

POTASSIUM PERMANGANATE FROM THE PEOPLE'S REPUBLIC OF CHINA

**Determination of the Commission
in Investigation No. 731-TA-125
(Final) Under the Tariff Act of
1930, Together With the
Information Obtained
in the Investigation**

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UNITED STATES INTERNATIONAL TRADE COMMISSION

COMMISSIONERS

Alfred E. Eckes, Chairman

Paula Stern

Veronica A. Haggart

Seeley G. Lodwick

Kenneth R. Mason, Secretary to the Commission

Robert Carpenter, Investigator
Jack Greenblatt, Industry Analyst
Carol McCue Verratti, Attorney
Marvin Claywell, Accountant
Larry Johnson, Economist

John MacHatton, Supervisory Investigator

Address all communications to
Office of the Secretary
United States International Trade Commission
Washington, D.C. 20436

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UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

Investigation No. 731-TA-125 (Final)

POTASSIUM PERMANGANATE FROM THE PEOPLE'S REPUBLIC OF CHINA

Determination

On the basis of the record 1/ developed in the subject investigation, the Commission unanimously determines, pursuant to section 735(b)(1) of the Tariff Act of 1930 (19 U.S.C. § 1673(b)(1)), that an industry in the United States is materially injured 2/ by reason of imports from the People's Republic of China of potassium permanganate, provided for in item 420.28 of the Tariff Schedules of the United States, which have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

The Commission also unanimously determines, pursuant to section 735(b)(4)(A) of the act (19 U.S.C. § 1673(b)(4)(A)), that the material injury is by reason of massive imports of potassium permanganate from China over a relatively short period to an extent that it is necessary that the duty provided for in section 731 of the act be imposed retroactively on those imports in order to prevent such injury from recurring.

Background

The Commission instituted this investigation effective August 9, 1983, following a preliminary determination by the Department of Commerce that imports of potassium permanganate from China are being sold in the United States at LTFV.

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

2/ Commissioner Stern determines that an industry in the United States is materially injured, or threatened with material injury, by reason of the subject imports.

Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, D.C., and by publishing the notice in the Federal Register of August 31, 1983 (48 F.R. 39519). The hearing was held in Washington, D.C., on December 2, 1983, and all persons who requested the opportunity were permitted to appear in person or by counsel.

VIEWS OF COMMISSIONERS STERN, HAGGART, AND LODWICK

On the basis of the record in investigation No. 731-TA-125 (Final), 1/ we determine that an industry in the United States is materially injured by reason of imports of potassium permanganate from the People's Republic of China (China) with respect to which the Department of Commerce has made a final affirmative determination of sales at less than fair value (LTFV).

We also determine, pursuant to section 735(b)(4)(A) of the Tariff Act of 1930, 2/ that the material injury is by reason of massive imports of potassium permanganate from China found by the Department of Commerce to exist during the months of March through July, 1983, to an extent that, in order to prevent such material injury from recurring, it is necessary to impose the antidumping duty retroactively on those imports.

Summary

The domestic industry in this investigation has experienced material injury, as demonstrated by declines in production, domestic shipments, capacity utilization, and profitability, as well as increased inventories and consequent plant shutdowns during the period under review. Coincident with these difficulties, LTFV imports from China tripled, and prices of the Chinese product were substantially lower than the domestic product. Price suppression was found to exist. Lost sales data establish that numerous contracts were

1/ This investigation was conducted simultaneously with Potassium Permanganate from Spain, inv. No. 731-TA-126 (Final), until after the Dec. 2, 1983, hearing. Therefore, most of the record is the same for both investigations. Throughout this opinion, citations to the "Commission Report" will be a report entitled "Report to the Commission, Potassium Permanganate from Spain." This report contained information relevant to both the Spanish investigation and this investigation. A limited Commission report was prepared for this investigation only. References to that report will be "Report on China."

2/ 19 U.S.C. § 1673d(b)(4)(A).

lost by the domestic producer to imports from China on the basis of price. Moreover, we have found that the material injury is by reason of massive imports of the Chinese product that entered the U.S. market between the initiation of the investigation and the Department of Commerce's preliminary determination. The extent of these imports indicates that it is necessary to impose retroactive antidumping duties in order to prevent the material injury from recurring.

The domestic industry

Section 771(4)(A) of the Tariff Act of 1930 defines the term "industry" as "the domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product." 3/ Section 771(10), in turn, defines "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" this investigation. 4/

The product under investigation is potassium permanganate from China. Potassium permanganate is a compound of manganese, potassium, and oxygen. It exists at room temperature as a dark purple crystalline solid of rhombic shape with a blue metallic sheen. 5/ Potassium permanganate is used by various industries and municipalities as an oxidizer. Municipalities use it primarily for water and waste-water treatment for the removal of impurities and the reduction of odor. Industrial uses for potassium permanganate include

3/ 19 U.S.C. § 1677(4)(A).

4/ 19 U.S.C. § 1677(10).

