

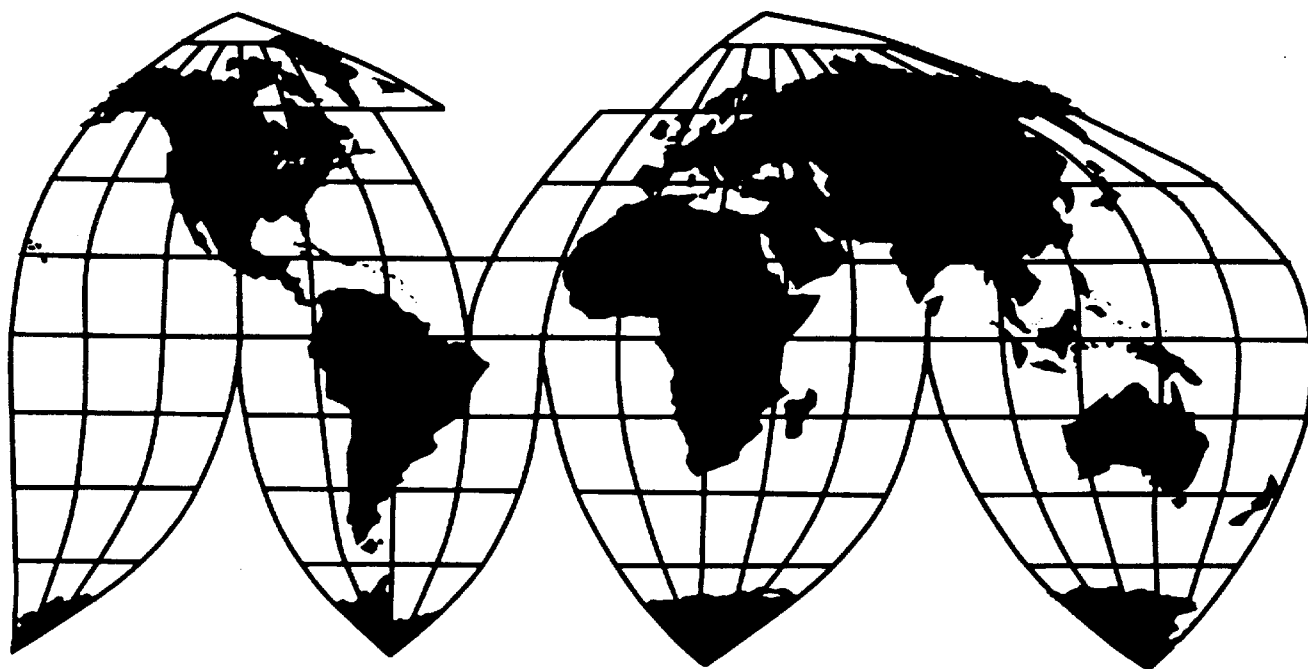
# Persulfates From China

Investigation No. 731-TA-749 (Second Review)

Publication 3988

March 2008

**U.S. International Trade Commission**



Washington, DC 20436

# U.S. International Trade Commission

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*Director of Operations*

---

### *Staff assigned*

Christopher Cassise, *Investigator*  
Rhonda Hughes, *Attorney*  
  
George Deyman, *Supervisory Investigator*

**Address all communications to  
Secretary to the Commission  
United States International Trade Commission  
Washington, DC 20436**

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Note.--Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report.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



# UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation No. 731-TA-749 (Second Review)

## PERSULFATES FROM CHINA

### **DETERMINATION**

On the basis of the record<sup>1</sup> developed in the subject five-year review, the United States International Trade Commission (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**

The Commission instituted this review on November 1, 2007 (72 FR 61907) and determined on February 4, 2008 that it would conduct an expedited review (73 FR 8903, February 15, 2008). The Commission transmitted its determination in this investigation to the Secretary of Commerce on March 31, 2008.

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





## VIEWS OF THE COMMISSION

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

### 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 Commerce determined to be sold at less than fair value.<sup>1</sup> Commerce issued its antidumping duty order in 1997.

In the first review investigation, the Commission received one response to its notice of institution from FMC, the sole U.S. producer of persulfates (thus reflecting 100 percent of total domestic production).<sup>2</sup> The Commission found that the domestic interested party response was adequate. The Commission also found that the respondent interested party response was inadequate, as no Chinese producer of persulfates responded to the Commission’s notice of institution. Pursuant to 19 U.S.C. § 1675(c)(3)(B), the Commission conducted an expedited review of the matter and found that revocation of the antidumping duty order on persulfates from China would be likely to lead to a continuation or recurrence of material injury within a reasonably foreseeable time.<sup>3</sup>

The Commission instituted this second review on November 1, 2007.<sup>4</sup> As in the first review, the Commission received one response to the notice of institution from FMC, the sole known producer of persulfates in the United States. The Commission did not receive any responses from any producer or exporter of persulfates in China or from any U.S. importers of the subject merchandise.

On February 4, 2008, the Commission found the domestic interested party group response to the notice of institution adequate and the respondent interested party group response inadequate.<sup>5</sup> The Commission did not find any circumstances that would warrant conducting a full review. It determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930, as amended.<sup>6</sup> Accordingly, we rely on the facts available on the record, which consist primarily of information from the original and first review investigations as well as information collected in this five-year review, including that submitted by FMC.<sup>7</sup>

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

<sup>2</sup> First Review Staff Report at I-3 n.2.

<sup>3</sup> Persulfates from China, Inv. No. 731-TA-749 (Review), USITC Pub. 3555 (Oct. 2002), at 1 (“First Review Determination”).

<sup>4</sup> 72 Fed. Reg. 61,907 (Nov. 1, 2007).

<sup>5</sup> See Explanation of Commission Determination on Adequacy.

<sup>6</sup> Id.; 19 U.S.C. § 1675(c)(3).

<sup>7</sup> Section 751(c)(3)(B) of the Act indicates that the Commission in an expedited five-year review may issue a determination based on the facts available. See 19 U.S.C. § 1677e(a).

## II. DOMESTIC LIKE PRODUCT AND INDUSTRY

### A. Domestic Like Product

In making its determination under section 751(c), the Commission defines the “domestic like product” and the “industry.”<sup>8</sup> The Act defines 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.”<sup>9</sup> In five-year reviews, the Commission looks to the domestic like product definition from the original determination and any previous reviews and considers whether the record indicates any reason to revisit that definition.<sup>10</sup>

In its expedited sunset determination, Commerce defined the subject merchandise 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  $\text{Na}_2\text{S}_2\text{O}_8$ . Potassium persulfates are currently classifiable under subheading 2833.40.10 of the Harmonized Tariff Schedule of the United States (“HTSUS”). Sodium persulfates are classifiable under HTSUS subheading 2833.40.20. Ammonium and other persulfates are classifiable under HTSUS subheadings 2833.40.50 and 2833.40.60.<sup>11</sup>

The scope definition set out above is unchanged from Commerce’s original scope determination.

Persulfates are salts that are produced in the form of a dry white crystalline powder that is odorless. The three salts are indistinguishable when subject to a visual or tactile examination. They are all derived from a common source, persulfuric acid, and the active ingredient for all three salts is the persulfate anion. Persulfates are used in many industrial processes and commercial products. They have two major applications: (1) as catalysts or “initiators” in the process of polymerization and (2) as oxidants in cleaning, microetching and plating processes. Persulfates as catalysts are used in producing latex for carpet backing and paper coating, acrylic latex paint and for other acrylics and polyvinyls used in adhesives, among other uses. Persulfates as oxidants are used in printed circuit boards, among other uses. Persulfates are also used in applications such 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.<sup>12</sup>

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<sup>8</sup> 19 U.S.C. § 1677(4)(A).

<sup>9</sup> 19 U.S.C. § 1677(10). See Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int’l Trade 1996); Torrington Co. v. United States, 747 F. Supp. 744, 748-49 (Ct. Int’l Trade 1990), aff’d, 938 F.2d 1278 (Fed. Cir. 1991). See also S. Rep. No. 249, 96<sup>th</sup> Cong., 1<sup>st</sup> Sess. 90-91 (1979).

<sup>10</sup> See Stainless Steel Sheet and Strip from France, Germany, Italy, Japan, Korea, Mexico, Taiwan, and the United Kingdom, Inv. Nos. 701-TA-380 to 382 and 731-TA-797 to 804 (Review), USITC Pub. 3788 at 6 (July 2005); Crawfish Tail Meat from China, Inv. No. 731-TA-752 (Review), USITC Pub. 3614 at 4 (July 2003); Steel Concrete Reinforcing Bar from Turkey, Inv. No. 731-TA-745 (Review), USITC Pub. 3577 at 4 (Feb. 2003).

<sup>11</sup> 73 Fed. Reg. 11,868 (Mar. 5, 2008). We note that HTSUS subheadings 2833.40.10 and 2833.40.50 no longer exist, but are still contained in the scope.

<sup>12</sup> Confidential Staff Report (“CR”) at I-7, Public Staff Report (“PR”) at I-5.

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 determination.<sup>13</sup> In the original investigation, the Commission found one domestic like product consisting of ammonium, potassium and sodium persulfates.<sup>14</sup> The Commission based this finding on similarities in physical characteristics and uses, common manufacturing facilities and production employees, producer perceptions of similarity between the products, evidence of interchangeability among the three products, and common channels of distribution.<sup>15</sup>

In the first review, the Commission again found one domestic like product consisting of persulfates.<sup>16</sup> In this second review, FMC states that it agrees with the Commission's prior definition of the domestic like product.<sup>17</sup> FMC also states that there have been no significant changes in the characteristics or uses of persulfates that would warrant revisiting the Commission's original like product determination. No new facts have been presented to warrant a conclusion different from that originally reached by the Commission. Accordingly, we find, based on the available information, that there is one domestic like product consisting of ammonium, sodium and potassium persulfates, coextensive with the scope of the order.

