camera* no later than 7 days prior to the date of the hearing.

**Written Submissions**

Each party to the reviews may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is August 20, 1999. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is September 9, 1999; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the reviews may submit a written statement of information pertinent to the subject of the reviews on or before September 9, 1999. On September 23, 1999, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before September 27, 1999, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with

the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

#### **Authority**

These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: March 2, 1999.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 99-5654 Filed 3-5-99; 8:45 am]

**BILLING CODE 7020-02-P**

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the basis of a notice of intent to participate and substantive comments filed on behalf of the domestic industry and inadequate response (in this case, no response) from respondent interested parties, the Department determined to conduct an expedited review. As a result of this review, the Department finds that revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Review section of this notice.

**FOR FURTHER INFORMATION CONTACT:** Scott E. Smith or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482-6397 or (202) 482-1560, respectively.

**EFFECTIVE DATE:** April 7, 1999.

#### Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*"). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

#### Scope

The merchandise subject to this antidumping order is potassium permanganate from Spain, an inorganic chemical produced in free-flowing, technical, and pharmaceutical grades. Potassium permanganate is classifiable under item 2841.61.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS item number is provided for convenience and U.S. Customs purposes. The written description remains dispositive.

This review covers imports from all manufacturers and exporters of Spanish potassium permanganate.

#### Background

On November 2, 1998, the Department initiated a sunset review of the antidumping order on potassium permanganate from Spain (63 FR 58709), pursuant to section 751(c) of the

Act. The Department received a Notice of Intent to Participate on behalf of Carus Chemical Company ("Carus") on November 16, 1998, within the deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations*. Carus claimed interested party status under 19 U.S.C. 1677(9)(C) as a U.S. producer of potassium permanganate. In addition, Carus indicated that it was the original petitioner in this proceeding and that it has regularly participated in all administrative reviews. We received a complete substantive response from Carus on December 2, 1998, within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i). We did not receive a substantive response from any respondent interested party to this proceeding. As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C), the Department determined to conduct an expedited, 120-day review of this order.

The Department determined that the sunset review of the antidumping duty order on potassium permanganate from Spain is extraordinarily complicated. In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (i.e., an order in effect on January 1, 1995). (See section 751(c)(6)(C) of the Act.) Therefore, on March 2, 1999, the Department extended the time limit for completion of the final results of this review until not later than June 1, 1999, in accordance with section 751(c)(5)(B) of the Act.<sup>1</sup>

#### Determination

In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping order, and shall provide to the International Trade Commission ("the Commission") the magnitude of the margin of dumping likely to prevail if the order is revoked.

The Department's determinations concerning continuation or recurrence of dumping and the magnitude of the

## DEPARTMENT OF COMMERCE

International Trade Administration  
[A-469-007]

### Final Results of Expedited Sunset Review: Potassium Permanganate from Spain

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

**ACTION:** Notice of Final Results of Expedited Sunset Review: Potassium Permanganate from Spain.

**SUMMARY:** On November 2, 1998, the Department of Commerce ("the Department") initiated a sunset review of the antidumping order on potassium permanganate from Spain (63 FR 58709) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On

<sup>1</sup> See *Potassium Permanganate from Spain and the People's Republic of China: Extension of Time Limit for Final Results of Five-Year Review*, 64 FR 10991 (March 8, 1999).

margin are discussed below. In addition, Carus' comments with respect to continuation or recurrence of dumping and the magnitude of the margin are addressed within the respective sections below.

#### Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103-316, vol. 1 (1994), the House Report, H.R. Rep. No. 103-826, pt. 1 (1994), and the Senate Report, S. Rep. No. 103-412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the bases for likelihood determinations. In its *Sunset Policy Bulletin*, the Department indicated that determinations of likelihood will be made on an order-wide basis (see section II.A.3). In addition, the Department indicated that normally it will determine that revocation of an antidumping order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (see section II.A.3).

In addition to guidance on likelihood provided in the *Sunset Policy Bulletin* and legislative history, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of an order is likely to lead to continuation or recurrence of dumping where a respondent interested party waives its participation in the sunset review. In the instant review, the Department did not receive a response from any respondent interested party. Pursuant to section 351.218(d)(2)(iii) of the *Sunset Regulations*, this constitutes a waiver of participation.

The antidumping duty order on potassium permanganate from Spain was published in the *Federal Register* on January 19, 1984 (49 FR 2277). Since that time, the Department has conducted three administrative reviews.<sup>2</sup> The order remains in effect for

all manufacturers and exporters of the subject merchandise.

