Chloropicrin from China

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

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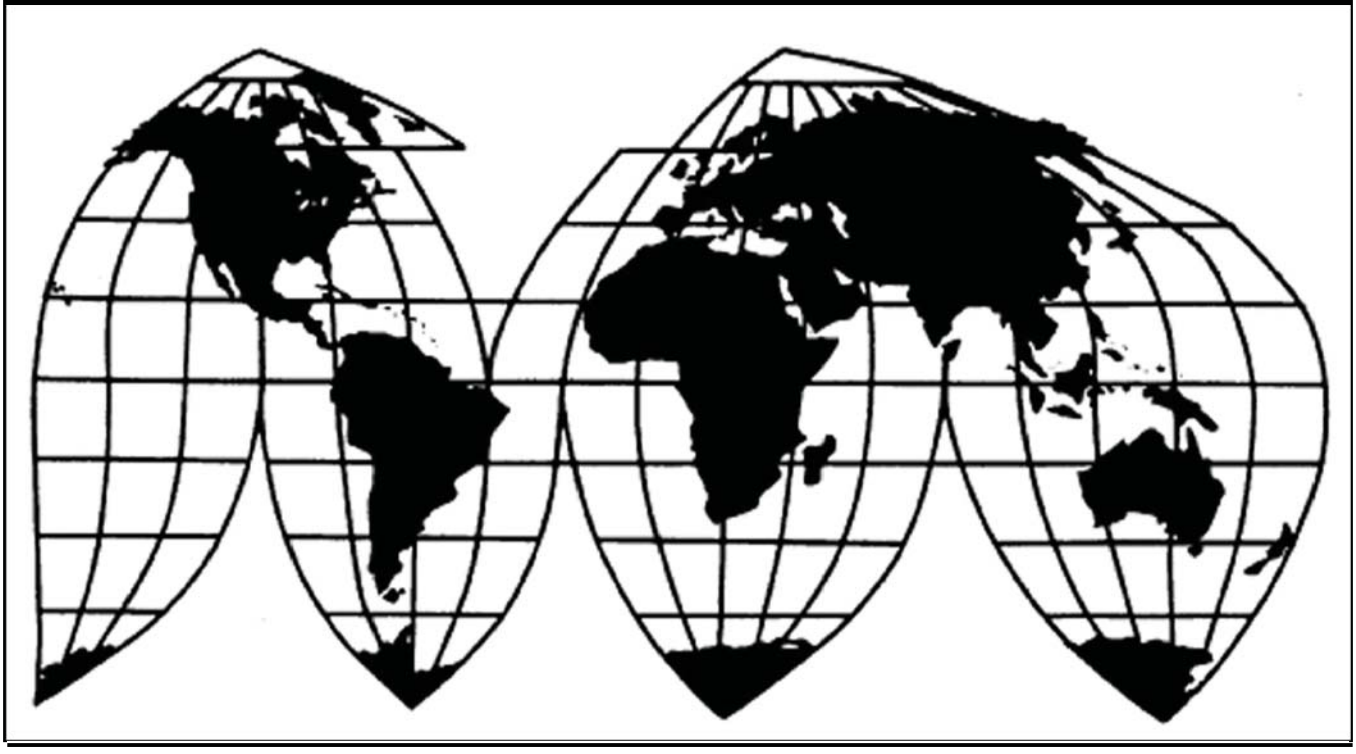
U.S. International Trade Commission



Washington, DC 20436

U.S. International Trade Commission

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Note.–Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report.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-130 (Third Review)

CHLOROPICRIN FROM CHINA

DETERMINATION

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

BACKGROUND

The Commission instituted this review on July 1, 2009 (74 F.R. 31760) and determined on October 15, 2009 that it would conduct a full review (74 F.R. 55065, October 26, 2009). Notice of the scheduling of the Commission's review and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* on October 15, 2009 (74 F.R. 55065). Counsel for the three domestic producers of chloropicrin offered to submit written testimony in lieu of an oral hearing presentation. In connection with the offer of written testimony, counsel indicated a willingness to respond to written questions of the Commissioners by a date to be set by the Commission. No other party filed a request to appear at the hearing. Consequently, the public hearing in connection with the review, scheduled to begin at 9:30 a.m. on February 18, 2010, at the U.S. International Trade Commission Building was cancelled.

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

VIEWS OF THE COMMISSION

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

I. BACKGROUND

A. The Original Determination

In March 1984, the Commission unanimously determined that an industry in the United States was being materially injured by reason of imports of chloropicrin from China that were being sold at less than fair market value.[1] Subsequently, the U.S. Department of Commerce ("Commerce") issued an antidumping duty order covering these imports.[2]

B. The Commission's Five-Year Reviews

In April 1999, the Commission completed an expedited first five-year review of the order. On the basis of facts available, the Commission determined that revocation of the order on chloropicrin from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[3]

In August 2004, the Commission completed a second expedited review of the order. On the basis of facts available, it determined that revocation of the antidumping duty order on chloropicrin from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[4]

C. The Current Review

The Commission instituted this five-year review on July 2, 2009.[5] The Commission received a joint response to the notice of institution from domestic producers ASHTA Chemicals, Inc. ("ASHTA"); Niklor Chemical Co., Inc. ("Niklor");[6] and Trinity Manufacturing, Inc. ("Trinity") (collectively "Domestic Producers"). Although the Commission determined that the domestic interested party group response was adequate and that the respondent interested party group response was inadequate, the

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

[2] Antidumping Duty Order; Chloropicrin From the People's Republic of China, 49 Fed. Reg. 10691-03 (March 22, 1984).

[3] Chloropicrin from China, 64 Fed. Reg. 16998 (April 7, 1999).

[4] Chloropicrin from China, 69 Fed. Reg. 48520 (August 10, 2004).

[5] Chloropicrin from China, 74 Fed. Reg. 31760 (July 2, 2009).

[6] Niklor is not currently a producer of chloropicrin nor did it produce during the period examined. Niklor ***, although economic conditions since the second review have not warranted a resumption of operations. CR at I-18 to I-19, PR at I-12.

Commission determined to conduct a full review in light of information regarding possible changes in conditions of competition.[7]

Commerce expedited its five-year review and published its final affirmative review determination on November 6, 2009.[8]

In this review, the Domestic Producers submitted a prehearing brief, written testimony, and written responses to questions from the Commission.[9] The Commission did not receive a brief from any subject foreign producer or importer, nor did any respondent interested party request to appear at the Commission's hearing.

Two U.S. producers, ASHTA and Trinity, accounting for all U.S. production of chloropicrin in 2008, provided complete responses to the Commission's questionnaires.[10] The Commission received a questionnaire response from one importer accounting for virtually all imports of the subject merchandise during the period of review.[11] The Commission received usable questionnaire responses from nine U.S. purchasers, eight of whom are believed to account for all of the direct purchases of chloropicrin from U.S. producers.[12] The Commission also reviewed written testimony in lieu of a public hearing, although only supporters of continuing the antidumping duty order submitted such testimony.[13] The Commission did not receive any responses to foreign producer questionnaires from chloropicrin producers in China.[14]

II. DOMESTIC LIKE PRODUCT

In making its determination under section 751(c) of the Act, the Commission defines "the domestic like product" and the "industry."[15] The Act defines "domestic like product" as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an

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[7] Confidential Report ("CR")/Public Report ("PR") at app. A. Commissioners Lane, Williamson, and Pinkert voted to conduct an expedited review. Id.

[8] Chloropicrin from the People's Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order, 74 Fed. Reg. 57450 (November 6, 2009).

[9] The Commission's public hearing was originally scheduled for February 18, 2010. The hearing was cancelled at the request of the Domestic Interested Parties. The Domestic Interested Parties filed written testimony in lieu of oral testimony. Staff Report, INV-HH-020 (March 16, 2010) ("CR") at I-2. No respondent interested party objected to cancellation of the hearing.

[10] CR at I-20, PR at I-12 and CR/PR at Table I-5.

[11] CR at I-20, IV-1, PR at I-13, IV-1. There have been no reported commercial sales of chloropicrin from China or from nonsubject countries since 1984. ***. CR at IV-3, PR at IV-1.

[12] CR/PR at II-1.

[13] See Domestic Producers' Written Testimony (March 1, 2010) ("Written Testimony").

[14] As noted above, this is the Commission's first full review of the antidumping duty order since it was imposed in 1984. Along with two of her colleagues, Chairman Shara L. Aranoff voted to conduct a full review in light of possible changes in market conditions resulting from increasing environmental regulation of chloropicrin. Pursuant to the decision to conduct a full review, Commission staff mailed questionnaires to domestic producers, importers, foreign producers, and purchasers of chloropicrin.

While other parties responded to the questionnaires, the foreign producer of the subject merchandise in China did not, despite the diligent efforts of Commission staff. As a result, the record in this review lacks information that could have been supplied from the foreign producer and that could have been important to the Commission's analysis. Having voted to conduct a full review of the order, Chairman Aranoff notes the foreign producer's lack of participation with disappointment, and expresses the hope that all interested parties elect to participate in future investigations and reviews.

[15] 19 U.S.C. § 1677(4)(A).

investigation under this subtitle."[16] The Commission's practice in five-year reviews is to look to the like product definition from the original determination and any completed reviews and consider whether the record indicates any reason to revisit the prior findings.[17]

A. Product Description

In its third five-year review, Commerce defined the subject merchandise as "chloropicrin, also known as trichloronitromethane. A major use of the product is as a pre-plant soil fumigant (pesticide). Such merchandise is currently classifiable under the Harmonized Tariff Schedule item number 2904.90.50."[18]

Chloropicrin is a highly toxic liquid chemical compound, used primarily as an active agent in pre-plant soil fumigants for killing fungi. Small amounts are also used to control insects and rodents in grain storage and to prevent wood decay. Chloropicrin is a relatively expensive fungicide, so its use is normally limited to high-value crops such as strawberries, tobacco, flowers, and tree-grown fruit, although it is also used for relatively lower-value crops which require less fumigant per acre to achieve the same pest control and resultant increase in yield. Chloropicrin is usually blended with other chemical agents, such as methyl bromide, into a single fumigant with mixture ranges from less than one percent chloropicrin to more than 50 percent.[19]

B. The Commission's Original Determination and Prior Reviews

The definition of the subject merchandise has not changed since the original investigation.[20] In the original investigation the Commission defined the domestic like product as "chloropicrin produced through the use of nitromethane."[21] In its first and second five-year reviews, the Commission defined the domestic like product as all chloropicrin, consistent with Commerce's scope.[22]

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[16] 19 U.S.C. § 1677(10); see, e.g., Cleo, Inc. v. United States, 501 F.3d 1291, 1299 (Fed. Cir. 2007); NEC Corp. v. Department of Commerce, 36 F. Supp. 2d 380, 383 (Ct. Int'l Trade 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int'l Trade 1996); Torrington Co. v. United States, 747 F. Supp. 744, 748-49 (Ct. Int'l Trade 1990), aff'd, 938 F.2d 1278 (Fed. Cir. 1991); see also S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979).

[17] See, e.g., Internal Combustion Industrial Forklift Trucks From Japan, Inv. No. 731-TA-377 (Second Review), USITC Pub. 3831 at 8-9 (December 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 (February 2003).

[18] Chloropicrin from the People's Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order, 74 Fed. Reg. 57450 (November 6, 2009).

[19] CR at I-13 to I-14, PR at I-8 to I-9.

[20] See Original Determination at 3 and n.6.

[21] Original Determination at 3 and n.4.

[22] First Five-Year Review at 4; Second Five-Year Review at 4.

C. Analysis and Conclusion

No new facts have been presented to warrant a conclusion regarding the domestic like product different from that in the Commission's past determinations. Moreover, no party raised any objections to this definition of the domestic like product.[23]

Therefore, we find that the appropriate definition of the domestic like product in this full five-year review is all chloropicrin, the same as Commerce's scope and unchanged from the Commission's original determination and two subsequent five-year reviews.[24]

III. DOMESTIC INDUSTRY

Section 771(4)(A) of the Act defines the relevant industry as the domestic "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."[25] 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.

In its original determination and in both prior five-year reviews, the Commission defined the domestic industry as all domestic producers of chloropicrin.[26] During the period examined in the current review, no domestic producer has imported subject merchandise or is related to a foreign producer or importer of the subject merchandise. Accordingly, no domestic producer comes within the definition of a related party.[27] Based on our definition of the domestic like product, we define the domestic industry to include all U.S. producers of the domestic like product.[28]

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

A. Legal Standard

In a five-year review conducted under section 751(c) of the Act, Commerce will revoke an antidumping or countervailing duty order unless (1) it makes a determination that dumping or subsidization is likely to continue or recur and (2) the Commission makes a determination that revocation of the antidumping or countervailing duty order "would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time."[29] The SAA states that "under the likelihood

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[23] Substantive Response of Domestic Producers to the Commission's Notice of Institution (July 31, 2009) ("Substantive Response") at 9-10; Domestic Producers' Prehearing Brief (February 9, 2010) ("Prehearing Brief") at 2-3.

[24] First Five-Year Review at 4; Second Five-Year Review at 4.

[25] 19 U.S.C. § 1677(4)(A). The definitions in 19 U.S.C. § 1677 are applicable to the entire subtitle containing the antidumping and countervailing duty laws, including 19 U.S.C. §§ 1675 and 1675a. See 19 U.S.C. § 1677.

[26] Original Determination at 3 and A-5 (Commission defined the domestic industry as the two U.S. producers of chloropicrin identified in the investigation, Niklor and LCP Chemicals and Plastics, Inc.); First Five-Year Review at 6; Second Five-Year Review at 6.

[27] 19 U.S.C. § 1677(4)(B).

[28] As noted above, Niklor does not currently produce chloropicrin, although it reportedly retains the capacity to do so. CR at I-18 to I-19, PR at I-11 to I-12.

[29] 19 U.S.C. § 1675a(a).

standard, the Commission will engage in a counterfactual analysis; it must decide the likely impact in the reasonably foreseeable future of an important change in the status quo – the revocation or termination of a proceeding and the elimination of its restraining effects on volumes and prices of imports."[30] Thus, the likelihood standard is prospective in nature.[31] 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.[32] [33] [34]

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."[35] 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."[36]

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."[37] 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

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[30] SAA at 883-84. 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." Id. at 883.

[31] 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.

[32] 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 mem., 140 Fed. Appx. 268 (Fed. Cir. 2005); Nippon Steel Corp. v. United States, 26 CIT 1416, 1419 (2002) (same); Usinor Industeel, S.A. v. United States, 26 CIT 1402, 1404 nn.3, 6 (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, 26 CIT 767, 794 (2002) ("'likely' is tantamount to 'probable,' not merely 'possible'").

[33] 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, Invs. Nos. 701-TA-362 (Review) and 731-TA-707 to 710 (Review)(Remand), USITC Pub. 3754 (Feb. 2005).

[34] 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), 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 these reviews and all subsequent reviews until either Congress clarifies the meaning or the U.S. Court of Appeals for the Federal Circuit addresses this issue.

[35] 19 U.S.C. § 1675a(a)(5).

[36] 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.

[37] 19 U.S.C. § 1675a(a)(1).

terminated, and any findings by Commerce regarding duty absorption pursuant to 19 U.S.C.§ 1675(a)(4).[38] 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.[39]

In evaluating the likely volume of imports of subject merchandise if the orders under review are revoked and the suspended investigations are terminated, the Commission is directed to consider whether the likely volume of imports would be significant either in absolute terms or relative to production or consumption in the United States.[40] 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.[41]

In evaluating the likely price effects of subject imports if the orders and finding under review were revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject 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.[42]

In evaluating the likely impact of imports of subject merchandise if the orders and finding under review are 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 the following: (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.[43] 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. 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 were revoked.[44]

As discussed above, no foreign producer of chloropicrin responded to the Commission's notice of institution. Accordingly, when appropriate in this review, we have relied on the facts otherwise available,

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[38] 19 U.S.C. § 1675a(a)(1). We note that no duty absorption findings have been made by Commerce.

[39] 19 U.S.C. § 1675a(a)(5). Although the Commission must consider all factors, no one factor is necessarily dispositive. SAA at 886.

[40] 19 U.S.C. § 1675a(a)(2).

[41] 19 U.S.C. § 1675a(a)(2)(A-D).

[42] See 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.

[43] 19 U.S.C. § 1675a(a)(4).

[44] The SAA states that in assessing whether the domestic industry is vulnerable to injury if the order is revoked, the Commission "considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they may also demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports." SAA at 885.

which consist of information from the original investigation and the first and second five-year reviews, as well as information submitted in this review, including information provided by the domestic industry, questionnaire responses, and information available from published sources.[45] [46]

B. Conditions of Competition and 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."[47]

1. The Commission's Original Determination and Prior Reviews

In the original investigation, the Commission found that the sale of chloropicrin was seasonal, with the bulk of the product sold during the months of April to October for blending with other chemicals for use in fumigating fields in summer and fall.[48]

In its first five-year review, the Commission identified several conditions of competition pertinent to its analysis of the chloropicrin market. The Commission noted that consumption of chloropicrin had *** from the time of the original investigation in 1984 to the time of the first review in 1999. It noted also that chloropicrin was frequently combined with other chemical agents, principally methyl bromide, and that methyl bromide was scheduled to be phased out over the next six years for environmental reasons, creating uncertainty about future demand for chloropicrin. At the time of the first review, there were no nonsubject imports and domestic consumption and domestic production capacity had grown. The Commission characterized the market for chloropicrin as mature, and noted that the availability and prices of raw materials had been steady.[49] The Commission found that chloropicrin was a commodity product, with price an important purchasing factor, and with a relatively high degree of substitutability between the likely subject imports and the domestic like product.[50]

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[45] 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 any other person withholds information requested by the agency, fails to provide such information in the time or in the form or manner requested, significantly impedes a proceeding, or provides information that cannot be verified pursuant to 19 U.S.C. § 1677m(i). The verification requirements in 19 U.S.C. § 1677m(i) are applicable only to Commerce. See Titanium Metals Corp. v. United States, 155 F. Supp. 2d 750, 765 (Ct. Int'l Trade 2002) ("the 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 Commission investigations.").

[46] 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. See 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, the Commission is obligated to consider all evidence relating to each of the statutory factors and may not draw adverse inferences that render such analysis superfluous. "In general, the Commission makes determinations by weighing all of the available evidence regarding a multiplicity of factors relating to the domestic industry as a whole and by drawing reasonable inferences from the evidence it finds most persuasive." SAA at 869.

[47] 19 U.S.C. § 1675a(a)(4).

[48] Original Determination at 8; but see Domestic Producers' Answers to Questions from the Commission (Vice Chairman Pearson) at 10-11.

[49] First Five-Year Review at 9.

[50] First Five-Year Review at 9-10.