## **B. Domestic Industry and Related Parties**

Section 771(4)(A) of the Act defines the relevant domestic industry as the "producers as a whole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product."<sup>18</sup> In defining the domestic industry, the Commission's general practice has been to include in the industry producers of all domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market, provided that adequate production-related activity is conducted in the United States.<sup>19</sup> 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.<sup>20</sup>

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<sup>13</sup> 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, when appropriate, (6) price. See Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int'l Trade 1996). 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, 96<sup>th</sup> Cong., 1<sup>st</sup> Sess. 90-91 (1979); 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).

<sup>14</sup> Original Determination at 4.

<sup>15</sup> Original Determination at 4.

<sup>16</sup> First Review Determination at 4-5.

<sup>17</sup> FMC's Response to Notice of Institution at 28 (Dec. 21, 2007).

<sup>18</sup> 19 U.S.C. § 1677(4)(A).

<sup>19</sup> 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).

<sup>20</sup> 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

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

For the reasons stated below, 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 domestic industry producing persulfates within a reasonably foreseeable time.

#### 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.”<sup>21</sup> The Uruguay Round Agreements Act (“URAA”), Statement of Administrative Action (“SAA”), states that “under the likelihood standard, the Commission will engage in a counter-factual analysis; it must decide the likely impact in the reasonably foreseeable future of an important change in the status quo – the revocation or termination of a proceeding and the elimination of its restraining effects on volumes and prices of imports.”<sup>22</sup> Thus, the likelihood standard is prospective in nature.<sup>23</sup> The U.S. Court of International Trade has found that “likely,” as used in the five-year review provisions of the Act, means “probable,” and the Commission applies that standard in five-year reviews.<sup>24 25 26</sup>

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<sup>20</sup> (...continued)  
persulfates since 1995.

<sup>21</sup> 19 U.S.C. § 1675a(a).

<sup>22</sup> The 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.

<sup>23</sup> While the SAA states that “a separate determination regarding current material injury is not necessary,” it indicates that “the Commission may consider relevant factors such as current and likely continued depressed shipment levels and current and likely continued [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.

<sup>24</sup> 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)”), aff’d without opinion, 140 Fed. Appx. 268 (Fed. Cir. 2005); 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 (Ct. Int’l Trade July 19, 2002) (“‘likely’ is tantamount to ‘probable,’ not merely ‘possible’”).

<sup>25</sup> For a complete statement of Commissioner Okun’s interpretation of the likely standard, see Additional Views of Vice Chairman Deanna Tanner Okun Concerning the “Likely” Standard in Certain Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Argentina, Brazil, Germany, and Italy, Inv. Nos. 701-TA-362 (Review) and 731-TA-707-710 (Review) (Remand), USITC Pub. 3754 (Feb. 2005).

<sup>26</sup> Commissioner Lane notes that, consistent with her views in Pressure Sensitive Plastic Tape from Italy, Inv. No. AA1921-167 (Second Review), USITC Pub. 3698 (June 2004) at 15-17, she does not concur with the U.S. Court of International Trade’s interpretation of “likely” but she will apply the Court’s standard in this review and all

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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.”<sup>27</sup> According to the SAA, a “‘reasonably foreseeable time’ will vary from case-to-case, but normally will exceed the ‘imminent’ timeframe applicable in a threat of injury analysis in original investigations.”<sup>28</sup>

Although the standard in a five-year review is not the same as the standard applied in an original antidumping duty 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 orders are revoked or the suspended investigation is terminated.”<sup>29</sup> It directs the Commission to take into account its prior injury determination, whether any improvement in the state of the industry is related to the order or the suspension agreement under review, whether the industry is vulnerable to material injury if the orders are revoked or the suspension agreement is terminated, and any findings by Commerce regarding duty absorption pursuant to 19 U.S.C. § 1675(a)(4).<sup>30</sup>

No respondent interested party has participated in this review. The record, therefore, contains limited information with respect to the persulfates industry in China. Accordingly, we rely on the facts available on the record, which consist primarily of information from the original investigation and first review and information collected in this five-year review, including that submitted by FMC.<sup>31 32</sup>

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<sup>26</sup> (...continued)

subsequent reviews until either Congress clarifies the meaning or the U.S. Court of Appeals for the Federal Circuit addresses the issue.

<sup>27</sup> 19 U.S.C. § 1675a(a)(5).

<sup>28</sup> SAA at 887. Among the factors that the Commission should consider in this regard are “the fungibility or differentiation within the product in question, the level of substitutability between the imported and domestic products, the channels of distribution used, the methods of contracting (such as spot sales or long-term contracts), and lead times for delivery of goods, as well as other factors that may only manifest themselves in the longer term, such as planned investment and the shifting of production facilities.” *Id.*

<sup>29</sup> 19 U.S.C. § 1675a(a)(1).

<sup>30</sup> 19 U.S.C. § 1675a(a)(1). Commerce did not make any duty absorption findings with respect to the order under review. *See Commerce’s Review Determination*, 73 Fed. Reg. 11,868. The statute further provides that the presence or absence of any factor that the Commission is required to consider shall not necessarily give decisive guidance with respect to the Commission’s determination. 19 U.S.C. § 1675a(a)(5). While the Commission must consider all factors, no one factor is necessarily dispositive. SAA at 886.

<sup>31</sup> 19 U.S.C. § 1677e(a) 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 other person withholds information requested by the agency, fails to provide such information in the time, form, or manner requested, significantly impedes a proceeding, or provides information that cannot be verified pursuant to section 782(i) of the Act. 19 U.S.C. § 1677e(a). The verification requirements in section 782(i) are applicable only to Commerce. 19 U.S.C. § 1677m(i). *See Titanium Metals Corp.*, 155 F. Supp. 2d at 765 (“[T]he ITC correctly responds that Congress has not required the Commission to conduct verification procedures for the evidence before it, or provided a minimum standard by which to measure the thoroughness of a Commission investigation.”).

<sup>32</sup> Commissioner Okun notes that the statute authorizes the Commission to take adverse inferences in five-year reviews, but such authorization does not relieve the Commission of its obligation to consider the record evidence as a whole in making its determination. 19 U.S.C. § 1677e. She generally gives credence to the facts supplied by the participating parties and certified by them as true, but bases her decision on the evidence as a whole, and does not automatically accept participating parties’ suggested interpretations of the record evidence. Regardless of the level of participation and the interpretations urged by participating parties, the Commission is obligated to consider all evidence relating to each of the statutory factors and may not draw adverse inferences that render such analysis superfluous. “In general, the Commission makes determinations by weighing all of the available evidence regarding  
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## B. Conditions of Competition and the Business Cycle

In evaluating the likely impact of the subject imports on the domestic industry, the statute directs the Commission to consider all relevant economic factors “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”<sup>33</sup> The following conditions of competition are relevant to our determination.

*Demand.* In the original investigation, the Commission found that demand was cyclical and that trends in the market were closely tied to economic conditions in the housing, automotive and packaged goods markets, among others. Total apparent consumption increased irregularly. 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.<sup>34</sup>

In the first review, the Commission found that the conditions of competition were similar to those of the original investigation. Demand trends remained cyclical and tied to the economic conditions of the markets for products in which persulfates were used. Apparent U.S. consumption increased \*\*\* between the period of the original investigation and 2001. The 2001 figure, however, signaled a softening in demand, continuing into 2002 according to FMC, that resulted from the overall downturn in the U.S. economy and was exacerbated by a decline in printed circuit board production, an important market for persulfates.<sup>35</sup>

In the current review, while U.S. apparent consumption has increased since the original investigation, it has declined somewhat since 2001. Apparent U.S. consumption was \*\*\* pounds in 2001 and \*\*\* pounds in 2006.<sup>36</sup> With the recent decline in the automotive and housing markets, there is likely to be lower demand for many products that are made using persulfates, including paints, carpet backing, coatings, plastics, synthetic rubbers, caulking, sealants, and other materials.<sup>37</sup> Accordingly, we conclude that the recent downturn in apparent U.S. consumption of persulfates is likely to continue in the reasonably foreseeable future.

*Supply.* During the original period of investigation, a fire occurring in August 1995 shut down FMC’s manufacturing facility for six weeks and destroyed 800 tons of inventory. The inventory lost was not significant in terms of actual production for 1995, but there was evidence that the event spurred many purchasers to develop sources of supply other than FMC.<sup>38</sup>

In the first review, the Commission found that FMC remained the only domestic producer, although there continued to be competition in the market from both subject and nonsubject imports. Domestic production capacity had remained level since the original period of investigation. U.S. consumption had increased overall since the original period of investigation, as had FMC’s capacity utilization. China’s persulfates production capacity, on the other hand, had increased \*\*\* between 1996 and 2000, and its capacity utilization rate declined substantially.<sup>39</sup>

In the current review, FMC continues to be the sole domestic producer, and its capacity is now \*\*\* pounds, representing an increase from \*\*\* pounds at the time of the original investigation and first

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

a multiplicity of factors relating to the domestic industry as a whole and by drawing reasonable inferences from the evidence it finds most persuasive.” SAA at 869.

<sup>33</sup> 19 U.S.C. § 1675a(a)(4).

<sup>34</sup> Original Determination at 6-7.

<sup>35</sup> First Review Determination (Confidential) at 10.

<sup>36</sup> CR/PR at Table I-6.

<sup>37</sup> See CR at I-16, PR at I-12.

<sup>38</sup> Original Determination at 6.