In its substantive response, Carus argued that "it is highly likely that dumping would continue if the antidumping order in this case (the "Order") were to be revoked". With respect to whether dumping continued at any level above *de minimis* after the issuance of the order, Carus stated that the uninterrupted existence of dumping margins for the past decade—and continued failure of IQN [Industrial Quimica del Nalon] to challenge this margin through annual review—provides compelling evidence that Spanish potassium permanganate would be dumped in the U.S. market in the absence of the order (see December 2, 1998, Substantive Response of Carus at page 6).

With respect to whether imports of the subject merchandise ceased after the issuance of the order, Carus, citing its own shipment data and official U.S. Census Bureau import statistics, argued that imports of Spanish-origin potassium permanganate increased by almost 250% between 1983 and 1986 and reached an all-time high of over 2.5 million lbs. in 1986, accounting for over 14% of the U.S. market. Moreover, Carus asserts that, during the 1983-86 period, increasing levels of imports were accompanied by increasing levels of dumping, not declining or no dumping (see December 2, 1998, Substantive Response of Carus at 7). Carus further argues that the ability of Spanish producers of potassium permanganate to export large quantities of subject merchandise to the U.S. with dumping margins in place suggests that revocation of the order could prompt a massive influx of potassium permanganate into the U.S. at below fair market value. Carus notes that total imports of the subject merchandise continued in substantial volumes during all years when the order was in effect.

In addition, Carus states that there are other factors which support the likelihood of dumping if the order were revoked. Carus argues that the attractiveness of the U.S. market would promote increased imports of Spanish potassium permanganate because U.S. prices of this product are at a premium while prices elsewhere in the world are well below U.S. levels. Furthermore, Carus asserts that Spanish producers have an overcapacity of the subject merchandise and see the U.S., with its premium prices for potassium

permanganate, as a vibrant market where they can sell their product.

In conclusion, Carus argued that the Department should determine that there is a likelihood that dumping would continue were the order revoked because (1) dumping margins have existed and continue to exist, (2) shipments of subject merchandise have continued throughout the life of the life of the order, (3) premium prices for potassium permanganate in the U.S. will promote continued, if not increased, dumping by Spanish producers and (4) Spanish producers have an overcapacity of the subject merchandise and need markets, especially ones with high prices, in which to sell.

As discussed in Section II.A.3 of the *Sunset Policy Bulletin*, the SAA at 890, and the House Report at 63-64, if companies continue dumping with the discipline of an order in place, the Department may reasonably infer that dumping would continue if the discipline were removed. A dumping margin above *de minimis* has existed throughout most of the life of the order, and continues to exist, for shipments of the subject merchandise from all Spanish producers/exporters.<sup>3</sup>

Consistent with section 752(c) of the Act, the Department also considered the volume of imports before and after issuance of the order. The import statistics provided by Carus on imports of the subject merchandise between 1981 and 1998, and those examined by the Department (U.S. Census Bureau IM146 reports), demonstrate that imports of the subject merchandise continued throughout the life of the order.

Based on this analysis, the Department finds that the existence of dumping margins after the issuance of the order is highly probative of the likelihood of continuation or recurrence of dumping. Deposit rates above a *de minimis* level continue in effect for exports of the subject merchandise by all known Spanish manufacturers/exporters. Therefore, given that dumping has continued over the life of the order and respondent interested parties have waived their right to participate in this review before the Department, and absent argument and evidence to the contrary, the Department determines that dumping is

<sup>2</sup> See *Potassium Permanganate from Spain; Early Determination of Antidumping Duty*, 49 FR 18341 (April 30, 1984); *Final Results of Antidumping Duty Administrative Review; Potassium Permanganate From Spain*, 53 FR 21504 (June 8, 1988); and *Final Results of Antidumping Duty Administrative Review; Potassium Permanganate From Spain*, 56

FR 58361 (November 19, 1991). Prior to the imposition of the order, the Department published *Potassium Permanganate from Spain; Final Determination of Sales at Less Than Fair Value*, 48 FR 53589 (November 28, 1983).

<sup>3</sup> See *Potassium Permanganate from Spain; Early Determination of Antidumping Duty*, 49 FR 18341 (April 30, 1984); *Final Results of Antidumping Duty Administrative Review; Potassium Permanganate From Spain*, 53 FR 21504 (June 8, 1988); and *Final Results of Antidumping Duty Administrative Review; Potassium Permanganate From Spain*, 56 FR 58361 (November 19, 1991).

likely to continue if the order were revoked.

Because the Department based this determination on the continued existence of margins above *de minimis* and respondent interested parties' waiver of participation, it is not necessary to address Carus' arguments concerning the attractiveness of the U.S. market and Spanish overcapacity and export orientation.

**Magnitude of the Margin**

In the *Sunset Policy Bulletin*, the Department stated that it will normally provide to the Commission the margin that was determined in the final determination in the original investigation. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the "all others" rate from the investigation. (See section II.B.1 of the *Sunset Policy Bulletin*.) Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. (See sections II.B.2 and 3 of the *Sunset Policy Bulletin*.)

