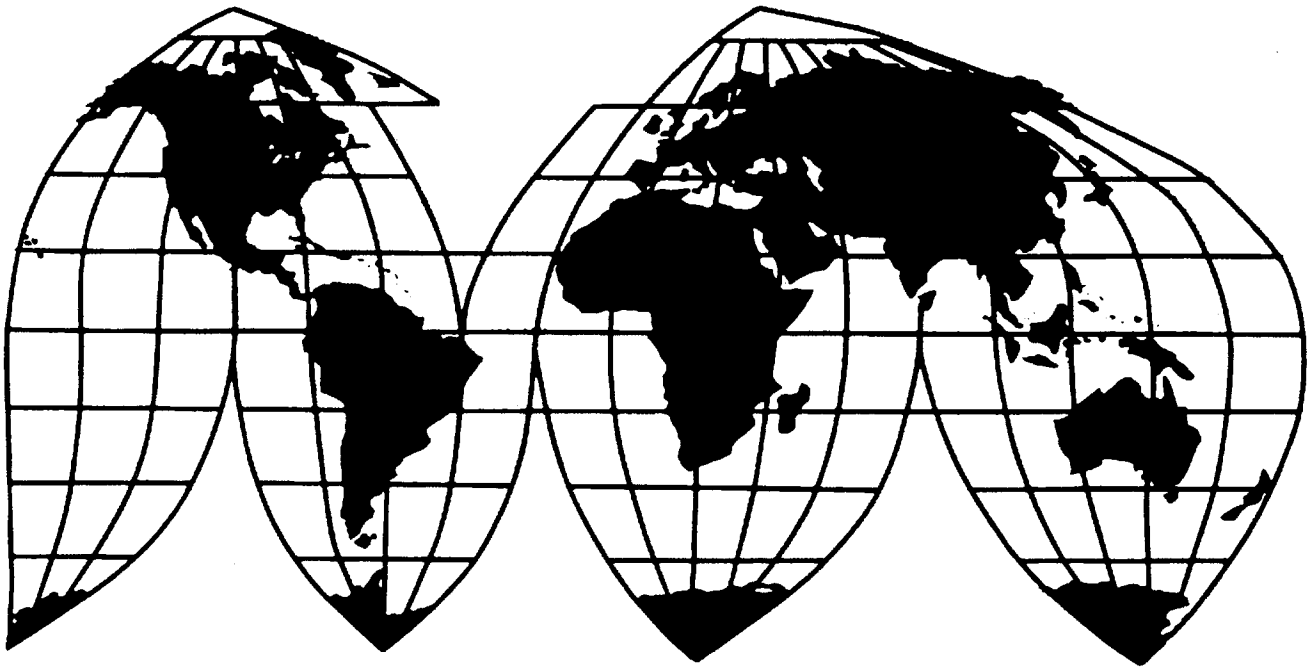
Chloropicrin From China

Investigation No. 731-TA-130 (Second Review)

Publication 3712 **August 2004**

U.S. International Trade Commission



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UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation No. 731-TA-130 (Second Review)

Chloropicrin from China

DETERMINATION

On the basis of the record[1] developed in the subject five-year review, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)) (the Act), that revocation of the antidumping duty order on chloropicrin from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

BACKGROUND

The Commission instituted this review on March 1, 2004 (69 F.R. 9638) and determined on June 4, 2004 that it would conduct an expedited review (69 F.R. 34402, June 21, 2004).

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

VIEWS OF THE COMMISSION

Based on the record in this five-year review, we determine under section 751(c) of the Tariff Act of 1930, as amended ("the Act"), that revocation of the antidumping duty order covering chloropicrin from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

I. BACKGROUND

In March 1984, the Commission determined that an industry in the United States was being materially injured by reason of imports of chloropicrin from China that were being sold at less than fair value.[1] That same month, the Department of Commerce ("Commerce") issued an antidumping duty order on imports of chloropicrin from China.[2] In November 1998, the Commission instituted its first five-year review pursuant to section 751(c) of the Act.[3]

In five-year reviews, the Commission first determines whether to conduct a full review (which would include a public hearing, the issuance of questionnaires, and other procedures) or an expedited review. In order to make this decision, the Commission first determines whether individual responses to the notice of institution are adequate. Next, based on those responses deemed individually adequate, the Commission determines whether the collective responses submitted by two groups of interested parties -- domestic interested parties (such as producers, unions, trade associations, or worker groups) and respondent interested parties (such as importers, exporters, foreign producers, trade associations, or subject country governments) -- demonstrate a sufficient willingness among each group to participate and provide information requested in a full review. If the Commission finds the responses from both groups of interested parties adequate, or if other circumstances warrant, it will determine to conduct a full review.[4]

In the first five-year review, four domestic producers filed a joint response, containing company-specific information: ASHTA Chemicals, Inc. ("ASHTA"), HoltraChem Manufacturing Company, L.L.C. ("HoltraChem"), Niklor Chemical Company, Inc. ("Niklor"), and Trinity Manufacturing, Inc. ("Trinity"). The Commission conducted an expedited review, pursuant to section 1675(c)(3)(B) of the Act, and ultimately determined that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[5] Commerce published its notice of continuation of the antidumping duty order in August 1999.[6]

In March 2004, the Commission instituted the present review to determine whether revocation of the antidumping duty order would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.[7] The Commission received a joint substantive response, containing company-specific information, to the notice of institution from three domestic producers (ASHTA,

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[1] Chloropicrin from the People's Republic of China, Inv. No. 731-TA-130 (Final), USITC Pub. No. 1505 (Mar. 1984) ("Original Determination").

[2] 49 Fed. Reg. 10691 (Mar. 22, 1984).

[3] 63 Fed. Reg. 58761 (Nov. 2, 1998).

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

[5] Chloropicrin from China, Inv. No. 731-TA-139 (Review), USITC Pub. 3175 (April 1999) ("1999 Review") at 4.

[6] 64 Fed. Reg. 42655 (Aug. 5, 1999).

[7] 69 Fed. Reg. 9638 (Mar. 1, 2004).

Niklor, and Trinity) and from a company that is not a producer but which represents that it has the capacity to produce chloropicrin (Arvesta Corporation).[8] The participating domestic producers accounted for all known domestic production of chloropicrin at that time. As in its first review, the Commission received no responses from respondent interested parties.

In June 2004, the Commission determined that the response of the domestic interested party group was adequate and that the respondent interested party group response was inadequate. The Commission voted to conduct an expedited review.[9]

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."[10] 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."[11] The imported product subject to the order under review consists of "chloropicrin, also known as trichloronitromethane. A major use of the product is as a pre-plant soil fumigant (pesticide). Such merchandise is currently classifiable under Harmonized Tariff Schedule (HTS) item number 2904.90.50."[12]

Chloropicrin is a highly toxic liquid chemical compound, used primarily as an active agent in pre-plant soil fumigants for killing fungi. Small amounts are used to control insects and rodents in grain storage and to prevent wood decay. The expense of using chloropicrin normally limits its application to high-value crops such as flowers and certain fruits, although it is also used for relatively lower-value crops which require less fumigant per acre.[13]

We find, based on the facts available, that the appropriate definition of the domestic like product in this expedited five-year review is the same as Commerce's scope and unchanged from the Commission's original determination and first five-year review.[14]

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[8] Collectively, we refer to these parties as the domestic producers.

[9] 69 Fed. Reg. 34402, 34403 (June 21, 2004); see also CR, PR at App. B (Explanation of Commission Determination on Adequacy).

