

UNITED STATES INTERNATIONAL TRADE COMMISSION

CHLOROPICRIN FROM CHINA  
Investigation No. 731-TA-130 (Review)

DETERMINATION AND VIEWS OF THE COMMISSION  
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## CHLOROPICRIN FROM CHINA

### **DETERMINATION**

On the basis of the record<sup>1</sup> developed in the subject five-year review, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)) (the Act), that revocation of the antidumping duty order on chloropicrin 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.

### **BACKGROUND**

The Commission instituted this review on November 2, 1998 (63 F.R. 58761), and determined on February 4, 1999, that it would conduct an expedited review (64 F.R. 9173, Feb. 24, 1999).

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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)).

## VIEWS OF THE COMMISSION

Based on the record in this five-year review, we determine under section 751(c) of the Tariff Act of 1930, as amended (“the Act”), that revocation of the antidumping duty order covering chloropicrin 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.

### I. BACKGROUND

In March 1984, the Commission determined that an industry in the United States was being materially injured by reason of imports of chloropicrin from China that were being sold at less than fair value.<sup>1</sup> That same month, the Department of Commerce (“Commerce”) issued an antidumping duty order on imports of chloropicrin from China.<sup>2</sup> On November 2, 1998, the Commission instituted a review pursuant to section 751(c) of the Act to determine whether revocation of the antidumping duty order on chloropicrin from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.<sup>3</sup>

In five-year reviews, the Commission first determines whether to conduct a full review (which would include a public hearing, the issuance of questionnaires, and other procedures) or an expedited review. Specifically, the Commission determines whether individual responses to the notice of institution are adequate and, based on those responses deemed individually adequate, whether the collective responses submitted by two groups of interested parties -- domestic interested parties (such as producers, unions, trade associations, or worker groups) and respondent interested parties (such as 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, and if not, whether other circumstances warrant a full review.<sup>4</sup> If responses from either group of interested parties are found to be inadequate, the Commission may determine, pursuant to section 751(c)(3)(B) of the Act, to conduct an expedited review because inadequate responses from a group of parties indicate that they are not sufficiently willing to participate in a full review and provide information requested throughout such a proceeding.

In this review, the Commission received a joint response, containing company-specific information, from four domestic producers: ASHTA Chemicals, Inc. (“ASHTA”), HoltraChem Manufacturing Company, L.L.C. (“HoltraChem”), Niklor Chemical Company, Inc. (“Niklor”), and Trinity Manufacturing, Inc. (“Trinity”). The participating producers account for all known domestic production of chloropicrin. These producers also filed joint comments on adequacy, arguing that the review should be expedited because no respondent interested party responded to the Commission’s notice of institution.<sup>5</sup>

The Commission determined that the domestic producers’ responses to the Commission’s notice of institution were adequate.<sup>6</sup> The Commission also determined that the respondent interested party group response was inadequate because no foreign producers or U.S. importers of subject merchandise responded to

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<sup>1</sup> Chloropicrin from the People’s Republic of China, Inv. No. 731-TA-130 (Final), USITC Pub. No. 1505 (Mar. 1984) (“Original Determination”).

<sup>2</sup> 49 Fed. Reg. 10691 (Mar. 22, 1984).

<sup>3</sup> 63 Fed. Reg. 58761 (Nov. 2, 1998).

<sup>4</sup> See 19 C.F.R. § 207.62(a); 63 Fed. Reg. 30599, 30602-05 (June 5, 1998).

<sup>5</sup> See 19 C.F.R. § 207.62(b) (authorizing, *inter alia*, all interested parties that have responded to the notice of institution to file comments with the Commission on whether the Commission should conduct an expedited review).

<sup>6</sup> Confidential Report (“CR”) at Appendix B, Public Report (“PR”) at Appendix B. See also 64 Fed. Reg. 9173 (Feb. 24, 1999).

the Commission's notice of institution. Pursuant to section 751(c)(3)(B) of the Act, the Commission voted to conduct an expedited review.<sup>7</sup>

On March 9, 1999, the domestic producers filed comments pursuant to 19 C.F.R. § 207.62(d) urging the Commission to determine that revocation of the antidumping duty order on chloropicrin would be likely to lead to recurrence of material injury within a reasonably foreseeable time.