The Department, in its final determination of sales at less than fair value, published a weighted-average dumping margin for Asturquimica,<sup>4</sup> a Spanish producer/exporter of potassium permanganate, of 5.49 percent (48 FR 53589, November 28, 1983). The Department also published an "all others" rate of 5.49 percent in this same Federal Register notice. We note that, to date, the Department has not issued any duty absorption findings in this case.

In its substantive response, Carus argues that the Department, as stipulated in the *Sunset Policy Bulletin*, should provide the Commission a more recently calculated margin. Citing the *Sunset Policy Bulletin*, Carus states that "[a] company may choose to increase dumping in order to maintain or increase market share. As a result, increasing margins may be more representative of a company's behavior in the absence of an order." According to Carus, in the administrative review covering August 9, 1983 through January 10, 1984 (49 FR 18341, April 30, 1984), the Department determined that no dumping of Spanish potassium permanganate had occurred during this period justifying a cash deposit rate of

zero. After this review, Carus argues that imports of Spanish potassium permanganate soared, reaching a zenith of 2.5 million lbs. in 1986. Carus adds that when it subsequently requested an administrative review (53 FR 21504, June 8, 1988), a dumping margin of 16.16 percent was established for all imports of the subject merchandise. We note that this margin was decreased to 5.53 percent following litigation before the U.S. Court of International Trade.<sup>5</sup>

Carus submits that the determination of no dumping in the 1984 administrative review precipitated an enormous influx of subject merchandise, being sold at less than fair value, because it was no longer subject to the restraint imposed by a positive margin rate. Carus argues that the increase in imports of Spanish potassium permanganate to 2.5 million lbs. from 1983 to 1986 represents an increase of more than 210 percent over this three year period and 250 percent from pre-order levels just five years earlier. In addition, according to Carus, this increase in Spanish imports allowed Spanish producers/exporters to increase their percentage of the market share from just under 6 percent in 1982 (during the period of investigation) to 14.1 percent by 1986. Carus submits that the margin calculated in the administrative review for the period January 1, 1986 to December 31, 1986 (53 FR 21504, June 8, 1988) is more appropriate to report to the Commission.

Further, Carus reasserts its argument concerning the high price of potassium permanganate in the U.S. with respect to its price on the world market. Carus argues that export prices in non-U.S. markets for potassium permanganate fell by over \$0.13/lb during 1997 and 1998. Importers in the U.S. market, however, paid a price premium of \$0.25/lb in 1997 and \$0.23/lb. in 1998.

The Department agrees with Carus' argument concerning the choice of the margin rate to report to the Commission. An examination of the margin history of the order as well as an examination of import statistics of the subject merchandise, as provided in U.S. Census Bureau IM146 reports, confirms the scenario outlined by Carus. From 1983 to 1986, import volumes of the subject merchandise more than doubled.

<sup>4</sup> Pursuant to an initial court remand, this margin was changed to 12.87 percent (see Final Results of Redetermination Pursuant to Court Remand, *Industrial Quimica del Nalon v. United States*, Slip Op. 89-174 (December 21, 1989)). Pursuant to a second court remand, the 12.87 percent margin was changed to 5.53 percent (see Final Results of Redetermination Pursuant to Court Remand, *Industrial Quimica del Nalon v. United States*, Slip Op. 91-43 (May 24, 1991)).

During this period, there was a cash deposit rate of zero in effect. Following the request for an administrative review by Carus, the Department established a dumping margin above *de minimis* levels (53 FR 21504, June 8, 1988). The increase in import volumes during this period of unrestricted market access resulted in an increase in the market share held by Spanish imports. According to the *Sunset Policy Bulletin*, "a company may choose to increase dumping in order to maintain or increase market share. As a result, increasing margins may be more representative of a company's behavior in the absence of an order." Therefore, given the increase in imports through 1986, accompanied by the increase in the dumping margin in 1986, the Department finds this more recent rate is the most probative of the behavior of the known Spanish producer/exporter of potassium permanganate if the order were revoked. As such, the Department will report to the Commission the company-specific and "all others" rates from the administrative review for the period January 1, 1986 through December 31, 1986 as contained in the *Final Results of Review* section of this notice.

**Final Results of Review**

As a result of this review, the Department finds that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping at the margins listed below:

Manufacturer/exporter	Margin (percent)
IQN .....	5.53
All Others .....	5.53

This notice serves as the only 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 of the Department's regulations. 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 five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: April 1, 1999.

