

UNITED STATES INTERNATIONAL TRADE COMMISSION

PERSULFATES FROM CHINA Investigation No. 731-TA-749 (Review)

DETERMINATION AND VIEWS OF THE COMMISSION (USITC Publication No. 3555, October 2002)

DETERMINATION

On the basis of the record¹ developed in the subject five-year review, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)), that revocation of the antidumping duty order on persulfates 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

On September 6, 2002, the Commission determined that the domestic interested party group response to its notice of institution (67 FR 38333, June 3, 2002) was adequate and the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.² Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Act.

The Commission transmitted its determination in this review to the Secretary of Commerce on October 31, 2002. The views of the Commission are contained in USITC Publication 3555 (October 2002), entitled *Persulfates From China: Investigation No. 731-TA-749 (Review)*.

¹ The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 C.F.R. § 207.2(f)).

² A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements is available from the Office of the Secretary and at the Commission's web site.

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 concerning persulfates 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 June 1997, the Commission determined that an industry in the United States was materially injured by reason of imports of persulfates from China that the Department of Commerce (“Commerce”) determined to be sold at less than fair value (“LTFV”).¹ On June 3, 2002, the Commission instituted a review pursuant to section 751(c) of the Act to determine whether revocation of the antidumping duty order on persulfates from China would likely lead to continuation or recurrence of material injury within a reasonably foreseeable time.²

In five-year reviews, the Commission initially 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 to be adequate, or if other circumstances warrant, it will determine to conduct a full review.³

The Commission received one response to its notice of institution. The response came from FMC Corporation (“FMC”), the sole U.S. producer of persulfates (thus reflecting 100 percent of total domestic production).⁴ FMC also filed comments on adequacy, arguing that the Commission should expedite the review because its response to the notice of institution was adequate and no other interested party (respondent producers or others) had filed a response.

On September 6, 2002, the Commission found that the domestic interested party group response was adequate. The Commission also found that the respondent interested party group response was inadequate. Pursuant to 19 U.S.C. § 1675(c)(3)(B), the Commission expedited review of this matter.⁵

¹ Persulfates from China, Inv. No. 731-TA-749 (Final), USITC Pub. 3044 (June 1997) (“Original Determination”), at 3.

² 67 Fed. Reg. 38333 (June 3, 2002).

³ See 19 C.F.R. § 207.62(a); 63 Fed. Reg. 30599, 30602-05 (June 5, 1998).

⁴ Response of FMC Corporation to Notice of Institution (July 23, 2002) (“Initial Response”).

⁵ 67 Fed. Reg. 59863 (September 24, 2002).

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.”⁶ The Act defines the “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.”⁷

In its final five-year review determination, Commerce defined the imported product covered by the existing antidumping duty order as

persulfates, including ammonium, potassium, and sodium persulfates. The chemical formula[s] for these persulfates are, respectively, $(\text{NH}_4)_2\text{S}_2\text{O}_8$, $\text{K}_2\text{S}_2\text{O}_8$, and $\text{Na}_2\text{S}_2\text{O}_8$.⁸

Persulfates are salts that are produced in the form of a dry white crystalline powder that is odorless. They are derived from a common source, persulfuric acid, and the active ingredient for all three salts is the persulfate anion. Persulfates have two major applications: (1) as catalysts in the process of polymerization; and (2) as oxidants in cleaning, microetching, and plating processes. Persulfates as catalysts are used in producing, *inter alia*, latex for carpet backing and paper coating, acrylic latex paint, and other acrylics and polyvinyls. Persulfates as oxidants are used in the production of, *inter alia*, printed circuit boards. They are also used in such other applications as the desizing and bleaching of textiles, water treatment, and film processing. Persulfates account for only a small percentage of the cost of the final products in which they are used.⁹

The starting point of the Commission’s like product analysis in a five-year review is the Commission’s like product determination in the original investigation.¹⁰ In the original investigation, the Commission found one domestic like product consisting of ammonium, potassium, and sodium persulfates.¹¹ The Commission based this finding on similarities in physical characteristics and uses, common manufacturing facilities and production employees, producer perceptions of similarity between the

⁶ 19 U.S.C. § 1677(4)(A).

⁷ 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).

