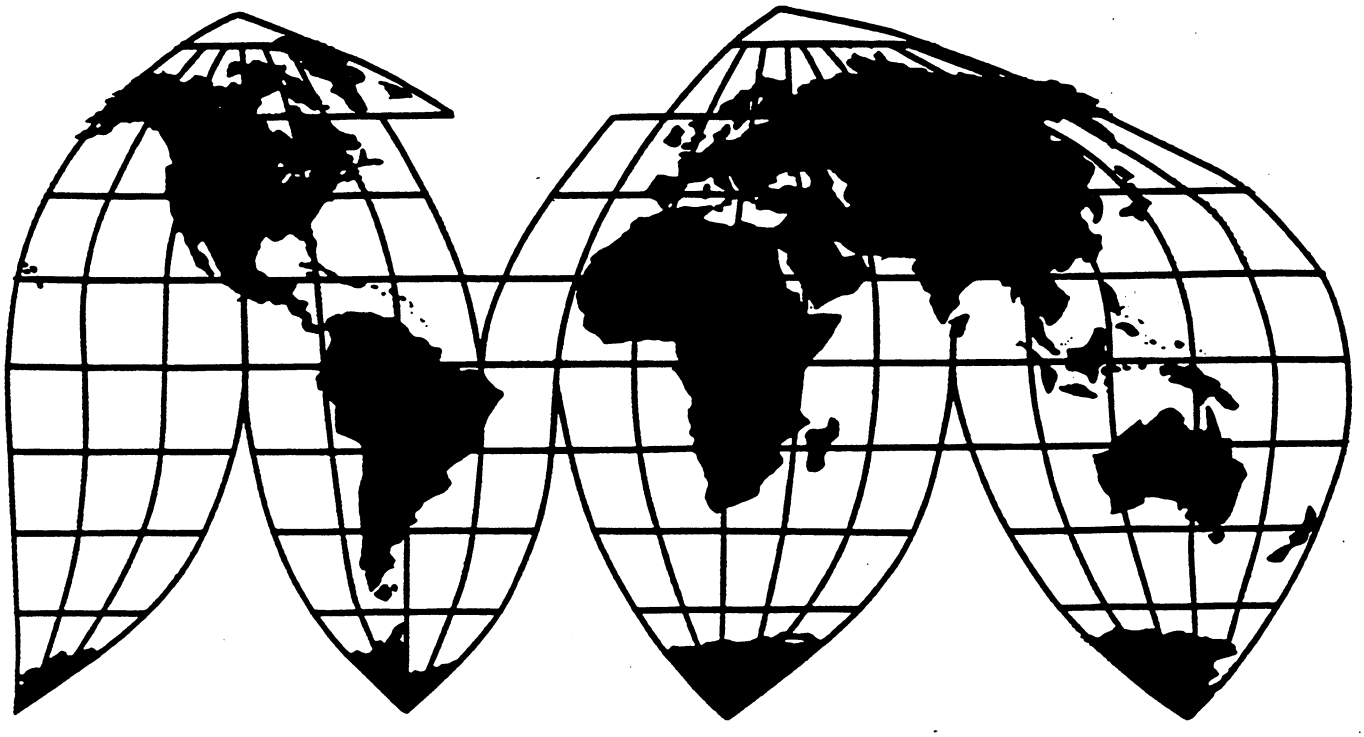
Persulfates From China

Investigation No. 731-TA-749 (Preliminary)

Publication 2989 **August 1996**

U.S. International Trade Commission



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U.S. International Trade Commission

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UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation No. 731-TA-749 (Preliminary)

PERSULFATES FROM CHINA

Determination

On the basis of the record[1] developed in the subject investigation, the Commission determines,[2] pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)), that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from China of persulfates, provided for in subheadings 2833.40.20 and 2833.40.60 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).[3]

Commencement of Final Phase Investigation

Pursuant to section 207.18 of the Commission's rules, as amended in 61 FR 37818 (July 22, 1996), the Commission also gives notice of the commencement of the final phase of its investigation. The Commission will issue a final phase notice of scheduling which will be published in the *Federal Register* as provided in section 207.21 of the Commission's rules upon notice from the Department of Commerce (Commerce) of an affirmative preliminary determination in the investigation under section 733(b) of the Act, or, if the preliminary determination is negative, upon notice of an affirmative final determination in that investigation under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary investigation need not enter a separate appearance for the final phase of the investigation. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Background

On July 11, 1996, a petition was filed with the Commission and the Department of Commerce by FMC Corp., Chicago, IL, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of persulfates from China. Accordingly, effective July 11, 1996, the Commission instituted antidumping investigation No. 731-TA-749 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference 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* of July 17, 1996 (61 FR 37283). The conference was held in Washington, DC, on July 31, 1996, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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

[2] Chairman Miller not participating.

[3] Commissioners Crawford and Watson find a reasonable indication of material injury by reason of the subject imports.

VIEWS OF THE COMMISSION

Based on the record in this investigation,[1] we find that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports of persulfates from China that are allegedly sold in the United States at less than fair value ("LTFV").[2] [3]

I. THE LEGAL STANDARD FOR PRELIMINARY DETERMINATIONS

The legal standard for preliminary antidumping duty determinations requires the Commission to determine, based upon the information available at the time of the preliminary determination, whether there is a reasonable indication that a domestic industry is materially injured, or threatened with material injury, by reason of the allegedly LTFV imports.[4] In applying this standard, the Commission weighs the evidence before it and determines whether "(1) the record as a whole contains clear and convincing evidence that there is no material injury or threat of such injury; and (2) no likelihood exists that contrary evidence will arise in a final investigation."[5]

II. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. In General

To determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of the subject imports, the Commission first defines the "domestic like product" and the "industry."[6] Section 771(4)(A) of the Act defines the relevant industry as the "producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product."[7] In turn, the Act defines "domestic like product" as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation."[8]

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[1]Under the Commission's amended regulations that became effective August 21, 1996, the Commission will now conduct a single, continuous investigation in contrast to the discrete preliminary and final investigations it conducted under its prior regulations. *See* Amendments to Rules of Practice and Procedure, 61 Fed. Reg. 37,818, 37,819 (July 22, 1996). Under these new rules, the preliminary portion of the Commission's injury investigation will now be referred to as the Commission's "preliminary phase of the investigation." Id. at 37,832. Because we commenced this investigation prior to the effective date of the rules, we refer to this investigation as this "preliminary investigation." We have, however, published notice of the commencement of a final phase investigation in the notice announcing our preliminary affirmative determination.

[2]Chairman Miller did not participate in this investigation.

[3]Commissioner Crawford joins Parts I-III of these views, but finds that there is a reasonable indication that an industry in the United States is materially injured by reason of allegedly LTFV imports of persulfates from China. *See* her Additional Views.

[4]19 U.S.C. § 1673b(a); *see also* American Lamb Co. v. United States, 785 F.2d 994 (Fed. Cir. 1996); Calabrian Corp. v. United States, 794 F. Supp. 377, 381 (Ct. Int'l Trade 1992).

[5]American Lamb, 785 F.2d at 1001; *see also* Texas Crushed Stone Co. v. United States, 35 F.3d 1535, 1543 (Fed. Cir. 1994).

[6]19 U.S.C. § 1677(4)(A).

[7]19 U.S.C. §1677(4)(A).

[8]19 U.S.C. §1677(10).

Our decision regarding the appropriate domestic like product(s) in an investigation is a factual determination, and we apply the statutory standard of "like" or "most similar in characteristics and uses" on a case-by-case basis.[9] No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.[10] The Commission looks for clear dividing lines among possible like products, and disregards minor variations.[11]

B. Analysis of Domestic Like Product

In its notice of initiation, the Department of Commerce defined the imported articles subject to this investigation as persulfates, including ammonium, potassium and sodium persulfates.[12] Persulfates have two major applications: (1) as catalysts or "initiators" in the process of polymerization; and (2) as oxidants in cleaning, microetching and plating processes. The polymerization application accounts for approximately *** of the demand for persulfates, with the remaining *** accounted for by the oxidation application. Persulfates as catalysts are primarily used in latex for carpet backing and paper coating, acrylic latex paint, water treatment, and other acrylics and polyvinyls used in adhesives. Persulfates as oxidants are primarily used in printed circuit boards, textiles, film processing, and soil stabilization.[13]

Petitioner FMC Corporation argues that the Commission should determine that there is a single domestic like product consisting of ammonium, sodium and potassium persulfates. Respondents Aceto Corporation ("Aceto") and ICC Industries, Inc. ("ICC") contend that there are three separate domestic like products. For the reasons discussed below, we find that there is one domestic like product, including all persulfates.

In terms of physical characteristics, while having different chemical formulae, the three salts are indistinguishable when subjected to a visual or tactile exam and are all derived from a common source: persulfuric acid. The active ingredient for all three salts is the persulfate anion, and all three salts have a persulfate content of at least 98 percent.[14] All are used in polymerization and oxidation applications.[15] The channels of distribution are the same: all three salts are sold to end users and distributors.[16]

The manufacturing process for all three salts is similar. Production begins in an electrolytic cell where liquid ammonium persulfate is produced as an intermediate product. This product is then crystallized into a wet cake, which is fed into the ammonium, sodium and potassium persulfate downstream production process in which the wet cake is further processed and then packaged for shipment. The only difference among salts is the removal and recycling of the ammonia that is released in the sodium and potassium

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[9]*See, e.g.,* Nippon Steel Corp. v. United States, Slip Op. 95-57, at 11 (Ct. Int'l Trade Apr. 3, 1995). The Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes and production employees; and, where appropriate, (6) price. *See* id. at n.4, 18; Timken Co. v. United States, Slip Op. 96-8, at 9 (Ct. Int'l Trade Jan. 3, 1996).

[10]*See, e.g.,* S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979).

[11]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).

[12]61 Fed. Reg. 40,817 (Aug. 6, 1996).

[13]Confidential Report ("CR") at I-2, Public Report ("PR") at I-2.

[14]CR at I-2, PR at I-1.

[15]*See* CR at I-2, PR at I-2.

[16]*See* CR at I-5, V-4 - V-15, PR at I-3, V-2 - V-3.

persulfate production processes. The three salts are manufactured by a single U.S. producer in the same plant, using the same or similar equipment as well as production workers.[17]

We note that there is evidence on the record of some limits on interchangeability due to waste disposal problems caused by the ammonium persulfate. In addition, the three salts have different water solubilities that affect their performance in emulsion polymerization.[18] It also appears that at least some customers may perceive the salts to be different.[19] Although individual purchasers may have specifications for a specific salt,[20] there is general interchangeability among the three salts, as each is used to manufacture the same downstream products.[21]

There is also some disparity in the pricing of the three salts. The price ranges for each of the three salts differed during the period examined, with potassium persulfate tending to be priced somewhat higher than sodium persulfate, which tended in turn to be priced slightly higher than ammonium persulfate. [22] [23]

On balance, given the similarities in physical characteristics, general interchangeability and the identical channels of distribution, as well as the common manufacturing facilities, production processes and production employees, and producer perceptions, we determine for purposes of this preliminary investigation that there is one domestic like product consisting of ammonium, sodium and potassium persulfates.

C. Domestic Industry

In making its determination, the Commission is directed to consider the effect of the subject imports on the industry, defined as "the producers as a [w]hole of a domestic like product."[24] Based on the definition of the domestic like product, the domestic industry consists of the sole domestic producer of persulfates, *i.e.* the petitioner.

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[17]CR at I-3 - I-4, PR at I-3.

[18]CR at I-4, PR at I-3.

[19]CR at I-4 - I-5, PR at I-3.

[20]For example, one end user, Dow Chemical, explains that its specifications require the use of sodium persulfate in the manufacture of latex products. CR at I-5, PR at I-3.

[21]*See* CR at I-4 - I-5, PR at I-3.

[22]With respect to the product as sold to distributors, the domestic price of potassium persulfate sold to distributors ranged from *** to *** per pound, while the price of ammonium persulfate ranged from *** to *** per pound and the price of sodium persulfate ranged from *** to *** per pound. As pertains to the product as sold to end users, the price of potassium persulfate ranged from *** to *** per pound, the price of ammonium persulfate ranged from *** to *** per pound and the price of sodium persulfate ranged from *** to *** per pound. CR at V-4 - V-14, Tables V-1 - V-6, PR at V-2 - V-3, Tables V-1 - V-6.

[23]Commissioner Watson doubts that the various types of persulfates are truly interchangeable in the sense of being nearly fungible. If they were, the persistent differences in price would be impossible to explain. Nevertheless, the fact that all three types of persulfates are made on the same production line, by the same workers employed by the same firm necessarily means that imports of persulfates of whatever type will be affecting the same industry in the same way. Where this is true, various types of a product should be classified as a single like product.

[24]19 U.S.C. §1677(4)(A). In doing so, the Commission generally includes all domestic production, including tolling operations and captively consumed product, within the domestic industry. *See* United States Steel Group v. United States, 873 F. Supp. 673, 682-83 (Ct. Int'l Trade 1994), *appeal docketed*, No. 95-1245 (Fed. Cir. Mar. 21, 1995).

Petitioner acknowledged that in *** it imported *** sample quantities of persulfates from China that were in the one- to two-kilo range.[25] Thus, petitioner is an importer and is a related party according to the provisions of the statute.[26] As such, the Commission may exclude the producer from the domestic industry if "appropriate circumstances" exist.[27] Exclusion of a related party is within the Commission's discretion based upon the facts presented in each case.[28] However, the roughly *** pounds of subject persulfates imported by petitioner is not commercially significant, particularly when compared to the *** pounds of persulfates imported from China in 1995 or the *** pounds of persulfates shipped by petitioner in 1995.[29] The importation of sample quantities of a product would not shield petitioner from any injury it has suffered from the subject imports.[30] It is clear that the petitioner's primary interest is in production, and not in importation. Accordingly, we do not find that "appropriate circumstances" exist to exclude petitioner from the domestic industry based on the very small quantity of its imports of the subject product.