In the second five-year review, the Commission again found that consumption of chloropicrin had grown significantly in the years since the original investigation. With the disappearance of subject imports from the U.S. market after imposition of the antidumping duty order on chloropicrin from China, the Commission found that domestic producers had recaptured their earlier share of the market.[51] Chloropicrin is primarily used as an active ingredient in fumigants that are applied to soil prior to planting. When used in fumigants, chloropicrin is often paired with methyl bromide, which has certain properties that chloropicrin lacks. The Commission noted that the use of methyl bromide had been curtailed and that its use in the United States was scheduled to be phased-out, except in some limited applications and for specific periods. As methyl bromide availability use was restricted, users increased the proportion of other active ingredients, including chloropicrin. The Commission found that the higher proportions for chloropicrin contributed to increased demand for chloropicrin during the period of review compared to the periods examined in the original investigation and the first five-year review. The Commission also found that research had not yet yielded practical alternatives to fumigants containing methyl bromide and chloropicrin. The Commission concluded that the future effects of the phase-out of methyl bromide on the demand for chloropicrin were unclear.[52]

The Commission also found that chloropicrin was a commodity product and that there was relatively high substitutability between likely subject imports and the domestic like product. As a result, the Commission found that price was an important consideration in purchasing decisions for chloropicrin. The Commission concluded that the conditions of competition in the chloropicrin market (aside from the possible effects of the phase-out of methyl bromide) were not likely to change significantly in the reasonably foreseeable future.

2. The Current Review

There have been substantial changes in the conditions of competition after the Commission's original investigation in 1984, as noted in the two previous five-year reviews. Those changed conditions have remained in place, and some additional changes have occurred since the Commission's last five-year review in 2004. We find the following conditions of competition relevant to our determination.

a. Demand

Demand for chloropicrin depends upon the demand for its end use applications. The most commonly reported uses include pre-planting soil fumigation applications to buildings and sheds.[53] The U.S. demand for chloropicrin as measured by apparent U.S. consumption decreased slightly from *** pounds in 2006 to *** pounds in 2007, before increasing to *** pounds in 2008.[54] Apparent U.S. consumption was *** pounds in January-September 2008 and *** pounds in January-September 2009.[55]

Two contrary trends have affected demand for chloropicrin in recent years, and will likely continue to do so in the reasonably foreseeable future. In 1999, the U.S. Environmental Protection Agency ("EPA") implemented a phase-out of methyl bromide, which was originally scheduled for

[51] Second Five-Year Review at 7.

[52] Second Five-Year Review at 8.

[53] CR at II-6, PR at II-4.

[54] CR/PR at Table B-1.

[55] Id.

completion in 2005.[56] As the share of methyl bromide in fumigant blends has declined, the share of chloropicrin has tended to rise.[57] On the other hand, chloropicrin has been subject to increasing regulatory review through the EPA's re-registration eligibility decision ("RED") procedures to determine the chemical's usability based on its effects on human health and the environment. In 2008 and 2009, the EPA issued REDs on chloropicrin requiring, among other things, risk mitigation measures including buffer zones, public notice of use, and community outreach and education programs. In 2009, the state of California's EPA issued an evaluation of chloropicrin as a toxic air contaminant; this evaluation is expected to result in increased restrictions on the use of chloropicrin sometime in 2011.[58] Even as the use of chloropicrin has increased due to the phase-out of methyl bromide, these Federal and state regulatory restrictions are expected to make the production and use of chloropicrin more complicated and expensive in the future.

Market participants provided mixed responses when asked whether demand increased, decreased, fluctuated, or remained the same, but all market participants reported that there have been no changes in the end uses of chloropicrin since 1984. Of the purchasers that reported that demand increased, most indicated that the phase-out of methyl bromide led to the increased demand for chloropicrin.[59] One former producer reported that *** and all responding purchasers reported that they anticipated more end use restrictions on applications for chloropicrin due to the EPA's RED.[60] [61] The overall effect of these contrary trends on future demand is uncertain.

b. Supply

There are currently two domestic producers of chloropicrin.[62] The domestic industry's annual capacity was *** from 2006 to January-September 2009 at *** pounds.[63]

Subject imports from China virtually exited the U.S. market after imposition of the antidumping duty order in 1984. Since that time, only small volumes of subject merchandise have been imported and no subject imports were sold commercially during the period for which data were collected.[64] Nonsubject imports were not present in the U.S. market during the period of this current review.[65]

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[56] CR at I-14, PR at I-9. Contrary to the EPA's original schedule to completely phase-out the use of methyl bromide in the United States by January 1, 2005, that chemical remains in limited use. The EPA granted methyl bromide a Critical Use Exemption from the January 1, 2005, phase-out date, thus allowing for limited production, consumption, and importation of methyl bromide for specific uses determined to be "critical." Farmers in the states of Florida and California, however, rely heavily on the use of methyl bromide for crops and reportedly participate in the critical use exemption process. Id. The critical use exemption process remains in effect and, therefore, the final ban on the production and use of methyl bromide is still pending with no clear indication when, if ever, a full ban will take effect.

[57] CR at I-16, I-23, PR at I-10, I-14.

[58] CR at I-14 to I-17, PR at I-8 to I-11, and CR/PR at app. D.

[59] CR at II-8, PR at II-5.

[60] Niklor reported ***. Niklor U.S. Producer's Questionnaire Response, section IV-14.

[61] U.S. Producers' Questionnaire Responses, section III-8; ; see also Substantive Response at 4-9 and Prehearing Brief at 6-9.

[62] CR/PR at Table I-5. The two producers are ASHTA and Trinity.

[63] CR/PR at Table B-1.

[64] CR at IV-3, PR at IV-1, and CR/PR at Table B-1.

[65] CR/PR at Table B-1. In addition to the domestic industry and Dalian, there are three chloropicrin producers in Japan. Because Japanese chloropicrin consumption exceeds production, Japanese producers have shown no interest in the U.S. market at any time for which the Commission has data since 1981. CR at IV-7 to IV-8, PR at IV-3 to IV-

c. Other Conditions

There is a high degree of substitutability between domestically produced chloropicrin and the subject imports, and price is an important consideration in purchasing decisions.[66] Purchasers listed price and availability as the most important factors affecting their chloropicrin purchasing decisions.[67]

C. Likely Volume of Subject Imports

1. The Commission's Original Determination and Prior Reviews

In the original investigation, the volume of U.S. imports of chloropicrin from China increased from a negligible amount in 1980 to a substantial amount in 1981, and more than tripled in 1982, before declining slightly in 1983. The U.S. market share held by imports of chloropicrin from China increased significantly from 1980 to 1982 before declining in 1983.[68]

In its first-five year review, the Commission found that the subject import volume would likely increase significantly and be significant if the order were revoked. The Commission based its conclusion largely on the record from the original investigation. Although there were no subject imports in the period examined in the first review, the volume of subject imports had increased from *** pounds in 1980 to *** pounds in 1982.[69] China was the source of virtually all imported chloropicrin in the U.S. market, and the Chinese industry was highly export-oriented, with the United States as its primary export market.[70] Production capacity in China appeared to have increased since the original determination, and China continued to export significant volumes to third country markets.[71]

In the second five-year review, the Commission concluded, on the basis of facts available, that subject import volume was likely to increase significantly and would be significant if the order were revoked. The conclusion was based largely on the records from the original investigation and the first five-year review, and information submitted by the domestic industry. Although the Commission acknowledged that there were no subject imports in the United States at the time of the review, the Commission inferred from the available data that, at a minimum, total production capacity for chloropicrin in China was significantly greater than in the original investigation. In addition, the Commission noted that the volume of U.S. imports of chloropicrin from China in 1982 was equivalent to *** of apparent U.S. consumption in 2004.[72] The Commission found that these circumstances suggested that the chloropicrin industry in China had ample ability to export significant volumes of chloropicrin to the United States if the order were revoked. The Commission concluded, because of the similarities in the conditions of competition prevailing at the time and those existing prior to the imposition of the order, that it was likely that the chloropicrin industry in China would resume shipping significant volumes of chloropicrin to the U.S. market in the absence of the antidumping duty order.[73]

4; Domestic Producers' Answers to Questions from the Commission (Chairman Aranoff) at 2-3.

[66] CR at V-10, PR at V-3 to V-4. When asked how frequently they purchase chloropicrin at the lowest price, seven purchasers indicated "always" or "usually," two reported "sometimes," and only one reported "never." Id.

[67] CR/PR at Tables II-2 and II-3.

[68] Original Determination at 5. The Commission found that subject imports were discontinued after Commerce's preliminary determination of sales at less than fair value in September 1983. Id. at n.15.

[69] First Five-Year Review at 11.

[70] First Five-Year Review at 11.

[71] First Five-Year Review at 12.

[72] Second Five-Year Review Confidential Views at 13.

[73] Second Five-Year Review at 10.

2. The Current Review

Several factors support the conclusion that the subject import volume is likely to be significant in the event of revocation of the order.

First, the sole Chinese producer, Dalian Dyechem International Corporation ("Dalian"), reportedly has considerable production capacity and unused capacity. The Domestic Producers estimate that Dalian has the ability to produce at least *** pounds of chloropicrin annually and believe that Dalian has plans to expand its production capacity to *** pounds within the next year.[74] The Domestic Producers estimate that Dalian's excess production capacity is *** pounds, and estimate this excess capacity to be the equivalent of *** percent of apparent U.S. consumption.[75]

Second, the Chinese industry is highly export-oriented. Dalian states on its website that it exports chloropicrin to many countries in the world and that its exports increase every year. In addition, Dalian claims that it works to increase production of chloropicrin to meet consumer demand in both domestic and foreign markets.[76] Information from the original investigation also shows that the Chinese industry is highly export-oriented.[77]

Finally, the United States is an attractive market for the Chinese producers because of its size. The United States was the world's second largest consumer of chloropicrin with more than *** of global consumption in 2008[78] and, despite projected slow growth in demand, is likely to remain one of the top chloropicrin markets.[79] In addition, the Chinese industry faces barriers in other markets. For example, although the European Union was the third largest global consumer of chloropicrin, the importation of Chinese chloropicrin reportedly ***.[80]

Accordingly, based on the demonstrated ability of Chinese chloropicrin producers to increase imports into the U.S. market rapidly, their substantial production capacity and unused capacity, their export orientation, and the attractiveness of the U.S. market, we find that the likely volume of subject imports, both in absolute terms and as a share of the U.S. market, would be significant if the order were revoked.

D. Likely Price Effects of Subject Imports

1. The Commission's Original Determination and Prior Reviews

In its original determination, the Commission found that consistent underselling by subject imports forced U.S. producers to reduce their prices by significant margins in order to compete with the less than fair value imports of chloropicrin from China.[81]

In its first five-year review, the Commission found that revocation of the antidumping duty order would be likely to lead to significant price effects, including significant underselling, and significant price

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[74] CR at IV-6, PR at IV-3; Prehearing Brief at 12; Written Testimony at 5.

[75] Prehearing Brief at 12. The Commission notes that *** million pounds would be equivalent to *** percent of apparent U.S. consumption in 2008. See CR/PR at Table B-1.

[76] CR at IV-6, PR at IV-3.

[77] Original Determination at 5 (imports of chloropicrin from China increased from a negligible amount in 1980 to a substantial amount in 1981, and more than tripled in 1982).

[78] According to the ***. CR at IV-7 to IV-8, PR at IV-4.

[79] CR/PR at Table IV-4. In addition, U.S. purchasers reported that they would be interested in purchasing Chinese chloropicrin, in the absence of the antidumping order, to develop additional competitive sources of chloropicrin. CR/PR at C-5 and C-6; see also CR at IV-3, PR at IV-1 ***.

[80] CR at IV-6, n.15, PR at IV-3, n.15.

[81] Original Determination at 5.

suppression and depression.[82] The Commission noted that the record contained little pricing data and it based its finding largely on the record from the original investigation.[83]

The Commission found that there was a relatively high level of substitutability between domestically produced chloropicrin and subject imports because of the commodity nature of the product. It noted that price was an important factor in purchasing decisions, that subject imports exhibited significant margins of underselling in the original investigation, and that there was no evidence that these facts had changed by the time of the first review. The Commission reasoned that, given these facts, it was likely that the Chinese producers would offer attractively low prices to U.S. purchasers in order to regain market share, as they did in the original investigation, if the antidumping duty order were revoked. Consequently, the Commission concluded that prices for domestically produced chloropicrin would likely decline to a significant degree in response to the likely significant volumes of substitutable subject imports offered at lower prices.[84]

In the second five-year review, the Commission noted that the level of substitutability suggested that price was an important, if not critical, criterion in the purchasing decision for customers and that there was no evidence in the record to suggest that these facts had changed. The Commission found it likely that the chloropicrin industry in China would offer attractively low prices to U.S. purchasers to regain market share and concluded that domestic prices would likely decline to a significant degree in response to the likely significant volumes of subject imports offered at low prices. As a result, the Commission found that revocation would lead to significant price effects, including significant underselling by subject imports, as well as significant price suppression and depression in the reasonably foreseeable future.[85]

2. The Current Review

The record in this review indicates that imported chloropicrin remains a commodity product that is readily substitutable with the domestic like product. Price remains an important factor in the purchase of chloropicrin, with most purchasers reporting that price is "very important" and ranking price most often as the number one factor in their purchasing decisions.[86]

There are no new pricing comparisons for subject and domestic chloropicrin on the record of this review.[87] [88] Domestic producer Trinity reported that, upon revocation, subject imports ***.[89] ASHTA concurred, reporting that revocation ***.[90] Purchaser *** agreed as well, indicating that the Chinese producer would attempt to buy its way into the market by selling at significantly lower prices.[91] Although subject imports have essentially exited the U.S. market as a result of the antidumping duty order in

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[82] First Five-Year Review at 14.

[83] First Five-Year Review at 13-14.

[84] First Five-Year Review at 13.

[85] Second Five-Year Review at 11. See also CR at V-10, PR at V-3 to V-4 (most purchasers reported they "always" or "usually" purchase chloropicrin at the lowest price).

[86] CR/PR at Tables II-2 and II-3.

[87] ***. CR at IV-3, PR at IV-1.

[88] Quarterly prices for U.S.-produced chloropicrin generally fluctuated from January 2006-September 2009 with one major increase during mid-2008. CR at V-9, PR at V-3; and CR/PR at Table V-1 and Figures V-1 and V-2.

[89] CR at C-3, PR at C-3.

[90] CR at C-3, PR at C-3.

[91] CR at C-6, PR at C-5.

1984,[92] the Domestic Producers note that the Chinese industry exports substantial quantitites of chloropicrin to third countries, particularly to Japan, at prices that are 20 to 40 percent below U.S. prices.[93]

If the order were revoked, it is likely that the U.S. market for chloropicrin would become an attractive export market for Dalian, based on Dalian's substantial unused capacity and export orientation, the limited number of global markets, and the size of and current attractive prices in the U.S. market. It is also likely, upon revocation of the order, that Dalian would resume its aggressive underselling practices to increase U.S. market share. Due to the high degree of interchangeability between subject and domestic chloropicrin and the importance of price in purchasing decisions, the underselling is likely to result in significant adverse price effects, similar to those found in the original investigation.[94] Thus, given the likely significant volume of subject imports, we conclude that, if the antidumping duty order under review were revoked, significant volumes of subject imports from China likely would significantly undersell the domestic like product to gain market share and likely would have significant depressing or suppressing effects on the prices of the domestic like product.

E. Likely Impact of Subject Imports[95]

1. The Commission's Original Determination and Prior Reviews

In its original determination, the Commission found that the subject imports significantly affected the U.S. market structure and resulted in the domestic producers losing significant sales and market share to the subject imports.[96] The Commission also noted that the condition of the domestic industry improved after Commerce announced its preliminary margin determination.[97]

In its first five-year review, the Commission noted that, during the period examined in the original investigation, the domestic industry experienced declines in shipments, market share, and capacity utilization, and that the industry's financial condition had deteriorated as well. The Commission also noted that after the entry of the order, subject imports exited the market and the domestic industry's market share increased. Given that domestic and subject chloropicrin are substitutable, and that demand

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[92] In September 1983, Commerce preliminarily determined in its less than fair value investigation of chloropicrin from China a 222 percent dumping margin for the subject merchandise. As a result, the Chinese producers ceased their exports of chloropicrin to the United States. Original Determination at n.10.

[93] Substantive Response at 2; see also U.S. Purchaser's Comments at C-6 ("Importers will make offers based on price.").

[94] Original Determination at 6.

[95] The SAA states that in assessing whether the domestic industry is vulnerable to injury if the order is revoked, the Commission "considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they may also demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports." SAA at 885, 19 U.S.C. § 1675a(a)(4). Section 752(a)(6) of the Tariff Act states that "the Commission may consider the magnitude of the margin of dumping or the magnitude of the net countervailable subsidy" in making its determination in a five-year review. 19 U.S.C. § 1675a(a)(6). The statute defines the "magnitude of the margin of dumping" to be used by the Commission in five-year reviews as "the dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title." 19 U.S.C. § 1677(35)(C)(iv). See also SAA at 887.

In the final results of its expedited sunset review of the antidumping duty order on chloropicrin from China, Commerce found likely antidumping duty margins of 58.0 percent for both the China National Chemicals Import and Export Corporation (SINOCHEM) and the PRC-Wide Entity. 74 Fed. Reg. at 57450.

[96] Original Determination at 6, 9.

[97] Original Determination at 4, n.10.

is not likely to increase due to new technology or product developments, the Commission found it likely that any future increase in the market share of subject imports would be largely at the expense of the domestic industry. The Commission found future demand for chloropicrin somewhat uncertain, given the phase-out of methyl bromide.[98]

The Commission found that, based on the limited record evidence, if the order were revoked the likely volume of subject imports would be significant and that these imports would have significant adverse price effects. The likely volume of subject imports would likely have a significant adverse impact on the production, shipment, sales and revenue levels of the domestic industry, given the substitutable nature of the product. The Commission concluded that, if the antidumping duty order were revoked, subject imports would be likely to have a significant adverse impact on the domestic industry within a reasonably foreseeable time.[99]

In the Commission's second five-year review, the Commission found that the basic substitutability of the product enabled the domestic industry to readily replace subject imports after imposition of the order and to regain market share. The Commission also found that demand was unlikely to be increased by product development or new technology and concluded that any future increase in the market share of subject imports would be largely at the expense of the domestic industry. The likely volume of subject imports would likely have a significant adverse impact on the production, shipment, sales and revenue levels of the domestic industry, given the substitutable nature of the product. The Commission found that the likely volume of subject imports would be significant and that these imports would have significant adverse price effects if the order were revoked. As a result of these findings, the Commission concluded, based on the limited record in the review, that subject imports would be likely to have a significant adverse impact on the domestic industry within a reasonably foreseeable time if the antidumping order were revoked.[100]

2. The Current Review

The condition of the domestic industry generally declined from 2006 to 2007 before improving substantially in 2008 and in January-June 2009. U.S. production of chloropicrin decreased from *** pounds in 2006 to *** pounds in 2007, before increasing to *** pounds in 2008. It was *** pounds in January-September 2008 and *** pounds in January-September 2009.[101] The domestic industry's production capacity remained constant from 2006 to 2008 at *** pounds. It was *** pounds in January-September 2008 and January-September 2009. Capacity utilization decreased from *** percent in 2006 to *** percent in 2007, before increasing to *** percent in 2008. It was *** percent in January-September 2008 and *** percent in January-September 2009.[102]

U.S. shipments decreased from *** pounds in 2006 to *** pounds in 2007 before increasing to *** pounds in 2008. Shipments were *** pounds in January-September 2008 and *** pounds in January-September 2009. Net sales increased from *** pounds in 2006 to *** pounds in 2007 before decreasing slightly to *** pounds in 2008, and were *** pounds in January-September 2008 and *** pounds in January-September 2009.[103]

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[98] First Five-Year Review at 15.