**Robert S. LaRussa,**  
Assistant Secretary for Import Administration.

[FR Doc. 99-8623 Filed 4-6-99; 8:45 am]

BILLING CODE 3510-D8-P

<sup>4</sup> Asturquimica has since merged with IQN (see Final Results of Redetermination Pursuant to Court Remand, *Industrial Quimica del Nalon v. United States*, Slip Op. 89-174 (December 21, 1989)). Since 1989, the Department has considered IQN the successor to Asturquimica.

## DEPARTMENT OF COMMERCE

## International Trade Administration

[A-570-001]

**Final Results of Expedited Sunset Review: Potassium Permanganate from the People's Republic of China**

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

**ACTION:** Notice of Final Results of Expedited Sunset Review: Potassium Permanganate from the People's Republic of China.

**SUMMARY:** On November 2, 1998, the Department of Commerce ("the Department") initiated a sunset review of the antidumping order on potassium permanganate from the People's Republic of China (63 FR 58709) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and substantive comments filed on behalf of the domestic industry and inadequate response (in this case, no response) from respondent interested parties, the Department determined to conduct an expedited review. As a result of this review, the Department finds that revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Review section of this notice.

**FOR FURTHER INFORMATION CONTACT:** Scott E. Smith or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482-6397 or (202) 482-1560, respectively.

**EFFECTIVE DATE:** April 7, 1999.

**Statute and Regulations**

This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*"). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

**Scope**

The merchandise subject to this antidumping order is potassium permanganate from the People's Republic of China ("PRC"), an inorganic chemical produced in free-flowing, technical, and pharmaceutical grades.<sup>1</sup> Potassium permanganate is classifiable under item 2841.61.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS item number is provided for convenience and U.S. Customs purposes. The written description remains dispositive.

This review covers imports from all manufacturers and exporters of potassium permanganate from the PRC.

**Background**

On November 2, 1998, the Department initiated a sunset review of the antidumping order on potassium permanganate from the People's Republic of China (63 FR 58709), pursuant to section 751(c) of the Act. The Department received a Notice of Intent to Participate on behalf of Carus Chemical Company ("Carus") on November 16, 1998, within the deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations*. Carus claimed interested party status under 19 U.S.C. 1677(9)(C) as a U.S. producer of potassium permanganate. In addition, Carus indicated that it was the original petitioner in this proceeding and that it has regularly participated in all administrative reviews. We received a complete substantive response from Carus on December 3, 1998, within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i). We did not receive a substantive response from any respondent interested party to this proceeding. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C), the Department determined to conduct an expedited, 120-day review of this order.

The Department determined that the sunset review of the antidumping duty order on potassium permanganate from the People's Republic of China is extraordinarily complicated. In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (i.e., an order in effect on January 1, 1995). (See section 751(c)(6)(C) of the Act.) Therefore, on March 2, 1999, the Department extended the time limit for

<sup>1</sup> On May 19, 1995, the Department determined that plastic ignitor spheres containing potassium permanganate are not within the scope of the order (60 FR 26871).

completion of the final results of this review until not later than June 1, 1999, in accordance with section 751(c)(5)(B) of the Act.<sup>2</sup>

**Determination**

In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping order, and shall provide to the International Trade Commission ("the Commission") the magnitude of the margin of dumping likely to prevail if the order is revoked.

The Department's determinations concerning continuation or recurrence of dumping and the magnitude of the margin are discussed below. In addition, Carus' comments with respect to continuation or recurrence of dumping and the magnitude of the margin are addressed within the respective sections below.

**Continuation or Recurrence of Dumping**

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103-316, vol. 1 (1994), the House Report, H.R. Rep. No. 103-826, pt. 1 (1994), and the Senate Report, S. Rep. No. 103-412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the bases for likelihood determinations. In its *Sunset Policy Bulletin*, the Department indicated that determinations of likelihood will be made on an order-wide basis (see section II.A.3). In addition, the Department indicated that normally it will determine that revocation of an antidumping order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the

<sup>2</sup> See *Potassium Permanganate from Spain and the People's Republic of China: Extension of Time Limit for Final Results of Five-Year Review*, 64 FR 10991 (March 8, 1999).

order and import volumes for the subject merchandise declined significantly (see section II.A.3).

In addition to guidance on likelihood provided in the *Sunset Policy Bulletin* and legislative history, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of an order is likely to lead to continuation or recurrence of dumping where a respondent interested party waives its participation in the sunset review. In the instant review, the Department did not receive a substantive response from any respondent interested party. Pursuant to section 351.218(d)(2)(iii) of the *Sunset Regulations*, this constitutes a waiver of participation.

The antidumping duty order on potassium permanganate from the PRC was published in the *Federal Register* on January 31, 1984 (49 FR 3897). Since that time, the Department has conducted two administrative reviews.<sup>3</sup> The order remains in effect for all manufacturers and exporters of the subject merchandise.