III. CONDITION OF THE DOMESTIC INDUSTRY

In assessing whether there is a reasonable indication that the domestic industry is materially injured or threatened with material injury by reason of allegedly LTFV imports, we consider all relevant economic factors that bear on the state of the industry in the United States.[31] These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is dispositive and all

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[25] Petitioner's Postconference Brief, Exh. 23; Tr. at 31-32.

[26]The term "related parties" is defined at 19 U.S.C. § 1677(4)(B).

[27]19 U.S.C. § 1677(4)(B). The primary factors the Commission examines in deciding whether appropriate circumstances exist to exclude the related parties include:

(1) the percentage of domestic production attributable to the importing producer;
(2) the reason the U.S. producer has decided to import the product subject to investigation, *i.e.* whether the firm benefits from the LTFV sales or subsidies or whether the firm must import in order to enable it to continue production and compete in the U.S. market, and
(3) the position of the related producers vis-a-vis the rest of the industry, *i.e.* whether inclusion or exclusion of the related party will skew the data for the rest of the industry.

See, e.g., Torrington Co. v. United States, 790 F. Supp. 1161, 1168 (Ct. Int'l Trade 1992), *aff'd without opinion*, 991 F.2d 809 (Fed. Cir. 1993). The Commission has also considered whether each company's books are kept separately from its "relations" and whether the primary interests of the related producers lie in domestic production or in importation. *See, e.g.,* Certain Carbon Steel Butt-Weld Pipe Fittings from France, India, Israel, Malaysia, the Republic of Korea, Thailand, the United Kingdom, and Venezuela, Invs. Nos. 701-TA-360-361, 731-TA-688-695 (Final), USITC Pub. 2870, at I-18 (Apr. 1995).

[28]*See* Torrington Co. v. United States, 790 F. Supp. at 1168; Empire Plow Co. v. United States, 675 F. Supp. at 1353-54 (analysis of "[b]enefits accrued from the relationship" as a major factor in deciding whether to exclude a related party held a "reasonable approach in light of the legislative history"); S. Rep. No. 249, at 83 ("where a U.S. producer is related to a foreign exporter and the foreign exporter directs his exports to the United States so as not to compete with his related U.S. producer, this should be a case where the ITC would not consider the related U.S. producer to be a part of the domestic industry").

[29]CR at IV-3, Table IV-1, IV-5, Table IV-2, PR at IV-2, Tables IV-1 & IV-2.

[30]*Compare, e.g.,* Polyvinyl Alcohol from China, Japan and Taiwan, Invs. Nos. 731-TA-726, 727 & 729 (Final), USITC Pub. 2960 (May 1996), at 10 (no appropriate circumstances found to exclude domestic producer when commercial quantities of subject merchandise were not imported).

[31]19 U.S.C. § 1677(7)(C)(iii).

relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."[32]

We note certain conditions of competition pertinent to our analysis of the domestic persulfates industry. As stated above, petitioner is the sole domestic producer of persulfates.[33] In August 1995, a fire at petitioner's warehouse in its Tonawanda, New York plant destroyed much of petitioner's inventory and caused production to be shut down for six weeks.[34] The parties dispute whether or not this created a shortage of supply for purchasers of persulfates. Petitioner claims that it was able to satisfy demand out of remaining inventory, diverted export shipments back to the United States, and ***.[35] Aceto and ICC claim that there was a short-supply situation, which resulted in their increased imports of persulfates from China.[36] We intend to seek further information on this issue in our final phase investigation.

Second, a small proportion of production of the domestic like product is internally transferred for the production of downstream articles, so we must decide whether to apply the statutory captive consumption provision in this investigation. That provision applies only if significant production of the domestic like product is internally transferred and significant production is sold in the merchant market.[37] In this investigation, petitioner reports that between *** percent of its persulfates production was captively consumed in 1995.[38] In the context of this investigation, these percentages are of such a low magnitude that a more focused analysis of market share and financial analysis would not provide a significantly altered picture of the competitive impact of imports on the domestic industry. We therefore determine that the sole domestic producer does not internally transfer significant production of the like product for processing into downstream articles, rendering the captive production provision inapplicable.

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[32]19 U.S.C. §1677(7)(C)(iii).

[33]CR at I-1, PR at I-1.

[34]CR at III-1, PR at III-1.

[35]CR at III-1, PR at III-1. Petitioner maintains that it did not put customers on formal allocation and that there were only two customers that experienced spot shortages of one day, due primarily to communication problems. CR at III-1 - III-2, PR at III-1.

[36]CR at III-2, PR at III-1. There is a statement on the record by Dow Chemical, which accounts for *** percent of petitioner's business, that on August 29, 1995, petitioner orally declared a force majeure as to the supply of sodium persulfate due to the fire. CR at III-2, PR at III-1. Declaration of a force majeure, *i.e.* an act of God or event that cannot be reasonably anticipated or controlled, would alter the terms of a contract such that the inability to fulfill delivery requirements would not constitute a breach of the contract.

[37]19 U.S.C. § 1677(7)(C)(iv). Neither the statute nor the legislative history describes what quantum of production is significant. Instead, the Uruguay Round Agreements Act Statement of Administrative Action ("SAA") states merely that the Commission should determine "significance" on a case-by-case basis and that "[c]aptive production and merchant sales are significant if they are of such magnitude that a more focused analysis of market share and financial performance is needed for the Commission to obtain a complete picture of the competitive impact of imports on the domestic industry. SAA, H.R. Rep. 316, 103d Cong., 2d Sess. 852 (1994).

[38]The range is due to petitioner's statement that *** percent of its total domestic shipments of persulfates was captively consumed in 1995, coupled with its statement that export transfers of persulfates together with the persulfates consumed in the U.S. manufacture of downstream products accounted for *** percent of its total persulfates production in 1995. Petitioner's Postconference Brief, Exh. 24. Based on the actual shipment data obtained from the domestic producer's questionnaire response, internal shipments accounted for *** percent of total shipments in 1995. CR at III-5, Table III-2, PR at III-2, Table III-2.

Finally, apparent consumption for persulfates increased significantly from 1993 to 1995, but was slightly lower in interim (January-June) 1996 compared with interim 1995.[39] Demand for persulfates reportedly is derived from the demand for housing, construction, automobiles, and packaged goods.[40]

U.S. capacity to produce persulfates increased from 1993 to 1994, and remained stable thereafter.[41] The domestic industry's persulfates production remained steady from 1993 to 1995, but was slightly lower in interim 1996 as compared with interim 1995.[42] With capacity first increasing and then stabilizing, and production first remaining flat then declining, capacity utilization declined irregularly over the period examined.[43]

The domestic producer maintained its volume of shipments within a fairly narrow range from 1993 to 1995. Shipments declined somewhat from 1993 to 1994, but more than recovered that volume from 1994 to 1995.[44] The quantity of shipments was lower in interim 1996 than in interim 1995.[45] Due to rising unit values in 1994, the value of shipments increased marginally in 1994, and more significantly in 1995.[46] Although shipment volumes showed modest fluctuations during the period examined, U.S. consumption was

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[39]We note that because the domestic industry consists of one producer, the data concerning the condition of the industry are confidential. The quantity of apparent consumption increased from *** pounds of persulfates in 1993 to *** pounds in 1994 and increased further to *** pounds in 1995. It was *** pounds in interim 1995 as compared with *** pounds in interim 1996. In terms of value, apparent consumption climbed from *** in 1993 to *** in 1994, then rose to *** in 1995. It was *** in interim 1995 as compared with *** in interim 1996. CR at IV-9, Table IV-6, PR at IV-2, Table IV-6.

[40]CR at IV-2, PR at IV-1.

[41]The domestic industry's capacity to produce persulfates increased from *** pounds in 1993 to *** pounds in 1994 and 1995. During the interim periods capacity was *** pounds. CR at III-4, Table III-1, PR at III-2, Table III-1.

[42]*** pounds of persulfates were produced in 1993 as compared with *** pounds in 1994 and *** pounds in 1995. *** pounds were produced in interim 1995 as compared with *** pounds in interim 1996. CR at III-4, Table III-1, PR at III-2, Table III-1.

[43]Capacity utilization was *** percent in 1993, *** percent in 1994 and *** percent in 1995. In interim 1995 capacity utilization was *** percent as compared with *** percent in interim 1996. CR at III-4, Table III-1, PR at III-2, Table III-1.

[44]The domestic industry's total shipments were *** pounds in 1993, *** pounds in 1994 and *** pounds in 1995. CR at III-5, Table III-2, PR at III-2, Table III-2.

[45]In interim 1995, the quantity of shipments was *** pounds as compared with *** pounds in interim 1996. CR at III-5, Table III-2, PR at III-2, Table III-2.

[46]The value of persulfates shipped rose only from *** in 1993 to *** in 1994, then climbed to *** in 1995. The value of shipments was *** in interim 1995 as compared with *** in interim 1996. CR at III-5, Table III-2, PR at III-2, Table III-2. The average unit value of persulfates shipped increased from *** per pound in 1993 to *** in 1994, where it remained in 1995. In interim 1995, the unit value was *** as compared with *** in interim 1996. CR at III-6, Table III-2, PR at III-2, Table III-2.

rising strongly through most of the same period. As a result, the petitioner lost substantial market share overall.[47] [48]

While inventories increased between 1993 and 1994, they decreased between 1994 and 1995, and were lower in interim 1996 than in interim 1995.[49] The ratio of inventories to production decreased by *** between 1993 and 1995 and was lower in interim 1996 as compared with interim 1995.[50] The ratio of inventories to U.S. shipments followed a similar trend.[51]

The number of production and related workers decreased between 1993 and 1995, but was slightly higher in interim 1996 than in interim 1995.[52] Hours worked increased between 1993 and 1995, and between interim 1995 and interim 1996.[53] Average hourly wages increased throughout the period of investigation, as did total wages.[54] Unit labor costs were steady from 1993 to 1994, and rose slightly in 1995. Unit labor costs were higher in interim 1996 as compared with interim 1995.[55]

The domestic industry's financial data are somewhat mixed. The total quantity of net sales decreased somewhat between 1993 and 1994, then rose between 1994 and 1995.[56] In terms of both total value and unit

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[47]The domestic industry's market share, as measured in terms of quantity, decreased from *** percent in 1993 to *** percent in 1994, and fell further to *** percent in 1995. It was *** percent in interim 1995 and *** percent in interim 1996. In terms of value, it was *** percent in 1993, *** percent in 1994 and *** percent in 1995. The domestic industry's share of the value of consumption was *** percent in interim 1995 and *** percent in interim 1996. CR at IV-9, Table IV-6, PR at IV-2, Table IV-6.

[48]Commissioner Crawford does not rely on changes in industry performance on a year-to-year basis (*i.e.* trends) in her determination of material injury by reason of the subject imports.

[49]End-of-period inventories of persulfates rose from *** pounds in 1993 to *** pounds in 1994, then fell to *** pounds in 1995. There were *** pounds of persulfates in end-of-period inventories in interim 1995 as compared to *** pounds in interim 1996. CR at III-7, Table III-3, PR at III-2, Table III-3.

[50]The ratio of inventories to production rose slightly from *** percent in 1993 to *** percent in 1994, then fell to *** percent in 1995. The ratio of inventories to production was *** percent in interim 1995 as compared with *** percent in interim 1996. CR at III-7, Table III-3, PR at III-2, Table III-3.

[51]The ratio of inventories to U.S. shipments increased from *** percent in 1993 to *** percent in 1994, but decreased to *** percent in 1995. The ratio of inventories to U.S. shipments was *** percent in interim 1995 as compared with *** percent in interim 1996. CR at III-7, Table III-3, PR at III-2, Table III-3.

[52]There were *** production and related workers in 1993, *** in 1994 and *** in 1995. In interim 1995 there were *** production and related workers as compared with *** in interim 1996. CR at III-8, Table III-4, PR at III-2, Table III-4.

[53]Production and related workers worked *** hours in 1993, *** hours in 1994 and *** hours in 1995, and *** hours in interim 1995 as compared with *** hours in interim 1996. CR at III-8, Table III-4, PR at III-2, Table III-4.

[54]The average hourly wages paid to production and related workers increased from *** in 1993 to *** in 1994, and increased more to *** in 1995. The average hourly wages paid to production and related workers were *** in interim 1995 as compared with *** in interim 1996. CR at III-8, Table III-4, PR at III-2, Table III-4. Total wages paid increased from *** in 1993 to *** in 1994, increased further to *** in 1995, and were *** in interim 1995 as compared with *** in interim 1996. CR at III-8, Table III-4, PR at III-2, Table III-4.

[55]Unit labor costs were *** per pound in 1993 and 1994, and *** per pound in 1995. Unit labor costs were *** per pound in interim 1995 and *** per pound in interim 1996. CR at III-8, Table III-4, PR at III-2, Table III-4.