5/ Commission Report at A-2.

chemical manufacturing and processing, aquaculture (fish farming), metal processing, air and gas purification, water treatment, and waste-water treatment. In addition, potassium permanganate is also used as a decoloring and bleaching agent in the textile and tanning industries, as an oxidizer in the decontamination of radioactive wastes, and as an aid in flotation processes used in mining. 6/

Potassium permanganate is manufactured and sold in three grades: technical grade; free-flowing grade; and pharmaceutical grade. 7/ All three grades are produced by the petitioner, Carus Chemical Co. Only technical grade is imported from China. All three grades have the same chemical formula but are generally distinguishable by variations in their degree of purity. At a minimum, the free-flowing grade must have 95 percent potassium permanganate by weight. Technical grade must contain at least 97 percent potassium permanganate by weight, and pharmaceutical grade generally has at least 99 percent potassium permanganate by weight. 8/ All of the technical-grade potassium permanganate imported from China has at least 99 percent potassium permanganate by weight and, therefore, could qualify as pharmaceutical grade for food and pharmaceutical applications. 9/

6/ Commission Report at A-3-A-5. Currently, use of potassium permanganate for municipal waste-water treatment represents one-third of the domestic market. Municipal water treatment also represents one-third of the market. The remaining one-third is composed of various industrial uses. Commission Report at A-5.

7/ Although the importers argued during the preliminary investigations involving imports from Spain and China that the three grades of potassium permanganate are three separate products for the purposes of defining the domestic industry, they did not raise this issue during the final investigation.

8/ Commission Report at A-3.

9/ Id.

Technical-grade potassium permanganate is the basic product from which free-flowing grade and pharmaceutical-grade are derived. The major part of the manufacturing process for all three grades is identical. Free-flowing grade is produced by adding an anticaking agent to technical-grade potassium permanganate. This is a simple process which requires relatively little additional expenditure. 10/ The pharmaceutical grade is technical grade that has gone through special testing or recrystallization in order to meet the specifications of a use not appropriate for free-flowing or any technical grade. 11/

For many potassium permanganate uses, such as nonwater and non-waste-water treatment, technical- and free-flowing-grade potassium permanganate are interchangeable. 12/ While free-flowing grade potassium permanganate has been preferred for many years for water and waste-water treatment because of the use of dry chemical feeders, 13/ the use of technical grade is increasing due to the recent availability of significantly lower priced technical grade

10/ Transcript of the conference (preliminary investigation), p. 8.

11/ Commission Report at A-3. The processing to qualify technical-grade potassium permanganate as pharmaceutical grade is an added cost. Thus, it would not normally be used in place of free-flowing or technical-grade. Petitioner's Post Conference Memorandum of Law at 4-5. Since the Chinese technical grade has not undergone the testing necessary to qualify it as pharmaceutical grade, there have been no imports of pharmaceutical-grade potassium permanganate from China during the period of this investigation. Commission Report at A-31.

12/ Commission Report at A-3.

13/ Carus, which created the domestic market for the use of potassium permanganate in municipal water and waste water treatment, would introduce the use of dry chemical feeders when it developed new customers. The dry chemical feeder uses a flexible hopper and an adjustable feed screw to provide a continuous flow of (dry) potassium permanganate to the point of application. Commission Report at A-3-A-4. Free-flowing-grade potassium permanganate performs well in dry chemical feeders, but technical grade cakes up. Id.

imported from China and the consequent increased use of solution tank feeders. 14/

Finally, the historically similar pricing of the domestically produced technical grade and free-flowing grade potassium permanganate indicates that they are interchangeable. Technical and free-flowing grades were similarly priced throughout 1981-82. 15/

On the basis of the foregoing discussion, we conclude that there is one like product, potassium permanganate. Consequently, we determine that there is one domestic industry consisting of the sole domestic producer, Carus Chemical Co.

The condition of the domestic industry 16/

On the basis of our analysis of factors such as production, capacity, capacity utilization, U.S. producer's shipments, inventories, employment, 17/ and financial performance, we conclude that the domestic industry in this investigation has experienced material injury. Carus' total production has decreased significantly from 1980 through 1982. It increased slightly in the

14/ In the solution tank feeders, potassium permanganate is dissolved in a liquid which is then fed into the water or waste-water treatment system. This method permits successful use of either technical-grade or free-flowing-grade potassium permanganate. There are some safety benefits to solution tank feeders, and the cost of solution tank feeders is comparable with that of dry chemical feeders. Commission Report at A-3-A-4.

Five municipalities contacted by the Commission staff are currently using solution feeders. A sixth municipality is planning to switch to a solution feeder in the near future, and a seventh would switch if the capital investment could be recovered in 2 years. Commission Report at A-4.

15/ Commission Report at A-35-A-36, tables 21 and 22.

16/ Since there is only one domestic producer, the specific data concerning the condition of the domestic industry are confidential.