## 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>8</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>9</sup> In its final five-year review determination, Commerce defined the subject merchandise as "chloropicrin, also known as trichloronitromethane ... a pre-plant soil fumigant (pesticide) ... currently classifiable under Harmonized Tariff Schedule (HTS) item number 2904.90.50."<sup>10</sup>

Chloropicrin is a highly toxic liquid chemical compound, used primarily as an active agent in pre-plant soil fumigants for killing fungi. Small amounts are also used to control insects and rodents in grain storage and to prevent wood decay. The expense of using chloropicrin normally limits its application to high-value crops such as strawberries, flowers, and fruit trees, although it is also used for relatively lower-value crops which require less fumigant per acre.<sup>11</sup>

We find, based on the facts available, that the appropriate definition of the domestic like product in this expedited five-year review is the same as Commerce's scope<sup>12</sup> and unchanged from the Commission's original determination.<sup>13</sup>

### B. Domestic Industry

Section 771(4)(A) of the Act defines the relevant industry as the "domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product."<sup>14</sup> In defining the domestic industry, the Commission's general practice has been to include in the industry producers of all domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market, provided that adequate production-related activity is conducted in the United States.<sup>15</sup> Accordingly, we find that the domestic industry includes all domestic producers of chloropicrin.

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<sup>7</sup> 19 U.S.C. § 1675(c)(3)(B); *see* 64 Fed. Reg. 9173 (Feb. 24, 1999).

<sup>8</sup> 19 U.S.C. § 1677(4)(A).

<sup>9</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. 249, 96th Cong., 1st Sess. 90-91 (1979).

<sup>10</sup> 64 Fed. Reg. 11440 (Mar. 9, 1999).

<sup>11</sup> CR at I-4 to I-5, PR at I-4.

<sup>12</sup> CR at I-4, PR at I-4.

<sup>13</sup> Original Determination at 3.

<sup>14</sup> 19 U.S.C. § 1677(4)(A).

<sup>15</sup> *See, e.g., United States Steel Group v. United States*, 873 F. Supp. 673, 682-83 (Ct. Int'l Trade 1994), *aff'd*, 96 F.3d 1352 (Fed. Cir. 1996).

### III. REVOCATION OF THE ORDER ON CHLOROPICRIN IS LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME

#### A. Legal Standard

In a five-year review conducted under section 751(c) of the Act, Commerce will revoke an antidumping duty order unless it makes a determination that dumping is likely to continue or recur and the Commission makes a determination that material injury would be likely to continue or recur if the order is revoked, as described in section 752(a).

Section 752(a) of the Act states that in a five-year review “the Commission shall determine whether revocation of an order, or termination of a suspended investigation, would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.”<sup>16</sup> The Uruguay Round Agreements Act (“URAA”) Statement of Administrative Action (“SAA”) states that “under the likelihood standard, the Commission will engage in a counter-factual analysis; it must decide the likely impact in the reasonably foreseeable future of an important change in the status quo -- the revocation [of the order] ... and the elimination of its restraining effects on volumes and prices of imports.”<sup>17</sup> Thus, the likelihood standard is prospective in nature.<sup>18</sup> The statute states that “the Commission shall consider that the effects of revocation ... may not be imminent, but may manifest themselves only over a longer period of time.”<sup>19</sup> According to the SAA, a “‘reasonably foreseeable time’ will vary from case-to-case, but normally will exceed the ‘imminent’ timeframe applicable in a threat of injury analysis [in antidumping and countervailing duty investigations].”<sup>20</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.” It directs the Commission to take into account

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<sup>16</sup> 19 U.S.C. § 1675a(a).

<sup>17</sup> URAA SAA, H.R. Rep. No. 103-316, vol. I, at 883-84 (1994).

<sup>18</sup> While the SAA states that “a separate determination regarding current material injury is not necessary,” it 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>19</sup> 19 U.S.C. § 1675a(a)(5).

<sup>20</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>21</sup> In analyzing what constitutes a reasonably foreseeable time, Commissioners Crawford and Koplán 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.