[10] 19 U.S.C. § 1677(4)(A).

[11] 19 U.S.C. § 1677(10). See Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int'l Trade 1996); Torrington Co. v. United States, 747 F. Supp. 744, 748-49 (Ct. Int'l Trade 1990), aff'd, 938 F.2d 1278 (Fed. Cir. 1991). See also S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979).

[12] 69 Fed. Reg. 40601 (July 6, 2004).

[13] Confidential Staff Report (INV-BB-084, July 1, 2004) ("CR") at I-5, Public Staff Report at I-4.

[14] Original Determination at 3, 1999 Review at 4.

B. Domestic Industry

Section 771(4)(A) of the Act defines the relevant industry as the "domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product."[15] Accordingly, we find that the domestic industry includes all domestic producers of chloropicrin.[16]

III. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF MATERIAL INJURY IF THE ANTIDUMPING DUTY ORDER IS REVOKED

A. Legal Standard In A Five-Year Review

In a five-year review conducted under section 751(c) of the Act, Commerce will revoke an antidumping duty 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 antidumping duty order "would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time."[17] The SAA states that "under the likelihood standard, the Commission will engage in a counter-factual analysis; it must decide the likely impact in the reasonably foreseeable future of an important change in the status quo – the revocation or termination of a proceeding and the elimination of its restraining effects on volumes and prices of imports."[18] Thus, the likelihood standard is prospective in nature.[19]

The U.S. Court of International Trade has found that "likely," as used in the sunset review provisions of the Act, means "probable," and the Commission applies that standard in five-year reviews.[20] [21] [22]

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[15] 19 U.S.C. § 1677(4)(A). In defining the domestic industry, the Commission's general practice has been to include in the industry producers of all domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market, provided that adequate production-related activity is conducted in the United States. See United States Steel Group v. United States, 873 F. Supp. 673, 682-83 (Ct. Int'l Trade 1994), aff'd 96 F.3d 1352 (Fed. Cir. 1996).

[16] As noted, Arvesta Corporation does not currently produce chloropicrin, although it retains the capacity to do so.

[17] 19 U.S.C. § 1675a(a).

[18] 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). Likewise, the standard applies to suspended investigations that were never completed." SAA at 883.

[19] While the SAA states that "a separate determination regarding current material injury is not necessary," it indicates that "the Commission may consider relevant factors such as current and likely continued depressed shipment levels and current and likely continued [sic] 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.

[20] See NMB Singapore Ltd. v. United States, 288 F. Supp. 2d 1306, 1352 (Ct. Int'l Trade 2003) ("'likely' means probable within the context of 19 U.S.C. § 1675(c) and 19 U.S.C. § 1675a(a)"); Nippon Steel Corp. v. United States, Slip Op. 02-153 at 7-8 (Ct. Int'l Trade Dec. 24, 2002) (same); Usinor Industeel, S.A. v. United States, Slip Op. 02-152 at 4 n.3 & 5-6 n.6 (Ct. Int'l Trade Dec. 20, 2002) ("more likely than not" standard is "consistent with the court's opinion"; "the court has not interpreted 'likely' to imply any particular degree of 'certainty'"); Indorama Chemicals (Thailand) Ltd. v. United States, Slip Op. 02-105 at 20 (Ct. Int'l Trade Sept. 4, 2002) ("standard is based on a likelihood of continuation or recurrence of injury, not a certainty"); Usinor v. United States, Slip Op. 02-70 at 43-44

(continued...)

The statute states that "the Commission shall consider that the effects of revocation or termination may not be imminent, but may manifest themselves only over a longer period of time."[23] According to the SAA, a "'reasonably foreseeable time' will vary from case-to-case, but normally will exceed the 'imminent' timeframe applicable in a threat of injury analysis [in antidumping investigations]."[24] [25]

Although the standard in a five-year review is not the same as the standard applied in an original antidumping investigation, it contains some of the same fundamental 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 or the suspended investigation is terminated."[26] It directs the Commission to take into account its prior injury determinations, whether any improvement in the state of the industry is related to the order or the suspension agreement under review, whether the

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[20] (...continued)
(Ct. Int'l Trade July 19, 2002) ("'likely' is tantamount to 'probable,' not merely 'possible'").

[21] Vice Chairman Okun and Commissioners Lane and Pearson interpret the Court's standard to mean that the Commission must revoke an order unless it finds that the continuation or recurrence of material injury is "more likely than not." See Usinor Industeel, S.A. v. United States, Slip Op. 02-152 at 4 n.3 & 5-6 n.6 (Ct. Int'l Trade Dec. 20, 2002). Vice Chairman Okun and Commissioners Lane and Pearson refer to their dissenting views in Pressure Sensitive Plastic Tape from Italy, Inv. No. AA1921-167 (Second Review), USITC Pub. 3698 (June 2004) at 23-25. Vice Chairman Okun and Commissioner Lane note that while this standard may not equate to a high level of certainty, there may be reviews in which there could be "more than one likely outcome" as envisioned by the SAA at 883, but the likelihood of continuation or recurrence of injury is not more likely than any other outcome. Id. at 24.

[22] Commissioner Hillman interprets the statute as setting out a standard of whether it is "more likely than not" that material injury would continue or recur upon revocation. She assumes that this is the type of meaning of "probable" that the Court intended when the Court concluded that "likely" means "probable". See Separate Views of Vice Chairman Jennifer A. Hillman Regarding the Interpretation of the Term "Likely", in Certain Carbon Steel Products from Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, Korea, Mexico, The Netherlands, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom (Views on Remand), Invs. Nos. AA1921-197 (Review), 701-TA-231, 319-320, 322, 325-328, 340, 342, and 348-350 (Review), and 731-TA-573-576, 578, 582-587, 604, 607-608, 612, and 614-618 (Review) (Remand), USITC Pub. 3526 (July 2002) at 30-31.

[23] 19 U.S.C. § 1675a(a)(5).

[24] 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.

[25] In analyzing what constitutes a reasonably foreseeable time, Chairman Koplan examines all the current and likely conditions of competition in the relevant industry. He defines "reasonably foreseeable time" as the length of time it is likely to take for the market to adjust to a revocation or termination. In making this assessment, he considers 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, this 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.

[26] 19 U.S.C. § 1675a(a)(1).

industry is vulnerable to material injury if the order is revoked or the suspension agreement is terminated, and any findings by Commerce regarding duty absorption pursuant to 19 U.S.C. § 1675(a)(4).[27]

Section 751(c)(3) of the Act and the Commission's regulations provide that in an expedited five-year review the Commission may issue a final determination "based on the facts available, in accordance with section 776 of the Act."[28] We have relied on the facts available in this review, which consist primarily of information from the original investigation and first review, information collected by the Commission since the institution of this second five-year review, information submitted by the domestic producers, and official Commerce statistics.

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

B. Conditions of Competition

In evaluating the likely impact of the subject imports on the domestic industry if the order is revoked, the statute directs the Commission to evaluate all relevant economic factors "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."[29] In performing our analysis under the statute, we have taken into account the following conditions of competition in the U.S. market for chloropicrin.

Consumption of chloropicrin has grown significantly, *** in the years since the original determination, when imports from China represented nearly *** of apparent U.S. consumption.[30] With the disappearance of imports from China since the imposition of the antidumping duty order, domestic producers recaptured their earlier share of the market. While apparent U.S. consumption of chloropicrin has grown, domestic supply capacity has grown *** as well.[31] The domestic producers characterize the market as one with continuing price competition and also indicate that they currently operate at low capacity utilization rates.[32] There is no evidence of any nonsubject imports since the imposition of the order.[33]

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[27] 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. Commerce has made no duty absorption findings for chloropicrin.