17/ Commissioner Stern notes that Carus' employment problems were related to the loss of Chemagro as a customer and not LTFV imports from China. The petition, p. 26.

first 8 months of 1983 compared with that in the corresponding period of 1982. Excluding Chemagro, a major customer which ceased purchasing from Carus in 1981, 18/ overall production increased slightly from 1980 to 1981, but decreased significantly from 1981 to 1982. 19/ Since Carus' capacity remained constant during the period of the investigation, its capacity utilization reflected trends similar to that of production. 20/ Employment declined significantly during the period under investigation. 21/ We note that in 1983 there was some indication by some economic factors that the condition of the domestic industry had improved slightly. 22/

Due to a sharp increase in inventories from 1980 to 1981, Carus shut down its LaSalle, Ill., plant for a period of time during the summer of 1982. This permitted Carus to reduce the level of its inventories. Carus held a similar shutdown during the summer of 1983 for the liquidation of inventories. 23/ In September, 1982, Carus and the union which represents the production workers at Carus signed a contract modification which resulted in wage and benefit concessions by the union equivalent to \$1.80 per hour effective October 1, 1982. 24/

Finally, with regard to evaluating Carus' profitability during the period under investigation, we analyzed sales, operating and net profit or loss, and the ratio of such profits or losses to net sales. 25/ These data show a

18/ For further discussion concerning the impact of the loss of Chemagro on our determination, see infra n. 28 at 9.

19/ Commission Report at A-11.

20/ Id.

21/ Commission Report at A-15-A-16.

22/ There was a small improvement in production, capacity utilization, and Carus' domestic shipments during the first 8 months of 1983 compared with these factors during the corresponding period of 1982. Commission Report at A-11-A-12.

23/ Commission Report at A-15.

24/ Commission Report at A-16.

25/ Commission Report at A-21, table 11.

decline in the financial condition of the domestic industry from 1980 to 1982. Although losses were less in the most recent 1983 period, Carus sustained net losses on its chemical operations in 1982 and January-August 1983. 26/

Material injury by reason of LTFV imports from the People's Republic of China

When determining whether the domestic industry has suffered material injury by reason of LTFV imports, section 771(7)(B) of the Tariff Act of 1930 directs the Commission to consider, among other factors, (1) the volume of imports of the merchandise under investigation, (2) their impact on domestic prices for the like product, and (3) the consequent impact of the imports on the domestic industry. 27/

In 1980, there was substantial importation of potassium permanganate from China largely due to purchases by Carus which were intended to insure that Carus could meet its contractual obligations to its customers. In 1981, Chemagro, Carus' largest customer, switched to a different manufacturing process that did not require the use of potassium permanganate. Thus, it withdrew from its contract with Carus. 28/ Hence, imports from China in 1981 declined substantially. 29/

26/ Id.

27/ 19 U.S.C. § 1677(7)(B).

28/ Commission Report at A-16-A-17.

The question of whether the problems of the domestic industry were due to Carus' loss of its largest customer, the Chemagro Agricultural Division of the Mobay Chemical Corp. (Chemagro), has been raised. Chemagro was lost as a customer, because it switched to a different manufacturing process that did not require the use of potassium permanganate. Commission Report at A-10. Although the record indicates that the loss of Chemagro has been a source of injury to the domestic industry, there is sufficient information in this investigation to determine that imports of potassium permanganate from China are also a cause of material injury to the domestic industry.

29/ Commission Report at A-25, table 14.

Potassium permanganate imported from China has increased substantially since 1981. Imports from China increased from 281,000 pounds in 1981 to 588,000 pounds in 1982. During January-August 1983, 1,365,000 pounds were imported from China compared with 407,000 pounds in the corresponding period of 1982. 30/ In addition, the ratio of imports from China to apparent domestic consumption, excluding purchases by Chemagro, rose from 1980 to 1981, declined from 1981 to 1982, and then more than doubled during the first eight months of 1983 compared with that in the corresponding period of 1982. 31/ Ninety-six percent of the imports from China in January-August 1983 entered during April-August, after this antidumping investigation was instituted. 32/ Significantly, the increase in imports from China in 1982 and 1983 and China's increased share of domestic consumption during those years were coincident with the domestic industry's declining profits and its decrease in market share. 33/

Potassium permanganate is a fungible product which is especially price sensitive. During the period of investigation, all of the imports from China were technical-grade potassium permanganate, which primarily affected the industrial market for potassium permanganate. The Chinese product undersold the domestic product by substantial margins throughout this period and also undersold LTFV imports from Spain, which also have been found to be a cause of material injury to the industry. 34/ Potassium permanganate from China undersold the domestic product in every quarter from January 1981 to June 1983

30/ Id.

31/ Commission Report at A-32, table 19.

32/ Commission Report at A-29, table 16.

33/ Commission Report at A-21, table 11; A-55; A-25, table 14; and A-32, table 19.

34/ Commission Report at A-35, table 21.

and in July-August 1983, with margins of underselling of over 20 percent during most of that period. Most recently, the margins of underselling have remained over 30 percent. 35/ These lower prices in a price-sensitive market as that for potassium permanganate allowed imports from China to gain market share.