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>22 23</sup>

Section 751(c)(3) of the Act and the Commission's regulations provide that in an expedited five-year review the Commission may issue a final determination "based on the facts available, in accordance with section 776."<sup>24 25</sup> As noted above, no respondent interested parties responded to the Commission's notice of institution. Accordingly, we have relied on the facts available in this review, which consist primarily of the record in the original investigation, limited information collected by Commission staff since the institution of this review, and information submitted by ASHTA, HoltraChem, Niklor, and Trinity.

For the reasons stated below, we determine that revocation of the antidumping duty order on chloropicrin from China would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

## **B. Conditions of Competition**

In evaluating the likely impact of the subject imports on the domestic industry if the order is revoked, the statute directs the Commission to evaluate all relevant economic factors "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."<sup>26</sup> In performing our analysis under the statute, we have taken into account the following conditions of competition in the U.S. market for chloropicrin.

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<sup>22</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>23</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 an affirmative duty absorption finding in this matter. 64 Fed. Reg. at 11442 (Mar. 9, 1999).

<sup>24</sup> 19 U.S.C. § 1675(c)(3)(B); 19 C.F.R. § 207.62(e). Section 776 of the Act, in turn, authorizes the Commission to "use the facts otherwise available" in 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, fails to provide such information in the time or in the form or manner requested, 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 from the record of our original determination and any other information placed on the record. *Id.*

<sup>25</sup> Chairman Bragg and Commissioner Askey note that the statute authorizes the Commission to take adverse inferences in five-year reviews, but emphasize that such authorization does not relieve the Commission of its obligation to consider the record evidence as a whole in making its determination. "[T]he Commission balances all record evidence and draws reasonable inferences in reaching its determinations." URAA SAA at 869 [emphasis added]. Practically speaking, when only one side has participated in a five-year review, much of the record evidence is supplied by that side, though that data is supplemented with publicly available information. We generally give credence to the facts supplied by the participating parties and certified by them as true, but base our decision on the evidence as a whole, and do not automatically accept the participating parties' suggested interpretation of the record evidence. Regardless of the level of participation and the interpretations urged by participating parties, the Commission is obligated to consider all evidence relating to each of the statutory factors and may not draw adverse inferences that render such analysis superfluous. "In general, the Commission makes determinations by weighing all of the available evidence regarding a multiplicity of factors relating to the domestic industry as a whole and by drawing reasonable inferences from the evidence it finds most persuasive." *Id.*

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

Consumption of chloropicrin has \*\*\* in the years since the original determination, when imports from China represented nearly \*\*\* of total domestic consumption.<sup>27</sup> With the disappearance of imports from China since the imposition of the antidumping duty order, domestic production recaptured its earlier share of the market. While domestic consumption of chloropicrin has grown, domestic supply capacity has \*\*\*.<sup>28</sup> The domestic producers characterize the market as one with continuing price competition and also note that they currently have \*\*\*.<sup>29</sup> There are no nonsubject imports.<sup>30</sup>

The domestic market for chloropicrin appears to be a mature one. While production has increased in the years since the original determination, technology and production methods are essentially unchanged.<sup>31</sup> Both availability and prices of raw materials have been steady.<sup>32</sup>

Chloropicrin can be used alone, but is frequently used in conjunction with other chemical agents, notably methyl bromide. Use of methyl bromide in the United States is scheduled to be phased out over the next six years under existing environmental regulations.<sup>33</sup> The effect of this phase-out on chloropicrin demand is uncertain.<sup>34</sup>

As in the original determination, the available evidence suggests that chloropicrin is a commodity product and that there is a relatively high degree of substitutability between imported and domestic chloropicrin.<sup>35</sup> Accordingly, the available evidence suggests, as in the original investigation, that price is an important consideration in the purchasing decision for chloropicrin.