⁸ 67 Fed. Reg. 62226, 62227 (October 4, 2002). Commerce also noted that the subject merchandise is currently classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) as follows: for ammonium and potassium persulfates, 2833.40.60; for sodium persulfate, 2833.40.20. Id.

⁹ Confidential Report (“CR”) at I-4-I-5, Public Report (“PR”) at I-4-I-5.

¹⁰ In its like product determination, the Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) common manufacturing facilities, production processes, and production employees; (5) customer or producer perceptions; and, where appropriate, (6) price. See Timken, 913 F. Supp. at 584. No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation. The Commission looks for clear dividing lines among possible like products, and disregards minor variations. See, e.g., S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979); Torrington, 747 F. Supp. at 748-49.

¹¹ Original Determination at 4.

products, evidence of interchangeability among the three products, and common channels of distribution.¹² In its response to the Commission’s notice of institution, FMC stated that it agreed with the Commission’s definition of the domestic like product from the original investigation.¹³ No party takes issue with this definition, nor have new facts been presented to warrant a conclusion different from that which the Commission originally reached. Accordingly, we find, based on the available information, one domestic like product consisting of ammonium, sodium, and potassium persulfates.

B. Domestic Industry

Section 771(4)(A) of the Act defines the relevant domestic industry as the “producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.”¹⁴ 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.¹⁵ Consistent with our definition of the domestic like product, we find that the domestic industry comprises all domestic producers of ammonium, sodium, and potassium persulfates – that is, FMC, the sole domestic producer.¹⁶

III. REVOCATION OF THE ANTIDUMPING DUTY ORDER ON PERSULFATES FROM CHINA IS LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME

A. Legal Standard

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

Section 752(a) of the Act states that in a five-year review “the Commission shall determine whether revocation of an order [or finding], or termination of a suspended investigation, would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.”¹⁷ The Uruguay Round Agreements Act (“URAA”) Statement of Administrative Action (“SAA”) indicates that “under the likelihood standard, the Commission will engage in a counter-factual analysis; it must decide the likely impact in the reasonably foreseeable future of an important change in the status quo – the revocation [of the

¹² Original Determination at 4.

¹³ Initial Response at 21.

¹⁴ 19 U.S.C. § 1677(4)(A).

¹⁵ 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 We note that, unlike in the original investigation, there are no related party issues in this review. See 19 U.S.C. § 1677(4)(B). In the original investigation, the Commission found that FMC imported very small amounts of Chinese persulfates in 1994 and 1995, but determined that appropriate circumstances did not exist to exclude FMC from the domestic industry as a related party because the amounts were minuscule and FMC’s interests clearly lay in production, not importation. Original Determination at 5. There is no evidence that FMC has imported Chinese persulfates since 1995.

¹⁷ 19 U.S.C. § 1675a(a).

order or finding] . . . and the elimination of its restraining effects on volumes and prices of imports.”¹⁸ Thus, the likelihood standard is prospective in nature.¹⁹ The statute states that “the Commission shall consider that the effects of revocation . . . may not be imminent, but may manifest themselves only over a longer period of time.”²⁰ According to the SAA, a “‘reasonably foreseeable time’ will vary from case-to-case, but normally will exceed the ‘imminent’ time frame applicable in a threat of injury analysis [in antidumping and countervailing duty determinations].”²¹

Although the standard in five-year reviews is not the same as the standard applied in original antidumping or countervailing duty investigations, it contains some of the same elements. The statute provides that the Commission is to “consider the likely volume, price effect, and impact of imports of the subject merchandise on the industry if the order is revoked.” It directs the Commission to take into account its prior injury determinations, whether any improvement in the state of the industry is related to the order under review, and whether the industry is vulnerable to material injury if the order is revoked.^{22 23}

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.”²⁴ We have relied on the facts available in this review, which consist primarily of the record in the original investigation, information submitted by FMC, and official Commerce statistics.

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

¹⁸ URAA SAA, H.R. Rep. No. 316, 103d Cong., 2d Sess., vol. I at 883-84 (1994).

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 prices for the domestic like product in the U.S. market in making its determinations of the likelihood of continuation or recurrence of material injury if the order is revoked.” SAA at 884.

²⁰ 19 U.S.C. § 1675a(a)(5).