[99] First Five-Year Review at 16.

[100] Second Five-Year Review at 12. The Commission did not find, however, that the domestic industry was in a weakened state due to the limited information on the record. Id.

[101] CR/PR at Table B-1.

[102] CR/PR at Table B-1.

[103] CR/PR at Table B-1.

Domestic producers' inventories declined from *** pounds in 2006 to *** pounds in 2007 and were *** pounds in 2008. Inventories were *** pounds in January-September 2008 and *** pounds in January-September 2009.[104]

The domestic industry's production and related workers (PRWs) increased from *** in 2006 to *** in 2007 before increasing to *** in 2008. The number of PRWs was *** in January-September 2008 and *** in January-September 2009. The number of hours worked increased from *** in 2006 to *** in 2007 to *** in 2008. The hours worked were *** in January-September 2008 and *** in January-September 2009.[105]

The domestic industry's financial performance declined from 2006 to 2007, although most of this decline can be attributed to increased costs faced by the domestic industry.[106] The industry's financial performance substantially improved in 2008 and January-September 2009. The industry's operating income *** from $*** in 2006 to *** in 2007, before *** to an operating income of $*** in 2008. Operating income was $*** in January-September 2008 and $*** in January-September 2009.[107] Although gross profits remained relatively stable during 2006 to 2007, the industry's operating income margin *** from *** percent in 2006 to *** percent in 2007.[108] The industry's operating income *** to *** percent in 2009, and was *** percent in January-September 2008 and *** percent in January-September 2009.[109]

We have also considered the role of other factors including nonsubject imports and demand. In light of the *** of such imports in the U.S. market, the subject imports would likely have a significant adverse impact because there are *** nonsubject imports to displace. We attribute the exceptionally improved performance in the domestic industry's production and capacity utilization rates in 2008 to the increase in demand created by the continued phase-out of methyl bromide, the particularly favorable weather conditions for chloropicrin use, and the ***.[110] With the existing exceptions to the complete phase-out of the use of methyl bromide and the lack of alternative uses for chloropicrin, future increases in demand for chloropicrin are uncertain at best.[111] Therefore, considerations of factors other than the

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[104] CR/PR at Table B-1. The ratio of domestic producers' inventories to U.S. shipments decreased from *** percent in 2006 to *** percent in 2007, before increasing to *** percent in 2008. It was *** percent in January-September 2008 and *** percent in January-September 2009. Id.

[105] CR/PR at Table B-1. Productivity (pounds/hour) decreased from *** in 2006 to *** in 2007, before increasing to *** in 2008. It was *** in January-September 2008 and *** January-September 2009. Id.

[106] During 2006 to 2007, the domestic industry's SGA expenses per unit *** percent and the unit cost of goods sold ***. CR/PR at Table B-1.

[107] The industry's capital expenditures were $*** in 2006 and 2007 and $*** in 2009. Capital expenditures were $*** in January-September 2008 and $*** in January-September 2009. CR/PR at Table B-1.

[108] The contrast between gross profits and the operating income margin during 2006 to 2007 is largely the result of the sharp increase in selling, general and administrative expenses which increased by 82.1 percent during this period. CR/PR at Table B-1.

[109] Based on these trends, we do not find that the domestic industry is vulnerable to the likely volume and price effects of the subject imports.

[110] Domestic Producers' Answers to Questions from the Commission (Chairman Aranoff) at 1. The Domestic Producers reported that the allowable percentage of methyl bromide in a mix with chloropicrin went from sixty-seven percent in 2007 to fifty percent in 2008. In addition, the Domestic Producers claim that the largest chloropicrin market in the United States, California, experienced unusual weather conditions in 2008 with a wet fall causing greater infestation followed by a dry fumigation season that permited more intensive use of chloropicrin. Id.

[111] The record also indicates that the domestic industry's continued improvement in January-June 2009 was based, in part, on the domestic industry's ability to increase ***. CR at III-4 and III-11, PR at III-2 and III-5, and CR/PR at Table B-1.

subject imports do not detract from our finding that the subject imports will have a likely material adverse impact on the domestic industry.

Consequently, based on the record in this review, we conclude that revocation of the order would likely lead to a significant increase in subject imports that would undersell the domestic like product and significantly suppress or depress U.S. prices. Decreased prices for chloropicrin would not significantly stimulate additional demand, but would likely cause purchasers to switch to lower-priced subject imports. Given that there do not appear to be any alternative third country sources of chloropicrin available to U.S. purchasers, any gain in market share by the subject imports after revocation would come entirely at the domestic industry's expense. Thus, we find that the volume and price effects of the subject imports would likely have a significant adverse impact on the production, shipments, sales, market share, and revenues of the domestic industry. Declines in these indicators of industry performance would have a direct adverse impact on the industry's profitability and employment, as well as its ability to raise capital and to make and maintain capital investments. Although we acknowledge that the various regulatory restrictions pertaining to chloropicrin production and use, as well as the uncertain demand for the product in the reasonably foreseeable future, may also adversely affect the domestic industry, this does not diminish the likely significant adverse effects that increased subject imports would have on the domestic industry, as noted above. Therefore, we conclude that, if the antidumping duty order were revoked, subject imports from China would likely have a significant adverse impact on the domestic industry within a reasonably foreseeable time.

CONCLUSION

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

PART I: INTRODUCTION AND OVERVIEW

BACKGROUND

On July 2, 2009, the U.S. International Trade Commission ("Commission" or "USITC") gave notice, pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"),[1] that it had instituted a review to determine whether revocation of the antidumping duty finding on chloropicrin from China would likely lead to the continuation or recurrence of material injury to a domestic industry.[2] [3] On October 5, 2009, the Commission determined that it would conduct a full review pursuant to section 751(c)(5) of the Act.[4] Selected information relating to the schedule of this proceeding appears in the tabulation on the following page.[5]

[1] 19 U.S.C. 1675(c).

[2] All interested parties were requested to respond to this notice by submitting the information requested by the Commission. *Chloropicrin from China*, 74 FR 31760, July 2, 2009. The Commission received one submission in response to its notice of institution for the subject review. It was filed on behalf of ASHTA Chemicals, Inc. ("ASHTA"), a successor firm to petitioner LCP in the original investigation, Niklor Chemical Co., Inc. ("Niklor"), a petitioner in the original investigation, and Trinity Manufacturing, Inc. ("Trinity"). Domestic interested parties' response to the notice of institution, July 31, 2009.

[3] In accordance with section 751(c) of the Act, the U.S. Department of Commerce ("Commerce") published a notice of initiation of a five-year review of the subject antidumping duty finding concurrently with the Commission's notice of institution. *Initiation of Five-Year ("Sunset") Review*, 74 FR 31412, July 1, 2009.

[4] The Commission found that the domestic interested party group response to its notice of institution (74 FR 31760, July 2, 2009) was adequate, but that the respondent interested party group response was inadequate (74 FR 55065, October 26, 2009). Notwithstanding the Commission's determination that the respondent interested party group response was inadequate, the Commission determined to conduct a full review in light of information regarding possible changes in conditions of competition. These include possible changes in market conditions resulting from increasing environmental regulation of chloropicrin. Commissioners Charlotte R. Lane, Irving A. Williamson, and Dean A. Pinkert, dissented citing both the lack of adequate respondent participation and their finding that the record in the adequacy phase did not indicate sufficient changes in the conditions of competition since the original investigation and the first and second five-year reviews to warrant conducting a full review. *Explanation of Commission Determination on Adequacy*.

[5] The Commission's notice of institution, notice to conduct a full review, scheduling notice, and statement on adequacy appear in app. A and may also be found at the Commission's web site (internet address *www.usitc.gov*). Commissioners' votes on whether to conduct an expedited or a full review may also be found at the web site.

Effective date	Action
March 22, 1984	Department of Commerce's antidumping duty order (49 FR 10691)
November 2, 1998	Commission's institution (63 FR 58761) and Commerce's initiation (63 FR 58709) of first review
March 9, 1999	Commerce's final results of expedited first review (64 FR 11440)
April 7, 1999	Commission's expedited first review determination (64 FR 16998)
April 14, 1999	Commerce's first continuation order concerning the antidumping duty finding (64 FR 42655, August 5, 1999)
March 1, 2004	Commission's institution (69 FR 9638) and Commerce's initiation (69 FR 9585) of second review
July 6, 2004	Commerce's final results of expedited second review (69 FR 40601)
August 10, 2004	Commission's expedited second review determination (69 FR 48520)
August 23, 2004	Commerce's second continuation order concerning the antidumping duty finding (69 FR 51811)
July 1, 2009	Commission's institution (74 FR 31760, July 2, 2009) and Commerce's initiation (74 FR 31412) of third review
October 15, 2009	Commission's determination to conduct a full review and scheduling of the review (74 FR 55065, October 26, 2009)
November 6, 2009	Commerce's final results of expedited third review (74 FR 57450)
February 18, 2010	Date for Commission's hearing (hearing cancelled at the request of domestic interested parties)
April 6, 2010	Commission's vote
April 19, 2010	Commission's determination transmitted to Commerce

THE ORIGINAL INVESTIGATION AND SUBSEQUENT FIVE-YEAR REVIEWS

The Commission instituted an antidumping duty investigation concerning chloropicrin from China (Inv. No. 731-TA-130) on April 6, 1983, after a petition was filed with the Commission and the U.S. Department of Commerce ("Commerce") by counsel for Niklor and LCP Chemicals & Plastics, Inc. ("LCP"), alleging sales at LTFV of chloropicrin from China. In March 1984, the Commission unanimously determined that an industry in the United States was being materially injured by reason of imports of chloropicrin from China sold at LTFV.[6] After receipt of the Commission's determination, Commerce issued an antidumping duty finding on imports of chloropicrin from China. The weighted average margins for the Chinese manufacturers found by Commerce to have made LTFV sales of the subject merchandise were 58.0 percent for China National Chemicals Import and Export Corp. (SINOCHEM), and 58.0 percent for all other Chinese manufacturers/producers/exporters.[7]

[6] 49 FR 11893, March 28, 1984.

[7] 49 FR 10691, March 22, 1984.

On November 2, 1998, the Commission instituted the first five-year review of the antidumping duty finding on chloropicrin from China and determined that revocation of the finding on chloropicrin from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a foreseeable time.[8] Following affirmative determinations in the five-year reviews by Commerce and the Commission, effective April 14, 1999, Commerce issued a continuation of the antidumping duty finding on imports of chloropicrin from China.[9]

In August 2004, the Commission completed a second expedited five-year review of the antidumping duty finding on chloropicrin from China and determined that revocation of the finding would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a foreseeable time.[10] Following affirmative determinations in the second five-year reviews by Commerce and the Commission, effective August 23, 2004, Commerce issued a continuation of the antidumping duty order on imports of chloropicrin from China.[11]

SUMMARY DATA

Table I-1 presents a summary of data from the original investigation as well as the first, second, and current reviews. From 1980 to 1983, the period for which data were collected in the original investigation, the U.S. industry's production, shipments, and net sales decreased irregularly over the period. Capacity utilization of the U.S. industry fluctuated during the period, experiencing a slight increase in 1983. As noted in Table I-1, certain data, including U.S. production, shipments, and imports of chloropicrin for the first and second five-year expedited reviews were based on estimates submitted by domestic interested parties in response to the Commission's notice of institution in the respective reviews. In the current five-year review, U.S. industry data and related information are based on the questionnaire responses of two U.S. producers of chloropicrin and U.S. import data and related information are based on the questionnaire response of *** U.S. importer of chloropicrin. Both U.S. producers' responses and importer response are believed to have accounted for virtually all U. S. production of chloropicrin and the vast majority of the total subject U.S. imports from China during 2008, which are *** percent of total U.S. apparent consumption of chloropicrin. There were no imports of chloropicrin from nonsubject countries during the period for which data were collected.

Table I-1
Chloropicrin: Summary data from the original investigation, first and second reviews, and current review, 1980-83, 1997, 2003 and 2006-08

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STATUTORY CRITERIA AND ORGANIZATION OF THE REPORT

Statutory Criteria

Section 751(c) of the Act requires Commerce and the Commission to conduct a review no later than five years after the issuance of an antidumping or countervailing duty order or the suspension of an investigation to determine whether revocation of the order or termination of the suspended investigation

[8] *Chloropicrin from China*, 64 FR 16998, April 7, 1999.

[9] *Continuation of Antidumping Duty Order: Chloropicrin from China*, 64 FR 42655, August 5, 1999.

[10] *Chloropicrin from China*, 69 FR 48520, August 10, 2004.

[11] *Continuation of Antidumping Duty Findings: Chloropicrin from China*, 69 FR 51811, August 23, 2004.

"would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury."

Section 752(a) of the Act provides that in making its determination of likelihood of continuation or recurrence of material injury–

> *(1) IN GENERAL.-- . . . the Commission shall determine whether revocation of an order, or termination of a suspended investigation, would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission shall consider the likely volume, price effect, and impact of imports of the subject merchandise on the industry if the order is revoked or the suspended investigation is terminated. The Commission shall take into account--*
>
> *(A) its prior injury determinations, including the volume, price effect, and impact of imports of the subject merchandise on the industry before the order was issued or the suspension agreement was accepted,*
> *(B) whether any improvement in the state of the industry is related to the order or the suspension agreement,*
> *(C) whether the industry is vulnerable to material injury if the order is revoked or the suspension agreement is terminated, and*
> *(D) in an antidumping proceeding . . ., (Commerce's findings) regarding duty absorption . . ..*
>
> *(2) VOLUME.--In evaluating the likely volume of imports of the subject merchandise if the order is revoked or the suspended investigation is terminated, the Commission shall consider whether the likely volume of imports of the subject merchandise would be significant if the order is revoked or the suspended investigation is terminated, either in absolute terms or relative to production or consumption in the United States. In so doing, the Commission shall consider all relevant economic factors, including--*
>
> *(A) any likely increase in production capacity or existing unused production capacity in the exporting country,*
> *(B) existing inventories of the subject merchandise, or likely increases in inventories,*
> *(C) the existence of barriers to the importation of such merchandise into countries other than the United States, and*
> *(D) 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.*
>
> *(3) PRICE.--In evaluating the likely price effects of imports of the subject merchandise if the order is revoked or the suspended investigation is terminated, the Commission shall consider whether--*
>
> *(A) there is likely to be significant price underselling by imports of the subject merchandise as compared to domestic like products, and*
> *(B) imports of the subject merchandise are likely to enter the United States at prices that otherwise would have a significant depressing or suppressing effect on the price of domestic like product.*

(4) IMPACT ON THE INDUSTRY.--In evaluating the likely impact of imports of the subject merchandise on the industry if the order is revoked or the suspended investigation is terminated, the Commission shall consider all relevant economic factors which are likely to have a bearing on the state of the industry in the United States, including, but not limited to–

(A) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity,

(B) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment, and

(C) 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.

The Commission shall evaluate all such relevant economic factors . . . within the context of the business cycle and the conditions of competition that are distinctive to the affected industry.

Section 752(a)(6) of the Act states further that in making its determination, "the Commission may consider the magnitude of the margin of dumping or the magnitude of the net countervailable subsidy. If a countervailable subsidy is involved, the Commission shall consider information regarding the nature of the countervailable subsidy and whether the subsidy is a subsidy described in Article 3 or 6.1 of the Subsidies Agreement."

Organization of the Report

Information obtained during the course of the review that relates to the statutory criteria is presented throughout this report. A summary of trade and financial data for chloropicrin as collected in the review is presented in appendix B. U.S. industry data are based on the questionnaire responses of two U.S. producers of chloropicrin that are believed to have accounted for virtually all of domestic production of chloropicrin in 2008. U.S. import data and related information are based on the questionnaire responses of *** U.S. importer of chloropicrin that is believed to have accounted for the vast majority of the total subject U.S. imports from China during 2008. Foreign industry data and related information are based on the *Substantive Response of Domestic Producers* (Third Review) and ***.[12] Responses by U.S. producers, importers, and purchasers of chloropicrin to a series of questions concerning the significance of the existing antidumping duty finding and the likely effects of revocation of the finding are presented in appendix C. A summary of the regulatory environment for chloropicrin is presented in appendix D.

COMMERCE'S REVIEWS

Administrative Reviews

Commerce has conducted one administrative review of the antidumping duty order on chloropicrin from China as shown in table I-2. Lack of interest from the foreign producer to request administrative reviews has resulted in several intents to revoke the antidumping duty order throughout the years. In each instance, the involved U.S. producers protested the intent to revoke and Commerce determined to uphold the order.

[12] *Substantive Response of Domestic Producers*, July 31, 2009, and ***.

Table I-2
Chloropicrin: Administrative review of the antidumping duty order for China

Date results published	Period of review	Producer or exporter	Margin (*percent)*
January 22, 1985 (50 FR 2844)	09/19/83-01/31/84	Sinochem	58.0
		Sinochem/William Hunt & Co. Ltd.[1]	58.0

[1] William Hunt & Co. Ltd. is a third country reseller of Sinochem's merchandise to the United States.

Source: Cited *Federal Register* notices.

Results of Five-Year Reviews

Table I-3 presents the dumping margins calculated by Commerce in its first, second, and third reviews.

Table I-3
Chloropicrin: Commerce's first, second, and third five-year dumping margins for producers/exporters in China

Producer/exporter	First five-year review margin (*percent*)	Second five-year review margin (*percent*)	Third five-year review margin (*percent*)
China National Chemicals Import and Export Corp. (Sinochem)	58.0	58.0	58.0
All others	58.0	58.0	58.0

Source: Final results of first expedited five-year review, 64 FR 11440, March 9, 1999; final results of second expedited five-year review, 69 FR 40601, July 6, 2004; final results of third expedited five-year review, 74 FR 57450, November 6, 2009.

DISTRIBUTION OF CONTINUED DUMPING AND SUBSIDY OFFSET ACT FUNDS

The Continued Dumping and Subsidy Offset Act of 2000 ("CDSOA") (also known as the Byrd Amendment) provides that assessed duties received pursuant to antidumping or countervailing duty orders must be distributed to affected domestic producers for certain qualifying expenditures that these producers incur after the issuance of such orders.[13] Qualified U.S. producers of chloropicrin have been eligible to receive disbursements from the U.S. Customs and Border Protection ("Customs") under CDSOA relating to the orders covering the subject merchandise beginning in Federal fiscal year 2002.[14] There have been no CDSOA claims or disbursements for chloropicrin from China in connection with the antidumping duty finding for the five most recent complete Federal fiscal years, October 1-September 30, 2004-08.

[13] Section 754 of the Tariff Act of 1930, as amended (19 U.S.C. § 1675(c)).

[14] 19 CFR 159.64 (g).

THE SUBJECT MERCHANDISE

Commerce's Scope

The imported chloropicrin subject to the antidumping finding under review, as defined by Commerce in its 2009 final results of its expedited sunset review, is as follows:

> *Chloropicrin, also know as trichloronitromethane. A major use of the product is as a pre-plant soil fumigant (pesticide). Such merchandise is currently classifiable under Harmonized Tariff Schedule ("HTS") item number 2904.90.50.05. The HTS item number is provided for convenience and customs purposes. The written description remains dispositive.*[15]

Tariff Treatment

Imports of this product are currently classifiable as chloropicrin under Harmonized Tariff Schedule of the United States ("HTS") subheading 2904.90.50 and statistical reporting number 2904.90.5005 as set forth in table I-4.