Based on the record evidence, we find that these conditions of competition in the chloropicrin market (aside from the effects, if any, from the phase-out of methyl bromide) are not likely to change significantly in the reasonably foreseeable future. Accordingly, in this review, we find that current conditions in the chloropicrin market provide us with a reasonable basis on which to assess the effects of revocation of the order in the reasonably foreseeable future.<sup>36</sup>

### C. Likely Volume of Subject Imports

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<sup>27</sup> Total apparent U.S. consumption in 1997 was 12.3 million pounds, up from \*\*\* in 1983. Imports from China accounted for \*\*\* of the 1983 total. CR at Table I-3, PR at Table I-3. The record in this review indicates there have been no imports of chloropicrin from China from late 1983 to the present. CR at I-8, PR at I-6.

<sup>28</sup> CR at Table I-1, PR at Table I-1.

<sup>29</sup> Response of Domestic Producers at 6.

<sup>30</sup> CR at Table I-3, PR at Table I-3.

<sup>31</sup> CR at I-5, PR at I-4 to I-5.

<sup>32</sup> CR at I-5, PR at I-5.

<sup>33</sup> CR at I-5, PR at I-4. The goals, as of October 1998, are to achieve a 25 percent reduction from 1991 levels in 1999, 50 percent reduction in 2001, 70 percent reduction in 2003, and 100 percent reduction in 2005, although critical agricultural uses allocated after 2005 and pre-shipment and quarantine uses are exempt. *Id.*

<sup>34</sup> CR at I-5, PR at I-4.

<sup>35</sup> Original Determination at A-3 to A-4. There are two methods of producing chloropicrin. All domestic producers use a method that requires nitromethane. At the time of the original investigation, no producer outside the United States used that method, relying instead on an older method that used picric acid. Domestic producers abandoned the picric acid method in the 1950s under regulatory pressure. It is unknown at this time which method is currently used by Chinese producers, although the record in this review indicates that China produces and exports nitromethane to the United States. CR at I-11, note 33, PR at I-9, note 33.

<sup>36</sup> In analyzing whether revocation of a finding or order would be likely to lead to a continuation or recurrence of material injury within a reasonably foreseeable time, Commissioner Crawford takes as her 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)(A)(iv).

In evaluating the likely volume of imports of subject merchandise if the order under review is revoked, the Commission is directed 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>37</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>38</sup>

We conclude, based on the facts available,<sup>39</sup> that subject import volume is likely to increase significantly and would be significant if the order is revoked. In making this finding, we recognize that no subject imports are currently in the domestic market.<sup>40</sup> In a five-year review, however, our focus is on whether subject import volume is likely to be significant in the reasonably foreseeable future if the antidumping duty order is revoked.

The record from the original investigation indicates that Chinese chloropicrin producers had the ability and willingness to quickly establish a significant presence in the U.S. market. From 1980 to 1983, China was the source of virtually all imported chloropicrin for the United States, accounting for \*\*\* percent of the total quantity of all imports during the period.<sup>41</sup> The volume of Chinese imports increased sharply over this time period, rising from \*\*\* in 1980 to \*\*\* at its peak in 1982.<sup>42</sup>

During the original investigation, Chinese production was highly oriented toward exports, with exports accounting for \*\*\* percent of all production.<sup>43</sup> China’s existing chloropicrin industry was capable of rapidly increasing exports to the United States. Between 1980 and 1982, the volume of Chinese exports rose \*\*\*.<sup>44</sup> By 1983 the U.S. market was China’s primary export market, accounting for \*\*\* percent of all Chinese exports that year.<sup>45 46</sup>

The original investigation found annual Chinese production capacity of \*\*\* at a plant located in Dalien;<sup>47</sup> China had also notified the U.S. Environmental Protection Agency that five other plants could produce chloropicrin, although none of the plants were known to be producing it at that time.<sup>48</sup> The record

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<sup>37</sup> 19 U.S.C. § 1675a(a)(2).

<sup>38</sup> 19 U.S.C. § 1675a(a)(2)(A)-(D). The record contains little or no information pertaining to existing inventories of the subject merchandise, the existence of barriers in other countries, or the potential for product shifting in China with respect to chloropicrin.

<sup>39</sup> See 19 U.S.C. § 1677e(a).

<sup>40</sup> The record shows no imports from China subject to the antidumping duty order in 1997. CR at Table I-2, PR at Table I-2.

<sup>41</sup> CR at I-7 to I-8 and Table I-2, PR at I-6 and Table I-2.