[28] 19 U.S.C. § 1675(c)(3)(B); 19 C.F.R. § 207.62(e). Section 776 of the Act, in turn, authorizes the Commission to "use the facts otherwise available" in reaching a determination when: (1) necessary information is not available on the record or (2) an interested party or any other person withholds information requested by the agency, fails to provide such information in the time or in the form or manner requested, significantly impedes a proceeding, or provides information that cannot be verified pursuant to section 782(i) of the Act. 19 U.S.C. § 1677e(a).

[29] 19 U.S.C. § 1675a(a)(4).

[30] Total apparent U.S. consumption in 2003 was *** pounds, up from 12.3 million pounds in 1997, and *** pounds in 1983. Imports from China accounted for *** of the 1983 total. CR and PR at Table I-6. The record in this review indicates there have been no imports of chloropicrin from China in more than a decade. CR at I-12 and Table I-6, PR at I-8 and Table I-6.

[31] CR and PR at Table I-4.

[32] Response of Domestic Producers to Notice of Institution (April 20, 2004) ("Response of domestic producers") at 4.

[33] CR at I-11 to I-12 and Table I-6, PR at I-7 to I-8 and Table I-6.

While production has increased in the years since the original determination, technology and production methods are essentially unchanged.[34] Domestic producers indicate that prices for raw material inputs have increased in recent years.[35]

The primary use of chloropicrin is as an active ingredient in fumigants that are applied to the soil prior to planting.[36] Smaller amounts have been used to control insects and rodents in stored grain and to prevent decay in wood.[37] When used in fumigants, chloropicrin is often paired with methyl bromide, which has certain herbicidal properties that chloropicrin lacks.[38]

Use of methyl bromide in the U.S. market has been curtailed substantially in recent years as the United States has implemented a phase-out of the chemical under the Montreal Protocol on Substances that Deplete the Ozone Layer.[39] The United States was permitted a critical use exemption for 2005 in an amount equal to 35 percent of production in 1991.[40] The amount of any critical use exemptions in years beyond 2005 is unknown, as exemption allowances are to be determined on a yearly basis.[41]

As its availability has declined, users have reduced the proportion of methyl bromide used in fumigants and increased the proportion of other active ingredients, including chloropicrin.[42] The higher proportion of chloropicrin has contributed to an increase in demand for the chemical compared to demand during the original investigation and the first five-year review.[43] Efforts to develop a substitute for fumigants combining chloropicrin and methyl bromide have not yet yielded a practical alternative.[44] Accordingly, when and if methyl bromide use is further curtailed, the effects on demand for chloropicrin are unclear.[45]

As in the original determination, the available evidence suggests that chloropicrin is a commodity product and that there is a relatively high degree of substitutability between imported and domestic chloropicrin.[46] Accordingly, the available evidence suggests, as in the original investigation, that price is an important consideration in the purchasing decision for chloropicrin.

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

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[34] CR at I-7, PR at I-6.

[35] CR at I-7, PR at I-6.

[36] CR at I-6, PR at I-4.

[37] CR at I-5, PR at I-4.

[38] CR at I-6 to I-7, PR at I-4 to I-5.

[39] CR at I-6, PR at I-4 to I-5.

[40] CR at I-6, PR at I-5.

[41] CR at I-6, PR at I-5.

[42] CR at I-12, PR at I-8.

[43] CR at I-12, PR at I-8.

[44] CR at I-6, PR at I-5.

[45] Chloropicrin may be paired with an active ingredient other than methyl bromide in the future. CR at I-7, PR at I-5.

[46] Original Determination at A-3 to A-4.

C. Likely Volume of Subject Imports

In evaluating the likely volume of imports of subject merchandise if the order under review is revoked, the Commission is directed to consider whether the likely volume of imports would be significant either in absolute terms or relative to production or consumption in the United States.[47] 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.[48]

We conclude, based on the facts available,[49] that subject import volume is likely to increase significantly and would be significant if the order is revoked. In making this finding, we recognize that no subject imports are currently in the domestic market.[50] In a five-year review, however, our focus is on whether subject import volume is likely to be significant within a reasonably foreseeable time if the antidumping duty order is revoked.

The record from the original investigation indicates that the chloropicrin industry in China had the ability and willingness to establish quickly a significant presence in the U.S. market. From 1980 to 1983, China was the source of virtually all imported chloropicrin for the United States, accounting for *** percent of the total quantity of all imports during the period.[51] The volume of imports of chloropicrin from China increased sharply over this time period, rising from *** in 1980 to *** at its peak in 1982.[52]

During the original investigation, production of chloropicrin in China was highly oriented toward exports, with exports accounting for *** percent of all production.[53] China's existing chloropicrin industry was capable of rapidly increasing exports to the United States. Between 1980 and 1982, the volume of exports of chloropicrin from China into the United States rose ***.[54] By 1983, the U.S. market was China's primary export market, accounting for *** percent of all such exports that year.[55]

In the original investigation, the Commission found that annual production capacity in China was *** at a plant located in Dalien.[56] The domestic producers assert that current chloropicrin production capacity in China is estimated to be ***, and that China exports chloropicrin in significant volumes to

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[47] 19 U.S.C. § 1675a(a)(2).

[48] 19 U.S.C. § 1675a(a)(2)(A)-(D). The record contains no information pertaining to existing unused foreign capacity, existing inventories of the subject merchandise, the existence of barriers in other countries, or the potential for product shifting in China with respect to chloropicrin.

[49] See 19 U.S.C. § 1677e(a).

[50] The record shows no imports from China subject to the antidumping duty order in 2003. CR at I-12 and at Table I-6, PR at I-8 and at Table I-6.

[51] CR and PR at Table I-6 and nn.1 & 2.

[52] CR and PR at Table I-6 and nn.1 & 2.

[53] CR at I-14, PR at I-8 to I-9.

[54] CR and PR at Table I-6.

[55] CR at I-14, PR at I-9.

[56] CR at I-14, PR at I-8.

third countries.[57] Based on the facts available, we infer that, at a minimum, the Dalien plant continues to have the production capacity identified in the original investigation and that it is likely that total production capacity in China is significantly greater than the *** quantified in the original investigation. The volume of U.S. imports of chloropicrin from China in 1982 is equivalent to *** of current apparent U.S. consumption.[58] This suggests that the chloropicrin industry in China has ample ability to export significant volumes of chloropicrin to the United States if the order is revoked.[59] Because of the similarity in the conditions of competition prevailing today and those existing prior to the imposition of the order, it is likely that the chloropicrin industry in China would resume shipping significant volumes to the U.S. market in the absence of the antidumping duty order.[60]

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

D. Likely Price Effects of Subject Imports

In evaluating the likely price effects of subject imports if the antidumping duty order is revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared to domestic like products and if the subject imports are likely to enter the United States at prices that would have a significant depressing or suppressing effect on the price of domestic like products.[61]

The record in this expedited review contains a limited amount of pricing data. In the original determination, the Commission found that subject imports from China exhibited significant margins of underselling during 1980-83.[62] Likewise, the average unit values of U.S. imports of chloropicrin from China were significantly lower than those of U.S. shipments of chloropicrin by the domestic industry.[63] Declines in the domestic industry's U.S. shipment unit values were pronounced between 1982 and 1983, toward the end of the period examined.[64]

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[57] CR at I-14, PR at I-8.