[56]The quantity of all net sales increased from *** pounds in 1993 to *** pounds in 1995. Total net sales amounted to *** pounds in interim 1995 and *** pounds in interim 1996. CR at VI-3, Table VI-1, PR at VI-1, Table VI-1.

value, net sales increased steadily from 1993 to 1995.[57] Net sales were lower both in terms of quantity and value in interim 1996 as compared with interim 1995. The unit value of the cost of goods sold (COGS) increased irregularly during the period of investigation,[58] with the sharpest increase occurring in the second half of 1995.[59] Although the ratio of COGS to net sales decreased irregularly from 1993 to 1995, it increased sharply from 1994 to 1995, and was higher in interim 1996 as compared with interim 1995.[60] Commensurate with this trend, gross profit increased between 1993 and 1994, but fell between 1994 and 1995, and was lower in interim 1996 as compared with interim 1995.[61] Selling, general and administrative expenses (SG&A) declined somewhat from 1993 to 1994, but rose significantly from 1994 to 1995. SG&A were higher in interim 1996 as compared with interim 1995.[62] As in the case of COGS, the sharpest increase in SG&A occurred in the second half of 1995.[63] Operating income rose between 1993 and 1994, but declined to *** in 1995. Although there was significant operating income in interim 1995, there was an operating loss in interim 1996.[64]

Capital expenditures *** between 1993 and 1995, and were also higher in interim 1996 as compared with interim 1995. Research and development expenditures followed the same trend.[65] [66]

IV. REASONABLE INDICATION OF THREAT OF MATERIAL INJURY BY REASON OF ALLEGEDLY LTFV IMPORTS[67] [68]

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[57]The value of all net sales climbed from *** in 1993 to *** and again to *** in 1995. The value of all net sales was *** in interim 1995 and *** in interim 1996. CR at VI-3, Table VI-1, PR at VI-1, Table VI-1. The unit value of all net sales was *** in 1993, and *** in 1994 and 1995. It was *** in interim 1995 as compared with *** in interim 1996. CR at VI-3, Table VI-1, PR at VI-1, Table VI-1.

[58]The cost of goods sold decreased from *** per pound in 1993 to *** in 1994, then increased to *** per pound in 1995. The cost of goods sold was *** per pound in interim 1995 as compared with *** per pound in interim 1996. CR at VI-3, Table VI-1, PR at VI-1, Table VI-1.

[59]CR at VI-2, PR at VI-1.

[60]The ratio of COGS to net sales was *** percent in 1993, *** percent in 1994 and *** percent in 1995. It was *** percent in interim 1995 and *** percent in interim 1996. CR at VI-3, Table VI-1, PR at VI-1, Table VI-1.

[61]Gross profit was *** in 1993 and climbed to *** in 1994 before it fell to *** in 1995. It was *** in interim 1995 and *** in interim 1996. CR at VI-3, Table VI-1, PR at VI-1, Table VI-1.

[62]Selling, general and administrative expenses fell from *** in 1993 to *** in 1994, then rose to *** in 1995. They were *** in interim 1995 as compared with *** in interim 1996. CR at VI-3, Table VI-1, PR at VI-1, Table VI-1.

[63]CR at VI-2, PR at VI-1.

[64]Operating income was *** in 1993 and climbed to *** in 1994 before it fell to *** in 1995. Operating income was *** in interim 1995 and the operating loss was *** in interim 1996. CR at VI-3, Table VI-1, PR at VI-1, Table VI-1.

[65]Capital expenditures increased from *** in 1993 to *** in 1994 to *** in 1995, and were *** in interim 1995 as compared with *** in interim 1996. Research and development expenditures rose from *** in 1993 to *** in 1994, rose further to *** in 1995, and were *** in interim 1995 as compared with *** in interim 1996. CR at VI-7, Table VI-3, PR at VI-2, Table VI-3.

[66]Based on the foregoing, Commissioner Newquist finds a reasonable indication that the domestic industry is vulnerable to the continuing adverse effects of allegedly unfair imports from China.

[67]As part of its consideration of the impact of imports, the statute specifies that the Commission is to consider in an antidumping proceeding, "the magnitude of the margin of dumping." 19 U.S.C. § 1677(7)(C)(iii)(V). The SAA

(continued...)

Section 771(7)(F) of the Act directs the Commission to consider whether the U.S. industry is threatened with material injury by reason of the subject imports by taking into account whether "further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted."[69] The Commission may not make such a determination "on the basis of mere conjecture or supposition,"[70] and considers the threat factors "as a whole."[71] In making our determination, we have considered all statutory factors[72] that are relevant to this investigation.[73]

For the reasons discussed below, we find there is a reasonable indication that the domestic industry producing persulfates is threatened with material injury by reason of the allegedly LTFV imports from China.

Foreign producers significantly increased both their capacity and their production of persulfates from 1993 through 1995.[74] Most of the increased production was shipped to the United States.[75] Further, the European Union ("EU") levied an 83 percent antidumping duty on exports of persulfates from China on a

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[67](...continued)
indicates that the amendment "does not alter the requirement in current law that none of the factors which the Commission considers is necessarily dispositive of the Commission's material injury analysis." SAA at 180. The statute defines the "magnitude of the margin of dumping" to be used by the Commission in a preliminary determination as "the dumping margin or margins published by the administering authority [Commerce] in its notice of initiation of the investigation." 19 U.S.C. § 1677(35)(C). The estimated dumping margins identified by Commerce in its notice of initiation of this investigation range from 15.87 percent to 182.37 percent. 61 Fed. Reg. 40,817, 40,818 (Aug. 6, 1996).

[68]Commissioner Newquist notes that, in his analytical framework, "evaluat[ion] of the magnitude of the margin of dumping" is not generally helpful in answering the questions posed by the statute: whether the domestic industry is threatened with material injury; and, if so, whether such threat of injury is by reason of the subject imports.

[69]19 U.S.C. § 1673b(a) and 1677(7)(F)(ii).

[70]19 U.S.C. §1677(7)(F)(ii). An affirmative threat determination must be based upon "positive evidence tending to show an intention to increase the levels of importation." Metallverken Nederland B.V. v. United States, 744 F. Supp. 281, 287 (Ct. Int'l Trade 1990), *citing* American Spring Wire Corp. v. United States, 590 F. Supp. 1273, 1280 (Ct. Int'l Trade 1984). *See also* Calabrian Corp. v. United States, 794 F. Supp. 377, 387 & 388 (Ct. Int'l Trade 1992), *citing* H.R. Rep. No. 1156, 98th Cong., 2d Sess. 174 (1984).

[71]While the language referring to imports being imminent (instead of "actual injury" being imminent and the threat being "real") is a change from the prior provision, the SAA indicates the "new language is fully consistent with the Commission's practice, the existing statutory language, and judicial precedent interpreting the statute." SAA at 184.

[72]The statutory factors have been amended to track more closely the language concerning threat of material injury determinations in the Antidumping and Subsidies Agreements, although "[n]o substantive change in Commission threat analysis is required." SAA at 185.

[73]19 U.S.C. § 1677(7)(F)(i). Factor I regarding consideration of the nature of the subsidies alleged is inapplicable because there have not been any subsidies alleged. Factor VII regarding raw and processed agriculture products is also inapplicable to the products at issue. *See* 19 U.S.C. § 1677(7)(F)(iii)(I).

[74]Because only two Chinese producers responded to Commission questionnaires, the data pertaining to their operations are confidential. Chinese producers' capacity to produce persulfates increased from *** pounds in 1993 to *** pounds in 1994, and to *** pounds in 1995. Production increased from *** pounds in 1993 to *** pounds in 1994, and further increased to *** pounds in 1995. CR at VII-3, Table VII-1, PR at VII-1, Table VII-1.

[75]Whereas Chinese producers' exports to the United States increased from *** pounds in 1993 to *** pounds in 1994, and increased then to *** pounds in 1995, their exports to all other markets only increased from *** pounds in 1993 to *** pounds in 1994, before falling slightly to *** pounds in 1995. Chinese producers' home market shipments increased from *** pounds in 1993 to *** pounds in 1994 and declined slightly to *** pounds in 1995. CR at VII-3, Table VII-1, PR at VII-1, Table VII-1.

provisional basis in July 1995 and did so on a definitive basis in December 1995.[76] Based on available data, which represent significantly less than the entire Chinese industry, capacity utilization in the exporting country is high.[77] We find that the significant increases in capacity and production of the Chinese industry, together with the imposition of the antidumping duty imposed by the EU, indicate the imminent likelihood of substantially increased imports of the subject merchandise into the United States.[78] [79]

Moreover, we find large increases in the volume and market share of the subject imports. Between 1993 and 1995, the quantity of subject imports increased dramatically, albeit from a small base. Imports continued to rise dramatically between interim periods.[80] In terms of both quantity and value, subject import market share followed the same trend.[81] We find that the large increases in subject import volume and market share also indicate the imminent likelihood of substantially increased imports.[82]

We find that subject imports will enter at prices likely to depress or suppress domestic prices to a significant degree. While there is some indication of quality differences between the subject product and the domestic product, and some indication that purchasers desire an alternative source of supply to the domestic industry, most importers and one significant purchaser indicated that the products could be used interchangeably.[83] Thus, it appears that Chinese persulfates and domestic persulfates compete to some extent on the basis of price. Because the subject imports persistently undersold the domestic product throughout the period of investigation,[84] we find it likely that further imports will also undersell the domestic products.

The likelihood of significant price suppressing effects by the subject imports is given some further support by the industry's inability to recoup the large increases in its costs in the latter half of 1995.[85] As

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[76]CR at IV-1, PR at IV-1; Petitioner's Postconference Brief at 32 & Exh. 2.

[77]Chinese producers' reported capacity utilization increased from *** percent in 1993 to *** percent in 1994 to *** percent in 1995. CR at VII-2, Table VII-1, PR at VII-1, Table VII-1.

[78]Commissioner Nuzum notes that the EU imposed a substantial (83.3 percent) dumping duty on Chinese persulfates in 1995. The likely result of this action will be to reduce Chinese persulfate exports to the EU. These exports may well be diverted to the United States. In light of the already significant U.S. market share held by Chinese persulfates, further increases in exports to the U.S. market pose a threat of material injury to the domestic industry. In any final phase investigation, Commissioner Nuzum will explore further the extent to which, as a result of the EU dumping finding, there is a likelihood of increased Chinese exports to the U.S. market. In that regard, she will seek information on Chinese export trends to the EU, as distinct from other export markets.

[79]Commissioner Watson finds that the shift in Chinese export patterns has already occurred, and so determines that there is a reasonable indication that imports of Chinese persulfates are causing present material injury, given the dumping margins noted above, and the high degree of substitutability between domestic and imported persulfates.

[80]Subject imports increased from *** pounds in 1993 to *** pounds in 1994, and increased further to *** pounds in 1995. Subject imports totaled *** pounds in interim 1996 as compared with *** pounds in interim 1995. CR at IV-3, Table IV-1, PR at IV-2, Table IV-1.

[81]In terms of quantity, subject import market share increased from *** percent in 1993 to *** percent in 1994, then climbed to *** percent in 1995. Subject import market share was *** percent in interim 1995 as compared with *** percent in interim 1996. In terms of value, subject import market share increased from *** percent in 1993 to *** percent in 1994, and then to *** percent in 1995. Subject import market share, as measured by value, was *** percent in interim 1995 as compared with *** percent in interim 1996. CR at IV-9, Table IV-6, PR at IV-2, Table IV-6.

[82]Commissioner Watson relies much more on the absolute market share held by Chinese imports as of the time of his determination than on the trends in market share over the period of investigation.

[83]CR at II-3 - II-4, PR at II-2 - II-3.

[84]*See* CR at V-4 - V-14, Tables V-1 - V-6, PR at V-2 - V-3, Tables V-1 - V-6.

[85]CR at VI-2, VI-3, Table VI-1, PR at VI-1 & Table VI-1.

noted above, the unit value of COGS increased sharply in late 1995 and remained high in interim 1996. [86] Moreover, prices for some of the products for which pricing information was gathered declined in interim 1996 for the first time during the period examined. This suggests a near-term likelihood of future significant price depression or price suppression.[87] Further, large purchasers are to some degree able to resist price increases, which somewhat impairs the domestic industry's ability to recover its increased costs.[88] [89] The industry's current weakened financial condition[90] makes it particularly vulnerable to such future adverse price effects of the lower priced imports.

End-of-period importer inventories of the subject merchandise increased dramatically between 1993 and 1995. Further, importer inventories were higher in interim 1996 than in interim 1995.[91] This gives further support to our affirmative finding of a reasonable indication of threat of material injury by reason of allegedly LTFV imports.[92]

We intend to explore further in the final phase investigation the degree to which the difficulties of the domestic industry are attributable to factors other than the subject imports, such as the fire, or the desire of purchasers to have alternate sources of supply. Nonetheless, we find the significantly increased volumes and market share of the subject imports, their persistent underselling of the domestic product and likelihood of significant adverse price effects, and their likely diversion from other export markets to the United States, together with the deteriorating financial condition of the domestic industry, provide a reasonable indication that the subject imports threaten the domestic industry with material injury.

CONCLUSION

For the foregoing reasons, we determine that there is a reasonable indication that the domestic industry producing persulfates is threatened with material injury by reason of allegedly LTFV imports from China.

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[86]CR at VI-3, Table VI-1, PR at VI-1, Table VI-1.

[87]*Compare* CR at V-6 - V-10, Tables V-2 - V-4, PR at V-2 - V-3, Tables V-2 - V-4.

[88]*See* CR at V-16, PR at V-4 (***).

[89]Commissioner Nuzum notes that dumping may contribute significantly to the ability of Chinese persulfates to undersell the domestic like product. The magnitude of dumping alleged in the petition ranges from 15.87 percent to 182.37 percent. *** Continued dumping of this magnitude suggests the likelihood of price suppression and of increased demand for further imports.

[90]*See* CR at VI-1 - VI-7, PR at VI-1 - VI-2. We note that some of these increased costs may be due to the petitioner's warehouse fire. We shall more fully explore these issues in our final phase investigation.

[91]Importers' end-of-period inventories increased from *** pounds in 1993 to *** pounds in 1994, and increased further to *** pounds in 1995. They totaled *** pounds in interim 1995 as compared to *** pounds in interim 1996. Relative to U.S. shipments of imports, end-of-period inventories averaged *** percent in 1993, *** percent in 1994 and *** percent in 1995. CR at VII-7, Table VII-5, PR at VII-2, Table VII-5.