<sup>39</sup> First Review Determination (Confidential) at 10.

review.<sup>40</sup> Chinese capacity and excess capacity have continued to increase since the first review, however. FMC has identified 25 persulfates producers in China, whereas it identified 12 in the first five-year review. In 2006, Chinese persulfate producers reportedly had a total capacity of 277.8 million pounds, which \*\*\*. In the last year of the original investigation, subject Chinese capacity utilization was \*\*\* percent; it was reportedly 79.9 percent in 2006.<sup>41</sup> In 2006, subject Chinese excess capacity \*\*\* apparent U.S. consumption, which was \*\*\* pounds compared with subject Chinese excess capacity of \*\*\* pounds.<sup>42</sup> Nonsubject imports have also increased since the first review. Nonsubject imports totaled 10.1 million pounds in 2001 and climbed to 15.8 million pounds in 2006. Nonsubject imports represented \*\*\* percent of apparent U.S. consumption in 2001 and \*\*\* percent in 2006. FMC's share of apparent U.S. consumption declined from \*\*\* percent in 2001 to \*\*\* percent in 2006.<sup>43</sup>

*Substitutability.* In the first review, the Commission stated that, as in the original investigation, subject imports and the domestic like product were interchangeable. Persulfates are a commodity-like product for which purchasers actively use the availability of lower-priced product to obtain more favorable prices from an incumbent supplier. The interchangeability of subject imports and U.S. product and the significance of price in the U.S. market had increased since the original investigation, given that the quality of the Chinese product had reportedly improved.<sup>44</sup>

There is no evidence on the record of this expedited review to suggest that these conditions have changed significantly since the first review. The information available indicates that persulfates continue to be a commodity chemical and, as such, quality differences do not insulate the domestic industry from competition with Chinese persulfates.<sup>45</sup> Price also remains one of the most important factors in purchasing decisions.<sup>46</sup>

*Other Factors.* In December 1995, during the original period of investigation, the European Union ("EU") imposed an antidumping duty of 83.3 percent on imports of persulfates from China.<sup>47</sup> In the first review, the Commission noted that the EU antidumping duties expired in early 2002.<sup>48</sup> In October 2007, the EU again imposed antidumping duties on imports of persulfates from China, and in July 2007 India imposed antidumping duties on imports of persulfates from China and Japan.<sup>49</sup>

Based on the record evidence, we find that these conditions of competition are not likely to change significantly in the reasonably foreseeable future.

### C. Likely Volume of Subject Imports

In evaluating the likely volume of imports of subject merchandise if the antidumping duty order is revoked, the Commission is directed to consider whether the likely volume of imports would be

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<sup>40</sup> CR at I-11, PR at I-8; CR/PR at Table I-3.

<sup>41</sup> CR at I-17, PR at I-12; CR/PR at Table I-7.

<sup>42</sup> See CR/PR at Tables I-6 & I-7.

<sup>43</sup> CR/PR at Table I-6.

<sup>44</sup> First Review Determination at 8.

<sup>45</sup> FMC's Response to Notice of Institution at 6.

<sup>46</sup> FMC's Response to Notice of Institution at 6.

<sup>47</sup> The Commission also noted that FMC consumed a small amount of persulfates for the production of downstream articles. No party argued that the captive production provision should apply. The Commission found that, because significant production of the domestic like product was not internally consumed, the requirements that mandate a captive production analysis were not met. Original Determination at 6 n.29.

<sup>48</sup> First Review Determination at 7.

<sup>49</sup> FMC's Response to Notice of Institution at 7.

significant either in absolute terms or relative to production or consumption in the United States.<sup>50</sup> In doing so, the Commission must consider “all relevant economic factors,” including four enumerated factors: (1) any likely increase in production capacity or existing unused production capacity in the exporting country; (2) existing inventories of the subject merchandise, or likely increases in inventories; (3) the existence of barriers to the importation of the subject merchandise into countries other than the United States; and (4) the potential for product shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products.<sup>51</sup>

In its original determination, the Commission found the volume and increase in volume of subject imports to be significant. 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. The market share of subject imports, by quantity, effectively \*\*\* between 1994 and 1995 and increased by almost another \*\*\* between 1995 and 1996, for a nearly \*\*\* increase during the period of investigation. In terms of value, subject imports’ market share more than \*\*\* during that period.<sup>52</sup>

In its first review determination, the Commission noted that, after the order was imposed, subject imports declined markedly from \*\*\* pounds in 1996 to 1.9 million pounds in 1997 and then increased erratically to 4.1 million pounds in 2000. In 2001, subject import volumes returned to the level of 1994, the first year of the original period of investigation. In 2001, subject imports from China accounted for \*\*\* percent of apparent U.S. consumption. Thus, although subject imports from China had not attained their highest pre-order level, they had maintained a post-order presence in the U.S. market.<sup>53</sup>

The Commission also found in the first review that the Chinese persulfates industry had reportedly expanded since the original investigation. Whereas there had been four known producers of persulfates in China in the original investigation (and respondents claimed that there were another five), the available data in the first review indicated that there were twelve known Chinese persulfates producers.<sup>54</sup> The Commission further noted that the Chinese persulfates industry remained export-oriented.<sup>55</sup> 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 its continuing export orientation, the Commission concluded that the likely volume of subject imports of persulfates would be significant absent the restraining effect of the antidumping duty order.<sup>56</sup>

In this review, subject producers in China have declined to participate or furnish information (including information on the volume of subject imports). Thus, the Commission is constrained to rely on the facts otherwise available on the record.<sup>57</sup> Based on official statistics, subject imports climbed

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<sup>50</sup> 19 U.S.C. § 1675a(a)(2).

<sup>51</sup> 19 U.S.C. § 1675a(a)(2)(A)-(D).

<sup>52</sup> Original Determination (Confidential) at 14-15.

<sup>53</sup> First Review Determination (Confidential) at 12-13.

<sup>54</sup> First Review Determination at 9.

<sup>55</sup> First Review Determination at 10.

<sup>56</sup> First Review Determination at 10.

<sup>57</sup> See 19 U.S.C. § 1677e(a); see also e.g., Glycine from China, Inv. No. 731-TA-718 (Review), USITC Pub. 3315 (June 2000) at 6-7.



significantly between 2001 and 2002, then declined to almost half that level in 2003. They rose again in 2004, but declined in 2006.<sup>58</sup>

We note that Commerce assigned the largest persulfates producer in China a separate antidumping duty rate during the original investigation. In subsequent administrative reviews, that producer received low or *de minimis* margins until 2004, when it was found to be dumping at a margin of 36.5 percent. This rate was applied to the producer's imports effective August 2005, when Commerce reached its preliminary results. The subsequent decline in subject import volume was likely due at least in part to the increase in the duty deposit rate as a result of that administrative review.<sup>59</sup> After subject imports declined in 2006, nonsubject imports increased.<sup>60</sup> We note also that notwithstanding the decrease in subject imports, the reported number of subject Chinese producers has more than doubled since the first five-year review,<sup>61</sup> as has subject capacity, which exceeds U.S. production.<sup>62</sup> There is also significant excess persulfates production capacity in China.<sup>63</sup>

As in the first review, the Chinese industry continues to export a significant percentage of its production. In 2006, China exported \*\*\* percent of its production.<sup>64</sup> After revoking its antidumping duties on persulfates from China in 2002, the EU again imposed such duties in October 2007. The current EU antidumping duty rates applicable to China range from 0.00 (*de minimis*) to 71.8 percent. In addition, in July 2007, India imposed an antidumping duty rate of 34.91 percent on persulfates from China.<sup>65</sup> In view of the fact that Chinese producers export nearly \*\*\* of their persulfates production, it is likely that the antidumping duties imposed by the EU and India will cause Chinese producers to search for new markets. Moreover, the behavior of the largest Chinese producer when it was assigned a low or *de minimis* antidumping duty rate<sup>66</sup> indicates that the U.S. market is an attractive one to Chinese producers.

In light of the increase in the volume and market share of subject persulfates during the original investigation, the Chinese producers' large capacity and significant excess capacity, Chinese producers' continuing export orientation, and the attractiveness of the U.S. market in light of the antidumping duties imposed by the EU and India, we find that the likely volume of subject imports upon revocation of the order would be significant.

#### **D. Likely Price Effects of Subject Imports**

In evaluating the likely price effects of subject imports if the antidumping order is revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject

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<sup>58</sup> Subject imports were 3.2 million pounds in 2001, 4.6 million pounds in 2002, 2.4 million pounds in 2003, 3.1 million pounds in 2004 and 2005, and 847,000 pounds in 2006. CR/PR at Table I-4.

<sup>59</sup> See FMC's Response to Notice of Institution at 10-11 & Exh. 6.

<sup>60</sup> Subject imports fell from \*\*\* pounds in 1995 to \*\*\* pounds in 1996, then fell further to 3.2 million pounds in 2001 and 847,000 pounds in 2006. Nonsubject imports decreased from \*\*\* pounds in 1995 to \*\*\* pounds in 1996, then increased to 10.1 million pounds in 2001 and 15.8 million pounds in 2006. CR/PR at Table I-5. U.S. apparent consumption fell from \*\*\* pounds in 1995 to \*\*\* pounds in 1996, then rose to \*\*\* pounds in 2001 before declining to \*\*\* pounds in 2006. CR/PR at Table I-6.

<sup>61</sup> CR at I-17, PR at I-12.

<sup>62</sup> Subject Chinese production capacity was 137.2 million pounds in 2000 and 277.8 million pounds in 2006. CR/PR at Table I-7. FMC's production totaled \*\*\* pounds in 2006. CR/PR at Table I-3.

<sup>63</sup> Capacity utilization was 79.9 percent in 2006, as compared to \*\*\* percent in 1996. CR/PR at Table I-7.

<sup>64</sup> CR/PR at Table I-7.