In its substantive response, Carus argues that it is highly likely that dumping would continue if the antidumping order in this case were to be revoked. (See December 3, 1998, Substantive Response of Carus at 2.) With respect to whether dumping continued at any level above *de minimis* after the issuance of the order, Carus argued that high dumping margins have been continuously in place for the almost 15 years since the date of the order. Carus further argues that the uninterrupted existence of high margins over the life of the order, and the continued failure of any PRC producer or exporter to successfully complete an annual review, provides compelling evidence that PRC exporters would engage in dumping at very high rates in the absence of the order. According to Carus, even with the severe discipline of the order in place, PRC exporters have continued to dump. (See December 3, 1998, Substantive Response of Carus at 7.)

With respect to whether imports of the subject merchandise ceased after the issuance of the order, Carus, citing its own shipment data and official U.S.

Census Bureau import statistics, argued that reported imports of potassium permanganate from the PRC effectively ceased after May 1994, when the Department issued the final results of the 1990 administrative review. (See December 3, 1998, Substantive Response of Carus at 7.) Carus argues that PRC producers/exporters were attempting to circumvent the order by shipping subject merchandise through a number of Hong Kong resellers who had not been subject to increased margin rates assigned to PRC producers and certain Hong Kong resellers in the final results of the 1989 administrative review (56 FR 19640).<sup>4</sup> Carus further argues that while imports of Chinese potassium permanganate were subject to the 39.64 percent deposit rate (1984–1990), annual imports surged by almost 580%—from 432,000 lbs. in 1984 to over 2.1 million lbs. in 1989 to over 2.5 million lbs. in 1990. (See December 3, 1998, Substantive Response of Carus at 22.) According to Carus, imports of the subject merchandise ceased after the deposit rate increased to reflect the actual level of dumping and purported absorption and, thus, the “loophole” associated with sales through Hong Kong resellers was eliminated.

In addition, Carus states that there are other factors which support the likelihood of dumping if the order were revoked. Carus argues that the attractiveness of the U.S. market would promote increased imports of Chinese potassium permanganate because U.S. prices of this product are at a premium while prices elsewhere in the world are well below U.S. levels. Carus also argues that Chinese producers have an oversupply of subject merchandise. In this respect, Carus makes four arguments. First, Carus states that the high antidumping duties established by the European Union and India on potassium permanganate from China have effectively shut Chinese exporters of this product out of those markets, increasing their inventories and forcing them to look elsewhere for export markets. Second, Carus argues that advances in Chinese potassium

permanganate production technology have resulted in increased efficiency and enable producers to offer lower prices. These technological advances have resulted in increased production capacities and inventories and, coupled with a lower price, will spur increased exportation. Third, because potassium permanganate has applications in the production of cocaine and China has recently demonstrated greater vigilance in controlling exports of potassium permanganate in situations where it may be used in the production of narcotics, Carus argues that this increased control may result in an additional surplus of Chinese potassium permanganate. According to Carus, this will promote the search for additional export markets which, in turn, may prompt future dumping. Fourth, Carus asserts that the Asian financial crisis has reduced the need for Chinese potassium permanganate in Asia. Carus argues that cash-strapped Asian governments are not likely to begin using large volumes of potassium permanganate in the type of applications for which it is used in the United States—for the treatment of municipal waste and drinking water. According to Carus, these factors may force Chinese producers to look elsewhere to sell their product.

In conclusion, Carus argued that the Department should determine that there is a likelihood that dumping would continue were the order revoked because (1) dumping margins have existed throughout the life of the order, (2) shipments of subject merchandise continued throughout the life of the order and have ceased only recently as the effective margin rate has increased to reflect the actual level of dumping, (3) premium prices for potassium permanganate in the U.S. will promote continued, if not increased, dumping by Chinese producers, (4) Chinese producers have an oversupply of the subject merchandise, for a variety of reasons, and need markets in which to sell and (5) the Asian economic crisis is limiting the number of markets in which Chinese producers of potassium permanganate can sell.

As discussed in Section II.A.3 of the *Sunset Policy Bulletin*, the SAA at 890, and the House Report at 63–64, if companies continue dumping with the discipline of an order in place, the Department may reasonably infer that dumping would continue if the discipline were removed. A dumping margin above *de minimis* continues to exist for shipments of the subject

<sup>3</sup> See *Final Results of Antidumping Duty Administrative Review: Potassium Permanganate from The People's Republic of China*, 56 FR 19640, April 29, 1991 (1989 POR) and *Potassium Permanganate from The People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 59 FR 26625, May 23, 1994 (1990 POR). Prior to the imposition of the order, the Department published *Final Determination of Sales at Less Than Fair Value; Potassium Permanganate from The People's Republic of China*, 48 FR 57347, December 29, 1983.