Specifically, the substantially lower prices of the Chinese product have provided incentive to municipalities to switch from the use of free-flowing-grade potassium permanganate to technical grade for water and waste-water applications. 36/ Thus, technical-grade potassium permanganate imported from China has made inroads into the water and waste-water treatment markets in which free-flowing grade has traditionally been used. 37/

The record also contains evidence of price suppression. Domestic prices of potassium permanganate initially fell by over 7 percent and then stabilized throughout the remainder of the period under investigation. Moreover, there were four verified allegations of revenues lost by Carus, because it was forced, in order to win a sale, to lower its price to meet or approximate the Chinese price. 38/

Finally, the Commission was able to confirm 12 specific instances of sales lost to imports from China on the basis of price. Carus had alleged sales lost to China involving 25 purchasers. The Commission sent

35/ Commission Report at A-35, table 21. Commissioner Stern notes that the margins of underselling by importers of technical-grade potassium permanganate were in the approximate range of the constructed LTFV margin.

36/ Commission Report at A-4.

37/ Note 14, supra at 7.

38/ Carus had made five allegations of lost revenues, but one purchaser failed to respond to the Commission's questionnaire. Report on China at A-5-A-6.

questionnaires to 20 of the purchasers. Sixteen of the questionnaires were returned, and 12 verified the allegations. 39/ 40/

Critical circumstances

We determine under section 735(b)(4)(A) that the material injury is by reason of massive imports over a relatively short period to an extent that it is necessary that the duty provided in section 731 be imposed retroactively on these imports in order to prevent such injury from recurring. Section 735(b)(4)(A) states:

If the finding of the administering authority under subsection (a)(2) is affirmative, then the final determination of the Commission shall include a finding as to whether the material injury is by reason of massive imports described in subsection (a)(3) [massive imports of the merchandise which is the subject of the investigation over a relatively short period and determined by the Department of Commerce to exist] to an extent that, in order to prevent such material injury from recurring, it is necessary to impose the duty imposed by section 731 retroactively on those imports.

In describing this provision, the House report states:

The provision is designed to provide prompt relief to domestic industries suffering from large volumes of, or a surge over a short period of imports, and to deter exporters whose merchandise is subject to an investigation from circumventing the intent of the law by increasing their exports to the United States during the period between initiation of an investigation and a preliminary determination by the Authority [Department of Commerce]. 41/

39/ Report on China at A-4-A-5.

40/ Commissioner Stern also finds threat of material injury by reason of imports of potassium permanganate from Spain. Trends in the volume of the Chinese product imported into the U.S. market have been increasingly significant with such imports doubling from 1981 to 1982 and tripling in January-August 1983 compared with those in January-August 1982. Prices of the Chinese product have also followed a declining trend, particularly in the most recent period. Consequently, domestic market share, especially for technical/pharmaceutical grades, eroded gradually throughout the period and abruptly in the interim 1983 period.

41/ H. Rep. No. 317, 96th Cong., 1st Sess. 63 (1979).

The relevant legislative history indicates that the Commission is to determine whether the volume of imports during the period after the investigation is initiated and before the Department of Commerce reaches its preliminary determination 42/ is sufficient to establish that foreign producers have circumvented the intent of the antidumping statute by increasing their exports so as to warrant the retroactive application of antidumping duties. 43/

In order to make a determination as to whether an affirmative critical circumstances determination is justified, it is necessary to examine the volume of imports entering the U.S. market during the relevant time period. 44/ In making our determination, we examined the period April 1983-July 1983. 45/ During this period, 1,117,000 pounds of potassium permanganate from China was imported into the United States compared with 149,000 pounds in April 1982-July 1982. In April 1983, the month immediately following the initiation of the investigation, 578,000 pounds of potassium permanganate was imported from China. In May, there were no imports of

42/ In this investigation the petition was filed on Feb. 22, 1983, and the preliminary determination of the Department of Commerce was made on Aug. 1, 1983.

43/ Since the Commission has made an affirmative determination, the Commerce Department under secs. 733(e) and 736(b) will apply antidumping duties retroactively from the date of the publication of the preliminary determination, Aug. 9, 1983, to May 11, 1983, the date which is 90 days prior to the publication of the determination.

44/ Commissioner Stern notes further that imports of potassium permanganate from China entering during this period were the lowest priced imports and undersold by substantial margins both the domestic product and LTFV imports from Spain.

45/ This period is appropriate because the Commerce Department initiated its preliminary LTFV investigation on Mar. 14, 1983, and then issued its preliminary LTFV determination on Aug. 1, 1983.

potassium permanganate from China. 46/ In June, 111,000 pounds of potassium permanganate was imported from China, and in July, the month just prior to Commerce's preliminary determination, 428,000 pounds was imported. 47/ The significance of the amounts imported during this period is highlighted by the smaller amounts imported in January-March 1983, prior to the initiation of the investigation, 48/ and by the amounts imported during August through October 1983, the months which followed Commerce's preliminary determination. 49/

Therefore, we find that the massive imports which are causing material injury to the domestic industry are doing so to an extent that, in order to prevent such material injury from recurring, it is necessary to impose the duty retroactively on those imports.

46/ This may have been the result of some depletion of supplies due to the unusually high level of importation in April, 1983.