<sup>65</sup> CR at I-18, PR at I-13.

<sup>66</sup> See FMC's Response to Notice of Institution at 15-16.

imports as compared to the domestic like product 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 the domestic like product.<sup>67</sup>

In the original investigation, the Commission noted at the outset that price was reported by most purchasers to be a very important factor in their purchasing decisions. It stated that persulfates are commodity-like products.<sup>68</sup> FMC's sales prices to distributors were \*\*\*, and its prices for \*\*\*. Although prices for Chinese products rose in certain instances, they nonetheless undersold domestic persulfates in 56 of 57 pricing comparisons by margins as high as 50.4 percent. The Commission considered even smaller margins of underselling to be significant in light of the high degree of interchangeability between domestic and Chinese persulfates and the clear importance of price to purchasers.<sup>69</sup> The Commission also found that subject imports suppressed domestic prices to a significant degree. FMC encountered significant increases in its operating costs in 1995 and 1996, but because of the large presence of dumped imports of subject Chinese persulfates was unable to raise its prices to help offset the increasing costs.<sup>70</sup>

In the first review determination, the Commission stated that the post-order average unit value of subject imports had declined, from \$0.50 per pound in 1996 to between \$0.43 and \$0.45 per pound from 1997 to 2000 and \$0.49 per pound in 2001. 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 low post-order prices for Chinese persulfates, along with the substantial excess production capacity in China and softening demand conditions in the U.S. market, the Commission found that 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.<sup>71</sup>

In this review, average unit values for subject imports from China were \*\*\* higher than during the original investigation or first review.<sup>72</sup> We view increases in prices during the current review period with caution, given the restraining effects of the order. Additionally, we consider that the volume of subject imports sold in the current review period constituted only a fraction of the volumes sold annually during the original investigation and first review period (the decline in import volume followed the 2005 administrative review that significantly increased the antidumping duty margin applicable to the largest producer of the subject merchandise, as described above).<sup>73</sup> For these reasons, we do not conclude that the higher average unit values observed in 2006 indicate that subject imports are likely to be sold at higher prices than were observed previously if the order were revoked. We also note that, while average unit values for subject imports increased from 2001 to 2006, average unit values for both nonsubject

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<sup>67</sup> 19 U.S.C. § 1675a(a)(3). The SAA states that “[c]onsistent with its practice in investigations, in considering the likely price effects of imports in the event of revocation and termination, the Commission may rely on circumstantial, as well as direct, evidence of the adverse effects of unfairly traded imports on domestic prices.” SAA at 886.

<sup>68</sup> Original Determination at 11.

<sup>69</sup> Original Determination (Confidential) at 17-18.

<sup>70</sup> Original Determination at 12.

<sup>71</sup> First Review Determination at 11.

<sup>72</sup> Prior to the order, average unit values for subject imports from China were \$\*\*\* per pound in 1994, \$\*\*\* per pound in 1995, and \$\*\*\* per pound in 1996. In the first review, the average unit values for subject imports from China were \$0.49 per pound in 2001, while they were \$0.66 per pound in 2006. CR/PR at Table I-5.

<sup>73</sup> The volume of subject imports sold in 2006 was 0.8 million pounds, compared to 3.2 million pounds in 2001 and \*\*\* million to \*\*\* million pounds annually during 1994-96. CR/PR at Table I-5.

imports and domestic production declined.<sup>74</sup> Nevertheless, average unit values for subject imports were \*\*\* average unit values for FMC's commercial sales in 2006.

The facts that subject imports undersold the domestic product during the original investigation, and average unit values for subject imports continued to be \*\*\* average unit values for FMC's commercial shipments during the review period, support the conclusion that subject imports would likely undersell the domestic like product if the order were revoked. In addition, as noted above, the volume of subject imports from China is likely to be significant, given, among other things, that producers in China have substantial excess capacity and are subject to antidumping duties in the EU and India. Because subject imports and the domestic like product are highly substitutable and compete largely on the basis of price, it is likely that the Chinese producers would price aggressively in order to gain market share in the United States. For these reasons, we conclude that subject imports would be likely to undersell the domestic product to a significant degree if the order were revoked.

In considering whether subject imports are likely to have price depressing or suppressing effects, we note that the demand for persulfates in the United States is declining, that the subject imports and domestic like product are largely interchangeable, that this is a price-sensitive market, and that the products compete largely on the basis of price. Given those facts, we conclude that significant underselling by subject imports would be likely to lead to significant price depressing or suppressing effects on prices for the domestic product within a reasonably foreseeable time.

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

In evaluating the likely impact of imports of subject merchandise if the antidumping duty order is revoked, the Commission is directed to consider all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including, but not limited to: (1) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity; (2) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and (3) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more advanced version of the domestic like product.<sup>75</sup> All relevant economic factors are to be considered within the context of the business cycle and the conditions of competition that are distinctive to the industry.<sup>76</sup> As instructed by the statute, we have considered the extent to which any improvement in the state of the domestic industry is related to the order at issue and whether the industry is vulnerable to material injury if the order is revoked.

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

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<sup>74</sup> Average unit values for nonsubject imports fell from \$0.65 per pound in 2001 to \$0.56 per pound in 2006, and for domestic commercial shipments fell from \$\*\*\* per pound in 2001 to \$\*\*\* per pound in 2006. CR/PR at Table I-3.

<sup>75</sup> 19 U.S.C. § 1675a(a)(4).

<sup>76</sup> 19 U.S.C. § 1675a(a)(4). Section 752(a)(6) of the Act states that “the Commission may consider the magnitude of the margin of dumping” in making its determination in a five-year review. 19 U.S.C. § 1675a(a)(6). The statute defines the “magnitude of the margin of dumping” to be used by the Commission in five-year reviews as “the dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title.” 19 U.S.C. § 1677(35)(C)(iv). *See also* SAA at 887. Commerce expedited its determination in its review of persulfates from China and found that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the following margins: 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 for the PRC-wide rate. 73 Fed. Reg. at 11,869.

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 cost of goods sold and unit selling, general and administrative expenses increased “steadily and significantly.”<sup>77</sup> The Commission found that the sharp increase in subject import volume and market share at 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 of subject imports of persulfates on the domestic industry, particularly on its financial performance.<sup>78</sup>

In the first review, the Commission noted there was limited information on the record concerning the condition of the domestic industry at that time. It found that FMC had not increased production capacity since the original investigation and that the average unit values of its U.S. shipments had remained essentially flat since 1999. Certain industry indicators had improved since the order was imposed. Production, U.S. shipments, capacity utilization, and market share all increased, and the Commission attributed these improvements to the positive effects of the order. Based on the limited information in the record of the first review, the Commission could not determine whether the domestic industry was vulnerable to material injury if the order were revoked.<sup>79</sup> It found that given the likely volume and price effects upon revocation of the order, there would likely be a significant adverse impact on the industry’s production, shipments, sales, and revenue, which 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. The Commission also found that revocation of the order would likely result in commensurate employment declines for the domestic industry.<sup>80</sup>

In this review, we again acknowledge that there is only limited information on the record regarding the current condition of the domestic industry. Certain industry indicators have improved since the order was imposed such as U.S. producer’s capacity, production, and operating profit.<sup>81</sup> However, other indicators have declined since 2001 to levels similar to those found during the original period of investigation such as U.S. shipments, capacity utilization, market share, and average unit values of U.S. shipments.<sup>82</sup> While the industry reported an operating profit in the first half of 2007, it argues that the subsequent downturn in demand in the automotive and housing industries make it vulnerable and that its \*\*\* are very fragile.<sup>83</sup> However, the limited information available for the domestic industry, in particular, current financial information, prevents us from being able to determine whether the domestic industry is vulnerable to material injury if the antidumping duty order is revoked.

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

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<sup>77</sup> Original Determination at 12-13.

<sup>78</sup> Original Determination at 14.

<sup>79</sup> First Review Determination at 12.

<sup>80</sup> First Review Determination at 12.

<sup>81</sup> CR at I-11 - I-12, PR at I-8; CR/PR at Table I-3. Capacity was \*\*\* pounds in 1994-2001 and \*\*\* pounds in 2006. CR/PR at Table I-3.

<sup>82</sup> CR/PR at Table I-3. Commercial shipments have decreased since 2001 as measured by both quantity and value. In terms of quantity, U.S. commercial shipments were \*\*\* pounds in 2001 and \*\*\* pounds in 2006. In terms of value, U.S. commercial shipments totaled \$\*\*\* in 2001 and \$\*\*\* in 2006. CR/PR at Table I-3. Capacity utilization was \*\*\* percent in 1996, \*\*\* percent in 2001 and \*\*\* percent in 2006. CR/PR at Table I-3.

<sup>83</sup> See CR at I-16, PR at I-11 - I-12; FMC’s Response to Notice of Institution at 20, 25-26.

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 revenues of the domestic industry. The reductions in the industry's production, sales and revenues 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 would result in employment declines for the industry.<sup>84</sup>

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.