<sup>42</sup> CR at Table I-2, PR at Table I-2.

<sup>43</sup> CR at I-9, PR at I-7 to I-8.

<sup>44</sup> CR at Table I-2, PR at Table I-2.

<sup>45</sup> CR at I-9, PR at I-8.

<sup>46</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. Based upon the record in this review, 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>47</sup> CR at I-9, PR at I-7 to I-9.

<sup>48</sup> CR at I-9, note 31, PR at I-9, note 31.

contains some evidence that these additional plants \*\*\*.<sup>49</sup> The domestic producers assert that Chinese production of chloropicrin has continued, and that the industry in China still exports its product in significant volumes to \*\*\*.<sup>50</sup> Based on the facts available, we infer that, at a minimum, the Dalian plant continues to have the production capacity identified in the original investigation. At the time of the original determination, Chinese production capacity available for export was \*\*\* of current total apparent U.S. consumption.<sup>51</sup> This suggests that Chinese producers have ample ability to export significant volumes of chloropicrin to the United States if the order is revoked. Because of the similarity in the conditions of competition prevailing today and those existing prior to the imposition of the order, it is likely that Chinese producers would resume shipping significant volumes to the U.S. market in the absence of the antidumping duty order.<sup>52</sup>

Thus, based on the limited record in this review, we find that significant volumes of chloropicrin from China are likely to be exported to the United States in the reasonably foreseeable future if the antidumping duty order is revoked. Consequently, we conclude that subject imports would increase to a significant level in the absence of the antidumping duty order and likely would regain significant U.S. market share absent the restraining effect of the order.<sup>53</sup>

#### **D. 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 to domestic like products and if the subject imports are likely to enter the United States at prices that would have a significant depressing or suppressing effect on the price of domestic like products.<sup>54 55</sup>

The record in this expedited review contains a limited amount of pricing data. In the original determination, the Commission found that subject imports from China exhibited significant margins of underselling during 1980-83.<sup>56</sup> By 1983, the third year of significant imports from China, domestic unit values dropped below 1981 levels.<sup>57</sup>

In its original determination, the Commission found chloropicrin to be a commodity product and that the subject merchandise and the domestic like product had a relatively high level of substitutability.<sup>58</sup> This level of substitutability suggested that price was an important, if not critical, criterion in the purchasing

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<sup>49</sup> CR at I-9, note 31, PR at I-9, note 31.

<sup>50</sup> CR at I-10 to I-11, PR at I-9. Domestic producers also note that China is a significant source and exporter of nitromethane, a raw material essential to chloropicrin production as practiced in the United States. CR at I-11, PR at I-9.

<sup>51</sup> CR at I-9 and Table I-3, PR at I-9 and Table I-3; Original Determination at Table 13.

<sup>52</sup> SAA at 884 (“If the Commission finds that pre-order conditions are likely to recur, it is reasonable to conclude that there is likelihood of continuation or recurrence of injury.”).

<sup>53</sup> Vice Chairman Miller and Commissioner Hillman emphasize that they reached this conclusion in the absence of any contrary evidence or argument from respondent interested parties.

<sup>54</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>55</sup> Commissioner Crawford finds from the evidence available that the likely price effects resulting from a revocation of the existing order would not be significant in the reasonably foreseeable future. She does not join in the remainder of this section.

<sup>56</sup> Original Determination at 5.

<sup>57</sup> CR at Table I-1, PR at Table I-1.

<sup>58</sup> Original Determination at A-3 to A-4.

decision for customers, and there is no evidence in the current record to suggest these facts have changed. Given these facts, it is likely that the Chinese producers would offer attractively low prices to U.S. purchasers in order to regain market share, as they did in the original investigation, if the antidumping duty order is revoked. Thus, we believe that prices for domestically produced chloropicrin would likely decline to a significant degree in response to the likely significant volumes of substitutable subject imports offered at lower prices.<sup>59</sup>

Accordingly, we find that revocation of the antidumping duty order would be likely to lead to significant price effects, including significant underselling by the subject imports of the domestic like product, as well as significant price depression and suppression, in the reasonably foreseeable future.<sup>60</sup>