²¹ 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.*

²² 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.

²³ Section 752(a)(1)(D) of the Act directs the Commission to take into account in five-year reviews involving antidumping proceedings “the findings of the administrative authority regarding duty absorption.” 19 U.S.C. § 1675a(a)(1)(D). Commerce made no duty absorption findings in its five-year review determination. 67 Fed. Reg. 62226 (October 4, 2002).

²⁴ 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).

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.”²⁵ Conditions of competition that are relevant to the persulfates industry are discussed below.

In the original investigation, the Commission highlighted several pertinent conditions of competition. First, although competition comes from both subject and non-subject imports, there is only one domestic producer, FMC.²⁶ Second, demand is cyclical; trends in the market are closely tied to economic conditions in the housing, automotive, and packaged goods markets, among others.²⁷ During the original period of investigation, total apparent consumption increased. The domestic industry’s share of consumption fluctuated, but showed a slight overall increase between 1994 and 1996. Domestic capacity remained steady during this period.²⁸ Third, an August 1995 fire shut down FMC’s manufacturing for six weeks and destroyed 800 tons of inventory. The inventory lost was not significant in terms of total production for 1995, but there was evidence that many purchasers sought to develop alternate sources of supply other than FMC.²⁹ Fourth, in June 1995, the European Union (“EU”) imposed a provisional antidumping duty of 83.3 percent on imports of persulfates from China. The EU imposed its final antidumping duty, also 83.3 percent, in December 1995.³⁰

The current conditions of competition are similar in a number of respects to those existing at the time of the original investigation, although the EU antidumping order imposed in 1995 on persulfates from China expired in early 2002.³¹ FMC remains the only domestic producer, although competition in the market continues to come from both subject and non-subject imports.³² Imports, subject and non-subject, constituted *** percent of domestic consumption in 2001, down from *** percent in 1996.³³

Demand trends for persulfates remain cyclical and tied to the economic conditions of the markets for products in which persulfates are used.³⁴ Apparent U.S. consumption increased substantially between the period of the original investigation and 2001.³⁵ The 2001 figure, however, signals a softening in demand, continuing into 2002 according to FMC, that has resulted from the overall downturn in the U.S. economy and is exacerbated by a decline in printed circuit board production, an important market for persulfates.³⁶

Domestic production capacity has remained level at *** million pounds since the original period of investigation. U.S. consumption has increased overall since the original period of investigation, as has the

²⁵ 19 U.S.C. § 1675a(a)(4).

²⁶ Original Determination at 6.

²⁷ Original Determination at 6.

²⁸ Original Determination at 7.

²⁹ Original Determination at 6.

³⁰ Original Determination at 6.

³¹ CR at I-15, PR at I-11.

³² Initial Response at 1.

³³ CR and PR at Table I-3.

³⁴ Initial Response at 5.

³⁵ For the years 1994 through 1996, the figures in millions of pounds were ***, respectively. CR and PR at Table I-3. In 2001, apparent U.S. consumption stood at *** million pounds.

³⁶ CR at I-13, PR at I-9; Initial Response at 5, 19.

domestic capacity utilization rate, which was *** percent in 2001, compared with *** percent in 1994 and *** percent in 1996.³⁷ China's persulfates production capacity, on the other hand, increased *** between 1996 and 2000 and its capacity utilization rate declined from *** percent in 1996 to 45.2 percent in 2000.³⁸

As the Commission found in the original investigation, subject imports and U.S. product are interchangeable.³⁹ In addition, persulfates are a commodity-like product for which purchasers actively seek and use the availability of lower-priced product to obtain more favorable prices from an incumbent supplier.⁴⁰ Price remains a very important factor in purchasing decisions for persulfates. The interchangeability of subject imports and U.S. product and the significance of price in the U.S. persulfates market have only increased, given that the quality of the Chinese product reportedly has improved since the original period of investigation.⁴¹

Based on the available evidence, we find that these conditions of competition are not likely to change significantly in the reasonably foreseeable future. Accordingly, they provide the basis upon which we assess the likely effects of revocation within a reasonably foreseeable time.