[92]While petitioner has argued that Chinese producers of hydrogen peroxide may shift to the production of persulfates, there is no evidence in the record to suggest this is being done. CR at VII-1 - VII-2, PR at VII-1. Nor is there any persuasive evidence in the record that imports of persulfates from China may have an imminent adverse effect on the existing development and production efforts of the domestic industry. However, the information available regarding other threat factors, as discussed, provides a reasonable indication that the subject imports threaten the domestic industry with material injury.

ADDITIONAL VIEWS OF VICE CHAIRMAN LYNN M. BRAGG

NO REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF ALLEGEDLY LTFV IMPORTS OF PERSULFATES

I join my colleagues in the sections of this opinion involving the domestic like product and industry, the condition of the domestic industry, and threat of material injury to the domestic industry. When making an affirmative threat determination, as I have in this investigation, I believe that it is necessary to first address the question of present material injury. For the reasons discussed below, I find that there is not a reasonable indication that the domestic industry producing persulfates is presently experiencing material injury by reason of allegedly LTFV imports from China.

In preliminary antidumping investigations, the Commission determines whether there is a reasonable indication that an industry in the United States is materially injured by reason of the imports under investigation.[93] In making this determination, the Commission must consider the volume of imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.[94] Although the Commission may consider causes of injury to the industry other than the allegedly LTFV and subsidized imports,[95] it is not to weigh causes.[96] [97]

Volume:

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[93]19 U.S.C. § 1673b(a). The statute defines "material injury" as "harm which is not inconsequential, immaterial, or unimportant." 19 U.S.C. § 1677(7)(A).

[94]19 U.S.C. § 1677(7)(B)(i). The Commission "may consider such other economic factors as are relevant to the determination," but shall "identify each [such] factor . . . and explain in full its relevance to the determination." 19 U.S.C. § 1677(7)(B).

[95]Alternative causes may include the following:

> [T]he volume and prices of imports sold at fair value, contraction in demand or changes in patterns of consumption, trade, restrictive practices of and competition between the foreign and domestic producers, developments in technology, and the export performance and productivity of the domestic industry.

S. Rep. No. 249, 96th Cong., 1st Sess. 74 (1979). Similar language is contained in the House Report. H.R. Rep. No. 317, 96th Cong., 1st Sess. 46-47 (1979).

[96]See, e.g., Citrosuco Paulista, S.A. v. United States, 704 F. Supp. 1075, 1101 (Ct. Int'l Trade 1988).

[97]As part of its consideration of the impact of imports, the statute as amended by the Uruguay Round Agreements Act (URAA) specifies that the Commission is to consider "the magnitude of the margin of dumping." 19 U.S.C. § 1677(7)(C)(iii)(V). The URAA Statement of Administrative Action (SAA) indicates that the amendment "does not alter the requirement in current law that none of the factors which the Commission considers is necessarily dispositive in the Commission's material injury analysis." SAA at 850. New section 771(35)(C), 19 U.S.C. § 1677(35)(C), defines the "margin of dumping" to be used by the Commission in a preliminary determination as the margin or margins published by Commerce in its notice of initiation. The estimated dumping margins identified by Commerce in its notice of initiation of this investigation range from 15.87 percent to 182.37 percent. 61 Fed. Reg. 40,817, 40,818 (Aug. 6, 1996). I note that I do not ordinarily consider the margin of dumping to be of particular significance in evaluating the effects of subject imports on domestic producers. See Separate and Dissenting Views of Commissioner Lynn M. Bragg in Bicycles from China, Inv. No. 731-TA-731 (Final), USITC Pub. 2968 (June 1996).

I find that the increase in the volume of imports of persulfates from China was significant over the investigation period. Measured by quantity, subject imports increased from *** pounds in 1993 to *** pounds in 1994, and then further increased to *** pounds in 1995. Subject imports increased from *** pounds in the first six months of 1995 to *** pounds in the first six months of 1996. The value of subject imports increased from *** in 1993 to *** in 1994, and to *** in 1995. Between interim 1995 and 1996, the value of subject imports increased from *** to ***.[98] Subject import shipments, by quantity, as a share of apparent consumption in the United States also increased markedly from *** percent in 1993 to *** percent in 1994, and to *** percent in 1995. This market share increased from *** percent in interim 1995 to *** percent in interim 1996.[99] The market share by value followed a similar trend over the investigation period. Based on the foregoing, I find that the increase in the volume of imports of persulfates from China was significant.

Price:

Based on the available information in this preliminary investigation, I cannot conclude that the subject imports depressed domestic prices or prevented price increases, which otherwise would have occurred, to a significant degree.[100] While imports of Chinese persulfates were priced consistently below the comparable domestic product over the period of investigation, these prices do not appear to have adversely affected prices for the domestic product. In fact, for each of the six product and distribution channel combinations (three products in two channels of distribution) for which the Commission collected pricing data, the weighted average domestic prices increased between 1.0 percent and 20.0 percent from the first quarter of 1993 to the second quarter of 1996. These price increases occurred at the same time that Chinese imports were priced significantly below the comparable domestic products and were entering the United States in rapidly increasing volumes.[101] In addition, pricing observations for most Chinese products were first available in 1994 or 1995, and prices for five of the six comparable domestic products were higher at the end of the investigation period than when the Chinese products first appeared in the U.S. market. Chinese persulfate prices also increased in a range from 3.0 to 21.1 percent over the period during which they were available.[102]

The absence of any measurable adverse price effects during most of the period of investigation despite sustained underselling may be related in part to a modest degree of substitutability, or to perceived differences in quality between the domestic and Chinese products. Two of seven importers reported that the domestic and Chinese products are not interchangeable with one another, and several other importers stated that the quality of the Chinese product is inferior to that of the domestic product.[103] In the final phase investigation, the Commission should gain valuable access to purchaser data, which will help to clarify the degree to which the domestic and subject imported products are substitutable for one another. I also note that the Commission's pricing data show that prices for several of the domestic products began to decline slightly at the end of 1995 or the beginning of 1996. These downward trends late in the investigation period provide

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[98]Table IV-1, CR at IV-3, PR at IV-2.

[99]Table IV-6, CR at IV-6, PR at IV-2.

[100]19 U.S.C. § 1677(7)(C)(ii).

[101]Unit sales values for the domestic product also *** per pound during the first half of 1996. Table VI-1, CR at VI-3, PR at VI-1.

[102]CR at V-4-15, PR at V-2-3.

[103]CR at II-3-4, PR at II-2.

support for my affirmative threat finding, but are not sufficient to find significant present adverse price effects.

Impact:

In this preliminary investigation, I do not find any significant adverse impact that can be attributed to the subject imports. The financial condition of the domestic industry clearly worsened over the investigation period. However, net sales[104] and domestic shipments[105] increased in terms of quantity, value, and unit value between 1993 and 1995. In addition, production quantity,[106] the number of production workers, and hours worked all remained reasonably stable over the same period.[107] The decline in gross profits over the 1994-95 period, and then between interim 1995 and 1996 was due in significant part to a *** increase in the cost of goods sold which rose by *** percent between 1994-95 and by *** percent between interim 1995 and interim 1996. Operating income was further affected by *** increases in selling, general, and administrative expenses which rose by *** percent between 1994 and 1995 and by *** percent between interim 1995 and 1996. The record remains somewhat unclear as to the extent to which these increases are the result of the restructuring after the fire at petitioner FMC's plant that occurred in August of 1995. I shall seek to clarify this issue in the final phase investigation. As previously noted, however, it is clear that the industry's financial condition worsened considerably over the investigation period, and several indicators such as net sales, domestic shipments, and production quantity showed slight declines between interim 1995 and 1996. Thus, I find that further rapid increases in imports at depressing or suppressing prices could cause material injury to the domestic industry in the near future.

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[104]Net sales in terms of quantity and value did decline slightly between interim 1995-96. Table VI-1, CR at VI-3, PR at VI-1.

[105]Domestic shipments in terms of quantity declined slightly between interim 1995-96, and increased slightly in terms of value over the same period. Table III-2, CR at III-5, PR at III-2.

[106]Production quantity declined *** between interim 1995-96. Table III-1, CR at III-4, PR at III-2.

[107]Table III-4, CR at III-8, PR at III-2.

ADDITIONAL VIEWS OF COMMISSIONER CAROL T. CRAWFORD

On the basis of information obtained in this preliminary investigation, I determine that there is a reasonable indication that the industry in the United States producing persulfates is materially injured by reason of imports of persulfates from the People's Republic of China ("China") that are allegedly sold in the United States at less-than-fair-value ("LTFV"). I join my colleagues in finding a single like product, consisting of ammonium persulfate, sodium persulfate and potassium persulfate, and I join their discussion of the condition of the domestic industry. However, I do not concur in the majority's determination that there is a reasonable indication that the domestic industry producing persulfates is threatened with material injury by reason of the subject imports. Rather, I determine that there is a reasonable indication that the industry in the United States producing persulfates is materially injured by reason of the allegedly LTFV imports of persulfates from China. Because my determination differs from that of the majority, my separate views follow.

I. ANALYTICAL FRAMEWORK

In determining whether there is a reasonable indication that a domestic industry is materially injured by reason of the allegedly LTFV imports, the statute directs the Commission to consider:

> (I) the volume of imports of the merchandise which is the subject of the investigation,
> (II) the effect of imports of that merchandise on prices in the United States for like products, and
> (III) the impact of imports of such merchandise on domestic producers of like products, but only in the context of production operations within the United States . . .[108]

In making its determination, the Commission may consider "such other economic factors as are relevant to the determination."[109] In addition, the Commission "shall evaluate all relevant economic factors which have a bearing on the state of the industry . . . within the context of the business cycle and conditions of competition that are distinctive to the affected industry."[110]

The statute directs that we determine whether there is a reasonable indication of "material injury by reason of the dumped imports." Thus we are called upon to evaluate the effect of allegedly dumped imports on the domestic industry and determine if there is a reasonable indication that they are causing material injury. There may be, and often are, other "factors" that are causing injury. These factors may even be causing greater injury than the alleged dumping. However, the statute does not require us to weigh or prioritize the factors that are independently causing material injury. Rather, the Commission is to determine whether there is a reasonable indication that any injury "by reason of" the allegedly dumped imports is material. That is, the Commission must determine if there is a reasonable indication that the subject imports are causing material injury to the domestic industry. "When determining the effects of imports on the domestic industry, the Commission must consider all relevant factors that can demonstrate if unfairly traded imports are materially injuring the domestic industry."[111] It is important, therefore, to assess the effects of the allegedly dumped imports in a way that distinguishes those effects from the effects of other factors unrelated to the dumping. To do this, I compare the current condition of the industry to the industry conditions that would have existed without the dumping, that is, had subject imports

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[108] 19 U.S.C. § 1677(7)(B)(i).

[109] 19 U.S.C.§ 1677(7)(B)(ii).

[110] 19 U.S.C. § 1677(7)(C)(iii).

[111] S. Rep. No. 71, 100th Cong., 1st Sess. 116 (1987)(emphasis added).

all been fairly priced. I then determine whether the change in conditions constitutes material injury. The Court of International Trade has held that the "statutory language fits very well" with my mode of analysis.[112]

In my analysis of material injury, I evaluate the effects of the alleged dumping[113] on domestic prices, domestic sales, and domestic revenues. To evaluate the effects of the alleged dumping on domestic prices, I compare domestic prices that existed when the imports were allegedly dumped with what domestic prices would have been if the imports had been priced fairly. Similarly, to evaluate the effects of dumping on the quantity of domestic sales,[114] I compare the level of domestic sales that existed when imports were allegedly dumped with what domestic sales would have been if the imports had been priced fairly. The combined price and quantity effects translate into an overall domestic revenue impact. Understanding the impact on the domestic industry's prices, sales and overall revenues is critical to determining the state of the industry, because the impact on other industry indicators (e.g., employment, wages, etc.) is derived from the impact on the domestic industry's prices, sales, and revenues.

I then determine whether the price, sales and revenue effects of the alleged dumping, either separately or together, demonstrate that there is a reasonable indication that the domestic industry would have been materially better off if the imports had been priced fairly. If so, there is a reasonable indication that the domestic industry is materially injured by reason of the allegedly dumped imports.

For the reasons discussed below, I determine that there is a reasonable indication that the domestic industry producing persulfates is materially injured by reason of allegedly LTFV imports of persulfates from China.

II. CONDITIONS OF COMPETITION

To understand how an industry is affected by unfair imports, we must examine the conditions of competition in the domestic market. The conditions of competition constitute the commercial environment in which the domestic industry competes with unfair imports, and thus form the foundation for a realistic assessment of the effects of the dumping. This environment includes demand conditions, substitutability among and between products from different sources, and supply conditions in the market.

A. Demand Conditions

An analysis of demand conditions tells us what options are available to purchasers, and how they are likely to respond to changes in market conditions, for example an increase in the general level of prices in the market. Purchasers generally seek to avoid price increases, but their ability to do so varies with conditions in the market. The willingness of purchasers to pay a higher price will depend on the importance of the product to them (e.g., how large a cost factor), whether they have options that allow them to avoid the price increase, for example by switching to alternative products, or whether they can exercise buying power to negotiate a lower price. An analysis of these demand-side factors tells us whether demand for the product is elastic or inelastic, that is, whether purchasers will reduce the quantity of their purchases if the price of the product increases. For the reasons discussed below, I find that the overall elasticity of demand for persulfates is relatively low.

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[112]U.S. Steel Group v. United States, 873 F.Supp. 673, 695 (Ct. Int'l Trade 1994), appeal docketed, No. 95-1245 (Fed. Cir. March 22, 1995).