Table I-4
Chloropicrin: Harmonized Tariff Schedule provision, article description, and duty rates

HTS provision	Article description	General[1]	Special[2]	Column 2[3]
		Rates		
2904	Sulfonated, nitrated or nitrosated derivatives of hydrocarbons, whether or not halogenated:			
2904.90.50	Other			
2904.90.5005	Trichloronitromethane (chloropicrin)	3.7 %	Free (A, AU, BH, CA, CL, E, IL, J, JO, MA, MX, OM, P, PE, SG)	25%

[1] Normal trade relations, sometimes referred to as the most-favored-nation duty rate.
[2] Special rates apply to imports of chloropicrin from certain trading partners of the United States as follows: A (GSP); AU (United States-Australia Free Trade Agreement; BH (United States-Bahrain Free Trade Agreement Implementation Act); CA and MX (North American Free Trade Agreement); CL (United States-Chile Free Trade Agreement); E (Caribbean Basin Economic Recovery Act); IL (United States-Israel Free Trade Area); J (Andean Trade Preference Act); JO (United States-Jordan Free Trade Area Implementation Act); MA (United States-Morocco Free Trade Agreement Implementation Act); OM (United States-Oman Free Trade Agreement Implementation Act) ;P (Dominican Republic-Central America-United States Free Trade Agreement Implementation Act); PE (United States-Peru Trade Promotion Agreement Implementation Act); SG (United States-Singapore Free Trade Agreement). China is not eligible for any special duty rates.
[3] Applies to imports from a small number of countries that do not enjoy normal trade relations duty status.

Source: Harmonized Tariff Schedule of the United States (2010).

[15] *Chloropicrin From the People's Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order*, 74 FR 57450, November 6, 2009.

THE PRODUCT

Description and Applications

Chloropicrin is a highly toxic liquid chemical compound that has the formula CCl_3NO_2. At the time of the original investigation, it was used primarily as an active agent in pre-plant soil fumigants[16] for killing fungi; in addition, small amounts were used to control insects and rodents in grain storage and to prevent decay in wood.[17] Because of the high cost of using chloropicrin as a soil fungicide[18] it is used mostly for high unit value crops such as strawberries, tobacco, flowers, and tree-grown fruit; when used for relatively low unit value crops, such as potatoes, it is generally because such crops require less fumigant per acre to achieve the same pest control and accompanying increase in yield.[19]

Chloropicrin is still used primarily as a soil fumigant and usually is blended with other chemical agents into a single fumigant. The chloropicrin component of a mixed fumigant can range from less than one percent to more than 50 percent. A substantial amount of chloropicrin has been used for soil fumigation with methyl bromide (CH_3Br). However, in 1999, the Environmental Protection Agency ("EPA") implemented a phase-out of the soil fumigant methyl bromide. In 2001, the volume of methyl bromide was reduced to 50 percent of the 1991 U.S. production volume. In 2003, the EPA implemented a 70 percent reduction from the 1991 production volume, and methyl bromide was scheduled to be phased out entirely in 2005.[20] However, methyl bromide has been granted a Critical Use Exemption from the EPA and Montreal Protocol.[21] This allows for limited production, consumption, and importations of methyl bromide after the January 1, 2005 phase-out date for specific uses determined by the Protocol Parties to be "critical." However, States such as California and Florida that rely heavily on the use of methyl bromide and chloropicrin in the production of their crops, reportedly participate in the critical use exemption process.[22] The United States was granted an internationally approved methyl bromide use allowance of 17.8 million pounds for 2006 (31.5 percent of the 1991 baseline volume). Exemption allowances are decided on a yearly basis, taking into account the availability of technically and

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[16] Generally soil fumigants are injected by machine into the soil shortly before planting to decrease harmful pests, which in turn may lead to increased plant yields. Plastic tarps are secured to the soil immediately after injection to ensure that the chemicals are not lost to the air by evaporation. *Original Investigation Staff Report of February 27, 1984, p. A-5.* This both increases the efficiency of the procedure and reduces harm to the environment. Currently, as chemical regulations become increasingly stringent, using thicker plastic tarps and increasing the protective gear of employees, coupled with reductions in methyl bromide/chloropicrin usage, are noted as options to maintain crop production and decrease environmental and safety risks. *The implications of Banning Methyl Bromide for Fruit and Vegetable Production: Hearing before the subcommittee on livestock and horticulture of the Committee on Agriculture, House of Representatives, July 13, 2000: http://commdocs.hous.gov/committees/ag/hag10657.000/hag10657_Of.htm.*

[17] *Second Review Staff Report of July 1, 2004*, p. I-5, (*citing First Review Staff Report of March 4, 1999*, p. I-5).

[18] About $900.00 per acre at the time of the original investigation, of which approximately half is application costs.

[19] *Second Review Staff Report of July 1, 2004*, p. I-5, (*citing First Review Staff Report of March 4, 1999*, p. I-5).

[20] Ibid., p. I-6.

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

[22] Ibid., *See* the EPA's Methyl Bromide Phase-out website: http://www.epa.gov/spdpublc/mbr/cueqa.html. *Responses to Questions from the Commission*, March 1, 2010, p. 8 (Pearson).

economically feasible alternatives to methyl bromide.[23] The amount of methyl bromide reserved for critical uses in 2010 is 7.0 million pounds (12.5 percent of the 1991 baseline levels).[24] Critical use exemptions are granted by crop, and then allocated geographically once the total amount of methyl bromide exemption is fixed.[25] Currently, no single alternative possesses all the effective fumigation qualities of methyl bromide.[26]

With the decreased use of methyl bromide, chloropicrin has been subject to greater regulatory review through the EPA's re-registration eligibility decision ("RED") procedures to determine the chemical's usability based upon a reassessment of its effects on human health and the environment. On July 9, 2008, the EPA released its RED for chloropicrin, along with REDs for other soil fumigant pesticides (including methyl bromide) and opened a public comment period on the REDs.[27] The EPA issued an amended RED for chloropicrin on May 29, 2009.[28] In both the original and amended RED, the EPA determined that due to chloropicrin's potential to move off-site, chloropicrin risks to handlers, workers, and bystanders are of concern given current labels and use practices.[29] To reduce inhalation exposures and to address associated risks of concern for pre-plant soil fumigations, the original and amended REDs set forth a complex array of mitigation measures, including: buffer zones; buffer zone posting; respiratory protections; restrictions on the timing of tarp perforation and removal operations; entry restrictions; mandatory good agricultural practices (GAPs); fumigant management plans (FMPs); emergency preparedness and response; notice to state-lead agencies; training; and community outreach and education programs.[30]

Many elements of these mitigation measures have yet to be finalized; in particular, the requirements relating to buffer zones;[31] however, they are expected to be phased in from 2010 to 2011.[32]

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

[24] *Domestic Interested Parties Responses to Follow Up Questions*, March 11, 2010, pp. 3-4.

[25] Ibid., p. 2.

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

[27] *Substantive Response of Domestic Producers to the Notice of Institution of Five-Year Review*, July 31, 2009, p. 8, citing Reregistration Eligibility Decision (RED) for Chloropicrin, EPA738-R-08-009, July 2008 (Hereafter, "RED"); Chloropicrin, Dazomet, Metam Sodium/Potassium, and Methyl Bromide Reregistration Eligibility Decisions: Notice of Availability, 73 FR 40871, July 16, 2008, http://www.regulations.gov/searchRegs/home.html#documentDetail?R=0900006480661819.

[28] *Substantive Response of Domestic Producers to the Notice of Institution of Five-Year Review*, July 31, 2009, p. 8, citing Amended Reregistration Eligibility Decision (RED) for Chloropicrin, EPA738-R-09-308, May 2009 ("Amended RED"), http://www.regulations.gov/search/Regs/home.html#documentDetail?R=09000064809b8b7f

[29] *Substantive Response of Domestic Producers to the Notice of Institution of Five-Year Review*, July 31, 2009, p. 8, citing RED at 17; Amended RED at 22.

[30] *Substantive Response of Domestic Producers to the Notice of Institution of Five-Year Review*, July 31, 2009, p. 8, citing RED at 9-10; 27-28.

[31] As set forth in the RED, the EPA's human health risk assessment indicates that when chloropicrin is used as a pre-planting soil fumigant, bystanders may be exposed to chloropicrin air concentrations that exceed the EPA's level of concern. The RED notes that, in general, the risk from inhalation exposures decreases as the distance between bystanders and the treated field increases. Because of this relationship, the EPA requires that a "buffer zone" be established around the perimeter of each application block where chloropicrin is applied. As defined in the July 2008 RED, "buffer zone" is an area established around the perimeter of each application block or greenhouse where a soil fumigant is applied. The buffer zone must extend from the edge of the application block or greenhouse perimeter equally in all directions. *Substantive Response of Domestic Producers to the Notice of Institution of Five-*

(continued...)

The buffer zone requirement will impose greater restrictions on the use of chloropicrin for farms and greenhouses, particularly for small establishments located in areas with nearby suburban development. The requirement for notification of neighbors through Buffer Zone Postings in areas with nearby suburban development will also inhibit the use of chloropicrin on farms and greenhouses in these areas. These mitigation measures will increasingly reduce the utility of chloropicrin as a pre-planting soil fumigant. Additionally, requirements for community education and outreach may result in public backlash against the use of chloropicrin.

Chloropicrin is viewed by some as a viable alternative to methyl bromide. However, chloropicrin ***.[33] Chloropicrin is limited in its capabilities when compared to methyl bromide (as all current alternatives are). The limitation of each alternative creates the need to blend different chemicals and techniques to act as efficiently as methyl bromide. Chloropicrin lacks the herbicidal properties of methyl bromide; therefore, *** chloropicrin's use as an alternative in conjunction with 1,3-dichloropropene (trade name Telone (***)) and compounds with broader herbicidal properties such as metam sodium, diazomet, and pebulate.[34]

Chloropicrin itself is classified as a Restricted Use Pesticide by the EPA and has been subject to greater regulatory review as the supply of methyl bromide has decreased. Chloropicrin's re-registration eligibility decision ("RED") report (case 00400), issued in 2006, determined the chemical's future usability based on a reassessment of chloropicrin's effects on human health and the environment. Risk mitigation measures shall be implemented as required and necessary.[35] Environmentally, chloropicrin does not contribute to significant ozone depletion because it breaks down both in soil and sunlight. The chemical, however, is highly toxic to humans and wildlife.[36] In June 2009, the California EPA issued its Evaluation of Chloropicrin as a Toxic Air Contaminant,[37] which is expected to result in increased restrictions on chloropicrin use in 2011, and could eventually phase out the use of chloropicrin in California entirely.[38] Current regulatory issues relating to chloropicrin and methyl bromide are detailed in appendix D.

Manufacturing Process

At the time of the original investigation, chloropicrin was produced in the United States by mixing nitromethane and sodium hypochlorite to form chloropicrin and sodium hydroxide (caustic soda). The sodium hydroxide was either wasted or recycled back into the production of sodium hypochlorite

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[31] (...continued)
Year Review, July 31, 2009, p. 8.

[32] Written Testimony, John Paulson, Product Manager, Trinity Manufacturing, Inc., February 18, 2010, p. 3.

[33] *Responses to Questions from the Commission*, March 1, 2010, p. 8 (Pearson).

[34] Ibid., p. I-7, *See* the U.S. Department of Agriculture's online 2003 economic research publication, *Amber Waves*: http://www.ers.usda.gov/Amberwaves/April03/Features/MethylBromide.htm. *Responses to Questions from the Commission*, March 1, 2010, p. 8 (Pearson).

[35] Ibid., 69 FR 25082, May 5, 2004, for EPA's re-registration schedule. *See* also EPA's website: http://cfpub.epa.gov/oppref/rereg/status.fcfm?show=rereg.

[36] Ibid., *See* the U.S. Department of Agriculture's Technical Report: Chloropicrin as a Soil Fumigant, 1996: http://www.ars.usda.gov/is/np/mba/july96/.

[37] Prehearing Brief of Domestic Interested Parties, February 9, 2010, p. 9, citing Evaluation of Chloropicrin as a Toxic Air Contaminant, Department of Pesticide Regulation, California EPA (June 2009) (available at: www.cdpr.ca.gov).

[38] Ibid., citing ***'s producer questionnaire response (section IV-27).

(formed from chlorine and caustic soda).[39] The technology and production methods remain relatively unchanged. Also, as chloropicrin has become subject to greater regulatory review, the U.S. industry has invested substantially in studies supporting the continuing use of chloropicrin in the United States and elsewhere.[40]

DOMESTIC LIKE PRODUCT ISSUES

In its original determination and its expedited first and second five-year review determinations, the Commission defined the domestic like product the same as Commerce's scope, "chloropicrin, also know as trichloronitromethane. A major use of the product is as a pre-plant soil fumigant (pesticide). Such merchandise is currently classifiable under Harmonized Tariff Schedule ("HTS") item number 2904.90.5005."[41] The Commission further defined the domestic industry as all producers of chloropicrin.[42] The domestic producers indicated in their response to the Commission's notice of institution in this third review that they agreed with the Commission's definitions of the domestic like product and domestic industry as set forth in the Commission's notice.

U.S. MARKET PARTICIPANTS

U.S. Producers

The domestic chloropicrin producers have experienced a number of changes since the Commission's original investigation concerning chloropicrin from China was conducted in 1984. Since that time, closures, openings, and acquisitions have altered the composition of the domestic industry. During the original investigation, two firms were identified as producers of chloropicrin: Niklor, Long Beach, CA, and LCP, with plants in Orrington, ME, and Ashtabula, OH.[43]

In the Commission's first five-year review, Niklor still produced chloropicrin. The LCP plant at Ashtabula, OH, was acquired by LinChem Inc. in 1989 and has operated as ASHTA since May 1992. The LCP plant at Orrington, ME, was operated by Hanlin Group Inc. until it was acquired by HoltraChem as part of bankruptcy proceedings in 1994. Trinity has produced chloropicrin in Hamlet, NC, since at least 1990. ASHTA, HoltraChem, Niklor, and Trinity provided a response to the Commission's notice of institution in the first review.

In their response to the Commission's notice of institution in the second review, the domestic producers indicated that ASHTA, Niklor, and Trinity accounted for all domestic production of chloropicrin during 2003. The domestic producers reported that HoltraChem ceased production of chloropicrin following the Commission's first review and that its chloropicrin production facilities were

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[39] Ibid., citing (*Staff Report of February 27, 1984*, p. A-6).

[40] Ibid., citing (*Domestic Substantive Response for the Second Review*, p. 7).

[41] *Chloropicrin from China, Investigation No. 731-TA-130 (Second Review),* USITC Publication 3712, March 2004, p. 4.

[42] Ibid., p. 5.

[43] *Original Investigation Staff Report* at A-8. Two other firms produced chloropicrin in the United States during the period of the original investigation; Dow Chemical Co. had produced chloropicrin for about 20 years when it ceased production at its aging plant in 1980 and began relying exclusively on purchases for its blended fumigants, and International Mineral & Chemical Corp. ("IMC") produced chloropicrin until 1982 when it sold its Orrington, ME, and Ashtabula, OH, plants to LCP. *First Review Staff Report*, p. I-6.

purchased by Arvesta Corp. ("Arvesta") in 2000.[44] Arvesta indicated that it had the capability to produce chloropicrin, but it did not produce the product during the period of the second review.

In response to the Commission's notice of institution in the present review, the domestic producers indicated that ASHTA and Trinity are the only currently operating producers of the domestic like product. ***. Although economic conditions during the period since the second review have not warranted Niklor manufacturing at its new facility, Niklor is working on resuming production.

The Commission issued producers' questionnaires to three firms, all confirmed producers of chloropicrin in the United States. Of these firms, two provided the Commission with useable information on their chloropicrin operations.[45] These two firms are believed to have accounted for virtually all of U.S. production of chloropicrin in 2008. Presented in table I-5 is a list of domestic producers of chloropicrin, each company's position on continuation of the order, production location(s), related and/or affiliated firms, and share of reported production of chloropicrin in 2008.

Table I-5
Chloropicrin: U.S. producers, positions on the orders, U.S. production locations, related and/or affiliated firms, and shares of 2008 reported U.S. production

Firm	Position on continuation of the orders	Production location(s)	Related and/or affiliated firms	Share of production (*percent*)
ASHTA	Support	Ashtabula, OH	Baxter Associates Inc., Palatine, IL	***
Niklor	Support	Mojave, CA	None	***
Trinity	Support	Hamlet, NC	None	***

Note.–Because of rounding, shares may not total to 100.0 percent.

Source: Compiled from data submitted in response to Commission questionnaires.

U.S. Importers

The Commission issued three questionnaires to potential U.S. importers of chloropicrin identified through independent staff research. Of these, the Commission received useable data from one U.S. importing firm on its operations involving the importation of chloropicrin. The remaining two firms provided certification that they had not imported chloropicrin during the period for which data were gathered. Staff believes that the data reported by the responding U.S. importer accounts for the vast majority of U.S. imports of subject chloropicrin from China. There were no nonsubject imports believed to be entering the United States during the period for which data were gathered. Table I-6 lists the responding U.S. importer of chloropicrin from China, its location, and shares of U.S. imports in 2008.

Table I-6
Chloropicrin: U.S. importers, U.S. headquarters, and shares of reported imports in 2008

* * * * * * *

[44] Arvesta changed its name to Arysta LifeSciences North America ("Arysta") on August 10, 2005, concurrent with an announcement of its headquarters moving from San Francisco, CA, to Research Triangle Park, NC. "Arvesta Corp. Changes Name and Plans Headquarters Move," *LM Week in Review*, http://www.landscapemanagement.net/landscape/article/articleDetail.jsp?id=174574, retrieved January 26, 2010.

[45] The two U.S. producers that supplied the Commission with usable questionnaire information are: ASHTA and Trinity. The Commission also received a questionnaire response from U.S. chloropicrin producer Niklor, ***.

U. S. Purchasers

The Commission received nine usable purchaser questionnaires from firms that bought chloropicrin during 2006-08. Table I-7 presents the purchaser names, location, type of firm, and type of customers for the responding purchasers. Each firm may provide more than one type of service to its customers: ***.

Table I-7
Chloropicrin: Purchaser names, location, type of firm, and end products produced

* * * * * * *

APPARENT U.S. CONSUMPTION AND MARKET SHARES

Table I-8 presents apparent U.S. consumption for 2006-08, January-September 2008, and January-September 2009, while table I-9 presents U.S. market shares for the same period. Apparent U.S. consumption of chloropicrin, as shown in tables I-8 and I-9, is based on U.S. producers' U.S. shipments of chloropicrin and U.S. shipments of imports of chloropicrin as compiled from questionnaire responses submitted by U.S. importers.

Table I-8
Chloropicrin: U.S. shipments of domestic product, U.S. shipments of imports, and apparent U.S. consumption, 2006-08, January-September 2008, and January-September 2009

* * * * * * *

Apparent U.S. consumption of chloropicrin has ***. A significant portion of the ***. The industry moved from a mix of 98.0 percent methyl bromide and 2.0 percent chloropicrin in the past, to a 50/50 blend in 2008. A small amount of the ***; however, reportedly, 2008 demand was ***.[46]

Table I-9
Chloropicrin: U.S. consumption and market shares, 2006-08, January-September 2008, and January-September 2009

* * * * * * *

The U.S. industry reported that it expects the market for chloropicrin ***.[47]

[46] *Responses to Questions from the Commission*, March 1, 2010, pp. 6-7 (Pearson).