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.⁴² 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.⁴³

In the original investigation, the Commission found the volume and increase in volume of subject imports to be significant.⁴⁴ The total quantity of shipments of subject imports more than doubled between 1994 and 1995 and continued to increase significantly between 1995 and 1996, for a nearly three-fold increase over the period of investigation. In terms of value, subject import shipments followed the same trend.⁴⁵ The market share of subject imports, by quantity, effectively doubled between 1994 and 1995 and

³⁷ CR and PR at Table I-1.

³⁸ CR and PR at Table I-4. Aggregate capacity for China rose from *** million pounds in 1996 to 75 million pounds in 1998 and 137 million pounds in 2000. Initial Response at Exh. 3A; CR and PR at Table I-4; Confidential Staff Report of Original Investigation, INV-U-046 (June 3, 1997) ("Staff Report of June 3, 1997") at VII-2 and Table VII-1.

³⁹ Original Determination at 4, 12.

⁴⁰ Original Determination at 11-12; Initial Response at 7.

⁴¹ Initial Response at 6; Original Determination at 11 n.62 (noting that there was "little" evidence of "significant" quality differences between subject imports and domestic persulfates).

⁴² 19 U.S.C. § 1675a(a)(2).

⁴³ 19 U.S.C. § 1675a(a)(2)(A-D).

⁴⁴ Original Determination at 11.

⁴⁵ Original Determination at 10.

increased by almost another third between 1995 and 1996, for a nearly three-fold increase during the period of investigation. In terms of value, subject imports' market share more than doubled in the same period.⁴⁶

The original investigation demonstrates that the Chinese persulfates industry was able to establish quickly a significant presence in the U.S. market. The antidumping duty order imposed in 1997 had a restraining effect on these imports. The volume of subject imports in 1996 was *** million pounds, the same year China's market share reached a pre-order high of *** percent in terms of quantity.⁴⁷ After the order was imposed, imports of persulfates from China, based on official Commerce statistics, declined markedly to 1.9 million pounds in 1997 and then increased erratically to 4.1 million pounds in 2000.⁴⁸ The volume in 2001, for which the most recent Commerce statistics are available, was 3.2 million pounds, and China's market share for that year was *** percent of apparent U.S. consumption.⁴⁹ Imports from China have therefore maintained a post-order presence in the U.S. market, although they have not attained their pre-order highs. Chinese import volumes in 2001 returned to the level seen in 1994, the first year of the original period of investigation.⁵⁰ The volume of non-subject imports has returned to the highest levels of the pre-order period but, given that apparent U.S. consumption is higher, their U.S. market share is below that of the original period of investigation.⁵¹

China's persulfates industry reportedly has expanded since the original investigation. At that time, there were four known producers of persulfates in China with significant production.⁵² Respondents in the original investigation claimed that there were another five persulfates producers in China, four that produced 100 tons or less and one that captively consumed nearly all of its production.⁵³ In this review, the available data indicate that there are twelve known Chinese persulfates producers, four of which began production in 1999.⁵⁴ In terms of production capacity, the smallest among the twelve producers has a capacity of 880,000 pounds. Ten have production capacities in excess of 2 million pounds, five in excess of 13 million pounds.⁵⁵ The largest producer of persulfates in China, Shanghai Ai Jian Reagent Co., Ltd. ("Ai Jian"), has expanded its capacity from 29 million pounds in 1999 to over 46 million pounds in 2000 and maintained a capacity utilization rate in 2000 of only 46 percent.⁵⁶ China's aggregate production capacity nearly doubled between 1998 and 2000, growing from 75 million pounds in 1998 to 137 million pounds in 2000. The aggregate capacity utilization rate in 2000 was 45 percent.⁵⁷ Thus, China's excess capacity in 2000 exceeds total U.S. consumption.⁵⁸

⁴⁶ Original Determination at 10.

⁴⁷ CR and PR at Tables I-2 and I-3.

⁴⁸ CR at I-11, PR at I-8; CR and PR at Figure I-1.

⁴⁹ CR and PR at Tables I-2 and I-3.

⁵⁰ CR and PR at Table I-2.

⁵¹ CR and PR at Tables I-2 and I-3.

⁵² Original Determination at VII-1.

⁵³ Original Determination at VII-1.

⁵⁴ CR at I-14, PR at I-10; Initial Response at 9 and Exh. 4.