47/ Commissioner Stern notes that an analysis of the monthly volume of imports from China in previous years indicates there is no seasonal demand for this product which would explain such a surge of imports during this period. See Report at A-28-A-29. Also, although total shipping time from China to the U.S. market for this product ranges from 3 to 6 months, two major independent importers stated at the hearing that most of the potassium permanganate imported from China during this time was purchased from Europe, where shipping time to the U.S. market is significantly less. Hearing transcript, pp. 123 and 126. All eight of the importers of potassium permanganate from China are independent, with no relationship to Chinese producers or SINOCHEN, the Government agency responsible for international trade of the product.

48/ In January, 25,000 pounds was imported; in February, there were no imports; and in March, 33,000 pounds was imported.

49/ In August 1983, 190,000 pounds of potassium permanganate was imported from China; in September, there were no imports; and in October, 155,000 pounds was imported from China.

VIEWS OF CHAIRMAN ALFRED E. ECKES

On the basis of the record in this investigation 1/ I conclude that an industry in the United States is materially injured by reason of imports of potassium permanganate from the People's Republic of China (China) with respect to which the Department of Commerce has made a final affirmative determination of sales at less than fair value (LTFV). In my judgment, massive imports from China have caused material injury and require imposing retroactive duties.

The Domestic Industry

Section 771(4)(A) of the Tariff Act of 1930 defines the term "industry" as "the domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product." 2/ Section 771(10), in turn, defines "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" this investigation. 3/

1/ The Commission instituted this investigation together with another regarding LTFV sales of potassium permanganate from Spain (Potassium Permanganate from Spain, Inv. No. 731-TA-126 (Final) USITC Pub. 1474, 1984, (Hereinafter, "Potassium Permanganate from Spain"). The record of each investigation is essentially the same with respect to the following statutory considerations: appropriate like product, domestic industry, and condition of the domestic industry. In each investigation I made my determination of material injury on a case-by-case basis.

2/ 19 U.S.C. § 1677(4)(A).

3/ 19 U.S.C. § 1677(10).

The product under investigation is potassium permanganate from China. Consistent with the Commission's like-product analysis in the recent investigation regarding imports from Spain, I conclude that there is one like product, potassium permanganate. 4/ Also, as in the previous investigation, the domestic industry consists of the sole domestic producer, Carus Chemical Co.

Condition of the Domestic Industry

Recently the Commission examined the condition of this domestic industry and unanimously found that the domestic industry is experiencing material injury. Because the record in both investigations is virtually identical and because no additional information has emerged which alters the earlier finding, I adopt the reasoning of the Commission in the preceding investigation. In my judgment the domestic potassium permanganate industry is still experiencing material injury. 5/

Material Injury by Reason of LTFV Imports from China

With respect to the causation issue, the Tariff Act of 1930 directs the Commission to consider, among other factors, (1) the volume of imports of the merchandise under investigation, (2) their impact on domestic prices for the like product, and (3) the consequent impact of the imports on the domestic industry. 6/

4/ I adopt the relevant discussion contained in the "Views of the Commission," Potassium Permanganate from Spain, pp. 3-6.

5/ See "Views of the Commission," Potassium Permanganate from Spain, pp. 6-8.

6/ The question has been raised as to whether the problems of the domestic industry were due to Carus' loss of its largest customer, the Chemagro Agricultural Division of the Mobay Chemical Corporation (Chemagro). Chemagro was lost as a customer because it switched to a different manufacturing process that did not require the use of potassium permanganate. Report, Potassium Permanganate from Spain at A-10. Although the record indicates that the loss of Chemagro has been a source of injury to the domestic industry, there is sufficient information in this investigation to determine that imports of potassium permanganate from China are also a cause of material injury to the domestic industry.

Considering import volume first, I note that imports from China amounted to 1 million pounds in 1980. 7/ In 1981, these imports declined to 281,000 pounds before increasing to 588,000 pounds in 1982. Importantly, for the interim period January-August 1983, imports climbed rapidly to 1.4 million pounds, more than three times the level of imports entering during the same period in 1982. 8/

Market penetration figures also reflect recent increases in import volume. 9/ Specifically, penetration for the period January-August 1983 was more than 2.5 times the share held in the comparable 1982 period, and almost three times the share held by these imports in all of 1982. 10/

Turning next to the impact of imports on pricing, I observe that potassium permanganate is a fungible, price-sensitive product sold primarily to two classes of buyers - distributors and end users. The substantial portion of domestic production is sold to distributors, with lesser amounts sold directly to end users. End users consist of local governments and industrial consumers. 11/

Most imports from China are sold to industrial customers, usually on a spot basis. 12/ Pricing information reveals that imports from China undersold the domestic product in every quarter of the period under investigation,

7/ This total includes a substantial amount purchased by the domestic producer.

8/ Report, Potassium Permanganate from Spain at A-25.

9/ The exact percentage of U.S. consumption held by imports from China is confidential. However, the trend for market penetration of these imports corresponds to the trend for absolute levels.

10/ Report, Potassium Permanganate from Spain at A-32.

11/ Report, Potassium Permanganate from Spain at A-34.