[47] Ibid., p. 7 (Pearson).

PART II: CONDITIONS OF COMPETITION IN THE U.S. MARKET

CHANNELS OF DISTRIBUTION AND U.S. MARKET CHARACTERISTICS

The two responding U.S. producers, ASHTA and Trinity, reported shipping their chloropicrin primarily to U.S. *** during January 2006-September 2009, while the lone U.S. importer of chloropicrin from China, ***, reported shipping all of its product to U.S. *** during this period (table II-1).[1] [2]

Table II-1
Chloropicrin: U.S. producers' and U.S. importers' shares of reported U.S. shipments, by sources and channels of distribution, 2006-08, January-September 2008, and January-September 2009

* * * * * * *

Based on usable responses from nine U.S. purchasers, eight of whom are believed to account for all the direct purchases of chloropicrin from U.S. producers,[3] the distributors are usually both blenders and distributors[4] and the end users are soil fumigation providers, who also perform blending operations. Of the nine responding active U.S. purchasers of chloropicrin, four reported they were soil fumigation service providers, four reported they were both blenders and distributors,[5] and one purchaser reported that it was solely a distributor. Purchases of chloropicrin by type of purchaser for the eight firms that purchased directly from U.S. producers are shown in the following tabulation as a share of total purchases for each of the years requested, during 2006-08, and for the full period.

	Purchase shares of U.S.-produced chloropicrin *(Percentage)*			
Type of purchaser	2006	2007	2008	2006-08
Soil fumigator providers	69.7	73.4	79.5	74.5
Blenders/distributors	30.3	26.6	20.5	25.5
Distributor	0.0	0.0	(1)	(1)
Total	100.0	100.0	100.0	100.0

[1] Less that 0.05 percent.

Source: Compiled from data submitted in response to Commission questionnaires.

[1] As discussed earlier in this report, only a very small volume of Chinese chloropicrin has been imported into the United States since 1984, and during January 2006-September 2009 ***.

[2] U.S. producer *** (see CR at I-18). ***'s questionnaire answers are included in sections II and V if the question refers to periods since 1984. If the questions refer to periods since January 2006, its answers have been excluded.

[3] There were no reported purchases of chloropicrin from China or from nonsubject countries since 1984. U.S. purchaser questionnaire responses, section II-3a-c.

[4] In addition, ***, was also considered a blender/distributor. The firm reported that ***. *** purchaser questionnaire response, sections II-2 and III-3.

[5] One of the blenders/distributors, ***, purchased all of its chloropicrin from ***, another blender/distributor that purchases its U.S.-produced chloropicrin from a U.S. producer.

The principal market for chloropicrin in the United States consists of a limited number of companies that blend chloropicrin with other chemicals, principally methyl bromide or 1,3-dichloropropene, to produce blends for crop fumigation.[6] The blended products are ultimately applied by soil fumigator providers or sold to farmers who apply the products.

SUPPLY AND DEMAND CONSIDERATIONS[7]

U.S. Supply

Domestic Industry[8]

Based on available information, U.S. producers have the ability to respond to changes in demand with at least moderate changes in the quantity of shipments of U.S.-produced chloropicrin to the U.S. market. The main factors contributing to this responsiveness of supply are discussed below.

Industry capacity

Capacity utilization for U.S. producers of chloropicrin *** from *** percent in 2006 to *** percent in 2008,[9] and was *** percent in January-September 2009 compared with *** percent in January-September 2008. The reported levels of capacity utilization indicate that U.S. producers have the ability to increase shipments, however capacity utilization data indicate that this ability may be lower than it was in the earlier part of the period.

Alternative markets

Exports of U.S. produced chloropicrin *** from *** percent of U.S. producers' total shipments in 2006 to *** percent in 2008; exports accounted for *** percent of total shipments in January-September 2009 compared with *** percent in January-September 2008. Reported exports suggest that U.S. producers may have had an ability to shift shipments between exports and the U.S. market in response to price changes.

Inventory levels

U.S. producers' end-of-period inventories (as a ratio of their total chloropicrin shipments) fluctuated between 2006 and 2008, increasing irregularly from *** percent of total shipments in 2006 to *** percent in 2008. U.S. producers' inventories were equivalent to *** percent of total annualized shipments in September 2009, compared with *** percent in September 2008. Reported inventory data suggests that U.S. producers may have had an ability to use inventories to increase shipments.

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[6] ***.

[7] Short-run effects discussed in the supply and demand sections refer to changes that could occur within 12 months, unless otherwise indicated.

[8] Data on U.S. chloropicrin production capacity, capacity utilization, exports, inventories, and production alternatives are shown in detail in Part III.

[9] ***." *Responses to Questions from the Commission,* March 1, 2010, p. 1 (Aranoff).

Production alternatives

The three responding U.S. producers reported that they are unable to produce other products using the same equipment and machinery used to produce chloropicrin. However, U.S. producers produce chlorine bleach or potassium bleach as inputs to produce chloropicrin in their facilities, which are also sold separately as end products. Their ability to shift production between just the bleach products and chloropicrin enhances the producers' ability to increase supplies of chloropicrin to the U.S. market.

Supply of Subject Imports from China

The Commission received no questionnaire responses from Chinese producers in this review. The lone responding U.S. importer, ***, reported that it does not anticipate any changes in term of the availability of chloropicrin imported from China in the U.S. market.[10] [11]

Factors affecting supply

U.S. producers, importers, and purchasers were asked if there have been any changes in factors affecting supply (such as changes in availability or prices of energy or labor; transportation conditions; production capacity and/or methods of production; technology; export markets; or alternative production opportunities) that affected the availability of U.S.-produced chloropicrin in the U.S. market since 1984.[12]

U.S. producers Trinity, ASHTA, and Niklor, reported changes in factors affecting supply. A change in production capacity was reported by all three producers due to domestic producers leaving the market;[13] ASHTA also reported ***.[14] ASHTA and Trinity reported ***.[15] All three producers reported no changes in regulations that affected the availability of U.S. produced chloropicrin in the U.S. market since 1984. Niklor reported that the availability of U.S.-produced chloropicrin in the U.S. market will *** in the future,[16] and ASHTA and Trinity reported *** in future supply.[17] The one responding importer, ***, reported *** in factors that affected the availability of U.S.-produced chloropicrin in the U.S. market since 1984.

Five of nine responding purchasers reported changes in factors affecting supply, and the remaining four reported no such changes. The majority of purchasers reported that raw material shortages and subsequent price increases in nitromethane affected supply. One purchaser reported that changes

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[10] U.S. importer questionnaire response, section III-21.

[11] In addition, U.S. importer, ***, and all three U.S. producers reported that the availability of nonsubject chloropicrin has not changed since 1984. U.S. producer and importer questionnaire responses, section IV-22 and III-22, respectively.

[12] U.S. producer, importer, and purchaser questionnaire responses, section IV-19, III-19, and III-15, respectively.

[13] The two current U.S. producers ASHTA and Trinity reported a reduction in capacity in the last 10 years when *** exited the market. U.S. producer Niklor reported that ***." U.S. producer questionnaire responses, section IV-19.

[14] U.S. producer ASHTA reported ***." ASHTA's producer questionnaire response, section IV-19.

[15] U.S. producer ASHTA reported that ***." ASHTA's producer questionnaire response, section IV-19.

[16] Niklor reported that ***. Niklor's producer questionnaire response, sections II-3 and IV-21.

[17] U.S. producer questionnaire responses, section IV-21.

have occurred in regulations that affected the availability of U.S. produced chloropicrin in the U.S. market since 1984.[18]

U.S. Demand

Based on available information it is likely that changes in the price level of chloropicrin will result in a small change in the quantity of chloropicrin demanded. The main contributing factor to the small degree of responsiveness of demand is the limited degree of substitutability of other products for chloropicrin. However, the high cost share of chloropicrin to the overall costs of blended products may also affect the responsiveness of demand.

Demand Characteristics

U.S. overall chloropicrin demand depends upon the demand for a few end-use applications. U.S. producers, importers, and purchasers were asked to list the end uses of chloropicrin.[19] The most commonly reported uses included pre-plant soil fumigation and fumigation applications to buildings and sheds. Purchasers were asked if demand for their firms' final products incorporating chloropicrin has changed since 1984.[20] Four purchasers reported that the downstream demand fluctuated, two purchasers reported increased demand, and one reported decreased demand. All seven responding purchasers reported that the changed demand for their firms' final products of chloropicrin increased the firms' demand for chloropicrin due to an increase in downstream demand for chloropicrin and blended chloropicrin products. The apparent discrepancy in responses shown in the last two sentences may have resulted from the difficulty in providing information for a 25-year period.

When asked if there has been any changes in the end uses of chloropicrin since 1984, U.S. producer Niklor and U.S. purchaser *** reported that ***.[21] U.S. producers ASHTA and Trinity, U.S. importer, ***, and eight purchasers reported that there were no changes in the end uses of chloropicrin.

When asked if they anticipate any changes in end uses, former producer, Niklor, reported that new ***.[22] All six responding purchasers reported that they anticipate changes in end uses due to the EPA's recently issued Reregistration Eligibility Decision (RED) for chloropicrin and the ongoing review in California.[23]

Business Cycles

Demand for chloropicrin reportedly is not subject to business cycles or conditions of competition distinctive to chloropicrin.[24] All ten responding purchasers reported that there was no specific business

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[18] U.S. purchaser *** reported that ***." *** purchaser questionnaire response, section III-16.

[19] U.S. producer, importer, and purchaser questionnaire responses, sections IV-12, III-12, and III-5, respectively.

[20] U.S. purchaser questionnaire responses, section III-12.

[21] Niklor's U.S. producer questionnaire response, section IV-13, and *** U.S. purchaser questionnaire response, section III-7.

[22] U.S. producer Niklor reported ***." Niklor's U.S. producers questionnaire response, section IV-14.

[23] U.S. purchaser questionnaire responses, section III-8.

[24] Domestic interested parties reported that "seasonality has not had a significant impact on the U.S. industry's production because producers are able to produce to customer forecasts and manage mostly consistent quarterly production volumes throughout the year based on our customer mix." *Responses to Questions from the Commission*, March 1, 2010, pp. 10-11 (Pearson).

cycle to the chloropicrin industry, nor have new markets emerged since 1984 that have affected conditions of competition distinctive to chloropicrin.[25]

Consumption

Demand, as measured by apparent U.S. consumption, increased irregularly from *** million pounds in 2006 to *** million pounds in 2008. U.S. consumption was *** million pounds in January-September 2009 compared with *** million pounds in January-September 2008.

Demand Trends

U.S. producers, importers, and purchasers were asked how demand has changed within the United States since 1984.[26] All three U.S. producers reported that demand fluctuated, which was due to changes in acreage planted for specialty crops, as well the availability of other soil fumigants such as methyl bromide and 1,3-dichloropropene in blended chloropicrin products. Importer *** reported no change in demand.

Six of nine responding purchasers reported that demand for chloropicrin increased and three purchasers reported that demand fluctuated. Of the purchasers that reported that demand increased, most of these firms indicated that the phase out of methyl bromide has led to increased demand for chloropicrin.[27] Changes in farming practices and the increased number of fumigations also reportedly contributed to an increase in demand for chloropicrin. Of the purchasers that reported that demand fluctuated, most of these firms cited fluctuation in crop diseases as a reason.

U.S. producers, importers, and purchasers were also asked how demand outside the United States changed since 1984.[28] Producers ASHTA and Trinity reported that demand for chloropicrin increased outside the United States: ASHTA noted "***;"[29] Trinity also noted that it "***."[30] Importer *** reported no change. Two of three responding purchasers reported that demand increased outside the United States, while the other reported that it fluctuated.[31]

U.S. purchasers were asked whether their purchasing patterns for chloropicrin from domestic, subject, and nonsubject sources changed since 1984.[32] Three of seven responding purchasers reported that their total purchases of chloropicrin from domestic sources increased, three purchasers reported that their domestic purchases have fluctuated, and one stated that it decreased. Purchasers that reported increased purchases of domestic chloropicrin attributed the increase to an introduction of new products in the market that incorporate chloropicrin, and an increase in farming in Florida. Other purchasers reported that their purchases of domestic chloropicrin fluctuated due to growers' needs. One purchaser reported a decrease in purchasing domestic chloropicrin due to a decreased demand in products that contain chloropicrin.

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[25] U.S. purchaser questionnaire responses, section III-19.

[26] U.S. producer, importer, and purchaser questionnaire responses, sections IV-26a, III-26a, and III-12a, respectively.

[27] Domestic interested parties reported that "a significant portion of the ***. A small amount of the ***." *Responses to Questions from the Commission,* March 1, 2010, p. 7 (Pearson).

[28] U.S. producer, importer, and purchaser questionnaire responses, sections IV-26b, III-26b, and III-12b, respectively.

[29] ASHTA's producer questionnaire response, section IV-26b.

[30] Trinity's producer questionnaire response, section IV-26b.

[31] U.S. purchaser *** reported that ***.

[32] U.S. purchaser questionnaire responses, section II-4.

Anticipated Demand

U.S. producers, importers, and purchasers were asked if demand for chloropicrin is likely to change within the United States in the future. U.S. producers ASHTA and Trinity reported "yes," stating that environmental regulations, as well as the phase out of methyl bromide will likely change the demand for chloropicrin in the United States.[33] [34] Importer *** reported no anticipated change in the future demand for chloropicrin within the United States.

Four of nine responding purchasers reported that demand will increase, four reported that demand will fluctuate, and one purchaser reported that demand will decrease in the future. Firms reporting increased future demand stated that methyl bromide will be replaced with higher concentrations of chloropicrin due to the Montreal Protocol phase out of methyl bromide over the next several years.[35] Purchasers reporting fluctuating demand attributed it to EPA's regulatory restrictions.

U.S. producers, importers, and purchasers were asked if they anticipate any change in demand for chloropicrin outside the United States.[36] U.S. producer Trinity expects that "***."[37] Importer *** does not anticipate any changes. One of two responding purchasers anticipates fluctuating future demand; the other firm reported no change in future demand for chloropicrin.

Substitute Products

Six of seven responding U.S. purchasers reported no substitute products for chloropicrin; whereas the *** U.S. producer, ***, and one purchaser reported that there were substitutes.[38] For some types of fungi, chloropicrin is the only known fungicide. However, for other types of fungi, there are chemicals such as 1,3-dichloropropene that may be used to some extent in place of chloropicrin.[39] Substitute products mentioned were methyl bromide, 1,3-dichloropropene, metam sodium, metam potassium, and iodomethane. When asked if there have been any changes in the number or types of products that can be substituted for chloropicrin since 1984, U.S. producers ASHTA and Trinity, importer ***, and eight of ten responding purchasers reported no changes.[40] Two purchasers reported that metam potassium has been developed since 1984 and can be used as a substitute for chloropicrin. Purchaser *** anticipates changes in substitutes for chloropicrin in the future, and reported that ***."[41] Due to the reduced access to methyl bromide, domestic interested parties reported no economical replacement to combine with chloropicrin. Domestic interested parties stated that "***."[42]

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[33] Trinity reported that the ***. Trinity's producer questionnaire response, section IV-27a.

[34] Petitioners reported that "***." *Responses to Questions from the Commission*, March 1, 2010, p. 8 (Pearson).

[35] Formed in 1989, the Montreal Protocol is an international treaty developed to stop ozone depletion. Due to methyl bromide's ozone depleting properties, its use has been phased out during recent years. ***.

[36] U.S. producer, importer, and purchaser questionnaire responses, sections IV-27b, III-27b, and III-13b, respectively.

[37] Trinity's producer questionnaire response, section IV-27b.

[38] U.S. producer, importer, and purchaser questionnaire responses, sections IV-15a, III-15a, and III-9, respectively.

[39] *Staff Report of February 27, 1984, p. A-7.*

[40] U.S. producer, importer, and purchaser questionnaire responses, sections IV-16, III-16, and III-10, respectively.

[41] *** purchaser questionnaire response, section III-11.

[42] *Responses to Questions from the Commission*, March 1, 2010, p. 7-8 (Pearson).

Cost Share

Depending on the final end use, the total cost share of chloropicrin in the final products in which it is used as an input varies widely. U.S. producers, the importer, and purchasers reported the following shares of several end products accounted for by chloropicrin: 40 percent for Telone C-17, 68-100 percent for Chlor-O-Pic, 57 percent for Terr-O-Gas, and 13 percent for MIDAS 50:50.[43] These costs shares are likely lower if the substantial costs of applying fumigants are considered.[44]

SUBSTITUTABILITY ISSUES

The degree of substitution between domestically produced and imported chloropicrin depends upon such factors as relative prices, quality (e.g., grade standards, reliability of supply, etc.), and conditions of sale (e.g., price discounts/rebates, lead times between order and delivery dates, payment terms, product services, etc.). Based on the available information, staff believes that there may be a high degree of substitutability between domestically produced chloropicrin and chloropicrin produced in China.[45]

Factors Affecting Purchasing Decisions

Table II-2 summarizes the nine responding purchasers' responses concerning the top three factors that affect their purchasing decisions for chloropicrin.[46] As indicated in the table, price was cited most frequently as the primary factor in buying decisions. Factors other than availability, price and quantity were most frequently cited as second in importance, and quality was the most frequently cited third factor.

Table II-2
Chloropicrin: Ranking factors used in purchasing decisions by U.S. purchasers

Factor	Number of firms reporting		
	Number one factor	Number two factor	Number three factor
Availability	2	2	2
Price	4	2	1
Quality	1	2	4
Other[1]	2	3	2

[1] Other factors include reliability of supply and traditional supplier for first factor; reliability, current availability and lead time for second factor; ability to transport in rail cars, and minimum requirements for third factor.

Source: Compiled from data submitted in response to Commission questionnaires.

Purchasers were asked how often domestically-produced or imported chloropicrin meets minimum quality specifications for their own or their customers' uses. All nine responding purchasers reported that domestically-produced chloropicrin "always" meets minimum quality specifications.[47] They also reported that they had no knowledge of the quality of imported chloropicrin.

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[43] U.S. producer, importer, and purchaser questionnaire responses, sections IV-12, III-12, and III-5, respectively.

[44] *Confidential Staff Report: Chloropicrin from the People's Republic of China*, Inv. No. 731-TA-130 (Final), p. A-38, February 27, 1984.

[45] *Chloropicrin from China*, Inv. No. 731-TA-130 (Second Review), USITC Pub. No. 3712 (August 2004), p. 8.

[46] U.S. purchaser questionnaire responses, section III-31.

[47] U.S. purchaser questionnaire responses, section IV-7.

Purchasers were asked to rate the importance of 16 factors in their purchasing decisions (table II-3).[48] All nine responding purchasers rated "availability," "lack of contamination," "delivery time," "quality meeting industry standards," and "reliability of supply" as very important. In contrast, five firms reported that "product range" was not an important factor and four firms reported that "technical support" was not an important factor.