⁵⁵ Initial Response at Exh. 3A.

⁵⁶ Initial Response at Exh. 3A.

⁵⁷ Initial Response at Exh. 3A.

⁵⁸ CR and PR at Tables I-3, I-4.

Data from the original investigation showed that exports accounted for a predominant part of Chinese shipments, and that the United States was an important export market.⁵⁹ China's persulfates industry remains export oriented. For example, Ai Jian states on its website that its products are exported to more than thirty countries and have received preapproval from several major U.S. companies, such as Dow Chemical, BASF, Rohm and Haas, and 3M.⁶⁰ Another major producer, Shaanxi Baohua Chemical Co., Ltd., which has a capacity of over 19 million pounds and operated in 2000 at a capacity utilization rate of only 33 percent, states on its website that it is ISO certified and that, "[r]elying on its export business, the [Baohua persulfates] products have been used by the firms of Europe, the Americas, Southeast Asia, and Hong Kong and Taiwan." The company "warmly" welcomes "the businesses in the world" as customers.⁶¹ Other persulfates producers in China also promote their product for worldwide export.⁶²

In light of the increase in the volume and market share of subject persulfates during the original investigation, the significant excess capacity resulting from the Chinese persulfates industry's recent capacity expansion, and the Chinese industry's continuing export orientation, we conclude that the likely volume of imports of the subject merchandise would be significant absent the restraining effect of the antidumping duty order.⁶³

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 whether the subject imports are likely to enter the United States at prices that otherwise would have a significant depressing or suppressing effect on the price of domestic like products.⁶⁴

Pricing data from the original investigation showed that Chinese products undersold domestic persulfates in 56 of 57 pricing comparisons, by margins as high as 50.4 percent. Given the high degree of interchangeability between domestic and Chinese persulfates⁶⁵ and the clear importance of price in purchasing decisions, the Commission noted that even small margins of underselling were significant. The Commission also found, consistent with reports of purchasers using lower-priced product as leverage in purchasing negotiations, numerous confirmed instances of lost sales and lost revenues. The Commission

⁵⁹ From 1994 to 1996, exports accounted for between *** and *** percent of the Chinese industry's total shipments, with exports to the United States accounting for between *** and *** percent of total shipments. Staff Report of June 3, 1997, at Table VII-1.

⁶⁰ Initial Response at 10-11 and Exh. 5.

⁶¹ Initial Response at 11 and Exh. 6.

⁶² Initial Response at 11-12 and Exhs. 7-9.

⁶³ That the EU revoked its antidumping duties earlier this year, thus potentially making exports to the EU more attractive, does not alter our conclusion, given the scope of the Chinese industry's expansion and sheer magnitude of its unused capacity.

⁶⁴ 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.

⁶⁵ FMC points out that, because Chinese producers have continued to improve the quality of their product, subject imports and the domestic like product are "even more" interchangeable today than they were in 1997. Initial Response at 6.

concluded that LTFV imports suppressed domestic prices to a significant degree. The domestic industry was unable to raise its prices to help offset 1995 and 1996 increases in operating costs because of the large presence of dumped imports of persulfates from China.⁶⁶

The limited record in this review shows that post-order average unit values of imports of persulfates from China have actually declined since the original investigation, notwithstanding the discipline imposed by the order. The average unit value, per pound, of imported subject merchandise was \$0.50 in 1996. Average unit values per pound fluctuated between \$0.43 and \$0.45 from 1997 to 2000. In 2001, the figure was \$0.49.⁶⁷

Given the price sensitivity of the U.S. persulfates market and the interchangeability of subject imports and the domestic product, the persistent underselling by subject imports in the original investigation, and the continuing, low post-order prices for Chinese persulfates, coupled with the substantial excess production capacity in China and softening demand conditions in the U.S. market, we find that, if the order were revoked, significant volumes of subject imports likely would significantly undersell the domestic like product to gain market share and would have significant depressing or suppressing effects on the prices of the domestic like product 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.⁶⁸ 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.⁶⁹ As instructed by the statute, we have considered the

⁶⁶ Original Determination at 11-12.