[58] CR and PR at Table I-6.

[59] The record does not contain an estimate of current capacity utilization for the chloropicrin industry in China. In 1983, the capacity utilization rate for the Chinese chloropicrin industry was *** percent, indicating that *** capacity utilization rates in China did not prevent the steep increase in the volume of U.S. imports of the subject merchandise. Original Investigation Staff Report (INV-H-039, Feb. 27, 1984) at A-29.

[60] SAA at 884 ("If the Commission finds that pre-order conditions are likely to recur, it is reasonable to conclude that there is likelihood of continuation or recurrence of injury.").

[61] 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.

[62] Original Determination at 5.

[63] Compare CR and PR at Table I-5 with CR and PR at Table I-4.

[64] CR and PR at Table I-4.

In its original determination, the Commission found chloropicrin to be a commodity product and that the subject merchandise and the domestic like product had a relatively high level of substitutability.[65] This level of substitutability suggested that price was an important, if not critical, criterion in the purchasing decision for customers, and there is no evidence in the current record to suggest these facts have changed. Given these facts, it is likely that the chloropicrin industry in China would offer attractively low prices to U.S. purchasers in order to regain market share, as they did in the original investigation, if the antidumping duty order is revoked.[66] Thus, we conclude that prices for domestically produced chloropicrin would likely decline to a significant degree in response to the likely significant volumes of substitutable subject imports offered at lower prices.

Accordingly, we find that revocation of the antidumping duty order would be likely to lead to significant price effects, including significant underselling by the subject imports of the domestic like product, as well as significant price depression and suppression, within a reasonably foreseeable time.

E. Likely Impact of Subject Imports

In evaluating the likely impact of imports of subject merchandise if the order is revoked, the Commission is directed to consider all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including but not limited to: (1) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity; (2) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and (3) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more advanced version of the domestic like product.[67] 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.[68] 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.[69]

In the original determination the Commission found material injury to the domestic industry by reason of increased imports of chloropicrin at less than fair value, both in absolute terms and relative to

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[65] Original Determination at A-3 to A-4.

[66] The domestic producers assert that current chloropicrin exports from China to third country markets are priced 20 percent to 40 percent lower than current prices in the U.S. market. Response of domestic producers at 7.

[67] 19 U.S.C. § 1675a(a)(4).

[68] 19 U.S.C. § 1675a(a)(4). Section 752(a)(6) of the Act states that "the Commission may consider the magnitude of the margin of dumping" in making its determination in a five-year review. 19 U.S.C. § 1675a(a)(6). The statute defines the "magnitude of the margin of dumping" to be used by the Commission in five-year reviews as "the dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title." 19 U.S.C. § 1677(35)(C)(iv). See also SAA at 887. Commerce determined that the revocation of the antidumping duty order would be likely to lead to the continuation or recurrence of dumping by the sole identified Chinese producer at a rate of 58.0 percent. It determined an "all others" margin of 58.0 percent as well. 69 Fed. Reg. 40601, 40602 (July 6, 2004).

[69] 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.

domestic consumption.[70] It found declines in production and in shipments and market share, as well as declines in capacity utilization and deterioration of the domestic industry's financial condition.[71]

Since imposition of the antidumping duty order, the domestic industry's market share increased as subject imports exited the market. As noted above, the domestic industry, rather than nonsubject imports, gained the market share lost by the subject imports subsequent to imposition of the antidumping duty order.[72] The basic substitutability of the product has enabled the domestic industry to readily replace subject imports and regain domestic market share. Demand is unlikely to be increased by product development or new technology.[73] It is likely that any future increase in the market share of subject imports would be largely at the expense of the domestic industry. Domestic producers indicate that prices for chloropicrin in the U.S. market have been relatively stable.[74]

Domestic producers argue that they are vulnerable to material injury given uncertainty created by the projected phase out of methyl bromide.[75] However, we note that substantial methyl bromide use is permitted through 2005, and that the timetable for any subsequent reduction is uncertain. In addition, chloropicrin also is used alone or in conjunction with chemicals other than methyl bromide.[76] The domestic industry currently is operating at a level of capacity utilization that is *** than during the years examined in the first five-year review or in the original investigation, ***.[77] The domestic industry indicates that it is operating at a low capacity utilization rate and that operating margins are subject to increasing pressure from reported increases in raw materials costs.[78] While we have considered this factor, we find that the limited information on the record is inconclusive. Therefore, we do not find that the industry is in a "weakened state," as contemplated by the vulnerability criterion of the statute.[79]

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

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[70] Original Determination at 5.

[71] Original Determination at 4-5.

[72] CR and PR at Table I-6.

[73] It is unclear whether methyl bromide use will be reduced substantially from present levels, or what effect any such reduction would have on demand for chloropicrin.

[74] See CR at I-7 to I-8, PR at I-6.

[75] Response of Domestic Producers at 7.

[76] CR at I-5 to I-7, PR at I-4 to I-6.

[77] CR and PR at Table I-4. Capacity utilization was *** percent in 1980, *** percent in 1981, *** percent in 1982, *** percent in 1983, and *** percent in 2003.

[78] Response of domestic producers at 4, 6-7.

[79] 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...").

CONCLUSION

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

INFORMATION OBTAINED IN THE SECOND REVIEW

INTRODUCTION

Background

On March 1, 2004, the U.S. International Trade Commission (Commission) gave notice that it had instituted a second five-year review to determine whether revocation of the antidumping duty order on chloropicrin from China would be likely to lead to a continuation or recurrence of material injury within a reasonably foreseeable time.[1] On June 4, 2004, the Commission determined that the domestic interested party group response to its notice of institution was adequate;[2] the Commission also determined that the respondent interested party group response was inadequate because no response was received. The Commission found no other circumstances that would warrant conducting a full review.[3] Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930.[4] The Commission voted on this review on July 22, 2004, and notified Commerce of its determination on August 3, 2004. Information relating to the background of this review is presented in table I-1.

Table I-1
Chloropicrin: Chronology of investigation No. 731-TA-130 (Second Review)

Effective Date	Action
March 1, 2004	Commission institutes second five-year review (69 FR 9638)
March 1, 2004	Commerce initiates second five-year review (69 FR 9585)
June 4, 2004	Commission votes to conduct expedited second five-year review
June 4, 2004	Commission issues scheduling notice for second five-year review (69 FR 34402, June 21, 2004)
July 6, 2004	Commerce issues determination of expedited second five-year review (69 FR 40601)
July 22, 2004	Commission's vote
August 3, 2004	Commission's transmittal of determination and views to Commerce

Source: Cited *Federal Register* notices.

[1] All interested parties were requested to respond to the notice by submitting information requested by the Commission. Copies of the Commission's *Federal Register* notices are presented in app. A.

[2] The Commission received one submission in response to its notice of institution for the subject review. On April 20, 2004, a substantive response was filed on behalf of Trinity Manufacturing, Inc. ("Trinity"); Niklor Chemical Co., Inc. ("Niklor"); Ashta Chemicals, Inc. ("ASHTA"); and Arvesta Corporation ("Arvesta"). ASHTA, Niklor, and Trinity are the only companies currently producing chloropicrin in the United States. Arvesta has the capacity to produce chloropicrin and may choose to do so at a future time. *See Substantive Response of Arvesta, ASHTA, Niklor, and Trinity* ("Domestic Substantive Reponse"), p. 3 n.1 and 4. *See also* Memorandum INV-BB-063, *Chloropicrin from China: Investigation No. 731-TA-130 (Second Review) – Recommendation on Adequacy of Responses to Notice of Institution* (May 25, 2004).