<sup>4</sup> On April 29, 1991, the Department published *Final Results of Antidumping Duty Administrative Review: Potassium Permanganate from The People's Republic of China* (56 FR 19640) in which all subject merchandise produced and exported directly to the U.S. by Chinese manufacturers became subject to a deposit rate of 128.94 percent. In addition to all PRC producers, a rate of 128.94 percent was established for four of the seven known Hong Kong resellers of the subject merchandise in the 1991 Final Results. In those Final Results, other resellers retained the original 39.63 percent rate established for “all other” producers/exporters in the antidumping duty order (see *Antidumping Duty Order; Potassium Permanganate from The People's Republic of China*, 49 FR 3897, January 31, 1984).

merchandise from all Chinese producers/exporters.<sup>5</sup>

Consistent with section 752(c) of the Act, the Department also considered the volume of imports before and after issuance of the order. The import statistics provided by Carus on imports of the subject merchandise between 1980 and 1998, and those examined by the Department (U.S. Census Bureau IM146 reports), demonstrate that imports of the subject merchandise have continued throughout the life of the order.

Based on this analysis, the Department finds that the existence of dumping margins after the issuance of the order is highly probative of the likelihood of continuation or recurrence of dumping. Deposit rates above a *de minimis* level continue in effect for exports of the subject merchandise by all known Chinese manufacturers/exporters. Therefore, given that dumping has continued over the life of the order and respondent interested parties have waived their right to participate in this review before the Department, and absent argument and evidence to the contrary, the Department determines that dumping is likely to continue if the order were revoked.

Because the Department based this determination on the continued existence of margins above *de minimis* and respondent interested parties' waiver of participation, it is not necessary to address Carus' arguments concerning the attractiveness of the U.S. market, U.S. price premiums for potassium permanganate, Chinese overcapacity and export orientation, or the effects of the Asian economic crisis.

#### Magnitude of the Margin

In the *Sunset Policy Bulletin*, the Department stated that it will normally provide to the Commission the margin that was determined in the final determination in the original investigation. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the "all others" rate from the investigation. (See section II.B.1 of the *Sunset Policy Bulletin*.) Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. (See sections II.B.2 and 3 of the *Sunset Policy Bulletin*.)

The Department, in its final determination of sales at less than fair value, published a weighted-average dumping margin for the China National Chemicals Import and Export Corporation (SINOCEM), the sole Chinese producer/exporter in the original investigation, of 39.63 percent (48 FR 57347, December 29, 1983). The Department also published an "all others" rate of 39.63 percent in this same Federal Register notice. With respect to duty absorption findings, Carus argues that duty absorption is likely in this case but, because there have been no completed administrative reviews of the order since the 1990 administrative review, the Department has not had the opportunity to address the issue of duty absorption.

In its substantive response, Carus argues that the Department should provide the Commission a more recently calculated margin. Citing the *Sunset Policy Bulletin*, Carus states that "[a] company may choose to increase dumping in order to maintain or increase market share. As a result, increasing margins may be more representative of a company's behavior in the absence of an order." In the original investigation, the Department established a deposit rate of 39.63 percent for SINOCEM as well as for "all other" producers/exporters of Chinese potassium permanganate (48 FR 57347, December 29, 1983). Carus asserts that the 39.63 percent margin established in the investigation was far too low to prevent rapid import growth and continued dumping of PRC-origin product, as well as dramatic increases in the Chinese share of the U.S. market. According to Carus, Chinese imports of the subject merchandise surged by almost 580%—from 432,000 lbs. in 1984 to over 2.1 million lbs. in 1989 to over 2.5 million lbs. in 1990.

In January of 1990, Carus requested an administrative review of Chinese exports of potassium permanganate to the United States. In response to this request, the Department conducted a review and established, on April 29, 1991, a new deposit rate for all PRC producers of 128.94 percent. In addition, the Department established a new deposit rate for four of the seven known Hong Kong resellers of this product. According to Carus' information, imports of the subject merchandise then decreased by almost 70 percent, from 2,560,700 lbs. in 1990 to 861,051 lbs. in 1991.