Table II-3
Chloropicrin: Importance of purchase factors, reported by U.S. purchasers

Factor	Very important	Somewhat	Not important
	Number of firms responding		
Availability	9	0	0
Contamination (lack of)	9	0	0
Delivery terms	2	7	0
Delivery time	9	0	0
Discounts offered	3	5	0
Extension of credit	2	7	0
Minimum quantity requirements	2	7	0
Packaging	5	1	3
Price	6	1	0
Product consistency	8	1	0
Product range	2	2	5
Quality exceeds industry standards	3	3	3
Quality meets industry standards	9	0	0
Reliability of supply	9	0	0
Technical support/service	3	2	4
U.S. transportation costs	4	5	0

Note.--Not all purchasers responded for each factor.
Source: Compiled from data submitted in response to Commission questionnaires.

Purchasers were asked for a country-by-country comparison based on the same 16 factors (table II-4).[49] For U.S.-produced product compared to Chinese product, all three responding purchasers reported that the U.S. product was superior with regard to product availability, delivery time, packaging, reliability of supply, technical support, and transport costs. Two responding firms reported that the Chinese product was comparable with regard to price and product range. Three purchasers stated that they have only bought domestically-produced chloropicrin and had no knowledge to compare the domestic product with

[48] U.S. purchaser questionnaire responses, section III-30.

[49] U.S. purchaser questionnaire responses, section IV-6.

Chinese product.[50] None of the purchasers responded to domestic and nonsubject country comparisons or Chinese and nonsubject country comparisons.

Table II-4
Chloropicrin: Comparisons between U.S.-produced and imported chloropicrin reported by U.S. purchasers

Factor	U.S. vs China		
	S	C	I
Availability	3	0	0
Contamination (lack of)	2	0	0
Delivery terms	0	0	0
Delivery time	3	0	0
Discounts offered	0	0	0
Extension of credit	2	0	0
Minimum quantity requirements	2	0	0
Packaging	3	0	0
Price[1]	0	2	0
Product consistency	2	0	0
Product range	0	2	0
Quality exceeds industry standards	2	0	0
Quality meets industry standards	2	0	0
Reliability of supply	3	0	0
Technical support/service	3	0	0
U.S. transportation costs[1]	3	0	0

[1] A rating of superior means that price/U.S. transportation cost is generally lower. For example, if a firm reported "U.S. superior", it meant that the price of the U.S. product was generally lower than the price of the imported product.

Note.--S=first listed country's product is superior; C=both countries' products are comparable; I=first listed country's product is inferior.

Source: Compiled from data submitted in response to Commission questionnaires.

When asked if certain grades/purity levels of chloropicrin were available from only a single source, seven of eight responding purchasers reported that they are available from more than one source. The other purchaser reported that the size of shipping containers, including truckloads, railcars, and canisters, limited the availability of chloropicrin to a single source.[51]

[50] None of the purchasers reported buying Chinese chloropicrin during January 2006-September 2009, the period for which responses were requested.

[51] U.S. purchaser questionnaire responses, section IV-5.

U.S. purchasers were also asked if they or their customers ever specifically requested product from one country over other possible sources.[52] Seven of nine responding purchasers reported that they do not request product from specific countries. Two purchasers reported that they always order product from the United States.[53]

U.S. purchasers were also asked if they or their customers make purchasing decisions based on the country of origin of chloropicrin.[54] Two of nine responding purchasers indicated that their firm "always," made purchasing decision based on country of origin, and seven indicated "never." All nine responding purchasers indicated that their customers "never" made purchasing decisions based on the country of origin.

U.S. purchasers were asked if they have changed suppliers since 1984.[55] Seven of ten responding purchasers reported "yes," indicating the reason for the change was the exiting of two producers from the market. Five of ten responding purchasers are aware of one new supplier, ***, while the remaining five purchasers are not aware of any new suppliers.

U.S. purchasers discussed whether or not they required their suppliers to become certified or pre-qualified with respect to the quality, chemistry, strength, or other performance characteristics of the chloropicrin they purchase.[56] Four of nine responding purchasers reported that they did, and the remaining five purchasers reported no such supplier certification. Some purchasers requiring supplier qualification noted factors such as purity levels, low water and acid content, and ability to meet federal pesticide registration requirements.

When qualifying a new supplier, purchasers reported that the quality of the product is the most important factor.[57] Three purchasers reported sending batch samples for lab qualifications, and one purchaser required 99 percent purity, with a low water and acid content. Other factors taken into consideration included reliability, price, lead time, ability to ship via rail, regulatory compliance, and safety.[58]

Five purchasers provided information on the time necessary to qualify a supplier, which ranged from several weeks to 3-6 months.[59] When asked if any new suppliers had failed to obtain certification, *** reported that the *** U.S. producer, ***, was unable to meet government production requirements. When purchasers were asked what characteristics they consider when determining the quality of chloropicrin, seven purchasers reported characteristics that included meeting specific technical specifications, low water and acid content, and color.[60]

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[52] U.S. purchaser questionnaire responses, section IV-4.

[53] U.S. purchaser *** reported that they only purchase chloropicrin that is transported by railcars, and U.S. purchaser *** reported high prices of chloropicrin from Chinese sources due to the antidumping duty.

[54] U.S. purchaser questionnaire responses, section III-21.

[55] U.S. purchaser questionnaire responses, section III-25.

[56] U.S. purchaser questionnaire responses, section III-27.

[57] U.S. purchaser questionnaire responses, section III-27.

[58] U.S. purchaser questionnaire responses, section III-28.

[59] U.S. purchaser questionnaire responses, section III-27.

[60] U.S. purchaser questionnaire responses, section III-32.

Comparisons of Domestic Products and Subject Imports

In order to determine whether U.S.-produced chloropicrin can generally be used in the same applications as imports from China, U.S. producers, importers and purchasers were asked whether the products can "always," "frequently," "sometimes," or "never" be used interchangeably (table II-5).[61]

Table II-5
Chloropicrin: Perceived interchangeability of products produced in the United States and in other countries by country pairs [1]

* * * * * * *

When comparing U.S.-produced product with Chinese product, the only responding producer, ***, and importer, ***, reported that U.S.-produced chloropicrin can "always" be used interchangeably with subject product. The two responding purchasers reported that U.S.-produced chloropicrin can "always" be used interchangeably with Chinese product.

U.S. producers and importers were also asked to compare U.S.-produced products with imports from China in terms of product differences other than price such as quality, availability, product range, and technical support.[62] Again, firms were asked whether these product differences are "always", "frequently", "sometimes", or "never" significant (table II-6).

Table II-6
Chloropicrin: Perceived significance of differences other than price between products produced in the United States and in other countries, by country pairs[1]

* * * * * * *

The responding *** producer, ***, reported that differences other than price between chloropicrin produced in the United States and subject countries were "always" a significant factor in their firm's sales of the products. The only responding importer, ***, reported that differences were "always" a significant factor in their firm's shipments of the products. *** reported that ***.[63]

ELASTICITY ESTIMATES[64]

U.S. Supply Elasticity

The domestic supply elasticity for chloropicrin measures the sensitivity of the quantity supplied by U.S. producers to changes in the U.S. market price for chloropicrin. The elasticity of domestic supply depends on several factors, including the level of excess capacity, the existence of inventories, and the availability of alternate markets for U.S.-produced chloropicrin. Previous analysis of these factors suggests that the U.S. industry may have at least a moderate ability to increase or decrease shipments to

[61] U.S. producer, importer, and purchaser questionnaire responses, sections IV-31, III-31, and IV-3, respectively.

[62] U.S. producer and importer questionnaire responses, sections IV-32 and III-32, respectively.

[63] *** producer questionnaire response, section IV-32.

[64] The suggested ranges for the various elasticities were presented in the prehearing report for purposes of discussion in the prehearing briefs, and/or post hearing briefs. The elasticity responses in this section refer to changes that could occur within 12 months, unless otherwise indicated.

the U.S. market based principally on inventories and export markets. An estimate in the range of 3 to 8 is suggested.

U.S. Demand Elasticity

The U.S. demand elasticity for chloropicrin measures the sensitivity of the overall quantity demanded to a change in the U.S. market price of chloropicrin. This estimate depends on factors discussed earlier such as the existence, availability, and commercial viability of substitute products, as well as the component share of chloropicrin in the final cost of end-use products in which it is used. Staff suggests that the aggregate demand for chloropicrin is inelastic, with values ranging from -0.2 to -0.6.

Substitution Elasticity

The elasticity of substitution depends upon the extent of product differentiation between the domestic and imported chloropicrin. Product differentiation, in turn, depends upon such factors as quality and condition of sale (availability, delivery, etc.). U.S. imports of chloropicrin from China have been very limited since 1984. As a result, information on U.S. competition between the U.S.-produced and imported Chinese chloropicrin is based almost exclusively on such information developed in the final investigation in 1984. As in the original determination, the available evidence from the second review suggests that chloropicrin is a commodity product and that there is a relatively high degree of substitutability between imported and domestic chloropicrin.[65] Therefore, a review of this information suggests that the substitution elasticity between the domestic and subject imported chloropicrin may have ranged from 3 to 5.[66]

[65] *Second Review Views of the Commission*, Chloropicrin from China, Inv. 731-TA-130, July 2004, p. 11.

[66] *Chloropicrin from the Republic of China*, Inv. No. 731-TA-130 (Final), USITC Pub. No. 1505, March 1984.

PART III: CONDITION OF THE U.S. INDUSTRY

OVERVIEW

Background

Since the Commission's original 1984 investigation concerning chloropicrin from China, the U.S. industry reported a number of changes, marked by ***. In the original investigation, the two petitioning firms, LCP Chemicals & Plastics, Inc. ("LCP") and Niklor Chemical Co., Inc. ("Niklor") accounted for all U.S. production of chloropicrin during 1983. As detailed in *Part I* of this report, these firms have been acquired or exited the chloropicrin market.

In the current review, the Commission issued three U.S. producer questionnaires to firms identified in the domestic interested parties' response to the Commission's notice of institution or identified by independent staff research as possible chloropicrin producers in the United States. Three firms confirmed that they are producers of chloropicrin in the United States. Of these three firms, two provided the Commission with useable data on their chloropicrin operations.[1] These two firms, ASHTA and Trinity, are believed to account for 100 percent of production of chloropicrin in 2008.

Changes Experienced in Operations

U.S. chloropicrin producers were asked to indicate whether their firm had experienced any plant openings, relocations, expansions, acquisitions, consolidations, closures, prolonged shutdowns, or curtailment of production because of these or other reasons including revision of labor agreements or any other change in the character of their operations or organization relating to the production of chloropicrin since January 1, 1984. The domestic producers' responses to this question are presented in table III-1.

Table III-1
Chloropicrin: Changes in the character of U.S. operations since January 1, 1984

* * * * * * *

***.[2]

Anticipated Changes to Existing Operations

The Commission requested that domestic producers provide details as to the nature and significance of anticipated changes in the character of U.S. operations or organization. Table III-2 presents U.S. producer ***'s anticipated changes to its U.S. operations.

Table III-2
Chloropicrin: Anticipated changes in U.S. operations

* * * * * * *

[1] ***. ***'s U.S. producers' questionnaire response, section II-2.

[2] *Responses to Questions from the Commission*, March 1, 2010, p. 10 (Pearson).

U.S. PRODUCERS' CAPACITY, PRODUCTION, AND CAPACITY UTILIZATION

The Commission requested information on chloropicrin capacity and production from chloropicrin producers. U.S. producers' capacity, production, and capacity utilization data for chloropicrin are presented in table III-3. Total reported U.S. chloropicrin capacity remained the same for the period for which data were gathered.

Table III-3
Chloropicrin: U.S. producers' capacity, production, and capacity utilization, 2006-08, January-September 2008, and January-September 2009

* * * * * * *

U.S. production of chloropicrin fluctuated upward by *** percent between 2006 and 2008 and was *** percent lower in January-September 2009 than in January-September 2008. Capacity utilization fluctuated upward by *** percentage points between 2006 and 2008 and was *** percentage points lower in January-September 2009 than in January-September 2008.

Constraints on Capacity

The Commission asked domestic chloropicrin producers to report constraints on their capacity to produce chloropicrin. ASHTA reported that ***. Niklor reported that ***. Trinity reported that ***.[3]

All U.S. chloropicrin producers reported that they are *** to produce products other than chloropicrin utilizing the same equipment or labor.[4]

U.S. PRODUCERS' SHIPMENTS

As detailed in table III-4, the quantity of U.S. producers' U.S. shipments of chloropicrin fluctuated upward by *** percent between 2006 and 2008 and was *** percent higher in January-September 2009 than in January-September 2008. The value of U.S. producers' U.S. shipments of chloropicrin increased by *** percent between 2006 and 2008 and was *** percent higher in January-September 2009 than in January-September 2008. U.S. commercial shipments accounted for the majority of total shipments, with exports accounting for no more than *** percent in any full year during the period for which data were gathered. *** reported exporting chloropicrin to ***.

Table III-4
Chloropicrin: U.S. producers' shipments, by type, 2006-08, January-September 2008, and January-September 2009

* * * * * * *

U.S. PRODUCERS' INVENTORIES

Table III-5, which presents end-of-period inventories for chloropicrin, shows that inventories increased irregularly by *** percent between 2006 and 2008 and were *** percent higher in January-

[3] U.S. producer questionnaire responses, section II-6.

[4] U.S. producer questionnaire responses, section II-5.

September 2009 than in January-September 2008. In the original investigation, the ratio of inventories to total shipments *** those reported for the period for which data were gathered.[5]

Table III-5
Chloropicrin: U.S. producers' end-of-period inventories, 2006-08, January-September 2008, and January-September 2009

* * * * * * *

U.S. PRODUCERS' IMPORTS AND PURCHASES

***. ***.[6]

U.S. PRODUCERS' EMPLOYMENT, WAGES, AND PRODUCTIVITY

Data provided by U.S. producers on the number of production and related workers (PRWs") engaged in the production of chloropicrin, the total hours worked by such workers, and wages paid to such PRWs during the period for which data were collected in this review are presented in table III-6. Employment, in terms of boths PRWs and hours worked, increased between 2006 and 2008 by *** percent and *** percent, respectively. The number of PRWs employed in the production of chloropicrin in January-September 2009 was *** percent higher than in January-September 2008, while the number of hours worked was *** percent higher over the interim period.

Table III-6
Chloropicrin: Average number of production and related workers, hours worked, wages paid to such workers, hourly wages, productivity, and unit labor costs, 2006-08, January-September 2008, and January-September 2009

* * * * * * *

The *** increase in the total number of hours worked during the period under examination reportedly resulted from ***.[7] Hourly wages and total wages paid increased between both 2006 and 2008 and over the interim January-September periods. PRW productivity declined irregularly by *** percent between 2006 and 2008, and declined by *** percent over the interim January-September periods. Lower productivity, combined with the moderate increases in hourly wage rates discussed above, resulted in an increase in unit labor costs of *** percent between 2006 and 2008, and *** percent higher unit labor costs in January-September 2009 relative to January-September 2008.

[5] The ratio of inventories to total shipments in the original investigation were: *** percent in 1980; *** percent in 1981; *** percent in 1982; and *** percent in 1983. Original staff report, p. A-16.

[6] ***'s purchaser questionnaire response, section III-3.

[7] *Responses to Questions from the Commission*, March 1, 2010, p. 18 (Okun).

FINANCIAL EXPERIENCE OF THE U.S. PRODUCERS

Background

The financial results presented in this section of the report reflect the operations of ASHTA and Trinity which accounted for ***, respectively, of the period's cumulative sales volume.[8] A third U.S. company, Niklor, reportedly could ***.[9] Because it reportedly had ***.

While ASHTA and Trinity both produce and sell chloropicrin, the *** of ASHTA's sales. In contrast, chloropicrin represented *** of Trinity's corresponding sales. As noted below, the extent to which chloropicrin ***.[10]

Operations on Chloropicrin

Income-and-loss data for operations on chloropicrin are presented in table III-7 and on an average per-pound basis in table III-8. Table III-9 presents selected company-specific financial information. A variance analysis of the overall financial results on chloropicrin is presented in table III-10.[11]

Table III-7
Chloropicrin: Results of operations, 2006-08, January-September 2008, and January-September 2009

* * * * * * *

Table III-8
Chloropicrin: Results of operations (*per pound*), 2006-08, January-September 2008, and January-September 2009

* * * * * * *

Revenue

As shown in table III-9, while ASHTA and Trinity exhibited different patterns of sales volume, changes in average per-pound chloropicrin sales value were generally similar. The revenue section of the variance analysis (see table III-10), shows that the importance of changes in sales volume and average sales value alternated in terms of explaining the overall increase in total chloropicrin sales revenue during the period examined.

---

[8] ***.

[9] ***. USITC auditor prehearing notes. ***. *Responses to Questions from the Commission*, March 1, 2010 p. 10 (Pearson).

[10] ***. USITC auditor prehearing notes.

[11] A variance analysis is calculated in three parts, sales variance, cost of sales variance, and SG&A expense variance. Each part consists of a price variance (in the case of the sales variance) or a cost variance (in the case of the cost of sales and SG&A expense variance) and a volume variance. The sales or cost variance is calculated as the change in unit price times the new volume, while the volume variance is calculated as the change in volume times the old unit price. Summarized at the bottom of table III-10, the price variance is from sales; the cost/expense variance is the sum of those items from COGS and SG&A variances, respectively, and the volume variance is the sum of the lines under price and cost/expense variance.

***. USITC auditor prehearing notes. ***. E-mail with attachments from Kalik Lewin on behalf of Trinity, January 15, 2010.

In part, ASHTA attributed *** in its sales volume after 2006 (see table III-9) to the fact that 2006 was ***.[12] In contrast with ASHTA, Trinity reported ***.[13] Corresponding with higher average cost of goods sold (COGS), both companies reported ***.[14]

Table III-9
Chloropicrin: Results of operations, by firm, 2006-08, January-September 2008, and January-September 2009

* * * * * * *

Cost of Goods Sold

Nitromethane is an important component of chloropicrin COGS representing *** of total raw materials cost on a cumulative basis. As shown in table III-9, Trinity recognized the ***.[15] ***.[16]

Table III-10
Chloropicrin: Variance analysis of finalcial results, 2006-08, January-September 2008, and January September 2009

* * * * * * *

***. Unlike nitromethane, period-to-period changes in the average other raw materials component of chloropicrin COGS were more pronounced (see table III-8 and table III-9). ***.[17] As shown in table III-9, ***.[18] ***.[19] As shown in table III-9, ***[20] ***.[21] As indicated previously, other factory costs related to upstream processing/electrolysis are reflected in the cost of other raw materials.

Profitability

***, the U.S. industry's chloropicrin financial results were positive throughout the period. As noted above, the overall COGS-to-sales ratio was ***. The combination of these two factors largely explains the U.S. industry's overall *** shown in table III-7. When asked to explain the ***.[22]

[12] ***. E-mail with attachment from ASHTA, December 23, 2009.

[13] E-mail with attachments from Kalik Lewin on behalf of Trinity, January 15, 2010.

[14] ***. E-mail with attachment from ASHTA, December 23, 2009. ***. *Responses to Questions from the Commission*, March 1, 2010 pp. 11-12 (Pearson).

[15] E-mail with attachments from Kalik Lewin on behalf of Trinity, January 15, 2010.

[16] E-mail with attachment from ASHTA, December 23, 2009.

[17] USITC auditor prehearing notes.

[18] ***. E-mail with attachment from ASHTA, December 23, 2009. ***. USITC auditor prehearing notes.