[113]As part of its consideration of the impact of imports, the statute as amended by the URAA now specifies that the Commission is to consider in an antidumping proceeding, "the magnitude of the margin of dumping." 19 U.S.C. § 1677(7)(C)(iii)(V).

[114]In examining the quantity sold, I take into account sales from both existing inventory and new production.

Importance of the Product and Cost Factor. Key factors that measure the willingness of purchasers to pay higher prices are the importance of the product to purchasers and the significance of its cost. In the case of products that are incorporated into other products (e.g., a component), the importance will depend on its cost relative to the total cost of the product in which it is used. When the price of the component is a small portion of the total cost of the product in which it is used, changes in the price of the component are less likely to affect its purchase.

Record evidence shows that persulfates account for less than one percent of the price of most of the downstream products in which they are used, and less than ten percent of the cost of other downstream products.[115] This small cost share indicates an inelastic demand for persulfates.

Alternative Products. Another important factor in determining whether purchasers would be willing to pay higher prices is the availability of viable alternative products. Often purchasers can avoid a price increase by switching to alternative products. If such an option exists, it can impose discipline on producer efforts to increase prices.

Information on the record indicates that there are available alternative products that can substitute for persulfates in applications comprising 20 percent of the U.S. market.[116] However, the record also indicates that there are practical and functional limits on the availability of alternative products.[117] Thus, although limited, the availability of alternative products somewhat increases the elasticity of demand for persulfates.

Based on the small cost share of persulfates in downstream products and the limited availability of alternative products, I find that the overall elasticity of demand for persulfates is relatively low. That is, purchasers will not reduce significantly the amount of persulfates they buy in response to a general increase in the price of persulfates.

B. Substitutability

Simply put, substitutability measures the similarity or dissimilarity of imported versus domestic products from the purchaser's perspective. Substitutability depends upon 1) the extent of product differentiation, measured by product attributes such as physical characteristics, suitability for intended use, design, convenience or difficulty of usage, quality, etc.; 2) differences in other non-price considerations such as reliability of delivery, technical support, and lead times; and 3) differences in terms and conditions of sale. Products are close substitutes and have high substitutability if product attributes, other non-price considerations and terms and conditions of sale are similar.

While price is nearly always important in purchasing decisions, non-price factors that differentiate products determine the value that purchasers receive for the price they pay. If products are close substitutes, their value to purchasers is similar, and thus purchasers will respond more readily to relative price changes. On the other hand, if products are not close substitutes, relative price changes are less important and are therefore less likely to induce purchasers to switch from one source to another.

Because demand elasticity for persulfates is relatively low, overall purchases will not decline significantly if the overall prices of persulfates increase. However, purchasers can avoid price increases from one source by seeking other sources of persulfates. In addition to any changes in overall demand for persulfates, the demand for persulfates from different sources will decrease or increase depending on their relative prices and their substitutability. If persulfates from different sources are substitutable, purchasers are more likely to shift their

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[115]C.R. at II-3; P.R. at II-2.

[116]C.R. at II-2; P.R. at II-2.

[117]C.R. at I-5 to I-6; P.R. at I-3.

demand when the price from one source (i.e., subject imports) increases. The magnitude of this shift in demand is determined by the degree of substitutability among the sources.

Purchasers have three potential sources of persulfates: domestically produced persulfates, subject imports, and nonsubject imports. Purchasers are more or less likely to switch from one source to another depending on the similarity, or substitutability, between and among them. I have evaluated the substitutability among persulfates from different sources as follows.

For purposes of this preliminary investigation, I find that subject imports, nonsubject imports and domestic persulfates are all moderate substitutes for each other. Thus, a shift in demand away from subject imports would increase demand for both nonsubject imports and domestic persulfates.

The record indicates that subject imports are generally of somewhat lower quality than domestic persulfates and nonsubject imports, which reduces the substitutability among them. In addition, subject imports are an important alternative source of supply to domestic persulfates and nonsubject imports, which further reduces substitutability. However, the record also indicates that the applications in which subject imports are seldom used, oil exploration and cosmetics, represent only 2 to 3 percent of demand. Finally, one major purchaser reported that there are only minor differences among domestic persulfates, subject imports and nonsubject imports.[118]

For these reasons, I find that subject imports, nonsubject imports, and domestic persulfates are moderate substitutes for each other.[119] Therefore, I find that purchasers would have switched from purchases of subject imports to purchases of both nonsubject imports and domestic persulfates had subject imports been fairly priced.

C. Supply Conditions

Supply conditions in the market are a third condition of competition. Supply conditions determine how producers would respond to an increase in demand for their product, and also affect whether producers are able to institute price increases and make them stick. Supply conditions include producers' capacity utilization, their ability to increase their capacity readily, the availability of inventories and products for export markets, production alternatives and the level of competition in the market. For the reasons discussed below, I find that the elasticity of supply of persulfates appears to be moderate to high.

Capacity Utilization and Capacity. Unused capacity can exercise discipline on prices, if there is a competitive market, as no individual producer could make a price increase stick. Any attempt at a price increase by any one producer would be beaten back by its competitors who have the available capacity and are willing to sell more at a lower price. In 1995, *** percent of the domestic industry's capacity to produce persulfates was not used and therefore was available to increase production.[120] Available capacity exceeded the total quantity of subject imports in 1995.[121] Thus, the domestic industry had sufficient capacity available to supply the demand for subject imports.

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[118]C.R. at II-3 to II-4, and I-3; P.R. at II-2 and I-2.

[119]In any final investigation, I request the parties to address how the withdrawal of a German supplier from the U.S. market and the limited availability of Japanese persulfates affects the substitutability among the sources of persulfates.

[120]Table III-1, C.R. at III-4; P.R. at III-2.

[121]Table III-1 and table IV-2, C.R. at III-4 and IV-5; P.R. at III-2 and IV-2.

Inventories and Exports. The domestic industry had *** pounds of persulfates in inventories available at the end of 1995 which it could have shipped into the U.S. market.[122] In addition, the domestic industry's exports in 1995 *** the volume of subject imports in 1995.[123] Thus, the domestic industry had available inventories and exports that could have filled the demand supplied by subject imports.

Level of Competition. The level of competition in the domestic market has a critical effect on producer responses to demand increases. A competitive market is one with a number of suppliers in which no one producer has the power to influence price significantly. There is only one domestic producer of persulfates, the petitioner, and thus there is no competition within the domestic industry in the U.S. market. However, nonsubject imports are a substantial source of competition in this market, accounting for *** percent of consumption in 1995.[124] The record thus indicates that there is substantial competition from nonsubject imports. Consequently, I find that there is a significant level of competition in the U.S. market for persulfates.

Because of the level of competition in the U.S. market and the domestic industry's ability to supply the demand for subject imports, I find that the elasticity of supply is moderate to high.

III. REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF ALLEGEDLY LTFV IMPORTS OF PERSULFATES FROM CHINA

The statute requires us to consider the volume of subject imports, their effect on domestic prices, and their impact on the domestic industry. I consider each requirement in turn.

A. Volume of Subject Imports

Subject imports of persulfates increased from *** pounds in 1993 to *** pounds in 1994, and to *** pounds in 1995. The value of subject imports was $*** in 1993, $*** in 1994, and $*** in 1995.[125] By quantity, subject imports held a market share of *** percent in 1993, *** percent in 1994, and *** percent in 1995. Their market share by value was *** percent in 1993, *** percent in 1994, and *** percent in 1995.[126] While it is clear that the larger the volume of subject imports, the larger the effect they will have on the domestic industry, whether the volume is significant cannot be determined in a vacuum, but must be evaluated in the context of its price and volume effects. Based on the market share of subject imports and the conditions of competition in the domestic market, I find that the volume of subject imports is significant in light of its price and volume effects.

B. Effect of Subject Imports on Domestic Prices

To determine the effect of subject imports on domestic prices, I examine whether the domestic industry could have increased its prices if the subject imports had not been dumped. As discussed, both demand and supply conditions in the persulfates market are relevant. Examining demand conditions helps us understand whether purchasers would have been willing to pay higher prices for the domestic product, or buy less of it, if subject imports had been sold at fairly traded prices. Examining supply conditions helps us understand whether

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[122]Table III-3, C.R. at III-7; P.R. at III-2.

[123]Table III-2 and table IV-2, C.R. at III-5 and IV-5; P.R. at III- 2 and IV-2.

[124]Table IV-6, C.R. at IV-9; P.R. at IV-2.

[125]Table IV-1, C.R. at IV-3; P.R. at IV-2.

[126]Table IV-6, C.R. at IV-9, P.R. at IV-2.

available capacity and competition among suppliers to the market would have imposed discipline and prevented price increases for the domestic product, even if subject imports had not been unfairly priced.

If the subject imports had not been dumped, their prices in the U.S. market would have increased significantly. Thus, if subject imports had been fairly priced, they would have become more expensive relative to domestic persulfates. In such a case, if subject imports are good substitutes with other persulfates, purchasers would have shifted towards the relatively less expensive products.

In this investigation, the alleged dumping margins for subject imports from China are quite large, ranging from 15.87 percent to 182.37 percent, so that subject imports likely would have been priced significantly higher had they been fairly traded. Subject imports and domestic persulfates are moderate substitutes, and thus some of the demand for subject imports likely would have shifted to domestic persulfates had subject imports been fairly traded. However, nonsubject imports and subject imports also are moderate substitutes, and thus some of the demand for subject imports likely would have shifted to nonsubject imports as well. Since subject imports held a market share of *** percent by quantity in 1995,[127] the shift in demand away from subject imports would not have been large. Nonetheless, the elasticity of demand indicates that domestic suppliers should have been able to increase prices in response to this shift in demand.

Notwithstanding the relatively low elasticity of demand for persulfates, any attempt by the domestic industry to increase its prices in response to the shift in demand would have been unsuccessful. The domestic industry faces significant competition from nonsubject imports in the U.S. market. The domestic industry has available production capacity, as well as inventories and exports with which it would have competed for sales with the substantial volume of nonsubject imports, had demand shifted away from subject imports. This competition would have enforced price discipline in the market. In these circumstances, any effort by the sole domestic producer to raise its prices would have been beaten back by the competition. Therefore, significant effects on domestic prices cannot be attributed to the unfair pricing of subject imports. Consequently, I find that subject imports are not having significant effects on prices for domestic persulfates.

C. Impact of Subject Imports on the Domestic Industry

To assess the impact of subject imports on the domestic industry, I consider output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, research and development and other relevant factors.[128] These factors together either encompass or reflect the volume and price effects of the dumped imports, and so I gauge the impact of the dumping through those effects.

The domestic industry would not have been able to increase its prices significantly if subject imports had been sold at fairly traded prices. Therefore, any impact of allegedly dumped imports on the domestic industry would have been on the domestic industry's output and sales.

As I have discussed above, had subject imports not been dumped, competition from the substantial volume of nonsubject imports would have prevented the domestic industry from capturing the entire demand satisfied by subject imports. Thus, the increase in demand for the domestic product likely would have been, at most, moderate. The domestic producer could have increased its production and sales to satisfy the increased demand. Notwithstanding the competition from nonsubject imports, the domestic producer likely would have captured enough of the demand for subject imports that its output and sales, and therefore its revenues, would have increased significantly had subject imports not been dumped. Consequently, the domestic industry likely would have been materially better off if the subject imports had been fairly traded.

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[127]Table IV-6, C.R. at IV-9; P.R. at IV-2.

[128]19 U.S.C. § 1677(7)(C)(iii).

IV. CONCLUSION

On the basis of the foregoing analysis, I determine that there is a reasonable indication that the domestic industry producing persulfates is materially injured by reason of allegedly LTFV imports of persulfates from the People's Republic of China.

PART I: INTRODUCTION

BACKGROUND

This investigation results from a petition filed by the FMC Corp., Chicago, IL, on July 11, 1996, alleging that an industry in the United States is materially injured and threatened with material injury by reason of less than fair-value (LTFV) imports of persulfates[1] from China. Information relating to the background of the investigation is provided below.[2]

Date	*Action*
July 11, 1996	Petition filed with Commerce and the Commission; institution of Commission investigation (61 FR 37283, July 17, 1996)
July 31, 1996	Commission's conference[3]
July 31, 1996	Commerce's notice of initiation (61 FR 40817, August 6, 1996)[4]
August 26, 1996	Commission's vote
August 26, 1996	Commission determination transmitted to Commerce

SUMMARY DATA

A summary of data collected in the investigation is presented in tables I-1 through I-4, at the end of this section. U.S. industry data are based on the questionnaire response of the only firm producing persulfates in the United States, FMC Corp. Except as noted, U.S. imports are based on responses to questionnaires of the U.S. International Trade Commission. Responding importers accounted for all known 1995 imports.

THE PRODUCT

The imported products subject to this investigation are peroxydisulfates, which consist of a group of chemicals commonly known as persulfates. There are three salts included within the persulfates definition: ammonium persulfates, potassium persulfates, and sodium persulfates. The chemical formulae for these persulfates are, respectively, $(NH4)_2S_2O_8$, $K_2S_2O_8$, and $Na_2S_2O_8$. Persulfates are produced in the form of a dry white crystalline powder that is odorless. The typical merchandise sold has a persulfate content of 98 percent or above. The three salts are indistinguishable when subject to a visual or tactile exam. They are all derived from a common source, persulfuric acid. The active ingredient for all three salts is the persulfate anion.[5]

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[1] The merchandise covered by this investigation is persulfates, including ammonium, potassium, and sodium persulfates. The chemical formulae for these persulfates are, respectively, $(NH4)_2S_2O_8$, $K_2S_2O_8$, and $Na_2S_2O_8$. Sodium persulfate is covered by subheading 2833.40.20 of the Harmonized Tariff Schedule of the United States (HTS), with an MFN duty rate of 3.7 percent *ad valorem* in 1996, and amonium and potassium persulfates are covered by subheading 2833.40.60, with an MFN duty rate of 3.1 percent *ad valorem* in 1996.