[3] A copy of the *Explanation of Commission Determination on Adequacy* is presented in app. B.

[4] 19 U.S.C. § 1675(c)(3).

The Original Investigation and First Five-Year Review

The Commission completed its original investigation in March 1984, determining that an industry in the United States was materially injured by reason of imports of chloropicrin from China which Commerce determined were being sold, or likely to be sold, at less than fair value ("LTFV").[5] Commerce issued an antidumping duty order on the imports of such merchandise from China on March 22, 1984.[6] On November 2, 1998, the Commission instituted the first five-year review on chloropicrin. In March 1999, the Commission determined that revocation of the antidumping duty order on chloropicrin from China would be likely to lead to a continuation or recurrence of material injury within a reasonably foreseeable time.[7] A historical chronology of the original investigation and first five-year review is presented in table I-2.

Table I-2
Chloropicrin: Selected historical actions taken by the Commission and Commerce

Effective Date	Action
	Inv. No. 731-TA-130 (Final):
March 19, 1984	Commission issues determination (49 FR 11893, March 28, 1984)
March 22, 1984	Commerce issues antidumping duty order (A-570-002)[1] (49 FR 10691)
	Inv. No. 731-TA-130 (Review):[2]
November 2, 1998	Commission institutes review (63 FR 58761, November 2, 1998)
November 2, 1998	Commerce initiates review (63 FR 58709, November 2, 1998)
April 1, 1999	Commission issues determination (64 FR 16998, April 7, 1999)
April 14, 1999	Commerce issues continuation of antidumping duty order (64 FR 42655, August 5,1999)

[1] The dumping margin for chloropicrin was 58 percent *ad valorem* for all producers/exporters in China.
[2] The Commission's first five-year review also was expedited.

Source: Cited *Federal Register* notices.

Commerce's Final Results of Second Expedited Five-Year Review

On July 6, 2004, Commerce issued its "Final Results of Expedited Sunset Review" concerning chloropicrin from China.[8] The review covered all manufacturers and exporters of chloropicrin from China. Commerce determined that dumping is likely to continue or recur if the antidumping duty order is revoked, with margins of dumping of 58 percent *ad valorem.*

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[5] *Chloropicrin From The People's Republic of China: Inv. No. 731-TA-130 (Final)*, USITC Pub. 1505, March 1984. The original investigation resulted from a petition filed with Commerce and the Commission on behalf of Niklor Chemical Co., Inc., and LCP Chemicals and Plastics, Inc.

[6] 49 FR 10691. The order required the posting of a cash deposit equal to the estimated weighted-average dumping margin, which was 58.0 percent both for the reviewed firm, SINOCHEM, and for all other firms.

[7] 64 FR 16998, April 7, 1999.

[8] 69 FR 40601, July 6, 2004. *See* app. A.

Distribution of Continued Dumping and Subsidy Offset Funds to Affected Domestic Producers

Qualified U.S. producers of chloropicrin have been eligible to receive disbursements from the U.S. Bureau of Customs and Border Protection (Customs) under the Continued Dumping and Subsidy Offset Act of 2000 (CDSOA), also known as the Byrd Amendment.[9] Niklor Chemical and LCP Chemicals and Plastics[10] have been eligible to receive such funds in recent years.[11] However, no firm has received CDSOA funds in federal fiscal years 2001, 2002, or 2003.[12]

THE PRODUCT

Scope

The merchandise covered by this review is chloropicrin, also known as trichloronitromethane.[13] Chloropicrin is classified in subheading 2904.90.50 of the Harmonized Tariff Schedule of the United States (HTS),[14] a subheading that covers subject merchandise as well as well as other chemical products.

U.S. Tariff Treatment

Table I-3 presents current tariff rates for chloropicrin. The general column-1 duty rate of 3.7 percent is unchanged from the duty rate in effect during the Commission's first review of this order. In addition to the general column-1 duty rate set forth in the HTS, imports of chloropicrin from China currently are subject to an antidumping duty of 58 percent *ad valorem*.[15]

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[9] 19 U.S.C. § 1675c, 19 C.F.R. 159.64(g).

[10] For a discussion of LCP Chemicals and Plastics see the section of this report entitled "The Industry in the United States."

[11] 69 FR 31162, June 2, 2004.

[12] *See* U.S. Customs' *CDSOA Annual Report*s for fiscal years 2001, 2002, and 2003.

[13] *See* Commerce's web site (*http://ita.doc.gov/import_admin/records/sunset*) at Case History and Scope Information.

[14] Since 1989, chloropicrin has been classified under HTS subheading 2904.90.50. Prior to 1989, chloropicrin was classifiable under items 408.16, 408.29, or 425.52 of the former Tariff Schedules of the United States.

[15] Based on Commerce's antidumping duty order (A-570-002) (49 FR 10961, March 22, 1984). An administrative review of the antidumping duty order retained the 58 percent dumping margins for SINOCHEM and William Hunt & Co. (International) Ltd., a Hong Kong reseller of Chinese chloropicrin to the United States (50 FR 2844, January 22, 1985). There have been no further requests for administrative review of the antidumping duty order.

Table I-3
Chloropicrin: Tariff rates, 2004

HTS provision	Article description[1]	General[2]	Special[3]	Column 2[4]
		Rates *(percent ad valorem)*		
2904.90.50	Sulfonated, nitrated or nitrosaturated derivatives of hydrocarbons, whether or not halogenated: Other	3.7	Free	25

[1] An abridged description is provided for convenience; however, an unabridged description may be obtained from the respective headings, subheadings, and legal notes of the HTS.
[2] Normal trade relations rate, formerly known as the most-favored-nation duty rate, applicable to imports from China.
[3] For eligible goods under the Generalized System of Preferences (except India), Caribbean Basin Economic Recovery Act, Andean Trade Preference Act, Israel Free Trade Agreement, Jordan Free Trade Agreement, Chile Free Trade Agreement, Singapore Free Trade Agreement, and NAFTA-originating goods of Canada and Mexico.
[4] Applies to imports from a small number of countries that do not enjoy normal trade relations duty status.

Source: Harmonized Tariff Schedule of the United States (2004).