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<sup>84</sup> Commissioner Lane notes that FMC did provide current financial information in its Response to the Notice of Institution that supports the Commission's finding of likelihood of continuation or recurrence of material injury. FMC reported a net operating income of \$\*\*\* for the six-month period ending June 30, 2007, which equated to an operating profit margin of \*\*\* percent. See CR at I-11, PR at I-8. FMC also provided pro forma financial data reflecting the impact of a decline in prices on its operating income. These financial data indicate that its profit level would be significantly and negatively impacted by the increased volume of subject imports and the significant downward pressure on prices that the Commission has now determined likely would occur if the order were revoked. FMC's pro forma financial data indicate that a reduction of \$\*\*\* per pound in price would cause its operating income to decline to \*\*\*, which equates to an operating profit margin of \*\*\* percent. This pro forma result is based on a price decline of \$\*\*\* per pound, which FMC contends is conservative. See FMC's Response to Notice of Institution at 21-22. While this conservative estimate is un-rebutted, Commissioner Lane notes that a negative price impact of only one-half of FMC's estimate would cause its operating income and operating profit margin to decline to \*\*\*. FMC further indicated that it would likely lose volume to subject imports if the order were revoked, and that "based on the proportion of its fixed to variable costs, that for every 1 million pound reduction in its persulfates production, there will be a \*\*\* percent reduction \*\*\*." See FMC's Response to Notice of Institution at 23. Thus, the record supports a finding that the profit level of the domestic industry will be negatively affected to \*\*\* by the expected volume increase in subject imports and to \*\*\* by the expected price impact of subject imports if the order is revoked.



# INFORMATION OBTAINED IN THE REVIEW

## INTRODUCTION

### Background

On November 1, 2007, in accordance with section 751(c) of the Tariff Act of 1930 (“the Act”),<sup>1</sup> as amended, the U.S. International Trade Commission (“Commission”) gave notice that it had instituted a five-year review to determine whether revocation of the antidumping duty order on persulfates from China would be likely to lead to a continuation or recurrence of material injury within a reasonably foreseeable time.<sup>2 3</sup> On February 4, 2008, the Commission determined that the domestic interested party group response to its notice of institution was adequate;<sup>4</sup> the Commission also determined that the respondent interested party group response was inadequate.<sup>5</sup> The Commission found no other circumstances that would warrant conducting a full review.<sup>6</sup> Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Act.<sup>7</sup> The Commission voted on this review on March 20, 2008, and notified Commerce of its determination on March 31, 2008. Information relating to the background of the review is presented in the tabulation below.

Effective date	Action	Federal Register citation
July 7, 1997	Commerce's antidumping duty order	62 FR 36259 (amended by 62 FR 39212)
December 24, 2002	Commerce's continuation of antidumping duty order after first five-year review	67 FR 78415
November 1, 2007	Commerce's initiation and Commission's institution of second five-year review	72 FR 61861 72 FR 61907
February 4, 2008	Commission's determination to conduct expedited second five-year review	73 FR 8903, February 15, 2008
March 20, 2008	Commission's vote	Not applicable
March 31, 2008	Commission's determination to Commerce	Not applicable

Source: Cited *Federal Register* notices.

<sup>1</sup> 19 U.S.C. §1675(c).

<sup>2</sup> 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.

<sup>3</sup> In accordance with section 751(c) of the Act, the U.S. Department of Commerce (“Commerce”) published a notice of initiation of the five-year review of the subject antidumping duty order concurrently with the Commission's notice of institution. 72 FR 61861, November 1, 2007.

<sup>4</sup> The Commission received one submission in response to its notice of institution for the subject review. It was filed on behalf of FMC Corp. (“FMC”), Philadelphia, PA, the sole known U.S. producer of subject persulfates.

<sup>5</sup> The Commission received no responses to its notice of institution from respondent interested parties.

<sup>6</sup> A copy of the *Explanation of Commission Determination on Adequacy* is presented in app. B.

<sup>7</sup> 19 U.S.C. § 1675(c)(3). See the Commission's web site (<http://www.usitc.gov>) for Commissioner votes on whether to conduct expedited or full reviews.

## The Original Investigation and First Five-Year Review

The Commission completed the original investigation<sup>8</sup> on June 25, 1997, determining that an industry in the United States was materially injured by reason of imports of persulfates from China that Commerce determined to be sold at less than fair value. After receipt of the Commission's determination, Commerce issued an antidumping duty order on imports of persulfates from China that provided for the following weighted-average antidumping duty margins:

Firm	Weighted-average margin (percent)
Sinochem Jiangsu Wuxi Import & Export Corp. ("Sinochem")	32.22
Shanghai AJ Import and Export Corp. ("AJ")	34.41
Guangdong Petroleum Chemical Import & Export Trade Corp. ("GPC")	34.97
All others	119.02

Source: 62 FR 36259, July 7, 1997, as amended by 62 FR 39212, July 22, 1997.

On June 3, 2002, the Commission instituted a five-year review of the antidumping duty order on persulfates from China pursuant to section 751(c) of the Act, to determine whether revocation of the antidumping duty order on imports of persulfates from China would likely lead to a continuation or recurrence of material injury.<sup>9</sup> On October 23, 2002, following an expedited review, the Commission determined that revocation of the antidumping duty order on persulfates from China would be likely to lead to a continuation or recurrence of material injury within a reasonably foreseeable time.<sup>10</sup> On December 24, 2002, Commerce issued a continuation of the antidumping duty order on imports of persulfates from China.<sup>11</sup>

### Commerce's Administrative Reviews

Between 1997, when the antidumping duty order on China was imposed, and January 2008, Commerce completed seven administrative reviews with respect to imports of persulfates from China.<sup>12</sup> Antidumping duty margins promulgated in Commerce's administrative reviews are presented in table I-1.

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<sup>8</sup> The investigation resulted from a petition filed on July 11, 1996, by FMC.

<sup>9</sup> *Persulfates from China*, 67 FR 38333, June 3, 2002.

<sup>10</sup> *Persulfates from China*, 67 FR 66001, October 29, 2002.

<sup>11</sup> *Notice of Continuation of Antidumping Duty Order: Persulfates from the People's Republic of China*, 67 FR 78415, December 24, 2002.

<sup>12</sup> In 2003, at the request of FMC, Commerce also initiated a changed circumstances review to determine whether Degussa-AJ (Shanghai) Initiators Co., Ltd. ("Degussa AJ") was to be considered a successor-in-interest to Shanghai Ai Jian Reagent Factory ("AJ Works"), a wholly owned subsidiary of Shanghai Ai Jian Import & Export Corp., after Degussa AG purchased a 70-percent stake in AJ Works. 68 FR 9636, February 28, 2003. Commerce determined that for purposes of its administrative reviews, it would consider exports from Degussa AJ as from Shanghai Ai Jian Import & Export Corp. 68 FR 68031, December 5, 2003.



**Table I-1**  
**Persulfates: Commerce's antidumping duty margins from administrative and five-year reviews for China**

Action	Date of action	Federal Register citation	Period of review	Antidumping duty margins (Percent ad valorem)			
				Sinochem	AJ	GPC	All others
Administrative review	12/13/99	64 FR 69494 <sup>1</sup>	12/27/96-06/30/98	7.37	5.54	--	--
Administrative review	07/31/00	65 FR 46691	07/01/98-06/30/99	--	2.62	--	119.02
Administrative review	08/14/01	66 FR 42628	07/01/99-06/30/00	--	0.04 <sup>2</sup>	--	119.02
First five-year review	10/04/02	67 FR 62226	( <sup>3</sup> )	32.22	34.41	34.97	119.02
Administrative review	02/10/03	68 FR 6712	07/01/00-06/30/01	--	0.0 <sup>2</sup>	--	--
Administrative review	12/05/03	68 FR 68030	07/01/01-06/30/02	--	0.0 <sup>2</sup>	--	--
Administrative review	02/09/05	70 FR 6836	07/01/02-06/30/03	--	3.30	--	--
Administrative review	02/14/06	71 FR 7725	07/01/03-06/30/04	--	36.53	--	--
Administrative review	03/17/06	71 FR 13810	07/01/04-06/30/05	Requests for administrative reviews rescinded			
Administrative review	12/19/06	71 FR 75935	07/01/05-06/30/06				
Administrative review	01/16/08	73 FR 2900	07/01/06-06/30/07				
<sup>1</sup> Amended by 65 FR 1356, January 10, 2000. <sup>2</sup> <i>De minimis</i> . <sup>3</sup> Not applicable. Source: Cited <i>Federal Register</i> notices.							

**Commerce's Final Results of Expedited Sunset Review**

As of March 3, 2008, Commerce had not yet published the final results of its expedited sunset review.

**Distribution of Continued Dumping and Subsidy Offset Act Funds  
to the Affected Domestic Producer**

Since 2001, qualified U.S. producers of persulfates have been eligible to receive disbursements from U.S. Customs and Border Protection (“Customs”) under the Continued Dumping and Subsidy Offset Act of 2000 (“CDSOA”), also known as the Byrd Amendment.<sup>13</sup> One firm, FMC, received such funds and was allocated 100 percent of all duties collected on persulfates from China.<sup>14</sup> Table I-2 presents CDSOA disbursements for Federal fiscal years 2001-07. No funds related to this order were disbursed during Federal fiscal years 2001-04.

**Table I-2**  
**Persulfates: FMC’s CDSOA disbursements, Federal fiscal years 2001-07**

Fiscal year	Amount disbursed (dollars)
2001	0
2002	0
2003	0
2004	0
2005	27,141
2006	16,563
2007	86,630
Total	130,334
Source: Customs’ CDSOA Annual Reports at <a href="http://www.cbp.gov/xp/cgov/import/add_cvd/cont_dump">http://www.cbp.gov/xp/cgov/import/add_cvd/cont_dump</a> , retrieved February 13, 2008.	

**THE PRODUCT<sup>15</sup>**

**Scope**

Commerce has defined the scope of the subject product (persulfates) as follows:

The products covered by this review are persulfates, including ammonium, potassium, and sodium persulfates. The chemical formulas 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  $\text{Na}_2\text{S}_2\text{O}_8$ . Ammonium and potassium persulfates are currently classified under subheading 2833.40.60 of the Harmonized Tariff Schedule of the United States (HTSUS). Sodium persulfate is classified under HTSUS subheading

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<sup>13</sup> 19 CFR 159.64(g).