[2] *Federal Register* notices cited in the tabulation are presented in app. A.

[3] A list of witnesses appearing at the conference is presented in app. B.

[4] The alleged LTFV margins ranged from 15.87 percent to 182.37 percent.

[5] Petition, pp. 4 and 7; and petitioner's postconference brief ("FMC's brief"), pp. 5-6.

Persulfates have two major applications: (1) as catalysts or "initiators" in the process of polymerization and (2) as oxidants in cleaning, microetching, and plating processes. The polymerization application accounts for about *** of the demand for persulfates, with most of the remaining *** accounted for by the oxidation application. Persulfates as catalysts are primarily used in latex for carpet backing and paper coating, acrylic latex paint, water treatment, and other acrylics and polyvinyls used in adhesives. Persulfates as oxidants are primarily used in printed circuit boards, textiles, film processing, and soil stabilization.[6]

This section presents information on both imported and domestically produced persulfates, as well as information related to the Commission's "domestic like product" determination.[7] The petitioner argues that domestically produced persulfates are similar to persulfates imported from China. Petitioner also argues that all three salts comprise one like product--persulfates. Furthermore, the petitioner argues that there are no functional substitute products for persulfates. Respondents argue that the Chinese product is inferior to the domestically produced product, that the three salts are distinct like products, and that there are functional substitutes for persulfates.

According to one respondent, Aceto Corp., an importer, Chinese persulfates are not interchangeable with domestically produced persulfates in a number of applications, due to problems with caking or lumping from moisture, particle size, and off-white color from black specks. Aceto argues that Chinese persulfates are not suitable for oil recovery and cosmetics applications.[8] The other respondent in this investigation, ICC Industries, also an importer, contends that imports from China are interchangeable with the domestic product. Although ICC originally had problems with particle size in its imports from China, that problem was quickly resolved.[9] FMC Corp., the petitioner, argues that caking is a problem with persulfates of any origin, and that imports from China may be used in oil recovery and cosmetics. In any event, FMC argues that these two applications account for only 2-3 percent of demand for persulfates. Furthermore, FMC argues that customers perceive the Chinese persulfates as interchangeable with domestic product, and that competition among these products exists across all segments of the market.[10] All parties agree that the channels of distribution for Chinese and domestic products are the same.[11] There appear to be no significant differences in the persulfate production processes used in China and the United States, although the Chinese process may be slightly less automated.[12]

Petitioner argues that all three salts should comprise one domestic like product. First, the manufacturing processes for all three are similar. Production begins in an electrolytic cell where liquid ammonium persulfate is produced as an intermediate product. This liquid ammonium persulfate is then crystallized into a wet cake, which is fed into the ammonium, sodium, and potassium persulfate downstream production, in which the wet cake is further processed *** and then packaged for shipment. The only

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[6] Petition, p. 6.

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

[8] Transcript of conference ("Transcript"), pp. 66-68; and Aceto's brief, pp. 4-5. However, Aceto does admit that caking problems can be fixed by regrinding the persulfates or pounding the bags to break up the lumps. Transcript, p. 74.

[9] Transcript, p. 93.

[10] Transcript, pp. 16, 30, 38, and 96-97; and FMC's brief, pp. 12-14 and exh. 22.

[11] Aceto's brief, p. 5; FMC's brief, p. 14; and ICC's brief, p. 8.

[12] Transcript, pp. 48 and 62.

difference between salts is the removal and recycling of the ammonia that is released in the sodium and potassium persulfate production processes. The recycle of ammonia is a critical material balance issue which requires that the ammonium persulfate line be running in order to produce sodium or potassium persulfate. The three salts are manufactured in the same plant, using the same or similar equipment and production workers.[13]

Second, the petitioner asserts that the three salts are interchangeable in most applications. The higher-cost sodium and potassium persulfates are used in place of ammonium persulfate for two reasons: (1) there are environmental issues associated with the ammonium anion that is released in most customer processes and the customers want to avoid the high costs of treating ammonia and (2) customers formulate with the particular persulfate that works best in their laboratories, causing their reliance on that persulfate to mitigate the effect of any price difference among the three salts.[14] Aceto argues that the three salts are different products and are not interchangeable. Potassium is the most user friendly based on its relative toxicity, ammonium causes waste disposal problems, and all three have different water solubilities (ammonium is the most soluble; potassium is the least soluble). The different solubilities affect performance in emulsion polymerization.[15] ICC also believes the three salts are not interchangeable.[16]

Third, FMC argues that customers perceive that the three salts are one product. In its technical bulletin on persulfates, FMC combines all three salts into a general discussion of applications.[17] In contrast, ICC believes that customers perceive the salts to be different, as evidenced by a statement from Dow Chemical that explains that sodium persulfate is used in its manufacture of latex products and that the specifications require the use of sodium; accordingly, the salts are not interchangeble.[18]

Finally, the petitioner argues that all three salts are priced per pound, and that sodium and potassium persulfates are not always higher priced than ammonium persulfates.[19] Aceto asserts that the three salts are priced differently, with ammonium being the lowest priced.[20] The parties agree that the channels of distribution for the three salts are the same.[21]

The petitioner argues that persulfates have unique performance characteristics, including slow release and controllable, high oxidation potential, which means that there are no functional substitute products for the emulsion polymerization application.[22] Aceto argues that sodium formaldehyde sulfoxate (SFX) is substitutable for persulfates to some degree in aqueous polymerization. However, SFX's use in aqueous polymerization is in latex paint products, each of which will specify the use of persulfates or SFX and not switch among them. FMC disagrees with this characterization of SFX as a substitute product.[23] One limiting factor in using SFX is that formaldehyde fumes are extremely hazardous. Aceto also asserts that ketone peroxides and azo compounds are substitutes for persulfates in emulsion polymerization.[24]

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[13] Questionnaire response of FMC, p. 5; FMC's brief, p. 10; and Transcript, pp. 33-34.

[14] Transcript, p. 14; petition, p. 5; and FMC's brief, p. 6.

[15] Aceto's brief, p. 7.

[16] ICC's brief, p. 7; and Transcript, p. 92.

[17] FMC's brief, p. 9.

[18] ICC's brief, p. 9 and exh. A.

[19] FMC's brief, p. 10.

[20] Aceto's brief, p. 6.

[21] FMC's brief, p. 9; and ICC's brief, p. 8.

[22] Petition, p. 7; FMC's brief, pp. 6-7; and Transcript, pp. 28 and 60.

[23] Transcript, pp. 60-61; and FMC's brief, exh. 21.

[24] Aceto's brief, p. 8.

Although substitute products may theoretically be used in oxidation applications, FMC argues that they would increase production costs more than would be practical.[25] ***.[26]

Some of FMC's persulfates production is captively consumed in the production of downstream products. These downstream products are produced in a separate facility, using different production workers than are used for persulfates. One of these downstream products is used as a repulping agent in paper recycling. The market for repulping agents is extremely narrow, according to FMC.[27]

Table I-1
Total persulfates: Summary data concerning the U.S. market, 1993-95, Jan.-June 1995, and Jan.-June 1996

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Table I-2
Ammonium persulfate: Summary data concerning the U.S. market, 1993-95, Jan.-June 1995, and Jan.-June 1996

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Table I-3
Potassium persulfate: Summary data concerning the U.S. market, 1993-95, Jan.-June 1995, and Jan.-June 1996

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Table I-4
Sodium persulfate: Summary data concerning the U.S. market, 1993-95, Jan.-June 1995, and Jan.-June 1996

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[25] Petition, p. 7; FMC's brief, pp. 6-7; and Transcript, pp. 28 and 60.

[26] Questionnaire response of FMC, p. 5.

[27] Transcript, p. 26; and FMC's brief, exhs. 18 and 24.

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

MARKET SEGMENTS

Persulfates are used in a variety of end uses including polymerization applications in products such as plastics and rubber, structural materials, inorganic chemicals and minerals, and soil stabilization; oxidation applications such as printed circuit boards, semiconductors, plating and coating processes, cosmetics, and pharmaceuticals; and other applications including adhesives, gas and oil production, mining, and textiles.[1]

FMC estimates that polymerization applications account for *** percent of persulfates demand, printed circuit board oxidation accounts for about *** percent, and other applications including textiles, oil wells, hair bleach, film-processing solution, soil stabilization, production of catalysts, and paper production account for the remaining *** percent.[2]

SUPPLY AND DEMAND CONSIDERATIONS

U.S. Supply

Domestic Production

Based on the available information, staff believes that FMC has some ability to respond to price changes with changes in the quantity shipped to the U.S. market. The existence of some excess capacity, inventories, and alternate markets suggests that FMC has a moderate amount of flexibility to adjust shipments to the U.S. market.

Industry capacity

FMC's capacity utilization ***. During January-June 1995 to January-June 1996, capacity utilization ***.

Inventory levels

As a percentage of total shipments, inventories ***. Inventory levels were *** percent in January-June 1995 and *** percent in January-June 1996.

Export markets

Export sales accounted for *** percent of U.S. producer shipments during 1993-95 and accounted for *** percent of shipments during January-June 1996. This provides some flexibility in shifting shipments between the U.S. market and other markets.

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[1] FMC's brief, exh. 3 (FMC's Persulfates Technical Bulletin, p. 4).

[2] FMC's brief, pp. 7-8.

U.S. Demand

Demand Characteristics

Overall demand for persulfates in the United States increased by *** percent during 1993-95 and then decreased slightly during the interim period of 1996. Based on the available information regarding substitute products and the percentage of the cost of the final end-use products accounted for by persulfates, it is likely that the quantity of persulfates demanded will not change significantly with changes in the price level of persulfates.

Substitute Products

FMC reported that there are no practical substitutes in the principal applications which comprise 80 percent of the U.S. market.[3] Five of seven importers reported that they did not know of any substitutes for persulfates while one stated that sodium formaldehyde sulfoxylate can be used as an emulsion polymerization initiator in some cases and another cited oxalic acid as a substitute. Respondents also cited ketone peroxides and azo compounds as substitutes in emulsion polymerization.[4]

Cost Share

According to FMC, persulfates account for a small percentage of the final cost of the end-use products in which they are used.[5] FMC reported that persulfates account for less than one percent of the price of end-use polymers, printed circuit boards, textiles, film processing, soil stabilization, starch modification in paper production, and catalysts; and less than 10 percent of the cost of products used in hair bleach formula and oil well applications.

SUBSTITUTABILITY ISSUES

Comparison of Domestic Products and Subject Imports

FMC reported that while it ***.[6] It stated that any differences between domestic and Chinese products are minor. It maintained that all persulfates, including domestically produced persulfates, have a tendency to lump and cake and that particle-size differences are insignificant and can be easily altered.[7] It further stated that any lack of substitutability in oil exploration and cosmetics is not significant since these applications account for a minor share of persulfates demand.[8]

Respondents cited several quality differences between the domestic and Chinese products, specifically the tendency of the Chinese product to cake and lump up, off-color material and blacks specks in

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[3] Transcript, p. 14.

[4] Aceto's brief, p. 8.

[5] Petition, p. 38.

[6] FMC's questionnaire response.

[7] FMC's brief, pp. 12-13.

[8] FMC's brief, p. 30.

the Chinese product, and differences in particle size.[9] Five of seven importers reported that domestic and Chinese persulfates are used interchangeably, although one stated that Chinese quality is very poor, a second stated that polymerization applications require higher-purity persulfates, and a third said that they are used interchangeably in many cases. Two of the seven stated that they are not used interchangeably because of quality problems with the Chinese product. In particular, one importer said that particle size restrictions and caking limited the use of Chinese product in the oil recovery industry, cosmetics industry, and some emulsion polymerization and printed circuit board industries. Importers also cited the importance of Chinese persulfates as an alternative source of supply, particularly after the fire at FMC.[10]

* * * * * * *[11] [12]

Comparison of Domestic Products and Subject Imports to Nonsubject Imports

FMC reported that U.S.-produced persulfates and nonsubject imports are generally used interchangeably and that non-price differences between domestic persulfates and nonsubject imports were not a significant factor in its sales of persulfates.

Four of seven importers stated that non-price differences between nonsubject imports and Chinese persulfates were significant factors in their sales of persulfates. Two cited poor quality of the Chinese product. A third cited the need of customers to maintain multiple sources. The fourth importer reported that many purchasers look to the Chinese product for an alternate source of supply because of the withdrawal of the German supplier Degussa from the U.S. market and the limited availability of Japanese product.

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[9] Aceto's brief, p. 4.

[10] The fire at FMC is discussed in part III of this report.

[11] ***.

[12] ICC's brief, exh. A.

PART III: CONDITION OF THE U.S. INDUSTRY

The Commission analyzes a number of factors in making injury determinations (see 19 U.S.C. §§ 1677(7)(B) and 1677(7)(C)). Information on the alleged margin of dumping was presented earlier in this report and information on the volume and pricing of imports of the subject merchandise is presented in parts IV and V. Information on the other factors specified is presented in this section and/or part VI and (except as noted) is based on the questionnaire response of the one firm producing persulfates in the United States.