[19] E-mail with attachments from Kalik Lewin on behalf of Trinity, January 15, 2010.

[20] Ibid.

[21] USITC auditor prehearing notes.

[22] E-mail with attachments from Kalik Lewin on behalf of Trinity, January 15, 2010

CAPITAL EXPENDITURES, RESEARCH AND DEVELOPMENT EXPENSES, ASSETS, AND RETURN ON INVESTMENT

Table III-11 presents data on capital expenditures, research and development ("R&D") expenses, total assets, and return on investment related to the industry's chloropicrin operations.[23] As shown in table III-11, ***.[24] With regard to the ***.[25] ***.[26] ***.[27]

Table III-11
Chloropicrin: Capital expenditures, R&D expenses, total assets, and retun on investment, by firms, 2006-08, January-September 208, and January-September 2009

* * * * * * *

[23] ***. USITC auditor prehearing notes. ***.

[24] As described by ASHTA, ***. E-mail with attachment from ASHTA, December 23, 2009.

[25] E-mail with attachments from Kalik Lewin on behalf of Trinity, January 15, 2010.

[26] Trinity U.S. Producer Questionnaire response, II-16.

[27] E-mail with attachments from Kalik Lewin on behalf of Trinity, January 15, 2010.

PART IV: U.S. IMPORTS AND THE FOREIGN INDUSTRY

U.S. IMPORTS

Overview

The Commission sent questionnaires to three firms believed to have imported chloropicrin between 2006 and 2009. All three firms provided information in response to the questionnaires; two of the firms provided certification that they had not imported chloropicrin during the period for which data were collected. Staff believes that data reported by the sole responding U.S. subject importer comprises virtually all subject imports of chloropicrin from China. There were no nonsubject imports believed to be entering the United States during the period for which data were gathered.

***, the sole importer of chloropicrin reported entering or withdrawing chloropicrin from a foreign trade zone, but not from a bonded warehouse.[1] *** did not import chloropicrin under the temporary importation under bond program.[2] ***.[3] [4]

Imports from Subject and Nonsubject Countries

Imports of chloropicrin enter the United States under HTS statistical reporting number 2904.90.5005, an *eo nomine* category for chloropicrin. Data regarding U.S. imports of chloropicrin are presented in table IV-1 and are based on questionnaire responses.[5]

Table IV-1
Chloropicrin: U.S. imports, by sources, 2006-08, January-September 2008, and January-September 2009

* * * * * * *

Imports of chloropicrin from China were ***. ***.[6] ***.[7] There were no reported imports of chloropicrin from all other sources combined during the period for which data were gathered.

The unit values of chloropicrin imports were *** lower than U.S. commercial shipments unit values in 2006 and *** lower in 2008; whereas, import unit values were *** percent higher than export shipment unit values in 2006 and *** percent higher in 2008.

U.S. IMPORTER'S IMPORTS SUBSEQUENT TO SEPTEMBER 30, 2009

The Commission requested importers to indicate whether they imported or arranged for the importation of chloropicrin from China after September 30, 2009. ***.

---

[1] ***'s importer questionniare response, section I-9.

[2] ***'s importer questionniare response, section I-10.

[3] ***, retrieved November 2, 2009.

[4] ***'s importer questionniare response, section II-2.

[5] ***.

[6] USITC staff telephone interview with ***, December 29, 2009.

[7] Ibid.

U.S. IMPORTER'S INVENTORIES

Table IV-2 presents data for inventories of U.S. imports of chloropicrin from China and all other sources held in the United States. As detailed earlier in this section, *** accounted for all the U.S. imports of chloropicrin from China for the period for which data were gathered and is thus the firm that holds subject chloropicrin inventory.

Table IV-2
Chloropicrin: U.S. importer's end-of-period inventories from China and other countries, 2006-08, January-September 2008, and January-September 2009

* * * * * * *

THE INDUSTRY IN CHINA

At the time of the Commission's original investigation, China's chloropicrin production *** of chloropicrin imported into the United States and SINOCHEM accounted for all of China's known exports of chloropicrin to the United States.[8] During the time of the original investigation, SINOCHEM reported that the capacity to produce chloropicrin in China was *** pounds per year, exports of chloropicrin from China accounted for between *** and *** percent of Chinese production, and exports to the United States increased from *** percent of exports in 1980 to *** percent in 1983.[9]

In the first five-year review, no foreign producers responded to the Commission's notice of institution. There are no known public data concerning chloropicrin operations at the Dalian plant; however, U.S. producers at the time of the first review believed that the plant continued to produce chloropicrin and that it exported significant quantities of chloropicrin to ***.[10] Further, in the first review, U.S. producers cited the availability of nitromethane in China, noting that this important raw material for making chloropicrin is not only produced in China but also exported to the United States.[11]

In the second five-year review, no foreign producer of chloropicrin in China responded to the Commision's notice of institution. The domestic interested parties that responded to the Commission's notice of the institution of its second five-year review claimed that the capacity of Dalian Dye-Chemicals Group to produce chloropicrin in China has expanded by *** percent since 1998, and was estimated to total *** pounds. They also reported that China exports substantial quantities of chloropicrin to third countries, particularly to Japan and Europe, at prices that are 20 percent to 40 percent below U.S. prices.[12]

In the current review, no foreign producer of chloropicrin in China responded to the Commision's notice of institution. Three potential producers of chloropicrin in China were identified from the response of the domestic interested parties to the Commission's notice of institution and through independent staff research. Foreign producer/exporter questionnaires were sent to all three potential chloropicrin producers in China;[13] however, no producer of chloropicrin in China responded to

[8] *See* 49 FR 5982, February 16, 1984, and *Original Staff Report of February 27, 1984*, p. A-10.

[9] Ibid., p. A-29.

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

[11] Ibid., p. I-11. *See also, Nitromethane from China*, Inv. No. 731-TA-650 (Final), USITC Pub. 2773, May 1994.

[12] *Domestic Substantive Response to the Notice of Institution* (Second Review), p. 4.

[13] The Commission faxed and emailed the questionnaires to Dalian Dyechem International Corp. ("Dalian"); Jiangsu Luye Agrochemicals Co., Ltd. ("Jiangsu"); and Jinan Haohua Industry Co., Ltd. ("Jinan").

the Commission's questionnaire. Subsequent research indicated that there continues to be only one producer of chloropicrin in China, Dalian.[14]

On its web site, Dalian states that it developed chloropicrin in 1955, has a long history of chloropicrin production, and that it is the sole manufacturer of chloropicrin in China. The company further states that it exports chloropicrin to many countries in the world and that its export output increases every year.[15] Dalian also indicates that it constantly continues to work to improve chloropicrin quality and production technology in order to meet different consumer demands both domestically and abroad.[16]

The total Chinese domestic market for all fumigants is estimated at about *** annually.[17] Domestic interested parties estimate that China has the capacity to produce at least *** pounds of chloropicrin annually and believe that there are plans in place to increase chloropicrin production capacity to *** pounds within the next year. China reportedly exports substantial quantities of chloropicrin to third countries, particularly Japan and Europe at prices that are 20-40 percent below U.S. prices.[18]

GLOBAL MARKET

As a practical matter, there is limited information available with respect to chloropicrin. Global Trade Atlas statistics that include chloropicrin are presented at a "basket" six-digit heading level for sulfonated, nitrated, or nitrosated derivatives of hydrocarbons, whether or not halogenated, whereas chloropicrin is classified *eo nomine* as a ten-digit statistical reporting number in the U.S. HTS. However, *** which includes information on chloropicrin.[19] The information on the global chloropicrin market presented in this section is largely excerpted from this report.

Supply and Demand

Table IV-3 list the world producers of chloropicrin in 2008 by company and plant location. The global chloropicrin market is supplied from *** plants in *** countries: ***.

Table IV-3
Chloropicrin: World producers and plant locations, 2008

* * * * * * *

[14] Email correspondence from ***, October 29 and November 12, 2009, and staff telephone interview with ***, January 21, 2010. ***.

[15] In its *Responses to Questions From The Commission*, March 1, 2010, domestic interested parties stated that ***; and also stated that ***, p. 2. In its *Responses to Commission Staff's Further Information Request*, March 11, 2010, domestic interested parties stated that as a matter of law, Chinese chloropicrin may not be imported into the EU. However, ***, p. 1.

[16] Dalian Dyechem International Corp. web site, http://daliandc.com/2proe.htm, retrieved October 27, 2009.

[17] ***.

[18] Substantive Response of Domestic Producers to Notice of Initiation of Third Review, p. 2.

[19] ***.

Table IV-4 presents global chloropicrin producers' production capacity, production and consumption. Global chloropicrin consumption was estimated at *** pounds *** in 2008 and is expected to grow to *** pounds *** in 2013.[20] ***.[21]

Table IV-4
Chloropicrin: Global producers' production capacity, production, and consumption, 2006-08

* * * * * * *

[20] Ibid., p. ***.

[21] ***.

PART V: PRICING AND RELATED INFORMATION

FACTORS AFFECTING PRICES

Raw Material Costs

Raw materials as a share of the cost of goods sold for domestic producers of chloropicrin increased slightly from *** percent in 2006 to *** percent in 2007, and then deceased to *** percent in 2008. Raw materials were *** percent of goods sold during January-September 2008, and *** percent during January-September 2009. The key costs in producing chloropicrin are raw materials such as nitromethane ***, chlorine bleach for *** and potassium bleach for ***.

U.S. Inland Transportation Costs

U.S. producers of chloropicrin, ASHTA and Trinity, and the lone U.S. importer of chloropicrin from China, ***, indicated that their firms generally *** to the customers' locations.[1] U.S. producers estimated that their U.S. inland transportation costs were between *** and *** percent of the delivered price.[2] U.S. producers' and importers' reported shipment shares of domestic and imported chloropicrin during January 2006-September 2009, by distance categories from their U.S. shipping locations, are shown in the following tabulation.

* * * * * * *

U.S. producers and the sole U.S. importer of chloropicrin from China reported the U.S. geographical market area(s) during 2008 to which they shipped their domestic and imported chloropicrin.[3] [4] The weighted-average U.S. shipment shares by each of the specified geographic areas for chloropicrin produced domestically and imported from China are shown in the following tabulation.

* * * * * * *

[1] As indicated earlier in the report, the importer of chloropicrin from China, ***.

[2] U.S. producers were requested to report shipping costs from their U.S. production facilities and U.S. importers were requested to report shipping costs from their U.S. ports-of-entry. The firms were also requested to include any freight to their U.S. warehouses if they sold their chloropicrin from such facilities. U.S. producer and importer questionnaire responses, section IV-10a and III-10a, respectively.

[3] U.S. producer and importer questionnaire responses, sections IV-11 and III-11, respectively.

[4] Domestic interested parties reported that "***." *Response to Questions from the Commission*, March 1, 2010, p. 16 (Okun).

PRICING PRACTICES[5]

Pricing Methods

U.S. producers of chloropicrin, ASHTA and Trinity, reported their 2008 U.S. commercial shipments by type of sale;[6] their shipment shares, based on quantity, are shown in the tabulation below.[7] As the tabulation shows, chloropicrin is most commonly sold on a ***.

* * * * * * *

Trinity reported that its contracts can be ***; ASHTA reported that its contracts ***. ASHTA indicated that it uses ***, and Trinity reported that it ***.[8] Trinity and U.S. importer, ***, usually quote prices on *** basis, while ASHTA quotes prices on *** basis, but ***.[9] ASHTA and Trinity reported ***.[10]

PRICE DATA

U.S. producers of chloropicrin and importers of chloropicrin from China were asked to provide quarterly sales data for the total quantity and f.o.b. (U.S. point of shipment) value of two specified products that were shipped to unrelated customers in the U.S. market during January 2006-September 2009. The products for which pricing data were requested were as follows:

> ***Product 1*.-- Chloropicrin (100 to 96 percent pure) sold in a 180,000 pound rail car container (base quantities on 100 percent equivalent).**
>
> ***Product 2*.-- Chloropicrin (100 to 96 percent pure) sold in a 50,000 pound ISO container (base quantities on 100 percent equivalent).**

Two U.S. producers (Trinity and ASHTA) provided price data. The lone U.S. importer of chloropicrin from China, ***, did not report any selling price data.[11] By quantity, pricing data provided by responding U.S. producers accounted for approximately *** percent of reported commercial shipments during January 2006-September 2009. Price data are presented in table V-1 and figures V-1 and V-2.

---

[5] Information on pricing practices discussed in this section was based on questionnaire responses of the two current U.S. chloropicrin producers.

[6] U.S. producer questionnaire responses, section IV-6.

[7] Spot sales are usually one-time delivery; short-term sales are for multiple deliveries for up to 12 months after the purchase agreement; and long-term sales are for multiple deliveries for more than 12 months after the purchase agreement. Short-term and long-term sales may be arranged by contracts or oral agreements.

[8] U.S. producer questionnaire responses, section IV-3.

[9] ***. ASHTA's producer questionnaire response, section IV-5.

[10] U.S. producer questionnaire responses, section IV-4.

[11] However, the importer reportedly shipped a total of *** during January 2006-September 2009. As indicated in Part I, the Chinese chloropicrin was ***.

Table V-1
Chloropicrin: U.S. weighted-average quarterly f.o.b. selling prices and quantities for U.S.-produced products 1 and 2, January 2006-September 2009

* * * * * * *

Figure V-1
Chloropicrin: U.S. weighted-average quarterly f.o.b. selling prices and quantities of domestic product 1, January 2006-September 2009

* * * * * * *

Figure V-2
Chloropicrin: U.S. weighted-average quarterly f.o.b. selling prices and quantities of domestic product 2, January 2006-September 2009

* * * * * * *

Price Trends

Overall, prices for U.S.-produced chloropicrin generally fluctuated upward during January 2006-September 2009. However, there was one major increase during mid-2008. Table V-3 presents a summary of U.S. producer price trends.

Table V-3
Chloropicrin: Summary of weighted-average f.o.b. selling prices for U.S. produced products 1-2

* * * * * * *

U.S. purchasers were asked if there has been a change in the price of domestically produced and Chinese-produced chloropicrin since 1984.[12] Three of four responding purchasers reported that they are not able to comment because they have not purchased chloropicrin from China. One responding purchaser, ***, reported that U.S.-produced chloropicrin has increased relative to the price of chloropicrin from China. U.S. purchasers most frequently identified U.S. producers *** and *** as price leaders.[13]

When asked how frequently prices change, five U.S. purchasers reported annual changes, one purchaser reported quarterly changes, and one purchaser reported that it depends on raw materials.[14] U.S. purchaser, ***, reported that changes occur usually on an annual basis, and also specified that sometimes it occurs when raw materials become "tight."[15] Another purchaser, ***, reported that "price change from both suppliers - at least once each year. The change in price has historically always been an increase."[16]

Purchasers were also asked how often their firms purchase the chloropicrin that is offered at the lowest price. Seven purchasers reported that they either "always" or "usually" purchase chloropicrin at

[12] U.S. purchaser questionnaire responses, section IV-8.

[13] U.S. purchaser questionnaire responses, section III-35.

[14] U.S. purchaser questionnaire responses, section III-36.

[15] *** purchaser questionnaire response, section III-36.

[16] *** purchaser questionnaire response, section III-36.

the lowest price, while two purchasers reported that they purchase chloropicrin "sometimes" at the lowest price offered and one purchaser reported "never."[17]

[17] U.S. purchaser questionnaire responses, section III-34.

APPENDIX A

FEDERAL REGISTER NOTICES AND THE COMMISSION'S STATEMENT ON ADEQUACY

INTERNATIONAL TRADE COMMISSION

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

Chloropicrin From China

AGENCY: United States International Trade Commission.

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

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on chloropicrin from China would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission;[1] to be assured of consideration, the deadline for responses is July 31, 2009. Comments on the adequacy of responses may be filed with the Commission by September 15, 2009. 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), as most recently amended at 74 FR 2847 (January 16, 2009).

DATES: *Effective Date:* July 1, 2009.

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 March 22, 1984, the Department of Commerce issued an antidumping duty order on imports of chloropicrin from China (49 FR 10691). Following first five-year reviews by Commerce and the Commission, effective April 14, 1999, Commerce issued a continuation of the antidumping duty order on imports of chloropicrin from China (64 FR 42655, August 15, 1999). Following second five-year reviews by Commerce and the Commission, effective August 23, 2004, Commerce issued a continuation of the antidumping duty order on imports of chloropicrin from China (69 FR 51811). The Commission is now conducting a third review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any 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 first and second five-year review determinations, the Commission defined the *Domestic Like Product* as chloropicrin.

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

(5) An *Importer* is any person or firm engaged, either directly or through a

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 09–5–196, expiration date June 30, 2011. Public reporting burden for the request is estimated to average 15 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.

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 advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation. The Commission's designated agency ethics official recently has advised that a five-year review is no longer considered the ''same particular matter'' as the corresponding underlying original investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b)(19 CFR 201.15(b)), 73 FR 24609 (May 5, 2008). This advice was developed in consultation with the Office of Government Ethics. Consequently, former employees are no longer required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation was pending when they were Commission employees. For further ethics advice on this matter, 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 July 31, 2009. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is September 15, 2009. 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) 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 2003.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone

number, fax number, and E-mail address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) 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 2008, except as noted (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) Capacity (quantity) of your firm to produce the *Domestic Like Product* (*i.e.,* the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

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

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

(e) The value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) 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 2008 (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.*

(11) 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 2008 (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) Capacity (quantity) of your firm to produce the *Subject Merchandise* in the *Subject Country* (*i.e.,* the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) 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.

(12) 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 2003, 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.

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

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

By order of the Commission.

Marilyn R. Abbott,

Secretary.

Issued: June 29, 2009.

William R. Bishop,

Acting Secretary to the Commission.

[FR Doc. E9–15642 Filed 7–1–09; 8:45 am]

BILLING CODE P

INTERNATIONAL TRADE COMMISSION

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

Chloropicrin From China

AGENCY: United States International Trade Commission.

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

SUMMARY: The Commission hereby gives notice of the scheduling of a full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5))

(the Act) to determine whether revocation of the antidumping duty order on chloropicrin from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: Effective Date: October 15, 2009.

FOR FURTHER INFORMATION CONTACT: Cynthia Trainor (202–205–3354), 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 October 5, 2009, the Commission determined that it should proceed to a full review in the subject five-year review pursuant to section 751(c)(5) of the Act. The Commission found that the domestic interested party group responses to its notice of institution (74 FR 31760, July 2, 2009) were adequate and that the respondent interested party group responses to its notice of institution were inadequate. The Commission also found that other circumstances warranted conducting a full review.[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's Web site.

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 this review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the review need not file an additional notice of appearance. 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.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this review available to authorized applicants under the APO issued in the review, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the review. A party granted access to BPI following publication of the Commission's notice of institution of the review need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO *Staff report.*—The prehearing staff report in the review will be placed in the nonpublic record on January 29, 2010, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the review beginning at 9:30 a.m. on February 18, 2010, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before February 10, 2010. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on February 12, 2009, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party to the review may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is February 8, 2010. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is March 1, 2010; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the review may submit a written statement of information pertinent to the subject of the review on or before March 1, 2009. On March 24, 2009, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before March 29, 2010, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

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 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

[1] Commissioner Charlotte R. Lane, Commissioner Irving A. Williamson, and Commissioner Dean A. Pinkert dissenting.

published pursuant to section 207.62 of the Commission's rules.