12/ The largest share of sales of domestic potassium permanganate is sold to local governments on a sealed bid basis.

usually by substantial margins. For example, in the first quarter of 1982 underselling margins exceeded 50 percent. During 1983, imports sold at prices at least one-third lower than the domestic product. 13/

In addition, price trend data demonstrate price suppression throughout the period of the investigation. Chinese import prices generally fell during the period, declining more than twenty percent since early 1981 levels. In contrast, domestic prices declined slightly during 1981 and were at the same level during 1982 and part of 1983. Domestic prices did increase significantly during the period July-August 1983, but there was only a negligible increase in the price of imports from China during the same period. They remained well below the domestic price. 14/

During this investigation the Commission staff explored allegations of sales and revenue which domestic producers lost to imports from China. Sales to municipalities made on a sealed-bid basis were considered, as well as sales to industrial customers which purchased on a spot, or negotiated, price basis. Twelve of 16 respondents to the Commission's purchaser questionnaires purchased Chinese material. 15/ Of these 12 purchasers, 11 revealed that they bought Chinese material because it was priced lower. These transactions included bids as well as spot sales. 16/ Staff investigation also confirmed four instances of lost revenue. In each of those situations, purchasers informed the petitioner that distributors of Chinese material quoted lower prices. As a result, the petitioner lowered its price in order to obtain the sales. 17/

13/ Report, Potassium Permanganate from Spain at A-35-A-36.

14/ Report, Potassium Permanganate from Spain at A-34-A-36.

15/ These 16 respondents accounted for 94 percent of the lost sales volume alleged by the petitioner.

16/ Report, Potassium Permanganate from China at A-4-A-5.

17/ Report, Potassium Permanganate from China at A-5-A-6.

In essence, import trends and market penetration data, together with information demonstrating that lower-priced imports have suppressed domestic prices, taken sales, and depressed revenues, all establish a sufficient causal nexus between the material injury and the LTFV imports from China.

Critical Circumstances

This investigation is unique in at least one respect. For the first time the Commission has made an affirmative determination that massive imports over a relatively short period make it necessary to impose retroactive duties on these imports in order to prevent such injury from recurring. As a consequence, the Commerce Department will apply antidumping duties retroactively from August 9, 1983, the date of the publication of the preliminary determination, to the date 90 days prior to the issuance of that determination.

The Commission's responsibility in determining critical circumstances is set forth in sec. 735(b)(4)(A) of the Act, 18/ which provides:

If the finding of the administering authority under subsection (a)(2) is affirmative, then the final determination of the Commission shall include a finding as to whether the material injury is by reason of massive imports described in subsection (a)(3) [massive imports of the merchandise which is the subject of the investigation over a relatively short period] to an extent that, in order to prevent such material injury from recurring, it is necessary to impose the duty imposed by section 731 retroactively on those imports.

The relevant legislative history to this section states:

The provision is designed to provide prompt relief to domestic industries suffering from large volumes of, or a surge over a short period of imports, and to deter exporters whose merchandise is subject to an investigation from circumventing the intent of the law by increasing their exports to the United States during the period between initiation of an investigation and a preliminary determination by the Authority [Department of Commerce]. 19/

18/ 19 U.S.C. 1673(b)(4)(A).

19/ H. Rep. No. 96-317, 96th Cong., 1st Sess. 63 (1979).

As the Commission majority opinion points out in "Carbon Steel Wire Rod From Brazil," 20/ the relevant legislative history indicates that the Commission's determination must focus on the volume of imports as well as the nature of imports entering the U.S. market during the relevant time period. On the latter point the Commission's inquiry may resemble in some respects the Commerce Department's findings regarding "massive imports," but it is not a review or reconsideration of the Commerce finding. In the usual antidumping investigation, the Department of Commerce effectively imposes antidumping duties on imports when it renders an affirmative preliminary determination. Such duties do not apply to goods imported prior to the Commerce Department preliminary decision. However, by statute, Congress has provided for the further retroactive assessment of duties on imports in certain situations involving massive imports "in order to prevent such material injury from recurring."

According to the legislative history, the reasons for this additional assessment are (1) "to provide prompt relief to domestic industries suffering from large volumes of, or a surge over a short period of, imports" and (2) "to deter exporters whose merchandise is subject to an investigation from circumventing the intent of the law by increasing their exports to the United States during the period between initiation of an investigation and a preliminary determination by the Authority." Thus, it is clear that in making this additional determination the Commission is to consider the nature of such massive imports for the purpose of providing additional relief and deterring circumvention of the antidumping laws.

20/ To date, the Commission has made negative critical circumstances determinations in two investigations. See Certain Steel Products from Spain, Inv. No. 701-TA-155-162(Final), USITC Pub. 1331 (1982) and Carbon Steel Wire Rod from Brazil, Inv. No. 731-TA-113, USITC Pub. 1444 (1983).