U.S. PRODUCER

The FMC Corp., Chicago, IL, is a $4 billion diversified manufacturing company, producing industrial, agricultural, and specialty chemicals, defense products, food-processing machinery, and energy and transportation equipment. The Peroxygen Chemicals Division of the Chemical Products Group of FMC is the entity responsible for manufacturing persulfates. Its headquarters is in Philadelphia, PA, and its only manufacturing plant is located in Tonawanda, NY. FMC has seven shipping warehouses located throughout the United States.[1]

In August 1995, FMC experienced a warehouse fire in its Tonawanda plant that destroyed much of its inventory and shut down production for six weeks. FMC claims that there was no short-supply situation in the United States as a result of the fire for a number of reasons: (1) the timing of the fire coincided with FMC's scheduled annual maintenance, so that customers and FMC were already building inventories in anticipation of a two-week shutdown; (2) FMC diverted its exports back to the United States to fulfill customer requirements; and (3) ***.[2] FMC claims that it did not put customers on formal allocation, and that there were only two customers who experienced spot shortages of one day, due primarily to communication problems.[3] Aceto and ICC claim that there was indeed a short-supply situation, which resulted in their increased imports from China. Furthermore, there is a statement on the record by Dow Chemical, which accounts for *** of FMC's business, that on August 29, 1996, FMC verbally declared a force majeure as to the supply of sodium persulfate due to the fire.[4]

Aceto contends that FMC imported persulfates from China, submitting an invoice of the sale for the record of this investigation. However, the sale in question was made from a Shanghai producer to FMC to supply a customer in Southeast Asia, to replace exports that FMC redirected to U.S. customers after the fire. The persulfates never entered the United States.[5]

U.S. CAPACITY, PRODUCTION, AND CAPACITY UTILIZATION

Data regarding U.S. capacity, production, and capacity utilization are summarized in table III-1 and figure III-1 at the end of this section. ***.

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[1] Transcript, pp. 11 and 13.

[2] Transcript, pp. 24, 27, and 96; and FMC's brief, exh. 20. ***.

[3] Transcript, pp. 27 and 96; and FMC's brief, exh. 20.

[4] Transcript, pp. 41-42, 45, 54-58, 72-73, and 81; ICC's brief, p. 2 and exh. A; and staff interviews with FMC officials in Tonawanda, NY, July 25, 1996.

[5] Transcript, pp. 31-32, 42-43, and 95; and FMC's brief, exh. 23.

U.S. SHIPMENTS

The U.S. producer's shipments are presented in table III-2 and figure III-2 at the end of this section. ***. Internal shipments were used to produce several downstream products, including repulping agents for the paper recycling industry.

U.S. PRODUCER'S INVENTORIES

FMC's inventories are presented in table III-3 at the end of this section. ***.

U.S. EMPLOYMENT, COMPENSATION, AND PRODUCTIVITY

FMC's employment and productivity data are presented in table III-4 at the end of this section. ***.

Table III-1
Persulfates: U.S. producer's capacity, production, and capacity utilization, by products, 1993-95, Jan.-June 1995, and Jan.-June 1996

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Table III-2
Persulfates: U.S. producer's shipments, by products and by types, 1993-95, Jan.-June 1995, and Jan.-June 1996

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Table III-3
Persulfates: U.S. producer's end-of-period inventories, by products, 1993-95, Jan.-June 1995, and Jan.-June 1996

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Table III-4
Average number of production and related workers producing persulfates, hours worked, wages paid to such employees, and hourly wages, productivity, and unit labor costs, by products, 1993-95, Jan.-June 1995, and Jan.-June 1996

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Figure III-1
Persulfates: U.S. capacity, production, and capacity utilization, 1993-95, Jan.-June 1995, and Jan.-June 1996

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Figure III-2
Persulfates: U.S. producer's shipments, by types, 1993-95, Jan.-June 1995,and Jan.-June 1996

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PART IV: U.S. IMPORTS, APPARENT CONSUMPTION, AND MARKET SHARES

U.S. IMPORTERS

There are 11 known importers of persulfates from China and all other sources (primarily Germany and Japan). *** provided usable data, accounting for about *** of total imports during 1995. There were five firms importing only from China, four firms importing only from all other sources, and two firms importing from both. Imports from China were concentrated among three firms: ***.[1] Imports from all other sources were also concentrated among three firms: ***.

U.S. IMPORTS

Data on U.S. imports of persulfates as collected by the Commission through its questionnaires are presented in table IV-1 and figure IV-1 at the end of this section. The quantity and value of imports from China and Hong Kong[2] increased dramatically from 1993 to 1995, while imports from all other sources increased irregularly. There is disagreement over why imports from China increased during the period. The petitioner cites unfair competition and a diversion of Chinese exports from the European Community in the wake of dumping duties imposed in July 1995, while the respondents claim that the short-supply situation caused by the August 1995 fire at FMC forced purchasers to look to China for an alternate and reliable source of supply. The parties all agree that imports from Germany have declined as the German home market has expanded, and that the Japanese have shown no interest in increasing their presence in the U.S. market.[3]

APPARENT U.S. CONSUMPTION

Data on apparent consumption of persulfates are presented in tables IV-2-5 and figure IV-1 at the end of this section. Apparent consumption increased substantially from 1993 to 1995, and decreased slightly between the interim periods. Demand is cyclical, and is closely tied to trends in general economic growth in industries such as housing, construction, automobiles, and packaged goods.[4]

U.S. MARKET SHARES

Market shares based on the U.S. producer's and U.S. importers' shipments are presented in tables IV-6-9 and figure IV-2 at the end of this section. Imports from China gained substantial market share from 1993 to 1994, as did imports from all other sources. Chinese imports gained steady market share during the rest of the period for which data were gathered, while imports from all other sources declined. The U.S.

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[1] ICC is related to the Chinese exporter Shanghai Ai Jian Reagent Works. Transcript, p. 91.

[2] Petitioner asserts that imports from Hong Kong are originating in China, as there are no basic production facilities in Hong Kong. Transcript, p. 15. Petitioner also claims that some persulfates imported from Taiwan may have been transshipped from China; however, there is no real evidence on the record to support this claim. ***. Transcript, p. 15; and questionnaire responses of ***.

[3] Transcript, pp. 17-18, 41-42, 45-46, 54-58, 72-73, and 81-82; FMC's brief, pp. 32-34 and exh. 32; petition, exh. 30; Aceto's brief, pp. 9-11; and ICC's brief, p. 6.

[4] Transcript, p. 22; and FMC's brief, exh. 26.

producer's market share declined significantly from 1993 to 1994, decreased from 1994 to 1995, and then increased slightly between the interim periods.

Table IV-1
Persulfates: U.S. imports, by products and by sources, 1993-95, Jan.-June 1995, and Jan.-June 1996

* * * * * * *

Table IV-2
Persulfates: U.S. shipments of domestic product, U.S. import shipments, by sources, and apparent U.S. consumption, 1993-95, Jan.-June 1995, and Jan.-June 1996

* * * * * * *

Table IV-3
Ammonium persulfate: U.S. shipments of domestic product, U.S. import shipments, by sources, and apparent U.S. consumption, 1993-95, Jan.-June 1995, and Jan.-June 1996

* * * * * * *

Table IV-4
Potassium persulfate: U.S. shipments of domestic product, U.S. import shipments, by sources, and apparent U.S. consumption, 1993-95, Jan.-June 1995, and Jan.-June 1996

* * * * * * *

Table IV-5
Sodium persulfate: U.S. shipments of domestic product, U.S. import shipments, by sources, and apparent U.S. consumption, 1993-95, Jan.-June 1995, and Jan.-June 1996

* * * * * * *

Table IV-6
Persulfates: Apparent U.S. consumption and market shares, 1993-95, Jan.-June 1995, and Jan.-June 1996

* * * * * * *

Table IV-7
Ammonium persulfate: Apparent U.S. consumption and market shares, 1993-95, Jan.-June 1995, and Jan.-June 1996

* * * * * * *

Table IV-8
Potassium persufate: Apparent U.S. consumption and market shares, 1993-95, Jan.-June 1995, and Jan.-June 1996

* * * * * * *

Table IV-9
Sodium persulfate: Apparent U.S. consumption and market shares, 1993-95, Jan.-June 1995, and Jan.-June 1996

* * * * * * *

Figure IV-1
Persulfates: Apparent U.S. consumption, by sources, 1993-95, Jan.-June 1995, and Jan.-June 1996

* * * * * * *

Figure IV-2
Persulfates: Shares of the quantity of U.S. consumption, by sources, 1993-95, Jan.-June 1995, and Jan.-June 1996

* * * * * * *

PART V: PRICING AND RELATED DATA

FACTORS AFFECTING PRICING

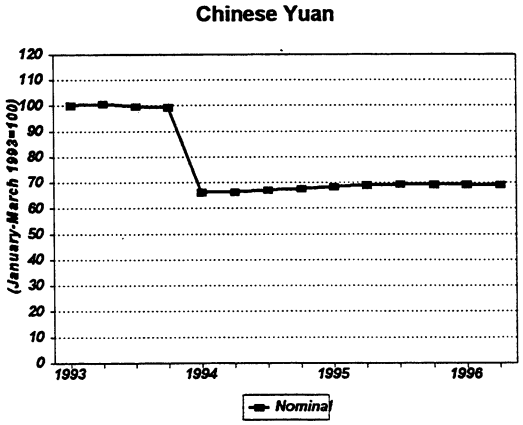
U.S. Inland Transportation Costs

FMC reported that U.S. inland transportation costs account for *** percent of the total delivered price of persulfates while importers reported that these transportation costs account for 2 to 13 percent of the cost of persulfates.

Exchange Rates

Quarterly exchange rates reported by the International Monetary Fund for China during the period January 1993-June 1996 are shown in figure V-1.

Figure V-1
Exchange rates: Index of nominal exchange rates of the Chinese yuan relative to the U.S. dollar, by quarters, Jan. 1993-June 1996



Source: International Monetary Fund, *International Financial Statistics*, July 1996.

PRICING PRACTICES

FMC ships persulfates in 55-pound bags and intermediate bulk containers (IBCs), and in 225-pound fiber drums ***. ***. FMC reported that price differences among the three persulfates reflect differences in manufacturing costs.

Importers generally negotiate prices on a transaction-by-transaction basis. Two of seven importers offer discounts. Only one importer, ***, indicated that it used a price list. ***.

FMC sells persulfates on an f.o.b. basis. Four of seven importers sell on a delivered basis, two sell on an f.o.b. basis, and one sells on both a delivered and an f.o.b. basis. Standard terms for persulfates from FMC and all importers are net 30 days.

FMC reported that *** percent of its sales are on a contract basis and that the average contract is for ***. Three of seven importers indicated that they sell persulfates on a contract basis.

PRICE DATA

The Commission requested the U.S. producer and importers to provide quarterly quantity and value data between January 1993 and June 1996 for the following products: potassium persulfate (product 1), ammonium persulfate (product 2), and sodium persulfate (product 3). Data were collected separately for sales to end users and sales to distributors. Pricing data are presented in tables V-1 to V-6 and figures V-2 to V-7.

FMC's prices generally ***. ***.

There were no sales of Chinese product reported prior to October 1993. Prices of Chinese persulfates ***.

Chinese persulfates were priced lower than U.S.-produced persulfates in all 43 possible price comparisons. Margins of underselling ranged from 2.6 percent to 62.7 percent.

Table V-1
Potassium persulfate sold to distributors: Weighted-average net U.S. f.o.b. prices and quantities, as reported by the U.S. producer and importers, and margins of underselling/(overselling), by quarters, Jan. 1993-June 1996

* * * * * * *

Figure V-2
Weighted-average net f.o.b. prices of potassium persulfate sold to distributors, by quarters, Jan. 1993-June 1996

* * * * * * *

Table V-2
Ammonium persulfate sold to distributors: Weighted-average net U.S. f.o.b. prices and quantities, as reported by the U.S. producer and importers, and margins of underselling/(overselling), by quarters, Jan. 1993-June 1996

* * * * * * *

Figure V-3
Weighted-average net f.o.b. prices of ammonium persulfate sold to distributors, by quarters, Jan. 1993-June 1996

* * * * * * *

Table V-3
Sodium persulfate sold to distributors: Weighted-average net U.S. f.o.b. prices and quantities, as reported by the U.S. producer and importers, and margins of underselling/(overselling), by quarters, Jan. 1993-June 1996

* * * * * * *

Figure V-4
Weighted-average net f.o.b. prices of sodium persulfate sold to distributors, by quarters, Jan. 1993-June 1996

* * * * * * *

Table V-4
Potassium persulfate sold to end users: Weighted-average net U.S. f.o.b. prices and quantities, as reported by the U.S. producer and importers, and margins of underselling/(overselling), by quarters, Jan. 1993-June 1996

* * * * * * *

Figure V-5
Weighted-average net f.o.b. prices of potassium persulfate sold to end users, by quarters, Jan. 1993-June 1996

* * * * * * *

Table V-5
Ammonium persulfate sold to end users: Weighted-average net U.S. f.o.b. prices and quantities, as reported by the U.S. producer and importers, and margins of underselling/(overselling), by quarters, Jan. 1993-June 1996

* * * * * * *

Figure V-6
Weighted-average net f.o.b. prices of ammonium persulfate sold to end users, by quarters, Jan. 1993-June 1996

* * * * * * *

Table V-6
Sodium persulfate sold to end users: Weighted-average net U.S. f.o.b. prices and quantities, as reported by the U.S. producer and importers, and margins of underselling/(overselling), by quarters, Jan. 1993-June 1996

* * * * * * *

Figure V-7
Weighted-average net f.o.b. prices of sodium persulfate sold to end users, by quarters, Jan. 1993-June 1996

* * * * * * *

LOST SALES AND LOST REVENUES

FMC reported *** lost sales allegations. ***.

* * * * * * *[1] [2]

[1] Telephone conversation with ***.

[2] Telephone conversation with ***.

PART VI: FINANCIAL CONDITION OF THE U.S. INDUSTRY

BACKGROUND

FMC, the lone U.S. producer, provided revenue-and-cost data on its combined perfsulfate operations along with data on capital expenditures, productive assets, and research and development expenditures. The company was ***.