Nevertheless, by 1993, imports of Chinese potassium permanganate had increased to 2,441,453 lbs. and had recaptured over 9 percent of the U.S. market, almost as much of the U.S.

market as Chinese producers/exporters had held just prior to the imposition of the order. Carus claims this resurgence in Chinese imports was attributed to a "loophole" evident in the 1991 Final Results. Specifically, the "all others" rate of 39.63 percent was still being applied as a deposit rate to previously unnamed Hong Kong resellers, not all of whom could be identified for review. Carus argues that the retention of the 39.63 percent rate for Hong Kong resellers subject to the "all others" rate, coupled with the willingness and ability of Chinese producers/exporters to dump, allowed substantial amounts of PRC-origin potassium permanganate to be transshipped through Hong Kong resellers and sold in the U.S. at below fair market value. In the 1991 Final Results, the Department clarified that, in cases involving non-market economies, an "all others" cash deposit rate is not appropriate because any non-market economy country firm must show that it is entitled to a separate rate before a rate other than the non-market economy country-wide rate can be assigned to it, and any intermediate country reseller is properly assigned the rate for its producer unless the reseller affirmatively shows that the merchandise has not simply been transshipped. 59 FR 26630. <sup>6</sup> Because no third country reseller established, during the 1990 administrative review or since, that its merchandise was not being transshipped, such that the first exporter "to the United States" was properly deemed to be the PRC exporter, the "all others" loophole was eliminated in the May 23, 1994 final results of the 1990 administrative review, which established a 128.94 percent deposit rate for all shipments of Chinese potassium permanganate. 59 FR 26625.

Carus submits that the history of this case shows that the margin established in the original investigation was insufficient to prevent an influx of Chinese potassium permanganate and insufficient to prevent Chinese producers/exporters' attempts at increasing market share in the United States through dumping. Carus argues that, between 1984 and 1990, Chinese producers/exporters of potassium permanganate increased their share of the U.S. market by 340 percent, from 2.5 percent to 8.5 percent. December 3, 1998 Substantive Response of Carus. Furthermore, Carus argues that the "loophole" created by the exclusion of certain Hong Kong resellers from the

<sup>5</sup> See *Potassium Permanganate from The People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 59 FR 26625 (May 23, 1994).

<sup>6</sup> See also *Yue Pak v. United States*, Slip Op. 96-65 (CIT April 18, 1996), *aff'd* 111 F.3rd 142 (Fed. Cir. 1997).

128.94 percent margin assigned to Chinese exporters in the 1989 administrative review again permitted dramatic increases in Chinese imports of the subject merchandise and the virtual recapture of the Chinese percentage of the U.S. potassium permanganate market.

Therefore, Carus argues, the margin determined in the original investigation does not reflect current Chinese pricing behavior or present levels of globally-traded input prices. In addition, Carus argues the changes in the methodology used by the Department in the calculation of margins renders the margin from the original investigation suspect.

The Department agrees with Carus' argument concerning the choice of the margin rate to report to the Commission. An examination of the margin history of the order as well as an examination of import statistics of the subject merchandise, as provided in U.S. Census Bureau IM146 reports, confirms the scenario outlined by Carus. From 1984, the date the first margins were established for this proceeding (49 FR 3897, January 31, 1984), to 1990, import volumes of the subject merchandise swelled, increasing by almost 600 percent. During this period, a cash deposit rate of 39.64 percent was in effect. In 1991, in an administrative review requested by Carus, the Department established a new deposit rate of 128.94 percent for producers of the subject merchandise from the PRC and for certain named third country resellers (56 FR 19640, April 29, 1991). Import volumes fell substantially in 1991, by almost 70 percent, but then rebounded by 1993, the year immediately preceding the final results of the 1990 administrative review (59 FR 26625, May 23, 1994). In May of 1994, in the Final Results of the 1990 administrative review, the Department established a rate of 128.94 percent for all potassium permanganate of Chinese origin, whether shipped directly from the PRC or transshipped through a third country reseller. Following the establishment of this more inclusive margin rate, shipments of potassium permanganate fell dramatically, and have not exceeded 50,000 lbs. in any year since 1996.

The Department believes that the increase in import volumes and market share between the imposition of the order and the Final Results in the 1989 administrative review (56 FR 19640, April 29, 1991) reflect the willingness and ability of Chinese producers/exporters to dump this product despite the margin rate established by the Department in the original investigation.

Furthermore, the continuation of dumping and the virtual recapture of market share between the final results in the 1989 review and those in the 1990 review reflects attempts by Chinese producers/exporters to circumvent the order by transshipping the subject merchandise through third country resellers with lower deposit rates. This is evidenced by the dramatic reduction in import volumes following the 1990 administrative review (59 FR 26625, May 23, 1994) in which a single rate was established for all potassium permanganate of Chinese origin, regardless of the interim shipping location, absent a showing that either the Chinese exporter was entitled to a separate rate or the third country reseller was not merely engaged in transshipment. This more inclusive margin determination has apparently reduced the ability of Chinese producers/exporters to circumvent the order.

