

UNITED STATES INTERNATIONAL TRADE COMMISSION

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

DETERMINATIONS AND VIEWS OF THE COMMISSION  
(USITC Publication No. 3245, October 1999)

# 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 under

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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).

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.” Thus, we understand the “no discernible adverse impact” provision to be largely a negligibility provision without

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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)

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 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

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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)

imports from 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 indicates that "the Commission may consider relevant factors such as current and likely continued depressed

(continued...)

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)

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>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 reaching a determination when: (1) necessary information is not available on the record; or (2) an interested party, (continued...)

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)

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

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

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>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 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).