Issued: October 21, 2009.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E9–25675 Filed 10–23–09; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–002]

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

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

SUMMARY: On July 1, 2009, the Department of Commerce (''the Department'') initiated a sunset review of the antidumping duty order on chloropicrin from the People's Republic of China (''PRC'') pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). *See Initiation of Five-year (''Sunset'') Review,* 74 FR 31412 (July 1, 2009); *see also Antidumping Duty Order; Chloropicrin from the People's Republic of China,* 49 FR 10691 (March 22, 1984) (''Order''). Based on the notice of intent to participate and adequate response filed by the domestic interested parties, and the lack of response from any respondent interested party, the Department conducted an expedited sunset review of the Order pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2). As a result of this sunset review, the Department finds that revocation of the Order would likely lead to continuation or recurrence of dumping, at the levels indicated in the ''Final Results of Sunset Review'' section of this notice, *infra.*

DATES: *Effective Date:* November 6, 2009.

FOR FURTHER INFORMATION CONTACT: Jennifer Moats, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–5047.

SUPPLEMENTARY INFORMATION: On July 1, 2009, the Department initiated a sunset review of the order on chloropicrin pursuant to section 751(c) of the Act. *See Sunset Initiation,* 74 FR 31412. On July 13, 2009, the Department received a timely notice of intent to participate in the sunset review from Ashta Chemicals, Inc. (''Ashta''), Niklor Chemical Company, Inc. (''Niklor''), and Trinity Manufacturing, Inc. (''Trinity''), domestic interested parties, pursuant to 19 CFR 351.218(d)(1)(i). On July 31, 2009, Ashta, Niklor, and Trinity filed a timely substantive response within 30 days after the date of publication of the *Sunset Initiation.* The Department did not receive a substantive response from any respondent interested party in the sunset review. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted an expedited sunset review of the *Order.*

Scope of the Order

The merchandise subject to this antidumping duty order is chloropicrin, also known as trichloronitromethane. A major use of the product is as a pre-plant soil fumigant (pesticide). Such merchandise is currently classifiable under Harmonized Tariff Schedule (''HTS'') item number 2904.90.50.05.[1] The HTS item number is provided for convenience and customs purposes. The written description remains dispositive.

Analysis of Comments Received

A complete discussion of all issues raised in this sunset review is addressed in the accompanying Issues and Decision Memorandum, which is hereby adopted by this notice. *See* ''Issues and Decision Memorandum for the Final Results in the Expedited Sunset Review of the Antidumping Duty Order on Chloropicrin from the People's Republic of China,'' from John M. Andersen, Acting Deputy Assistant Secretary, to Ronald Lorentzen, Assistant Secretary for Import Administration, dated concurrent with this notice (''I&D Memo''). The issues discussed in the accompanying I&D Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the dumping margin likely to prevail if the *Order* was revoked. Parties can obtain a public copy of the I&D Memo on file in the Central Records Unit, room 1117, of the main Commerce building. In addition, a complete public version of the I&D Memo can be accessed directly on the Web at *http://ia.ita.doc.gov/frn.* The paper copy and electronic version of the I&D Memo are identical in content.

Final Results of Review

The Department determines that revocation of the Order on chloropicrin would likely lead to continuation or recurrence of dumping at the rates listed below:

Manufacturers/exporters/ producers	Weighted-average margin (percent)
China National Chemicals Import and Export Corp. (SINOCHEM)	58.0
PRC-Wide Entity	58.0

Notification Regarding Administrative Protective Order

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

We are issuing and publishing these results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: October 29, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–26859 Filed 11–5–09; 8:45 am]

BILLING CODE 3510–DS–P

[1] In 2004, a new HTS category was developed and identified specifically for imports of chloropicrin i.e., 2904.90.50.05. Previously, the HTS category that included chloropicrin was 2904.90.50.

EXPLANATION OF COMMISSION DETERMINATION ON ADEQUACY

in

Chloropicrin from China
Inv. No. 731-TA-130 (Third Review)

On October 5, 2009, the Commission determined that it should proceed to a full review in the subject five-year review pursuant to section 751(c)(5) of the Tariff Act of 1930, as amended, 19 U.S.C. § 1675(c)(5).

The Commission received a single domestic producer response filed by ASHTA Chemicals, Inc. ("ASHTA"). ASHTA's response also contains information submitted on behalf of two other producers of chloropicrin, Niklor Chemical Company, Inc., and Trinity Manufacturing, Inc. The Commission found that the individual response of each domestic chloropicrin producer to be individually adequate. The Commission further determined that the domestic interested party group response was adequate because these producers account for all of the domestic production of chloropicrin.

The Commission did not receive a response from any respondent interested party in the review and, therefore, determined that the respondent interested party group response was inadequate.

Notwithstanding the Commission's determination that the respondent interested party group response was inadequate, the Commission determined to conduct a full review in light of information regarding possible changes in the conditions of competition.[1] These include possible changes in market conditions resulting from increasing environmental regulation of chloropicrin.

A record of the Commissioners' votes is available from the Office of the Secretary and the Commission's web site (http://www.usitc.gov).

[1] Commissioners Lane, Williamson, and Pinkert voted to conduct an expedited review citing both the lack of adequate respondent participation and their findings that the record in this adequacy phase did not indicate sufficient changes in the conditions of competition since the original investigation and the first and second five-year reviews to warrant conducting a full review.

APPENDIX B

SUMMARY DATA

Table B-1
Chloropicrin: Summary data concerning the U.S. market, 2006-08, January-September 2008, and January-September 2009

* * * * * * *

APPENDIX C

COMMENTS ON THE SIGNIFICANCE OF THE EXISTING ANTIDUMPING DUTY ORDER AND THE LIKELY EFFECTS OF REVOCATION

U.S. PRODUCERS COMMENTS

The Commission requested U.S. producers to describe any anticipated changes in the character of their operations or organization relating to the production of chloropicrin in the future if the antidumping duty order on chloropicrin from China was to be revoked. (Question II-4)

ASHTA

"***."

Niklor

"***."

Trinity

"***."

The Commission requested U.S. producers to describe the significance of the antidumping duty order on their production capacity, production, U.S. shipments, inventories, purchases, employment, revenues, costs, profits, cash flow, capital expenditures, research and development expenditures, and asset values. (Question II-15)

ASHTA

"***."

Niklor

"***."

Trinity

"***."

The Commission asked U.S. producers whether they anticipated changes in their production capacity, production, U.S. shipments, inventories, purchases, employment, revenues, costs, profits, cash flow, capital expenditures, research and development expenditures, or asset values relating to the production of chloropicrin in the future if the antidumping duty order was to be revoked. (Question II-16)

ASHTA

"***."

Niklor

"***."

Trinity

"***."

U.S. IMPORTERS COMMENTS

The Commission asked U.S. importers if they would anticipate any changes in their operations or organization relating to the importation of chloropicrin the future if the antidumping duty order was to be revoked. (Question II-4)

***

"No."

The Commission requested U.S. importers to describe the significance of the existing antidumping duty order covering imports of chloropicrin in terms of their effect on their firms' imports, U.S. shipments of imports, and inventories. (Question II-9)

***

"N/A."

The Commission requested U.S. importers if they would anticipate any changes in their imports, U.S. shipments of imports, or inventories of chloropicrin in the future if the antidumping duty order was to be revoked. (Question II-10)

***

"No."

U.S. PURCHASERS COMMENTS

The Commission requested U.S. purchasers to describe the likely effects of any revocation of the subject antidumping duty order on the future activities of their firm and the entire U.S. market. (Questions III-38 (1) and III-38 (2)). The following are quotations from the responses of purchasers:

(1) <u>Effects on the activities of the firm</u>

****

"Removal of the antidumping duty would likely result in additional competitive sources and would open up the opportunity for *** to purchase chloropicrin from China, or nonsubject countries and develop additional dependable alternate sources. *** would likely develop a relationship with an offshore source to secure a reliable alternate source to the limited domestic options. In particular, *** requires a competitive source of chloropicrin to incorporate into its *** in order to effectively compete with other products. The pricing for this key component of *** is not as competitive as it likely would be if the antidumping order was removed.

****

"Revocation of the order would not have a significant effect on the activities of my firm."

****

"Don't know."

****

"Less profitable for us."

****

"Traders will make offers to us based on price."

****

"Importers will make offer decision based on price."

****

"No change is anticipated since ***."

****

"No answer."

****

"Importers will make offer decision based on price."

****

"Companies/traders from China will offer to sell at significantly lower prices to buy their way into the market. Would likely not affect our purchases as ***."

(2) Effects on the entire U.S. market

***

"Removal of the antidumping duty would likely bring more competitive pricing for chloropicrin products (both as stand-alone product as well as incorporated into other products) to the U.S. market, ultimately benefitting farmers who use these products."

***

"I don't know what the effect might be on the U.S. market."

***

"Don't know."

***

"Less profitable for U.S. distributors."

***

"Importers will make offer decision based on price."

***

"Importers will make offer decision based on price."

***

"Imports of chloropicrin will occur, weakening the U.S. industry and ***. This will reduce the ability of the U.S. producers to support the USEPA and California data requirements."

***

"No answer."

***

"Importers will make offer decision based on price."

***

"Companies/traders from China will offer to sell at significantly lower prices to buy their way into the market. Would likely not effect our purchases as they could not supply us in railcars."

FOREIGN PRODUCERS/EXPORTERS' COMMENTS

The Commission requested foreign producers to indicate whether they anticipated any changes in their operations or organization relating to the production of chloropicrin in the future if the antidumping duty order was to be revoked, and if yes, to describe those changes. (Question II-4)

The Commission did not receive any responses to its Foreign Producers/Exporters' questionnaire.

The Commission requested foreign producers to identify export markets (other than the United States) where they have developed or to which they have increased their sales of chloropicrin as a result of the antidumping duty order. (Question II-11)

The Commission did not receive any responses to its Foreign Producers/Exporters' questionnaire.

The Commission requested foreign producers to describe the significance of the existing antidumping and countervailing duty orders covering imports of chloropicrin in terms of their effect on their firms' production capacity, production, home market shipments, exports to the United States and other markets, and inventories. (Question II-12)

The Commission did not receive any responses to its Foreign Producers/Exporters' questionnaire.

The Commission asked foreign producers if they would anticipate any changes in their production capacity, production, home market shipments, exports to the United States and other markets, or inventories in the future if the antidumping duty order was to be revoked. (Question II-13)

The Commission did not receive any responses to its Foreign Producers/Exporters' questionnaire.

The Commission asked foreign producers to discuss any anticipated changes in terms of the product range, product mix, or marketing of chloropicrin in their home markets, for export to the United States, or for export to third-country markets in the future, identifying the time period(s) involved and the factor(s) that they believe would be responsible for such changes. (Question III-10)

The Commission did not receive any responses to its Foreign Producers/Exporters' questionnaire.

APPENDIX D

REGULATORY ISSUES

CHLOROPICRIN REGULATORY ISSUES

The U.S. Environmental Protection Agency ("EPA") regulates the use of pesticides under the authority of two federal statutes: the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA") and the Federal Food, Drug, and Cosmetic Act ("FFDCA").[1] Pesticide registration is the process through which the EPA examines the ingredients of a pesticide; the site or crop on which it is to be used; the amount, frequency and timing of its use; and the storage and disposal practices of the potential users. The EPA evaluation attempts to ensure that pesticides will not have unreasonable adverse effects on humans, the environment and non-target species. Pesticides must be registered or exempted by EPA's Office of Pesticide Programs before they may be sold or distributed in the United States. Once registered, a pesticide may not legally be used unless the use is consistent with the approved directions for use on the pesticide's label or labeling.[2]

In 2006, the EPA initiated a registration review program to reevaluate all pesticides on a regular cycle. The program's goal is to review each pesticide active ingredient every 15 years to verify that all pesticide products in the marketplace can still be used safely, as the ability to assess risks to human health and the environment evolves.[3]

Table D-1 presents modifications from 2008 to 2009 to the amended soil fumigant re-registration eligibility decisions ("REDs"). In May 2009, after consultations with stakeholders and obtaining extensive public input, the EPA issued new safety measures for soil fumigant pesticides (including chloropicrin) to increase protections for agricultural workers and bystanders. These measures, which are in the process of being implemented, are designed to establish a baseline for safe use of soil fumigants throughout the United States, reducing fumigant exposures, and significantly improving safety.[4]

Many of the measures were announced in July 2008, when EPA issued risk management Reregistration Eligibility Decisions (REDs) for the soil fumigants. During 2009, EPA solicited and received public comments related to the implementation of these measures, including having public meetings and visits with agricultural, farm worker, and public health constituents. In the Amended REDs published in May 2009, all measures to reduce risks are still required; however, some aspects of these measures were adjusted based on stakeholder input, on new scientific data that reduces the uncertainties in the Agency's assessments, and improved information on certain technological capabilities. These modifications will achieve the same level of protection for those people with the potential to be exposed to the fumigants, while resulting in greater compliance among users and fewer negative impacts on use of soil fumigants.[5]

[1] Retrieved from http://www.epa.gov/pesticides/regulating/laws.htm on January 13, 2010.

[2] Retrieved from http://www.epa.gov/pesticides/regulating/registering/index.htm on January 13, 2010.

[3] Retrieved from http://www.epa.gov/oppsrrd1/reevaluation/index.htm on January 13, 2010.

[4] Retrieved from: http://www.epa.gov/pesticides/reregistration/soil_fumigants/index.htm#ammendedreds on January 12, 2010.

[5] Ibid.

Table D-1
Modifications from 2008 to 2009 of the Amended Soil Fumigant Re-registration Eligibility Decisions (REDs) [1]

Mitigation	2008 REDs	2009 Amended REDs
Buffers[1]	Buffer zones based on available data	- New chloropicrin data support smaller buffers and increased confidence in safety - New dazomet data support larger buffers
Buffer credits	Credits allowed based on available data	New data support more credits
Rights of way	Permission from local authorities must be granted if buffers extend onto rights of way	Permission from local authorities is only required when sidewalk is present
Buffer overlap	Buffers may not overlap	Buffers may overlap; separate applications by 12 hours
Restrictions for difficult-to-evacuate sites	¼ mile restriction around hard-to-evacuate areas including day care centers, nursing homes, schools	Maintain ¼ mile restriction but allow a reduced restricted area of 1/8 mile for applications with smaller buffers (less than 300 feet)
Respiratory protection	Required monitoring devices to trigger additional measures	- Allow sensory irritation properties to trigger additional measures for MITC and chloropicrin - Device required for methyl bromide formulations with <20% chloropicrin
Emergency response and preparedness	If neighbors are near buffers, they must be provided with information or buffer zones must be monitored every 1-2 hours over 48 hours with monitoring devices	- Same basic measures - Monitoring is required only during peak emission times of the day; irritation acceptable trigger for MITC and chloropicrin in lieu of devices; methyl bromide requires devices

[1] A buffer zone provides distance between the application site (i.e., edge of field) and bystanders, allowing airborne residues to disperse before reaching the bystanders. This buffer will reduce the chances that air concentrations where bystanders are located will cause acute adverse health effects.

Source: Modifications from 2008 to 2009 Amended Soil Fumigant Reds, retrieved from pm.ifas.ufl.edu/pdf/2009_Amended_Soil_Fumigant_Reds.pdf on January 12, 2010.

According to the EPA, the following are the mitigation measures that will be required for the re-registration of chloropicrin: new good agricultural practices,[6] maximum application rate reductions,[7] new handler protections,[8] tarp cutting and removal restrictions, extended worker reentry requirements,[9] training information for handlers,[10] fumigant management plans ("FMPs"),[11] first responder and community outreach,[12] certified applicator training,[13] restrictions on applications around difficult to evacuate sites (e.g., hospitals, schools), buffer zones, treated area and buffer zone posting,[14] and emergency preparedness measures.[15]

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[6] Current fumigant labels recommend practices that help reduce off-gassing and improve the safety and effectiveness of applications. The EPA determined that including certain practices on labels as requirements rather than recommendations will minimize inhalation and other risks from fumigant applications. Examples of good agricultural practices include proper soil preparation/tilling, ensuring optimal soil moisture and temperature, appropriate use of sealing techniques, equipment calibration, and weather criteria.

[7] EPA restricts certain fumigant application methods and practices for which data are not currently available to determine appropriate protections, or that lead to risks that are otherwise difficult to address. These risks may include certain untarped applications for some fumigants. EPA is also lowering maximum application rates to reflect those rates needed for effective use, thereby reducing the potential for inhalation exposure and risk.

[8] A clear description of handler activities is required to be placed on the fumigant labels. All persons performing fumigant-handler activities must be trained and equipped as handlers in accordance with the requirements in the Agricultural Worker Protection Standard ("WPS") (40 CFR Part 170).

[9] Current labels allow worker reentry into fumigated fields two to five days after applications are complete. However, there are risks for workers reentering even after 48 hours. Stakeholder comments indicate that reentry for non-handler tasks is generally not needed for several days after the application is complete. EPA is extending the time that agricultural workers (i.e., non-handlers) are prohibited from entering the treated area. The entry prohibited period depends on the method of application, but generally the minimum period for worker reentry will be five days or until after tarps are perforated and removed.

[10] EPA is requiring fumigant registrants to develop and implement training programs for applicators in charge of soil fumigations on the proper use and good agricultural practices, so that these applicators are better prepared to effectively manage fumigant operations. The registrants also must prepare and disseminate training information and materials for fumigant handlers (those working under the supervision of the certified applicator in charge of fumigations).

[11] EPA is requiring that fumigant users prepare a written, site-specific fumigant management plan ("FMP") before fumigations begin. Written plans and procedures for safe and effective applications will help prevent accidents and misuse and will capture emergency response plans and steps to take in case an accident occurs. FMPs will be a resource for compliance assurance; fumigators will capture in the FMP how they are complying with label requirements.

[12] EPA is requiring fumigant registrants to develop and implement community outreach programs to ensure that information about fumigants and safety is available within communities where soil fumigation occurs. Outreach and information will address the risk of bystander exposure by educating community members about fumigants, buffer zones, how to recognize early signs of fumigant exposure, and how to respond appropriately in case of an incident.

[13] EPA is requiring fumigant registrants to develop and implement training programs for applicators in charge of soil fumigations on proper use and good agricultural practices so these applicators are better prepared to effectively manage fumigant operations. The registrants also must prepare and disseminate training information and materials for fumigant handlers.

[14] For buffer zones to be effective, bystanders need to be informed about the location and timing of the fumigation. EPA is requiring that buffer zones be posted at usual points of entry and along likely routes of approach to the buffer unless a physical barrier prevents access to the buffer, or all of the area within 300 feet of the buffer is under the control of the owner/operator.

[15] EPA is requiring registrants to provide training information to first responders in high fumigant use areas. These measures will ensure that emergency responders are prepared to effectively identify and respond to fumigant exposure incidents.

The implementation of the REDs is currently in process, with proposals for revised labels due back to the EPA during the fall of 2009. The EPA is scheduled to review the proposals for the revised labels before the growing season in 2010 to institute the improved protections, and particularly to implement remaining measures relating to buffer zones in 2011. A re-evaluation of these procedures is also scheduled to begin in 2013.[16]

[16] Retrieved from: http://www.epa.gov/pesticides/reregistration/soil_fumigants/index.htm#emergency on January 12, 2010.