According to the *Sunset Policy Bulletin*, "a company may choose to increase dumping in order to maintain or increase market share. As a result, increasing margins may be more representative of a company's behavior in the absence of an order." Therefore, the Department finds that this most recent rate is the most probative of the behavior of Chinese producers/exporters of potassium permanganate if the order were revoked. As a result, the Department is not addressing current Chinese pricing behavior or changes in methodologies used by the Department in its margin calculations. The Department will report to the Commission the country-wide rate from the administrative review for the period January 1, 1990 through December 31, 1990 (59 FR 26625, May 23, 1994) as contained in the Final Results of Review section of this notice.

#### Final Results of Review

As a result of this review, the Department finds that revocation of the antidumping order would likely lead to continuation or recurrence of dumping at the margins listed below:

Manufacturer/exporter	Margin (percent)
Country-wide rate for the People's Republic of China	128.9

This notice serves as the only 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 of the

Department's regulations. 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 five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: April 1, 1999.

**Robert S. LaRossa**

*Assistant Secretary for Import Administration.*

[FR Doc. 99-8624 Filed 4-6-99; 8:45 am]

**BILLING CODE 3510-DS-P**

## EXPLANATION OF COMMISSION DETERMINATIONS ON ADEQUACY

in

### *Potassium Permanganate from China and Spain, Inv. Nos. 731-TA-125-126 (Review)*

On February 4, 1999, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c)(5) of the Act. The Commission, in consultation with the Department of Commerce, grouped these reviews because they involve the same domestic like product. See 19 U.S.C. § 1675(c)(5)(D); 63 *Fed. Reg.* 29372, 29374 (May 29, 1998).

With regard to *Potassium Permanganate from Spain, Inv. No. 731-TA-126 (Review)*, the Commission determined that both domestic and respondent interested party group responses were adequate and voted to conduct a full review. Regarding domestic interested parties, the Commission received a response from the sole domestic producer of potassium permanganate. Regarding respondent interested parties, the Commission received a response from a Spanish producer that indicated it was the sole exporter of potassium permanganate to the United States.

With regard to *Potassium Permanganate from China, Inv. 731-TA-125 (Review)*, the Commission determined that the domestic group response was adequate. The Commission received a response from the sole domestic producer of potassium permanganate. Because the Commission did not receive a response from any respondent interested party, the Commission determined that the respondent interested party group response was inadequate. The Commission further determined to conduct a full review, however, because conducting a full review would promote administrative efficiency in light of the Commission's decision to conduct a full review with respect to *Potassium Permanganate from Spain*.<sup>1</sup> See 63 *Fed. Reg.* 30599, 30604 (June 5, 1998).

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<sup>1</sup>Commissioner Crawford dissenting.



**APPENDIX B**

**LIST OF WITNESSES APPEARING  
AT THE COMMISSION'S HEARING**



**CALENDAR OF THE COMMISSION'S HEARING**

Those listed below appeared as witnesses at the United States International Trade Commission's hearing:

Subject: Potassium Permanganate from China and Spain

Inv. Nos.: 731-TA-125-126 (Review)

Date and Time: August 31, 1999 - 9:30 a.m.

Sessions were held in connection with these investigations in the Main Hearing Room, 500 E Street, SW, Washington, DC.

**In Support of the Continuation of the Antidumping Duty Orders:**

Winston & Strawn  
Washington, DC  
on behalf of

Carus Chemical Co. ("Carus")

**Aziz Asphahani**, President and CEO

**Inga Carus**, Vice President, Sales and Marketing

**Dennis Clark**, Vice President and CFO

**Daniel W. Klett**, Principal, Capital Trade, Inc.

**Edward F. Gerwin, Jr.**)  
**Cynthia L. Hansen** )-OF COUNSEL

**In Support of the Revocation of the Antidumping Duty Order on Spain:**

Cameron & Hornbostel LLP  
Washington, DC  
on behalf of

Industrial Quimica del Nalon ("IQN")

**Dennis James, Jr.**-OF COUNSEL



APPENDIX C  
SUMMARY DATA



Table C-1

Potassium permanganate: Summary data concerning the U.S. market, 1997-98, Jan.-Mar. 1998, and Jan.-Mar. 1999

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**APPENDIX D**

**RESPONSES OF PRODUCERS, IMPORTERS, AND  
PURCHASERS CONCERNING THE SIGNIFICANCE  
OF THE EXISTING ANTIDUMPING DUTY ORDERS  
AND THE LIKELY EFFECTS OF THEIR REVOCATION**



**CARUS' COMMENTS REGARDING THE EFFECTS OF THE ORDER AND THE LIKELY  
EFFECTS OF REVOCATION**

\* \* \* \* \*

**FOREIGN PRODUCERS**

\* \* \* \* \*

**IMPORTERS**

\* \* \* \* \*

**PURCHASERS**

\* \* \* \* \*