Description and Uses

Chloropicrin is a highly toxic liquid chemical compound having the formula CCl_3NO_2. At the time of the original investigation, it was used primarily as an active agent in pre-plant soil fumigants[16] for killing fungi; in addition, small amounts were used to control insects and rodents in grain storage and to prevent decay in wood.[17] Because of the high cost of using chloropicrin as a soil fungicide, about $900 per acre at the time of the original investigation, it is used mostly for high unit value crops such as strawberries, tobacco, flowers, and tree-grown fruit; when used for relatively low unit value crops such as potatoes it is generally because such crops require less fumigant per acre to achieve the same pest control and accompanying increase in yield.[18]

Chloropicrin still is used primarily as a soil fumigant. Although it can be used alone, chloropicrin usually is blended with other chemical agents into a single fumigant. The chloropicrin component of a mixed fumigant can range from less than 1 percent to more than 50 percent. A substantial amount of chloropicrin has been used for soil fumigation with methyl bromide (MeBr). However, in 1999 the Environmental Protection Agency (EPA) implemented a phase-out of the soil fumigant methyl bromide. In 2001, the volume of methyl bromide was reduced to 50 percent of the 1991 U.S. production volume. In 2003, the EPA implemented a 70 percent reduction from the 1991

[16] Generally, the soil fumigants are injected by machine into the soil shortly before planting to decrease harmful pests, which in turn may lead to increased plant yields. Plastic tarps are secured to the soil immediately after injection to ensure that the chemicals are not lost to the air by evaporation. *Staff Report of February 27, 1984*, p. A-5. This both increases the efficiency of the procedure and reduces harm to the environment. Currently, as chemical regulations become increasingly stringent, using thicker plastic tarps and increasing the protective gear of employees, coupled with reductions in methyl bromide/chloropicrin usage, are noted as options to maintain crop production and decrease environmental and safety risks. *The Implications of Banning Methyl Bromide for Fruit and Vegetable Production: Hearing before the Livestock and Horticulture Subcommittee of the Committee on Agriculture, House of Representatives. July 13, 2000: http://commdocs.house.gov/committees/ag/hag10657.000/hag10657_0f.htm.*

[17] *Staff Report of March 4, 1999*, p. I-5 (*citing Staff Report of February 27, 1984*, p. A-4).

[18] *Staff Report of March 4, 1999*, p. I-5 (*citing Staff Report of February 27, 1984*, p. A-5).

production volume, and methyl bromide is scheduled to be phased out entirely in 2005.[19] However, methyl bromide has been granted a Critical Use Exemption from the EPA and Montreal Protocol.[20] This allows for limited production, consumption, and importation of methyl bromide after the January 1, 2005 phase-out date for specific uses determined by the Protocol Parties to be "critical." Thus far, both California and Florida, states that rely heavily on the use of methyl bromide and chloropicrin in the production of their crops, have agreed to participate in the exemption process.[21] The United States was granted an internationally approved methyl bromide use allowance of 8,942 metric tons for 2005 (35 percent of the 1991 U.S. production volume). Exemption allowances will be decided on a yearly basis, taking into account the availability of technically and economically feasible alternatives to methyl bromide.[22] Currently, no single alternative possesses all the effective fumigation qualities of methyl bromide.[23]

Chloropicrin is viewed by some as a viable alternative to methyl bromide. However, it is limited in its capabilities when compared to methyl bromide (as all current alternatives are). The limitations of each alternative create the need to blend different chemicals and techniques to act as efficiently as methyl bromide. Chloropicrin lacks the herbicidal properties of methyl bromide; therefore, chloropicrin's use as an alternative is more likely to be in conjunction with 1,3-Dichloropropene (trade name Telone) and compounds with broader herbicidal properties such as metam sodium, dazomet, and pebulate.[24]

Chloropicrin itself is classified as a Restricted Use Pesticide by the EPA and has been subject to greater regulatory review as the supply of methyl bromide has decreased. Chloropicrin's re-registration eligibility decision (RED) report (case 0040) is expected to be issued in 2006 (possibly advanced to 2005), when the EPA will determine the chemical's future usability based on a reassessment of chloropicrin's effects on human health and the environment. Risk mitigation measures will be required as necessary.[25] Environmentally, chloropicrin does not contribute to significant ozone depletion because it breaks down both in soil and sunlight. The chemical, however, is highly toxic to humans and wildlife.[26]

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[19] *Domestic Substantive Response*, pp. 6-7.

[20] The Montreal Protocol on Substances that Deplete the Ozone Layer is an international treaty ratifed by the United States that aims to phase out specific ozone-depleting chemicals (such as methyl bromide) within set time frames and as technically and economically feasible alternatives become available. *See* the United Nations Environment Programme's *Montreal Protocol* website: *http://www.unep.ch/ozone/Treaties_and_Ratification/2B_montreal%20protocol.asp.*

[21] *See* the EPA's Methyl Bromide Phase-out website: *http://www.epa.gov/spdpublc/mbr/cueqa.html.*

[22] *See* the Environmental News Service's *Global Methyl Bromide Exemptions over 13,000 tons, March 29, 2004*: *http://www.keepmedia.com/ShowItemDetails.do?itemID=454215&extID=10032&oliID=213.*

[23] *See* the EPA's *Alternatives to Pre-Plant Uses of Methyl Bromide Index*: *http://www.epa.gov/spdpublc/mbr/preplant.html.*

[24] *See* the U.S. Department of Agriculture's online 2003 economic research publication, *Amber Waves*: *http://www.ers.usda.gov/Amberwaves/April03/Features/MethylBromide.htm.*

[25] 69 FR 25082, May 5, 2004 for EPA's reregistration schedule. *See also* EPA's website: *http://cfpub.epa.gov/oppref/rereg/status.cfm?show=rereg.*

[26] *See* the U.S. Department of Agriculture's Technical Report: Chloropicrin as a Soil Fumigant, July 1996: *http://www.ars.usda.gov/is/np/mba/july96/. See also* The Chloropicrin Pesticide Fact Sheet, prepared for the U.S. Department of Agriculture by Information Ventures, Inc.: *http://infoventures.com/e-hlth/pestcide/chlorpcn.html.*

Production Process

At the time of the original investigation, chloropicrin was produced in the United States by mixing nitromethane and sodium hypochlorite to form chloropicrin and sodium hydroxide (caustic soda). The sodium hydroxide was either wasted or recycled back into the production of sodium hypochlorite (formed from chlorine and caustic soda).[27] While the technology and production methods remain relatively unchanged, U.S. producers report that the cost of raw materials is rising while prices for chloropicrin remain static. This situation, they contend, exerts pressure on operating margins of the domestic chloropicrin producers.[28] Also, as chloropricrin has become subject to greater regulatory review, the U.S. industry has invested substantially in studies supporting the continuing use of chloropicrin in the United States and elsewhere.[29]

THE INDUSTRY IN THE UNITED STATES

U.S. Producers

In 1984, there were two producers of chloropicrin: Niklor, with a plant in Long Beach, CA, and LCP, with plants in Orrington, ME, and Ashtabula, OH.[30] Niklor still produces chloropicrin, but has ***. Niklor reportedly has ***.[31] The LCP plant in Ashtabula, OH, was acquired by LinChem, Inc. in 1989 and has operated as ASHTA since May 1992.[32] The LCP plant at Orrington, ME, was operated by Hanlin Group Inc. until it was acquired by HoltraChem as part of bankruptcy proceedings in 1994.[33] Holtrachem, a former producer of chloropicrin that responded to the notice of institution in the first five-year review in 1998, was purchased by Arvesta Corp. in 2000. Although Arvesta currently sells domestically produced chloropicrin at the wholesale level in the United States and retains production capacity, it does not currently produce chloropicrin.[34] Finally, Trinity has produced chloropicrin in Hamlet, NC, since at least 1990.

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[27] *Staff Report of February 27, 1984*, p. A-6.

[28] *Domestic Substantive Response*, p. 6.

[29] *Domestic Substantive Response*, p. 7.

[30] Two other firms produced chloropicrin in the United States during the period examined in the original investigation; Dow had produced chloropicrin for about 20 years when it ceased production at its aging plant in November 1980 and began relying exclusively on purchases for its blended fumigants, and International Mineral and Chemical Corp. produced chloropicrin until April 1982 when it sold its plants in Orrington, ME, and Ashtabula, OH, to LCP.

[31] According to domestic producers, Niklor ***. *Domestic Substantive Response*, p. 4. *See also Staff Report of March 4, 1999*, p. I-7 (noting ***).