FMC is a large producer of chemicals and machinery, operating 115 facilities in 24 countries. Total net sales and net income increased for the third straight year in 1995, and were $4.57 billion and $216 million, respectively. FMC's persulfate operations are in the Peroxygen Chemical Division of the Industrial Products Group. All of FMC's persulfates are manufactured at a single facility in Tonawanda, NY. The company's fiscal year ends December 31.

OPERATIONS ON PERSULFATES

Based on shipment data, the portion of total persulfate net sales accounted for by sales of ammonium persulfate, potassium persulfate, and sodium persulfate were *** each year. Sales of ammonium persulfate accounted for *** percent of the total, sales of potassium persulfate *** percent, and sales of sodium persulfate *** percent. All three persulfate salts were sold domestically, exported, and internally consumed. While the unit sales values for internally consumed persulfates were *** to the values for domestic sales, the values for exports were about ***.

Profit-and-loss data on FMC's sales of persulfates are shown in table VI-1. To summarize, FMC's profitability ***.

In 1995, ***.

The tabulation below details the cost components of COGS and SG&A expenses for the full years 1993, 1994, and 1995 and for the three 6-month periods during January 1995 - June 1996 (all values are in dollars per pound; values may not be additive due to rounding):

* * * * * * *

Table VI-1
FMC's income-and-loss experience on its persulfate operations, fiscal years 1993-95, Jan.-June 1995, and Jan.-June 1996

* * * * * * *

With respect to COGS, it can now be seen that the ***.

With respect to SG&A expenses, the driving forces behind the ***.

The ***.

It is not clear how much, if any, of FMC's cost *** in unit sales value during the same time period. Given that persulfates are commodity products, unless FMC's competitors' have experienced similar ***.

The variance analysis showing the effects of prices and volume on FMC's net sales of persulfates and of costs and volume on its total expenses is shown in table VI-2. The analysis shows that changes in profitability between and among periods were principally due to ***. For example, the analysis attributes the *** in operating profits from 1994 to 1995 to the following (amounts in thousands of dollars):

* * * * * * *

Table VI-2
Variance analysis of the results of FMC's operations producing persulfates, fiscal years 1993-95, Jan.-June 1995, and Jan.-June 1996

* * * * * * *

INVESTMENT IN PRODUCTIVE FACILITIES, CAPITAL EXPENDITURES, AND RESEARCH AND DEVELOPMENT EXPENSES

FMC's data on the value of its property, plant, and equipment, on capital expenditures, and on research and development expenditures are shown in table VI-3. ***.

Table VI-3
Value of FMC's assets used in the production of persulfates and capital expenditures and research and development expenditures related to persulfates, 1993-95, Jan.-June 1995, and Jan.-June 1996

* * * * * * *

CAPITAL AND INVESTMENT

FMC's comments regarding any actual or potential negative effects of imports of persulfates from China on its growth, investment, and ability to raise capital or development and production efforts (including efforts to develop a derivative or more advanced version of the product) were as follows:

* * * * * * *

PART VII: THREAT CONSIDERATIONS

The Commission analyzes a number of factors in making threat determinations (see 19 U.S.C. § 1677(7)(F)(I)). Information on the nature of the alleged dumping margins was presented earlier in this report; information on the volume and pricing of imports of the subject merchandise is presented in parts IV and V; and information on the effects of imports of the subject merchandise on U.S. producers' existing development and production efforts is presented in part VI. Information on inventories of the subject merchandise; foreign producers' operations, including the potential for "product-shifting;" and any other threat indicators, if applicable, follows.

THE INDUSTRY IN CHINA

There are four known producers of any significance of persulfates in China: Shanghai Ai Jian Reagent Works ("Ai Jian"), Shaanxi Baoji Chemical Factory, Guangzhou Zhujiang Electrochemicals, and Fujian Fuan Pesticide Factory ("Fuan"). According to counsel for the China Chamber of Commerce, other producers are of insignificant size and/or do not produce persulfates of export quality. These companies generally have unstable production quality and quantity, and focus on satisfying domestic demand.[1]

Two firms responded to Commission questionnaires, ***.[2] Data concerning foreign production and shipments of *** are presented in tables VII-1-4 at the end of this section. During the period 1993-95, capacity and production ***. During the interim periods, capacity and production ***. Capacity and production are projected to ***.

The potential for product shifting in China from hydrogen peroxide to persulfates, both of which utilize electrolytic technology, is argued by the petitioner.[3] However, there is no evidence on the record to suggest that such product shifting is likely to take place.

U.S. IMPORTERS' INVENTORIES

Importers' inventories are presented in table VII-5 at the end of this section. All but two firms importing from China maintained inventories, which increased during the period for which data were collected.

Table VII-1
Data for Chinese producers of total persulfates, 1993-95, Jan.-June 1995, Jan.-June 1996, and projected 1996-97

* * * * * * *

Table VII-2
Data for Chinese producers of ammonium persulfate, 1993-95, Jan.-June 1995, Jan.-June 1996, and projected 1996-97

* * * * * * *

---

[1] Postconference brief of the China Chamber of Commerce, p. 3.

[2] *** did not export to the United States. *** accounted for *** of 1995 imports from China.

[3] FMC's brief, pp. 37-38.

Table VII-3
Data for Chinese producers of potassium persulfate, 1993-95, Jan.-June 1995, Jan.-June 1996, and projected 1996-97

* * * * * * *

Table VII-4
Data for Chinese producers of sodium persulfate, 1993-95, Jan.-June 1995, Jan.-June 1996, and projected 1996-97

* * * * * * *

Table VII-5
U.S. importers' end-of-period inventories of persulfates from China, by products, 1993-95, Jan.-June 1995, and Jan.-June 1996

* * * * * * *

APPENDIX A

FEDERAL REGISTER NOTICES

[Investigation No. 731–TA–749 (Preliminary)]

Persulfates From China

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a preliminary antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731–TA–749 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)) (the Act) to determine whether there is a reasonable indication

that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from China of persulfates, provided for in subheadings 2833.40.20 and 2833.40.60 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. § 1673a(c)(1)(B)), the Commission must complete preliminary antidumping investigations in 45 days, or in this case by August 26, 1996. The Commission's views are due at the Department of Commerce within five business days thereafter, or by September 3, 1996.

For further information concerning the conduct of this investigation 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 and B (19 CFR part 207).

EFFECTIVE DATE: July 11, 1996.

FOR FURTHER INFORMATION CONTACT: Olympia DeRosa Hand (202–205–3182), 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 or ftp://ftp.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted in response to a petition filed on July 11,1996, by FMC Corp., Chicago, IL.

Participation in the investigation and public service list.—Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the Federal Register. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

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 preliminary investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than seven days after the publication of this notice in the Federal Register. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on July 31, 1996, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Olympia Hand (202–205–3182) not later than July 26, 1996, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before August 5, 1996, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (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 investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: July 12, 1996.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–18252 Filed 7–16–96; 8:45 am]

BILLING CODE 7020–02–M

Initiation of Antidumping Duty Investigation: Persulfates From the People's Republic of China

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

EFFECTIVE DATE: August 6, 1996.

FOR FURTHER INFORMATION CONTACT: James Terpstra, Irene Darzenta, or Howard Smith at (202) 482–3965, 482–6320, and 482–5193 respectively, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Initiation of Investigation

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act ("URAA").

The Petition

On July 11, 1996, the Department of Commerce ("the Department") received a petition filed in proper form by FMC Corporation ("FMC" or "petitioner"). On July 22 and 25, 1996, the petitioner submitted a supplement to the petition in response to the Department's request for additional information. The supplement contained updated normal values and revised margin calculations.

In accordance with section 732(b) of the Act, the petitioner alleges that imports of persulfates from the People's Republic of China ("PRC") are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, the U.S. industry.

Because the petitioner is an interested party, as defined under section 771(9)(C) of the Act, it has standing to file the petition.

Determination of Industry Support for the Petition

Section 732(c)(4)(A) of the Act requires the Department to determine, prior to the initiation of an investigation, that a minimum percentage of the domestic industry supports an antidumping petition. A petition meets these minimum requirements if the domestic producers or workers who support the petition account for (1) at least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition.

The petitioner is the only known U.S. producer of persulfates. Accordingly, the Department determines that the petition is supported by the domestic industry.

Scope of Investigation

The products covered by this petition are persulfates, including ammonium, potassium, and sodium persulfates. The chemical formulae for these persulfates are, respectively, $(NH_4)_2S_2O_8$, $K_2S_2O_8$, and $Na_2S_2O_8$. Ammonium and potassium persulfates are currently classified under subheading 2833.40.60 of the *Harmonized Tariff Schedule of the United States* ("*HTSUS*"). Sodium persulfate is classified under HTSUS subheading 2833.40.20. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Export Price

The petitioner based export prices for ammonium, potassium, and sodium persulfates on price quotes obtained from U.S. importers. Petitioner reduced these prices to account for estimated importer mark-ups, and for U.S. duties and customs fees, ocean freight, insurance, foreign inland freight and foreign handling fees.

Normal Value

In previous investigations, the Department has determined that the PRC is a nonmarket economy ("NME") country within the meaning of section 771(18) of the Act. *See, e.g., Final Determination of Sales at Less Than Fair Value: Manganese Metal from the People's Republic of China* (60 FR 56045, 56047 (November 6, 1995)). In accordance with section 771(18)(C), the presumption of NME status for the PRC shall continue for purposes of the initiation of this investigation. In the course of this investigation, all parties will have the opportunity to provide relevant information related to the NME status of the PRC and the assignment of separate rates to individual exporters. (*See, e.g., Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the PRC* (59 FR 22585 (May 2, 1994))).

In antidumping investigations in which the comparison market is not a market economy, section 773(c) of the Act requires that the normal value of the foreign like product be based on the producer's factors of production valued in a surrogate market economy country or countries that is/are a significant producer of comparable merchandise and at a level of economic development comparable to the NME country. Publicly available published information from India was used by the petitioner to value the factors of production because India is the only persulfate producer among surrogate countries that the Department typically uses for the PRC. The petitioner based the fixed factory overhead, selling, general and administrative, and profit elements of its normal value calculation on data from an annual report of an Indian producer of hydrogen peroxide. According to the petitioner, it relied on data from a producer of hydrogen peroxide because public financial data for Indian persulfate producers was not available, and the production processes for hydrogen peroxide and persulfates are comparable.

The petitioner based the quantities of factors (*i.e.*, raw materials, labor, and energy) used in production of ammonium, potassium, and sodium persulfates on the experience of certain PRC producers. The petitioner relied on its own production experience where PRC usage factors were not available. *See, Initiation of Antidumping Duty Investigation: Certain Brake Drums and Certain Brake Rotors from the People's Republic of China* (61 FR 14740 (April 3, 1996)). The petitioner maintains that it is reasonable to use its own production experience because the production process is the same whether the persulfates are produced in the United States or in the PRC.

Based on comparisons of the export prices with normal values constructed from factors of production, the calculated dumping margins range from 15.87 percent to 182.37 percent. If it becomes necessary at a later date to consider the petition as a source for facts available, we may re-examine the information in the petition and, if necessary, revise the margin calculations therein.

Normal Value Comparisons

Based on the data provided by the petitioner, there is reason to believe that imports of persulfates from the PRC are being, or are likely to be, sold at less than fair value.

Initiation of Investigation

We have examined the petition on persulfates from the PRC and have found that it meets the requirements of section 732 of the Act, including the requirements concerning allegations of material injury or threat of material injury to the domestic producers of domestic like products by reason of the complained-of imports, allegedly sold at less than fair value. Therefore, we are initiating an antidumping duty investigation to determine whether imports of persulfates from the PRC are being, or are likely to be, sold in the United States at less than fair value. Unless the investigation is extended, we will make our preliminary determination by December 18, 1996.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the petition has been provided to the representatives of the Government of the PRC.

International Trade Commission ("ITC") Notification

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will determine by August 26, 1996, whether there is a reasonable indication that imports of persulfates from the PRC are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination in this investigation will result in the investigation being terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits.

Dated: July 31, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96-19997 Filed 8-5-96; 8:45 am]

BILLING CODE 3510-DS-P

APPENDIX B

CONFERENCE WITNESSES

CALENDAR OF THE PUBLIC CONFERENCE

Those listed below appeared as witnesses at the United States International Trade Commission's conference held in connection with the investigation.

PERSULFATES FROM CHINA

Investigation No. 731-TA-749 (Preliminary)

July 31, 1996 - 9:30 am

The conference was held in Room 101 (Main Hearing Room) of the United States International Trade Commission Building, 500 E Street, SW, Washington, DC.

IN SUPPORT OF THE IMPOSITION OF ANTIDUMPING DUTIES:

Perkins Coie
Washington, D.C.
on behalf of

FMC Corporation

Richard Merluzzi, Business Director, FMC Corp.

R. Hows King, Jr., Marketing Manager, FMC Corp.

Jeffrey Carr, International Counsel, FMC Corp.

Bruce Malashevich, President, Economic Consulting Services, Inc.

Thomas Vakerics, Esq.--OF COUNSEL

IN OPPOSITION TO THE IMPOSITION OF ANTIDUMPING DUTIES:

Singer & Singh
Valley Stream, NY
on behalf of

Aceto Corporation

Leonard Schwartz, President, Aceto Corp.

Panos Yannopoulos, Products Manager, Aceto Corp.

Indie Singh--OF COUNSEL

Ross & Hardies
Washington, D.C.
on behalf of

ICC Industries

Susan Greenhalgh, International Product Manager, ICC Industries

Steven Kersner--OF COUNSEL

Dorsey & Whitney
Washington, D.C.
on behalf of

The China Chamber of Commerce of Metals, Minerals and Chemicals Importers and Exporters Association, and its member companies

Dan Mullaney--OF COUNSEL