<sup>14</sup> See Customs’ CDSOA Annual Reports for fiscal years 2001-07.

<sup>15</sup> The discussion in this section is taken largely from the product description as presented in the staff report from the first five-year review. *Persulfates from China, Staff Report*, INV-Z-168, October 3, 2002, pp. I-4-I-8.

2833.40.20. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this review is dispositive.<sup>16</sup>

### **Description and Uses**

The imported products subject to this investigation are peroxydisulfates, commonly known as persulfates. There are three salts included within the persulfates definition: ammonium persulfate, potassium persulfate, and sodium persulfate; the latter is dutiable at 3.7 percent *ad valorem*, and the former two products at 3.1 percent.<sup>17</sup> The chemical formulas 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  $\text{Na}_2\text{S}_2\text{O}_8$ . This section presents information on both imported and domestically produced persulfates, as well as information related to the Commission's "domestic like product" determination.<sup>18</sup> In its original investigation, the Commission found one domestic like product consisting of ammonium, sodium, and potassium persulfates, and one U.S. industry consisting of FMC.<sup>19</sup> In its first five-year review, the Commission found no new facts to warrant a change in its original domestic like product determination and again found FMC to account for the entire U.S. industry of persulfates.<sup>20</sup> In this second five-year review, FMC has stated that it agrees with the Commission's earlier domestic like product and domestic industry determinations and that there have been no material changes in the U.S. persulfates market that would warrant a reexamination of these issues.<sup>21</sup>

### **Physical Characteristics and Uses**

Persulfates are produced in the form of a dry white crystalline powder that is odorless. The three salts are indistinguishable when subject to a visual or tactile exam. They are all derived from a common source, persulfuric acid. The active ingredient for all three salts is the persulfate anion.

Persulfates are used in many industrial processes and commercial products. Persulfates have two major applications: (1) as catalysts or "initiators" in the process of polymerization and (2) as oxidants in cleaning, microetching, and plating processes. Persulfates as catalysts are used in producing latex for carpet backing and paper coating, acrylic latex paint, and for other acrylics and polyvinyls used in adhesives, among other uses. Persulfates as oxidants are used in printed circuit boards, among other uses. Persulfates are also used in applications such 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.

### **Manufacturing Facilities and Production Employees**

The manufacturing processes for ammonium, potassium, and sodium persulfates are similar. Production begins in an electrolytic cell where liquid ammonium persulfate is produced as an

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<sup>16</sup> See *Notice Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Persulfates from the People's Republic of China*, 62 FR 36259, July 7, 1997.

<sup>17</sup> Column 1 general duty rates, applicable to China.

<sup>18</sup> The Commission's decision regarding the appropriate domestic products that are "like" the subject imported products is based on a number of factors including (1) physical characteristics and uses; (2) common manufacturing facilities and production employees; (3) interchangeability; (4) customer and producer perceptions; (5) channels of distribution; and, where appropriate, (6) price.

<sup>19</sup> *Persulfates from China, Inv. No. 731-TA-749 (Final)*, USITC Pub. 3044, June 1997, pp. 4-5.

<sup>20</sup> *Persulfates from China, Inv. No. 731-TA-749 (Review)*, USITC Pub. 3555, October 2002, p. 5.

<sup>21</sup> *FMC's Response to the Notice of Institution*, December 21, 2007, p. 28.

intermediate product. This liquid ammonium persulfate is then crystallized into a wet cake, which is fed into the ammonium, sodium, and potassium persulfate downstream production, in which the wet cake is further processed in a fluid bed dryer and then packaged for shipment. One difference between the salts is the removal and recycling of the ammonia that is released in the sodium and potassium persulfates production processes. The recycling of ammonia is a critical material-balance issue which requires that the ammonium persulfate line be running in order to produce sodium or potassium persulfate. Information developed in the original investigation indicated that the three persulfate salts are manufactured in the same plant, using the same or similar equipment and production workers. There are no known significant differences in the persulfate production processes used in China and the United States, although the Chinese process may be slightly less automated.

Between \*\*\* and \*\*\* percent of FMC's persulfates production was captively consumed in the production of downstream products each year during 1994-96, approximately \*\*\* percent in 2001, and \*\*\* in 2006. These downstream products are produced in a separate facility, using different production workers than are used for persulfates.

### **Interchangeability and Customer and Producer Perceptions**

In both the original investigation and the first five-year review, the Commission determined that persulfates produced in the United States and China were interchangeable, commodity-like products.<sup>22</sup> In this second five-year review, FMC contends that these products remain interchangeable.<sup>23</sup>

In the original investigation FMC contended that while there are slight solubility and active oxygen content differences among the persulfate salts, all three salts can be and are used interchangeably because their essential characteristics are the same. According to the hearing testimony of respondents ICC Chemical Corp. (ICC) and Aceto Corp., importers of the subject merchandise in the original investigation, the persulfates are not interchangeable. However, \*\*\*, Aceto stated that the three salts \*\*\*. Every purchaser that responded to the questionnaire in the original investigation reported that there are functionality differences among ammonium, potassium, and sodium persulfates that would preclude substituting one salt for another, and only one reported that it actually substituted among these salts.

In the first five-year review, FMC claimed that the domestic and imported products were even more interchangeable than they were in 1997 because the Chinese producers continued to improve the quality of their product. In the original investigation, Aceto contended that Chinese persulfates were not interchangeable with domestically produced persulfates in a number of applications, due to problems with caking or lumping from moisture, particle size, and off-white color from black specks. Aceto claimed that Chinese persulfates were not suitable for oil recovery and cosmetics applications, and had limited use in emulsion polymerization and printed circuit board industries. \*\*\*. FMC argued that caking is a problem with persulfates of any origin, that imports from China may be used in oil recovery and cosmetics, and that these two applications account for only 2-3 percent of demand for persulfates. Furthermore, FMC contended that customers perceive the Chinese persulfates as interchangeable with the domestic product, and that competition among these products existed across all segments of the market.

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<sup>22</sup> *Persulfates from China, Inv. No. 731-TA-749 (Final)*, USITC Pub. 3044, June 1997, pp. 15-16 and *Persulfates from China, Inv. No. 731-TA-749 (Review)*, USITC Pub. 3555, October 2002, p. 8.

<sup>23</sup> FMC's *Response to the Notice of Institution*, December 21, 2007, p. 6.

## Substitute Products

According to FMC in the original investigation, there is no chemical that competes with persulfates in the oxidation market. Hydrogen peroxide is a distant competitor as a gross etchant when manufacturers want to quickly remove copper from areas where it is not wanted. However, hydrogen peroxide is not a functional substitute in this application as it is too powerful an etch, which polishes the surface and leads to poor adhesion and scrap. Another chemical that competes distantly in the oxidation market is a trade-named product from DuPont called Oxone. One importer, \*\*\*, said that latex polymers, benzoyl peroxide, and azobis-isobutylnitrile can be used as substitutes, although they are considered less efficient and more hazardous.

## Channels of Distribution

Both domestic and imported persulfates are believed to be sold in substantial quantities to end users as well as distributors. In the original investigation, parties agreed that the channels of distribution for Chinese and domestic products were the same.

## Price

In the original investigation, Aceto asserted that the three salts are priced differently, with ammonium persulfate being the lowest priced. In fact, pricing data obtained from FMC and importers showed that potassium persulfate was nearly always priced the highest of the three salts, sodium persulfate was priced next highest, and ammonium persulfate was generally priced the lowest. In 2001, FMC reported that unit values of its production of persulfates were \$\*\*\* per pound for potassium persulfate, \$\*\*\* per pound for sodium persulfate, and \$\*\*\* per pound for ammonium persulfate. FMC did not provide unit value data, by type of persulfate, for 2006.

## THE INDUSTRY IN THE UNITED STATES

### U.S. Producer<sup>24</sup>

The sole U.S. producer of persulfates, FMC Corp., Philadelphia, PA, is a diversified manufacturing company producing industrial, agricultural, and specialty chemicals, with revenues of \$2.35 billion in 2006. Persulfates are a part of FMC's industrial chemicals business segment, which accounted for 42.2 percent of its 2006 revenue or \$990.9 million. FMC's persulfates manufacturing plant

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<sup>24</sup> All discussion in this section which refers to the original investigation is from *Persulfates from China, Staff Report*, INV-U-046, June 3, 1997, pp. III-1-III-10; that which refers to the first five-year review is from *Persulfates from China, Staff Report*, INV-Z-168, October 3, 2002, pp. I-8-I-10; and that which refers to the second five-year review is from FMC's *Response to the Notice of Institution*, December 21, 2007, unless indicated otherwise.

is located in Tonawanda, NY.<sup>25</sup> FMC is not related to any foreign producer of persulfates or any U.S. importer of persulfates from China.

### U.S. Production, Capacity, and Shipments

Comparable data reported by FMC in the Commission's original investigation, the first five-year review, and in response to the current review's institution notice are presented in table I-3. FMC reported that although its capacity has increased \*\*\* from the first five-year review period, that it has become increasingly efficient during the current period of review, producing \*\*\* pounds per hour in 2006 as opposed to \*\*\* pounds per hour in 2002.<sup>26</sup> It also reported continued capital and research and development expenditures of \$\*\*\* in 2005 and 2006 combined, aimed at creating new applications for persulfates.<sup>27</sup> For the period of January through June 2007, FMC reported an actual operating profit of \$\*\*\* and an operating profit margin of \*\*\* percent.<sup>28</sup> FMC, however, did state that there currently exists uncertainty with regard to future raw material price increases of sulfuric acid, caustic soda, and energy costs used in its production of persulfates.<sup>29</sup> FMC also reported that from 2002 to 2004 it \*\*\* at its Tonawanda, NY plant.<sup>30</sup>

In the original investigation, FMC's ratio of operating income to net sales was \*\*\* percent in 1994, \*\*\* percent in 1995, and \*\*\* percent in 1996.