[32] LCP's parent company sold the plant to LinChem, an employee group. LinChem changed its name to ASHTA to avoid confusion with its former parent, which had filed for bankruptcy protection. *Staff Report of March 4, 1999*, p. I-6 (*citing Chemical Marketing Reporter*, March 29, 1993, starting at p. 45, and *Chemical Week*, December 22, 1993, starting at p. 29 as obtained online by proquest at *http://proquest.umi.com*).

[33] *Staff Report of March 4, 1999*, p. I-6 (*citing Chemical Week*, March 9, 1994, starting at p. 14, and *Chemical Week*, August 21, 1996, starting at p. 57; as obtained online by proquest at *http://proquest.umi.com*).

[34] *Domestic Substantive Response*, p. 3 n.1.

U.S. Producers' Capacity, Production, and Shipments

Niklor, Arvesta, ASHTA, and Trinity responded in a timely manner to the Commission's notice of institution in this review. Niklor, ASHTA, and Trinity are believed to account for all U.S. production of chloropicrin and all known commercial shipments in 2003.[35] Information on the U.S. industry, therefore, is based on the data from these three companies. Table I-4 presents information on the domestic industry's capacity, production, and shipments during 1980-83, 1997, and 2003.

Table I-4
Chloropicrin: U.S. producers' capacity, production, and shipments, 1980-83, 1997, and 2003

* * * * * * *

U.S. IMPORTS AND APPARENT U.S. CONSUMPTION

U.S. Imports

Prior to 1980, there were no known imports of chloropicrin from any source. As shown in table I-5, U.S. imports from China increased from *** pounds in 1980 to *** pounds in 1981 and then more than *** to *** pounds in 1982.[36] During January-September 1983, imports continued to increase (by *** percent over the the January-September 1982 level), but they then ceased following Commerce's September 1983 preliminary dumping determination.[37] The only other known source of chloropicrin during the original investigation was a trial shipment of *** pounds from *** in 1982.[38] Table I-5 presents information on U.S. imports of chloropicrin during 1980-83, 1997, and 2003.

Table I-5
Chloropicrin: U.S. imports from China, 1980-83, 1997, and 2003

* * * * * * *

During the original investigation, there were four firms that imported chloropicrin from China.[39] U.S. producers reported in 1997 that they were not aware of any significant imports of chloropicrin since

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[35] Arvesta did not produce chloropicrin in 2003, nor at the time of the U.S. producer's reponse to the Commission's notice of institution of a second five-year review, and therefore is not included in the data. Arvesta does have the capacity to produce chloropicrin and may produce chloropicrin at a future time. No information has been provided as to Arvesta's production status after the response was issued. Capacity was reported to be *** pounds. *Domestic Substantive Response*, Attachment A.

[36] *Staff Report of February 27, 1984*, p. A-12 and A-13, and *Chloropicrin from the People's Republic of China, USITC Pub. 1505, March 1984*, p. 5.

[37] Information relating to January-September 1982-83 imports is available in *Staff Report of February 27, 1984.*

[38] *Staff Report of March 4, 1999*, p. I-8 (*citing Staff Report of February 27, 1984*, p. A-12).

[39] *Staff Report of March 4, 1999*, p. I-9 (*citing Staff Report of February 27, 1984*, pp. A-10 and A-11). Two soil fumigant producers, Great Lakes and Trical, accounted for *** of the imports from China during 1980-83. Great Lakes, directly and indirectly through the trading firm, Toyomenka, accounted for more than *** percent of the U.S. imports of chloropicrin from China during 1980-83 (and accounted for ***). Another U.S. soil fumigant producer, Trical, imported Chinese chloropicrin directly and purchased some imported product from Great Lakes during the original investigation. *Ibid*, pp. A-10, A-11, and A-45.

the imposition of the antidumping order and that they believed such imports effectively ceased with the preliminary dumping determination by Commerce in September 1983.[40] Similarly, U.S. producers in 2004 report that they are not aware of any imports of chloropicrin from China since the first review.[41] No information was provided by U.S. producers about imports from any source other than China.

Data on the value of annual imports that are subject to the antidumping order indicate that there have been no imports of chloropicrin from China during the period 1993-97.[42] There is no evidence of imports of the subject merchandise since 1997.

Apparent U.S. Consumption and Market Shares

Apparent U.S. consumption of chloropicrin in 2003 exceeded that of 1997, as that of 1997 exceeded 1980-83. This trend is consistent with the introduction of blends of chloropicrin and methyl bromide that were higher in chloropicrin than previously, designed to "stretch" the available supplies of methyl bromide.[43] In 2003, there were no known imports of chloropicrin from China and zero or nearly zero imports from other sources, so U.S. producers accounted for all or virtually all of apparent U.S. consumption, as they had prior to 1981. Table I-6 presents information on apparent U.S. consumption and market shares for the periods 1980-83, 1997, and 2003.

Table I-6
Chloropicrin: U.S. shipments of domestic product, U.S. imports, by sources, apparent U.S. consumption, and market shares, 1980-83, 1997, and 2003

* * * * * * *

THE INDUSTRY IN CHINA

During November 1, 1982, through April 30, 1983, the period of Commerce's original investigation, SINOCHEM accounted for all of China's known exports of chloropicrin to the United States. During the time of the Commission's original investigation, SINOCHEM reported that the capacity to produce chloropicrin in China was *** pounds per year and that only one chemical plant in China, located in the city of Dalien, was known to produce chloropicrin for export to the United States. There are no known public data concerning chloropicrin operations at the Dalien plant; however, U.S. producers at the time of the first review believed that the plant continued to produce chloropicrin and that it exported significant quanitites of chloropicrin to ***.[44]

The domestic interested parties that responded to the Commission's notice of the institution of its second five-year review claim that the capacity of Dalian Dye-Chemicals Group to produce chloropicrin in China has expanded by *** percent since 1998, and now is estimated to total *** pounds. They also report that China exports substantial quantities of chloropicrin to third countries, particularly in Japan and Europe, at prices that are 20 percent to 40 percent below U.S. prices.[45]

Exports accounted for between *** and *** percent of production in China during 1980-83, and

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[40] *Staff Report of March 4, 1999*, p. I-8 (*citing Response* of domestic producers in the first five-year review, p. 7).

[41] *Domestic Substantive Response*, p. 5.

[42] *Staff Report of March 4, 1999*, p. I-8 (*citing* Commerce's web site: *http://ita.doc.gov/import_admin/records/sunset* at Case History and Scope Information).

[43] *Domestic Substantive Response*, p. 6.

[44] *Staff Report of March 4, 1999*, p. I-10.

[45] *Domestic Substantive Response*, p. 4.

exports to the United States increased from *** percent of exports in 1980 to *** percent in 1983. There have been no known exports of chloropicrin from China to the United States since Commerce issued the antidumping duty order in 1984. However, in the first review, U.S. producers cited the availibility of nitromethane in China, noting that this important raw material for making chloropicrin is not only produced in China but also exported to the United States.[46]

[46] *Staff Report of March 4, 1999*, p. I-11. *See also Nitromethane from China*, Inv. No. 731-TA-650 (Final), USITC Pub. 2773, May 1994.

APPENDIX A

FEDERAL REGISTER NOTICES

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–130 (Review)]

Chloropicrin from China

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order investigation on chloropicrin from China.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on chloropicrin from China would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission;[1] to be assured of consideration, the deadline for responses is April 20, 2004. Comments on the adequacy of responses may be filed with the Commission by May 14, 2004. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: Effective: March 1, 2004.