In the present investigation the appropriate period to examine for massive imports is March to July 1983. 21/ Data indicate that 1,150,000 pounds of potassium permanganate entered the United States during this period in 1983, far exceeding the 264,000 pounds imported in the same period of 1982. In April, a month after the investigation was initiated by Commerce, 22/ 578,000 pounds entered, and more than one-third (428,000 pounds) of the total amount entered in July, immediately before the Commerce Department's preliminary determination. 23/

The concentration of imports in the period before the Commerce Department's preliminary ruling demonstrates a significant increase over historical import levels. I am not persuaded by arguments that attempt to explain this surge as a lag between the time of placing orders and receiving shipments. Information developed in this investigation indicates that much of the potassium permanganate from China arrived from Europe where it has been held in warehouses. This evidence undercuts the claim of a long supply line and suggests the surge was intended to avoid imposition of preliminary antidumping duties.

In my judgment the import trends clearly warrant the imposition of retroactive duties to provide "prompt relief to domestic industries suffering from large volumes of, or a surge over a short period of imports" In addition, the timing of these entries indicates that the circumstances are appropriate for the retroactive imposition of duties in accordance with the legislative history of this provision.

21/ The Commerce Department initiated its preliminary LTFV investigation on March 14, 1983, and issued its preliminary LTFV determination on August 9, 1983.

22/ Imports entering in April are not reached by the retroactive assessment of duties as a result of the Commission's affirmative critical circumstances determination; however, they suggest a surge in imports shortly after the case was filed.

23/ Report, Potassium Permanganate from Spain at A-28-A-29.

INFORMATION OBTAINED IN THE INVESTIGATION

Introduction

On February 22, 1983, counsel for Carus Chemical Co. filed a petition with the U.S. International Trade Commission and the U.S. Department of Commerce alleging that an industry in the United States was materially injured, or threatened with material injury, by reason of imports from the People's Republic of China (China) and Spain of potassium permanganate, provided for in item 420.28 of the Tariff Schedules of the United States (TSUS), which were allegedly being sold at less than fair value (LTFV). Accordingly, the Commission instituted antidumping investigations Nos. 731-TA-125 and 126 (Preliminary), under section 731 of the Tariff Act of 1930, to determine whether there was a reasonable indication that an industry in the United States was materially injured, or threatened with material injury, or the establishment of an industry in the United States was materially retarded, by reason of imports of such merchandise into the United States. On April 8, 1983, the Commission unanimously determined that there was such a reasonable indication of material injury. 1/

On August 1, 1983, Commerce made preliminary determinations that there were reasonable bases to believe or suspect that imports of potassium permanganate from China and Spain were being, or were likely to be, sold in the United States at LTFV within the meaning of section 731 of the Tariff Act of 1930. The notice of preliminary determinations was published in the Federal Register of August 9, 1983 (48 F.R. 36175). Commerce further determined that "critical circumstances," as defined in section 733(e)(1) of the act, existed with respect to imports of potassium permanganate from China. This determination was based on a finding that the importers knew or should have known that the material was being imported at LTFV and that there were massive imports of the Chinese material over a relatively short period (March-July 1983).

As a result of the affirmative preliminary determinations of LTFV sales by Commerce, the Commission instituted investigations Nos. 731-TA-125 (Final) (China) and 731-TA-126 (Final) (Spain), effective August 9, 1983, to determine whether an industry in the United States is materially injured, or threatened with material injury, or the establishment of an industry is materially retarded, by reason of imports of potassium permanganate from China and Spain. Notice of the institution of the investigations and of the public hearing to be held in connection therewith was given by posting copies of the notice at the Office of the Secretary, U.S. International Trade Commission, Washington, D.C., and by publishing the notice in the Federal Register of August 31, 1983 (48 F.R. 39519). 2/

Following receipt of requests by counsel for the China National Chemicals Import & Export Corp. (the state trading organization handling the exportation

1/ Commissioner Stern determined that there was a reasonable indication that an industry in the United States was materially injured, or threatened with material injury, by reason of the subject imports.

2/ A copy of the Commission's notice is presented in app. A.

of potassium permanganate), Commerce announced the postponement of its final LTFV determination on potassium permanganate from China, first until not later than November 22, 1983, as published in the Federal Register of September 9, 1983 (48 F.R. 40771), and subsequently until not later than December 22, 1983, as published in the Federal Register of October 7, 1983 (48 F.R. 45815). Following a request by counsel for Asturquimica, S.A. (the Spanish producer and exporter of potassium permanganate), Commerce announced the postponement of its final LTFV determination on potassium permanganate from Spain until not later than November 22, 1983, as published in the Federal Register of October 5, 1983 (48 F.R. 45447). As a result of Commerce's postponements of its final LTFV determinations, the Commission postponed its hearing, which was originally scheduled for October 28, 1983, to December 2, 1983. 1/

On November 22, 1983, and December 22, 1983, Commerce made its final determinations that potassium permanganate from Spain and China, respectively, is being sold in the United States at LTFV. 2/ On January 5, 1984, the Commission issued its unanimous determination that an industry in the United States is materially injured by reason of imports of potassium permanganate from Spain. 3/ The Commission voted on the investigation concerning LTFV imports of potassium permanganate from China on January 12, 1984, and is scheduled to issue its final determination on that investigation on January 20, 1984.