**Table I-3**  
**Persulfates: FMC's capacity, production, and U.S. shipments, 1994-96, 2001, and 2006**

\* \* \* \* \*

### U.S. IMPORTS AND CONSUMPTION

#### U.S. Imports

In the original investigation, 17 firms, accounting for nearly all of subject imports, reported data to the Commission on their imports of persulfates from China. In the first five-year review, FMC

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<sup>25</sup> In August 1995, FMC experienced a warehouse fire in its Tonawanda plant that destroyed 800 tons of its inventory and shut down production for six weeks. FMC claimed that there was no short-supply situation in the United States as a result of the fire for a number of reasons: (1) the timing of the fire coincided with FMC's scheduled annual maintenance, so that customers and FMC were already building inventories in anticipation of a two-week shutdown; (2) FMC diverted its exports back to the United States to fulfill customer requirements; and (3) \*\*\*. FMC stated that it did not put customers on formal allocation, and that there were only two customers who experienced spot shortages of one day, due primarily to communication problems. In the original investigation, Aceto and ICC stated that there was indeed a short-supply situation, which resulted in their increased imports from China.

<sup>26</sup> FMC's *Response to the Notice of Institution*, December 21, 2007, p. 7.

<sup>27</sup> *Ibid.*

<sup>28</sup> FMC's *Response to the Notice of Institution*, December 21, 2007, exh. 11.

<sup>29</sup> See FMC's *Response to the Notice of Institution*, December 21, 2007, p. 23 and exh. 10 ("*Increased demand for biofuels like ethanol tighten supply of sulfuric acid for chemical buyers.*").

<sup>30</sup> *Ibid.* at 21.

identified 6 importers of Chinese persulfates. In its response to the Commission’s notice of institution for this review, FMC identified 26 known U.S. importers of persulfates from all countries.<sup>31</sup>

Volumes of U.S. imports of persulfates based on official Commerce statistics are shown in table I-4. The Commission’s report for the original investigation had conflicting reasons for the rise in imports from China. “The petitioner cites unfair competition and a diversion of Chinese exports from the European Community in the wake of dumping duties imposed in July 1995, while the respondents claim that the short-supply situation caused by the August 1995 fire at FMC forced purchasers to look to China for an alternate and reliable source of supply.”<sup>32</sup>

In this second five-year review, FMC stated that U.S. imports from China increased during much of the period of review because a large producer of persulfates in China, Shanghai AJ Import and Export Corp. (“AJ”), obtained a *de minimis* antidumping duty margin from Commerce and began exporting to the United States in greater volumes. In February 2006, however, Commerce published its final results of its review and again found AJ to be dumping, at an antidumping duty rate of 36.53 percent. A 2006 decrease in U.S. imports from China resulted.<sup>33</sup>

Data on the volume of U.S. imports of persulfates (in 1,000 pounds) as reported in official Commerce statistics for 1994-2006 are presented in table I-4 and figure I-1. The import data presented for 1994-96 in table I-5 were compiled from data submitted in response to Commission questionnaires during its original investigation.

**Table I-4**  
**Persulfates: U.S. imports, by source, 1994-2006**

Year	Imports from China	Imports from other sources	Total imports
	<i>(1,000 pounds)</i>		
1994	3,503	11,525	15,028
1995	4,856	10,180	15,036
1996	5,204	7,368	12,572
1997	1,911	10,272	12,183
1998	2,856	12,196	15,052
1999	3,702	10,262	13,964
2000	4,145	12,408	16,553
2001	3,181	10,051	13,231
2002	4,555	11,688	16,243
2003	2,384	10,156	12,540
2004	3,130	14,077	17,206
2005	3,062	13,708	16,769
2006	847	15,820	16,667

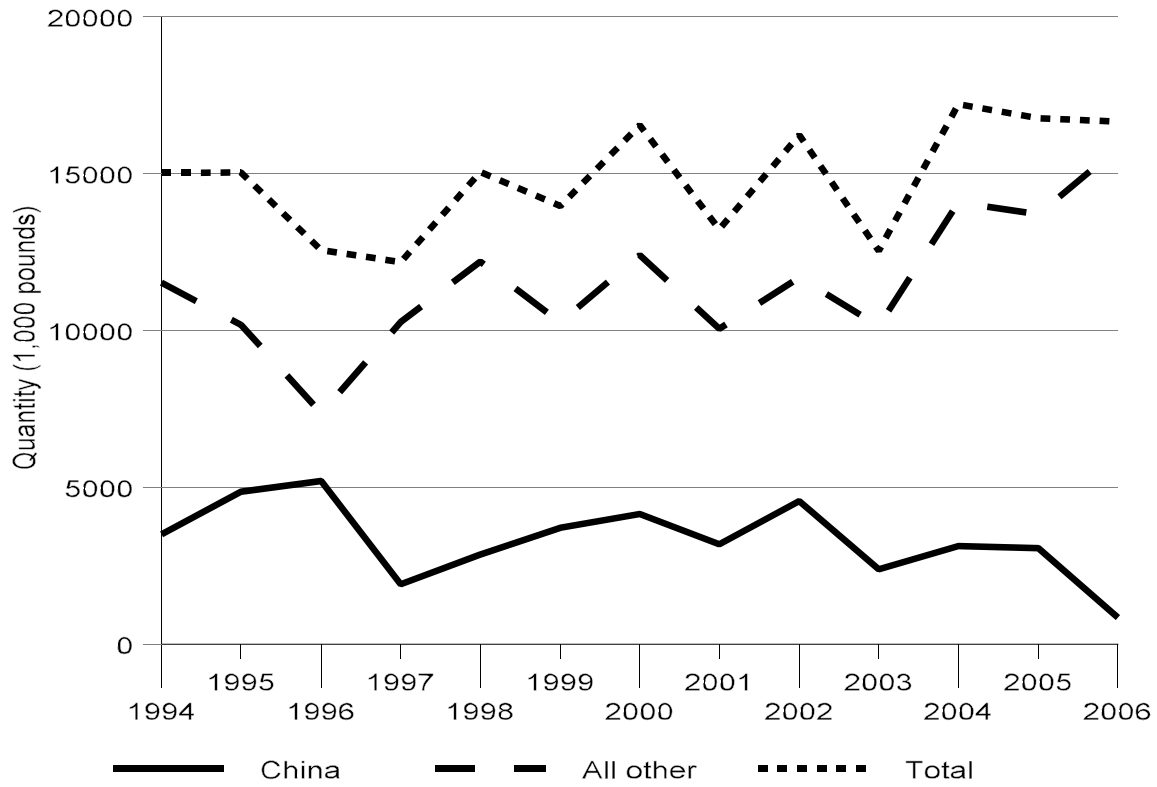
Source: Compiled from official Commerce statistics.

<sup>31</sup> FMC’s *Response to the Notice of Institution*, December 21, 2007, exh. 12. FMC did not identify in its response how many of the U.S. importers imported persulfates from China.

<sup>32</sup> *Persulfates from China, Staff Report*, INV-U-046, June 3, 1997, p. IV-1.

<sup>33</sup> FMC’s *Response to the Notice of Institution*, December 21, 2007, pp. 10-11.

**Figure I-1**  
**Persulfates: U.S. imports from China and all other sources, by quantity, 1994-2006**



Source: Compiled from official Commerce statistics.



**Table I-5**  
**Persulfates: U.S. imports, by source, 1994-96, 2001, and 2006**

Item	1994	1995	1996	2001	2006
<b>Quantity (1,000 pounds)</b>					
China	***	***	***	3,181	847
Other sources <sup>1</sup>	***	***	***	10,051	15,820
Total	***	***	***	13,232	16,667
<b>Landed duty-paid value (1,000 dollars)</b>					
China	***	***	***	1,544	557
Other sources <sup>1</sup>	***	***	***	6,472	8,791
Total	***	***	***	8,016	9,348
<b>Landed duty-paid unit value (per pound)<sup>2</sup></b>					
China	\$***	\$***	\$***	\$0.49	\$0.66
Other sources <sup>1</sup>	***	***	***	0.65	0.56
Total	***	***	***	0.60	0.56
<p><sup>1</sup> Other major sources of imports included Germany, Japan, and Taiwan in 1994-96 and these 3 countries as well as India and Turkey in 2001. In 2006, the top three nonsubject sources were Germany, Japan, and Taiwan.</p> <p><sup>2</sup> Excluding antidumping duties.</p> <p>Source: <i>Persulfates from China, Staff Report</i>, INV-U-046, June 3, 1997, p. IV-3, for 1994-96 data (compiled from data submitted in response to Commission questionnaires) and compiled from official Commerce statistics for 2001 and 2006 data.</p>					

### Apparent U.S. Consumption and Market Shares

Apparent U.S. consumption of persulfates during the original investigation, 2001, and 2006 are shown in table I-6. In the first five-year review, FMC contended that consumption decreased from 60 million pounds in 2000 to 52 million pounds in 2001, exacerbated by a decline in an important market for persulfates, printed circuit board production.<sup>34</sup> In this second five-year review, FMC maintained that demand for persulfates remained relatively constant for most of the period of review, but was cyclical and tied to trends in the market for printed circuit boards as well as the housing, automotive, and packaged-goods markets.<sup>35</sup> According to FMC, approximately 50 percent of the market demand for persulfates in the United States is accounted for by polymerization end uses such as plastics, synthetic rubber, and structural materials.<sup>36</sup> It reported that from 2006 to 2007, U.S. apparent consumption decreased by approximately \*\*\* to \*\*\* percent because of the market downturns in the housing and

<sup>34</sup> *Persulfates from China, Staff Report*, INV-Z-168, October 3, 2002, p. I-13. \*\*\*.