### **E. Likely Impact of Subject Imports**

In evaluating the likely impact of imports of subject merchandise if the 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>61</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>62</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>63</sup>

In the original determination the Commission found material injury to the domestic industry by reason of increased imports of chloropicrin at less than fair value, both in absolute terms and relative to domestic consumption.<sup>64</sup> It found declines in production and in shipments and market share, as well as declines in capacity utilization and deterioration of the domestic industry's financial condition.<sup>65</sup>

Since imposition of the antidumping duty order, the domestic industry's market share increased as subject imports exited the market. As noted above, the domestic industry, rather than non-subject imports,

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<sup>59</sup> Chairman Bragg notes in this regard that the URAA SAA states that “[i]f the Commission finds that pre-order conditions are likely to recur, it is reasonable to conclude that there is likelihood of continuation or recurrence of injury.” SAA at 884.

<sup>60</sup> Vice Chairman Miller and Commissioner Hillman emphasize that they reached this conclusion in the absence of any contrary evidence or argument from respondent interested parties.

<sup>61</sup> 19 U.S.C. § 1675a(a)(4).

<sup>62</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. Commerce's expedited determination in its five-year review provided a likely margin of 58.0 percent for one specific chloropicrin manufacturer/exporter in China. The “all others” margin also is 58.0 percent. 64 Fed. Reg. at 11442 (Mar. 9, 1999).

<sup>63</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>64</sup> Original Determination at 5.

<sup>65</sup> Original Determination at 4.

gained the market share lost by the subject imports subsequent to imposition of the antidumping duty order.<sup>66</sup> The basic substitutability of the product has enabled the domestic industry to readily replace subject imports and regain domestic market share. Demand is unlikely to be increased by product development or new technology. Thus it is likely that any future increase in the market share of subject imports would be largely at the expense of the domestic industry.

We note that the future demand for this product is somewhat uncertain, given the phase-out of a product, methyl bromide, used in conjunction with chloropicrin. On this basis, the domestic producers argue that they are vulnerable to material injury.<sup>67</sup> However, we note that chloropicrin is also used alone or in conjunction with chemicals other than methyl bromide.<sup>68</sup> We also note that the domestic industry is currently operating at lower levels of capacity utilization than during the original investigation and \*\*. <sup>69</sup> While we have considered this factor, we find that the limited information on the record is inconclusive. Therefore, we do not find that the industry is in a “weakened state,” as contemplated by the vulnerability criterion of the statute.<sup>70 71</sup>

As discussed above, based on the limited record in this review, we conclude that if the order is revoked, the likely volume of subject imports would be significant and that these imports would have significant adverse price effects.<sup>72</sup> Given the substitutable nature of the product, we find that a significant volume of low-priced subject imports would likely have a significant adverse impact on the production, shipment, sales, and revenue levels of the domestic industry. This reduction in the industry’s production, sales and revenue levels would have a direct adverse impact on the industry’s profitability and employment levels as well as its ability to raise capital and make and maintain necessary capital investments. Accordingly, we conclude that, if the antidumping duty order is revoked, the subject imports would be likely to have a significant adverse impact on the domestic industry within a reasonably foreseeable time.<sup>73</sup>

## CONCLUSION

For the foregoing reasons, we determine that revocation of the antidumping duty order covering chloropicrin from China would be likely to lead to continuation or recurrence of material injury to the domestic chloropicrin industry within a reasonably foreseeable time.

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<sup>66</sup> CR at I-9, PR at I-7.

<sup>67</sup> Response of Domestic Producers at 11.

<sup>68</sup> CR at I-5, PR at I-4.

<sup>69</sup> CR at I-6, PR at I-5.

<sup>70</sup> 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>71</sup> Commissioner Crawford finds that the magnitude of any adverse effects of revocation is likely to increase with the degree of vulnerability in the industry. She finds that the domestic industry in this review is not particularly vulnerable to injury if the order is revoked.

<sup>72</sup> Commissioner Crawford bases her affirmative determination on the likely volume effects resulting from a revocation of the existing antidumping duty order.

<sup>73</sup> Vice Chairman Miller and Commissioner Hillman emphasize that they reached this conclusion in the absence of any contrary evidence or argument from respondent interested parties.