⁶⁷ CR and PR at I-11 and Table I-2. The probative value of average unit value data may be limited to some extent by differences in product mix among sources and changes in product mix over time. Even so, we note that for U.S. commercial shipments, FMC's average unit values per pound were \$0.73 in 1996 and \$0.77 in 2001. CR and PR at Table I-1. FMC reports that its average prices per pound for all persulfates were \$0.78 in 1999 and \$0.77 in 2000. Initial Response at 14 n.35.

⁶⁸ 19 U.S.C. § 1675a(a)(4).

⁶⁹ Id. Section 752(a) of the Act states that "the Commission may consider the magnitude of the margin of dumping" in making its determination in a five-year review. 19 U.S.C. § 1675a(a)(6). The statute defines the "magnitude of the margin of dumping" to be used by the Commission in five-year reviews as "the dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title." 19 U.S.C. § 1677(35)(C)(iv). See also SAA at 887.

In the final results of its expedited sunset review of the antidumping order on persulfates from China, Commerce determined that revocation of the order would likely lead to a continuation or recurrence of dumping at weighted-average margins of 32.22 percent for Sinochem Jiangsu Wuxi Import & Export Corporation, 34.41 percent for Shanghai Ai Jian Import & Export Corporation, 34.97 percent for Guangdong Petroleum Chemical Import and Export Trade, and 119.02 percent "PRC-wide." 67 Fed. Reg. 62226, 62227 (October 4, 2002).

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.⁷⁰

In the original investigation, the Commission noted that certain indicators of industry performance showed improvement over the period of investigation, including production, shipments, and net sales, all of which rose along with domestic consumption. However, gross profit declined “steadily and substantially” during the same period. Operating income also declined throughout the investigation period and became an operating loss in 1996. Unit sales values increased only slightly, while unit COGS and unit SG&A increased “steadily and significantly.”⁷¹ The Commission found that the sharp increase in subject import volume and market share at LTFV prices that were often significantly below prices for comparable domestic products prevented the domestic industry from offsetting at least some of its increased costs with price increases. That large purchasers frequently turned to subject imports when offered lower prices constituted additional evidence of the adverse impact that LTFV imports of persulfates had on the domestic industry, particularly on its financial performance.⁷²

There is limited information in the record concerning the current condition of the domestic industry. FMC has not increased production capacity since the original investigation, and its average unit values of U.S. shipments have remained essentially flat since 1999 (since 1996 they are up by *** percent).⁷³ Certain industry indicators have improved since the order was imposed: U.S. producer’s production, U.S. shipments, capacity utilization, and market share all increased.⁷⁴ We attribute these improvements to the positive effect of the order in restraining subject import volumes.⁷⁵ The limited information in this review, however, does not permit a determination of whether the domestic industry is vulnerable to material injury if the antidumping duty order is revoked.⁷⁶

As discussed above, revocation of the antidumping duty order would likely lead to significant increases in the volume of subject imports from China. Given softening demand conditions and the likely significant underselling by the subject imports, the significant increase in subject imports is likely to cause a significant decline in the volume of the domestic producer’s shipments as well as significant negative price effects. We find that the volume and price effects of the subject imports would have a significant negative impact on the domestic industry and would likely cause the domestic industry to lose market share. In addition, the price and volume declines would likely have a significant adverse impact on the production, shipments, sales, and revenue levels of the domestic industry. The reductions in the industry’s production, sales, and revenue levels would have a direct adverse impact on the industry’s profitability, as well as its ability to raise capital and make and maintain necessary capital investments. Finally, we find it likely that revocation of the order will result in commensurate employment declines for the industry.

⁷⁰ 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.

⁷¹ Original Determination at 12-13.

⁷² Original Determination at 14.

⁷³ CR and PR at Table I-1; Initial Response at 14 n.35. See supra note 67.

⁷⁴ CR and PR at Tables I-1 and I-3.

⁷⁵ Absent financial performance data for the years following the imposition of the order, we are unable to measure with any specificity the order’s impact on FMC’s current financial condition.

⁷⁶ Based on the limited record in this review, Commissioner Bragg does not find that the domestic industry is currently in a weakened state, as contemplated by the vulnerability criterion of the statute.

For all of these reasons, we conclude that revocation of the antidumping duty order on persulfates from China likely would have a significant adverse impact on the domestic industry within a reasonably foreseeable time.

CONCLUSION

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