<sup>35</sup> FMC's *Response to the Notice of Institution*, December 21, 2007, pp. 6 and 9. FMC argued that with the recent weakness in the U.S. housing market, further demand pressures could be felt.

<sup>36</sup> *Ibid* at 20.

automotive sectors where persulfates are used in the production of such products as paints, carpet backings, coatings, plastics, synthetic rubbers, caulking, sealants, etc.<sup>37</sup>

**Table I-6**

**Persulfates: U.S. producer's U.S. shipments, U.S. imports, apparent U.S. consumption, and market shares, 1994-96, 2001, and 2006**

Item	1994	1995	1996	2001	2006
	<b>Quantity (1,000 pounds)</b>				
U.S. producer's U.S. shipments	***	***	***	***	***
U.S. importers' shipments: China	***	***	***	3,181	847
Other sources	***	***	***	10,051	15,820
Total	***	***	***	13,232	16,667
Apparent U.S. consumption	***	***	***	***	***
	<b>Share of consumption (percent)</b>				
U.S. producer's U.S. shipments	***	***	***	***	***
U.S. importers' shipments: China	***	***	***	***	***
Other sources	***	***	***	***	***
Total	***	***	***	***	***
Source: <i>Persulfates from China, Staff Report</i> , INV-U-046, June 3, 1997, p. IV-5, for 1994-96 data (compiled from data submitted in response to Commission questionnaires); <i>Persulfates from China, Staff Report</i> , INV-Z-168, October 3, 2002, p. I-10 (2001 data); FMC's <i>Response to the Notice of Institution</i> , December 21, 2007, p. 25; and compiled from official Commerce statistics for 2001 and 2006 U.S. import data.					

## THE INDUSTRY IN CHINA

The Commission's report for the original investigation identified four known producers of any significance in China. In the first five-year review, FMC identified 12 producers of persulfates in China, which resulted in a large increase in the reported capacity to produce persulfates in that country.<sup>38</sup> In its response to the Commission's notice of institution for this review, FMC stated that the persulfate industry in China continued to grow during the period of review and identified 25 producers of persulfates and again a large increase in capacity. FMC estimated that the current amount of excess capacity in China is approximately 56 million pounds and now \*\*\*.<sup>39</sup>

Data on the persulfate industry in China reported to the Commission during the original investigation, the first five-year review, and this review are presented in table I-7.

<sup>37</sup> Ibid at 26.

<sup>38</sup> *Persulfates from China, Staff Report*, INV-Z-168, October 3, 2002, p. I-14. Four of the additional Chinese producers reportedly began production in 1999. FMC also reported that in 1999, AJ built an entirely new production facility and expanded its persulfates capacity from 28 million pounds in 1999 to over 46 million pounds in 2000, resulting in a capacity utilization rate in 2000 of 46 percent. Ibid.

<sup>39</sup> FMC's *Response to the Notice of Institution*, December 21, 2007, p. 9 and exh. 2 and 5 ("China Chemical Reporter article entitled: "Unduly Rapid Capacity Expansion of Persulfates").

**Table I-7**  
**Persulfates: China's capacity, production, and shipments, 1994-96, 2000, and 2006**

Item	1994	1995	1996	2000 <sup>1</sup>	2006
	<b>Quantity (1,000 pounds, except as noted)</b>				
Capacity	***	***	***	137,238	277,782
Production	***	***	***	61,963	221,996
Capacity utilization ( <i>percent</i> )	***	***	***	45.2	79.9
Shipments: Home market	***	***	***	(2)	(2)
Exports: United States	***	***	***	(2)	***
Other	***	***	***	(2)	***
Total exports	***	***	***	(2)	***
Total shipments	***	***	***	(2)	(2)
<sup>1</sup> 2001 data not available. <sup>2</sup> Not available.					
Source: <i>Persulfates from China, Staff Report</i> , INV-U-046, June 3, 1997, p. VII-4, for 1994-96 data (compiled from data submitted in response to Commission questionnaires from two producers in China); <i>Persulfates from China, Staff Report</i> , INV-Z-168, October 3, 2002, p. I-15 (2000 data); and FMC's <i>Response to the Notice of Institution</i> , December 21, 2007, exh. 2 and 4.					

## ANTIDUMPING AND COUNTERVAILING DUTY ORDERS IN THIRD-COUNTRY MARKETS

Recently, the European Union ("EU") and India imposed antidumping duties on persulfates from China. The EU, after revoking its 1995 antidumping duty order on persulfates from China in April 2002, reimposed those duties in October 2007.<sup>40</sup> The current antidumping duty rates applicable to China range from 0.00 (*de minimis*) to 71.8 percent.<sup>41</sup> In July 2007, India imposed an antidumping duty on persulfates from China and Japan with a duty rate of 34.91 percent imposed on imports from China.<sup>42</sup>

<sup>40</sup> Antidumping duties were also imposed on exports of persulfates from the United States (10.6 percent for DuPont, 39.0 percent for FMC, and 39.0 percent for all others) and from Taiwan (22.6 percent) in October 2007. The scope of the EU's antidumping duty orders also includes a product known as potassium monopersulfate. *Ibid.*, exh. 9.

<sup>41</sup> *De minimis* for ABC Chemicals (Shanghai) Co., Ltd.; 24.5 percent for Degussa-AJ (Shanghai) Initiators Co., Ltd.; and 71.8 percent for all others. According to FMC, ABC Chemicals (Shanghai) Co., Ltd. accounted for only \*\*\* of the 126,000 metric ton capacity in China. *Ibid.* at pp. 12-13 and exh. 9. In December 1995, the European Union imposed a final antidumping duty order with a duty rate of 83.3 percent on imports of persulfates from China. The antidumping order was revoked in early 2002. *Ibid.*, exh. 13.

<sup>42</sup> *Ibid.* at p. 13 and exh. 7.



**APPENDIX A**  
***FEDERAL REGISTER* NOTICES**



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**INTERNATIONAL TRADE  
COMMISSION**

**[Investigation No. 731-TA-749 (Second  
Review)]**

**Persulfates From China**

**AGENCY:** United States International  
Trade Commission.

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

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**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 persulfates  
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;<sup>1</sup> to be assured of consideration, the deadline for responses is December 21, 2007. Comments on the adequacy of responses may be filed with the Commission by January 14, 2008. 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 Date:* November 1, 2007.

**FOR FURTHER INFORMATION CONTACT:**

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 July 7, 1997, the Department of Commerce ("Commerce") issued an antidumping duty order on imports of persulfates from China (62 FR 36259). Following five-year reviews by Commerce and the Commission, effective December 24, 2002, Commerce issued a continuation of the antidumping duty order on imports of persulfates from China (67 FR 78415). 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

injury to determine whether to conduct a full review or an expedited review. The Commission's determination in any 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 review determination, the Commission found a single *Domestic Like Product* consisting of ammonium, sodium, and potassium persulfates.

(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 review determination, the Commission defined the *Domestic Like Product* as producers of ammonium, sodium, and potassium persulfates.

(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 December 21, 2007. 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

<sup>1</sup> 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. 08-5-176, expiration date June 30, 2008. Public reporting burden for the request is estimated to average 10 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.



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 January 14, 2008. 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 after 2001.

(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 2006 (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 2006 (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 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 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 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 2006 (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 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 2001, 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.

Issued: October 25, 2007.

By order of the Commission.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. E7-21336 Filed 10-31-07; 8:45 am]

**BILLING CODE 7020-02-P**

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**INTERNATIONAL TRADE  
COMMISSION**

[Investigation No. 731-TA-749 (Second Review)]

**Persulfates From China**

**AGENCY:** United States International Trade Commission.

**ACTION:** Scheduling of an expedited five-year review concerning the antidumping duty order on persulfates 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 persulfates 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:** February 4, 2008.

**FOR FURTHER INFORMATION CONTACT:** Christopher Cassise (202-708-5408), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<http://www.usitc.gov>).

**SUPPLEMENTARY INFORMATION:**

*Background.*—On February 4, 2008, the Commission determined that the domestic interested party response to its notice of institution (72 FR 61907, November 1, 2007) 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.<sup>1</sup> 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 March 3, 2008, 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,<sup>2</sup> 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 March 6, 2008, 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 March 6, 2008. However, should 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.

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.

**Authority:** This review is being conducted under authority of title VII of the Tariff Act

of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: February 11, 2008.

**Marilyn R. Abbott,**

*Secretary.*

[FR Doc. E8-2848 Filed 2-14-08; 8:45 am]

**BILLING CODE 7020-02-P**

<sup>1</sup> A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

<sup>2</sup> The Commission has found the response submitted by FMC Corporation to be individually adequate. Comments from other interested parties will not be accepted (see 19 CFR 207.62(d)(2)).

**APPENDIX B**  
**STATEMENT ON ADEQUACY**



EXPLANATION OF COMMISSION DETERMINATION ON ADEQUACY

in

*Persulfates from China*

Inv. No. 731-TA-749 (Second Review)

On February 4, 2008, the Commission determined that it should proceed to an expedited review in the subject five-year review pursuant to section 751(c)(3) of the Tariff Act of 1930, as amended, 19 U.S.C. § 1675(c)(3).

The Commission received an adequate response to the notice of institution from FMC Corp., the sole known producer of persulfates in the United States. Because the Commission received an adequate response from a domestic producer accounting for all known U.S. production, the Commission determined that the domestic interested party group response was adequate.

The Commission did not receive a response from any respondent interested party concerning subject imports from China and therefore determined that the respondent interested party group response was inadequate. In the absence of an adequate respondent interested party group response, or other circumstances warranting a full review, the Commission 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>).