FOR FURTHER INFORMATION CONTACT: Megan Spellacy (202–205–3190) or Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On March 22, 1984, the Department of Commerce issued an antidumping duty order on imports of chloropicrin from China (49 FR 10691). Following five-year reviews by Commerce and the Commission, effective April 14, 1999, Commerce issued a continuation of the antidumping duty order on imports of chloropicrin from China (64 FR 42655, August 5, 1999). The Commission is now conducting a second review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 04–5–082, expiration date June 30, 2005. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to this review:

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

(2) The Subject Country in this review is China.

(3) The Domestic Like Product is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determination and its expedited five-year review determination, the Commission defined the Domestic Like Product as chloropicrin.

(4) The Domestic Industry is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determination and its expedited five-year review determination, the Commission defined the Domestic Industry as all domestic producers of chloropicrin.

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

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

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission is seeking guidance as to whether a second transition five-year review is the "same particular matter" as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was "personal and substantial." However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register.** Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is April 20, 2004. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is May 14, 2004. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information To Be Provided in Response to This Notice of Institution: As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate

in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Country that currently export or have exported Subject Merchandise to the United States or other countries since 1997.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 2003 (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production;

(b) the quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s); and

(c) the quantity and value of U.S. internal consumption/company transfers of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 2003 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Country accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Country; and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from the Subject Country.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 2003 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Country accounted for by your firm's(s') production; and

(b) the quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Country accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Country after 1997, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Country, and such merchandise from other countries.

(11) (Optional) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: February 23, 2004.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–4500 Filed 2–27–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–130 (Second Review)]

Chloropicrin From China

AGENCY: United States International Trade Commission.

ACTION: Scheduling of an expedited five-year review concerning the antidumping duty order on chloropicrin from China.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty order on chloropicrin from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: June 4, 2004.

FOR FURTHER INFORMATION CONTACT: Blair Cantfil (202–205–1888 or *Blair.Cantfil@usitc.gov*), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility

impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background

On June 4, 2004, the Commission determined that the domestic interested party group response to its notice of institution (69 FR 9638, March 1, 2004) of the subject five-year review was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.[1] Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Act.

Staff Report

A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on July 1, 2004, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written Submissions

As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before July 7, 2004 and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by July 7, 2004. However, should the Department of Commerce extend the time limit for its completion of the final results of its review, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 Fed. Reg. 68036 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination

The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: June 16, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–13970 Filed 6–18–04; 8:45 am]

BILLING CODE 7020–02–P

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

[2] The Commission has found the responses submitted by Arvesta Corp.; Ashta Chemicals, Inc.; Niklor Chemical Co., Inc.; and Trinity Manufacturing, Inc. to be individually adequate. Comments from other interested parties will not be accepted (see 19 CFR 207.62(d)(2)).

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-002]

Chloropicrin From the People's Republic of China; Final Results of the Expedited Sunset Review of Antidumping Duty Order

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

ACTION: Expedited sunset review of antidumping duty order on Chloropicrin from the People's Republic of China; final results.

SUMMARY: On March 1, 2004, the Department of Commerce ("the Department") published a notice of initiation of sunset review on chloropicrin from the People's Republic of China ("China"). On the basis of the notice of intent to participate, adequate substantive comments filed on behalf of the domestic interested parties, and an inadequate response (in this case, no response) from respondent interested parties, we determined to conduct an expedited, 120-day sunset review. As a result of this review, we find that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the levels listed below in the section entitled "Final Results of Review."

DATES: Effective July 6, 2004.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230; telephone: (202) 482-5050.

SUPPLEMENTARY INFORMATION:

Background

On March 1, 2004, the Department published the notice of initiation of sunset review of the antidumping duty order on chloropicrin from China pursuant to section 751(c) of the Tariff Act of 1930, as amended (the "Act").[1] The Department received Notice of Intent to Participate on behalf of Ashta Chemicals, Inc., Arvesta Corporation, Niklor Chemical Company, and Trinity Manufacturing Inc., (collectively, "the domestic interested parties"), within the deadline specified in section 351.218(d)(1)(i) of the Department's Regulations ("*Sunset Regulations*"). The domestic interested parties claimed interested party status under Section 771(9)(C) of the Act as U.S. producers of chloropicrin. We received a complete response from the domestic interested parties within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i). We received no response from any interested party respondents in this proceeding. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted an expedited, 120-day, sunset review of this antidumping duty order.

This order remains in effect for all Chinese manufacturers, producers, and exporters.

Scope of the Order

The merchandise subject to this antidumping duty order is chloropicrin, also known as trichloronitromethane. A major use of the product is as a pre-plant soil fumigant (pesticide). Such merchandise is currently classifiable under Harmonized Tariff Schedule (HTS) item number 2904.90.50. The HTS item number is provided for convenience and customs purposes. The written description remains dispositive.

Analysis of Comments Received

All issues raised in this case are addressed in the "Issues and Decision Memorandum" ("Decision Memo") from Ronald K. Lorentzen, Acting Director, Office of Policy, Import Administration, to Jeffrey A. May, Acting Assistant Secretary for Import

[1] *See Initiation of Five-Year (Sunset) Reviews*, 69 FR 9585 (March 1, 2004).

Administration, dated June 29, 2004, which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail if the finding were to be revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in room B–099 of the main Commerce Building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov/frn*, under the heading "July 2004." The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Review

We determine that revocation of the antidumping duty order on chloropicrin from China would be likely to lead to continuation or recurrence of dumping at the following percentage weighted-average percentage margins:

Manufacturers/Exporters/Producers	Weighted-average margin (percent)
China National Chemicals Import and Export Corporation (SINOCHEM)	58.00
China-wide rate	58.00

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

We are issuing and publishing the results and notice in accordance with sections 751(c), 752, and 777(i)(I) of the Act.

Dated: June 29, 2004.

Jeffrey A. May,

Acting Assistant Secretary for Import Administration.

[FR Doc. 04–15230 Filed 7–2–04; 8:45 am]

BILLING CODE 3510–DS–P

APPENDIX B

STATEMENT ON ADEQUACY

EXPLANATION OF COMMISSION DETERMINATION ON ADEQUACY
in
Chloropicrin from China, Inv. No. 731-TA-130 (Second Review)

On June 4, 2004, the Commission determined that it should proceed to an expedited review in the subject five-year review pursuant to section 751(c)(3)(B) of the Tariff Act of 1930, as amended, 19 U.S.C. § 1675(c)(3)(B).

The Commission received a joint response from U.S. producers ASHTA Chemicals, Inc., Niklor Chemical Co., Inc., and Trinity Manufacturing, Inc.[1] The Commission determined that the responses were individually adequate. The Commission also determined that the responses were an adequate domestic interested party group response because the three producers account for all domestic production of the like product.

The Commission did not receive a response from any respondent interested party. Consequently, the Commission determined that the respondent interested party group response was inadequate. The Commission did not find any circumstances that would warrant conducting a full review. The Commission therefore determined to conduct an expedited review. A record of the Commissioners' votes is available from the Office of the Secretary and the Commission's web site (http://www.usitc.gov).

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[1]Arvesta Corporation joined in the response from U.S. producers. Arvesta Corporation is currently not a producer of chloropicrin; in 2000 it purchased the facilities of a former producer and retains the capacity to produce chloropicrin.