Background and Discussion of Report Format

This report is designed to be used in conjunction with the staff report to the Commission dated December 14, 1983, on investigation No. 731-TA-126 (Final). That report includes information relevant to the investigation on imports from China as well as to that on imports from Spain with respect to the product, the domestic market, the U.S. producer, U.S. importers, foreign producers, the question of material injury, the question of the threat of material injury, and the consideration of the causal relationship between LTFV imports and the alleged injury (excluding information concerning lost sales and lost revenue as they relate to LTFV imports from China). This report includes information only on the nature and extent of sales of LTFV imports from China, the Chinese producers, and lost sales and lost revenue as they relate to LTFV imports from China. Copies of the Commission's public report on investigation No. 731-TA-126 (Final), Potassium Permanganate From Spain . . ., USITC Publication 1474, January 1984, may be obtained from the Office of the Secretary, U.S. International Trade Commission, 701 E St. NW., Washington, D.C. 20436.

1/ A copy of the Commission's notice of postponement of the hearing and other events connected with the investigations is presented in app. A. A copy of the calendar of the public hearing is presented in app. B.

2/ A copy of Commerce's final determination on LTFV imports from China is presented in app. C.

3/ Commissioner Stern determined that an industry in the United States is materially injured, or threatened with material injury, by reason of the subject imports.

Nature and Extent of Sales at LTFV

In its final investigation, Commerce examined 100 percent of the Chinese exporter's sales of potassium permanganate to the United States during April-December 1982. The China National Chemicals Import & Export Corp., which is not a producer but a trading company, is the only known Chinese exporter of the product to the United States. There are eight plants that produce potassium permanganate in China. Commerce determined that the economy of China was state-controlled to the extent that home-market sales of potassium permanganate would not provide an appropriate basis for fair-value comparisons. Commerce was unable to find a country whose level of economic development was comparable to that of China, which produced potassium permanganate, and which was willing to participate in the investigation. Consequently, Thailand, which does not produce potassium permanganate, was chosen as a country with a non-state-controlled-economy reasonably comparable in economic development to that of China for purposes of appraising the Chinese factors of production. This approach resulted in a constructed foreign-market value for Chinese potassium permanganate that exceeded the Chinese exporter's price in the United States on 100 percent of sales compared. The final dumping margins ranged from 36.78 percent to 42.24 percent. The weighted-average margin on all sales compared was 39.63 percent.

In its petition, Carus alleged that imports of potassium permanganate from China present "critical circumstances." Commerce examined such imports under the provisions set forth in section 733(e)(1) of the act and found in both its preliminary and final determinations that critical circumstances exist. 1/ The effect of such a determination is the requirement of a cash deposit or the posting of a bond retroactive to 90 days before the date of publication of the preliminary critical circumstances determination in the Federal Register, or in this case, 90 days prior to August 9, 1983.

Foreign Producers

There are eight plants in China that produce potassium permanganate:
 * * *. International trade in the product is handled by the China National Chemicals Import & Export Corp., located in Beijing, China. Both the U.S. Embassy in Beijing and counsel for the China National Chemicals Import & Export Corp. were requested to supply data on China's production of potassium permanganate, capacity, domestic shipments, inventories, and exports to the United States and to other countries for 1980-82, January-August 1982, and January-August 1983. Although no data were made available from either source during the final investigation, most of the following information was provided

1/ Commerce found that there were "massive" imports over a relatively short period (March-July 1983). Because Commerce made an affirmative critical circumstances determination, the Commission is required, if it finds material injury by reason of imports from China, to make an additional finding as to whether the material injury is by reason of massive imports over a relatively short period, such that it is necessary to impose antidumping duties retroactively on the imports in order to prevent such injury from recurring.

in the preliminary investigation. China's capacity to produce potassium permanganate was reported to be 12 million pounds a year in 1979. 1/ Capacity subsequently declined following the closure of two plants during 1980-82. Those plants, which had a total capacity of about 880,000 pounds, are not expected to reopen. Exports to the United States reportedly declined from about 1 million pounds in 1980 to 361,554 pounds in 1982. 2/ Total exports worldwide were stated to range from approximately * * * pounds to * * * pounds annually. 3/

Consideration of the Causal Relationship Between LTFV Imports and the Alleged Injury

Lost sales

Carus provided the Commission with a list of end users of potassium permanganate that allegedly had purchased the Chinese product, which was being offered at lower prices than the Carus product. The purchasers were asked to supply information on their purchases during 1980-82, January-August 1982, and January-August 1983. Some of the end users were municipalities that purchased on the basis of soliciting sealed bids; others were industrial customers that purchased on a spot, or negotiated-price, basis. In sales to municipalities, bids were submitted by distributors (some of which were importers of record) and frequently by Carus itself, very often competing against distributors of its own product as well as distributors of imported material. Most purchasers had a policy of awarding contracts to the supplier offering the lowest price, provided the supplier could meet product specifications and delivery requirements. Many purchasers entered into contracts on an annual or semiannual basis; others purchased more frequently. Most required the supplier to deliver the material at specified intervals, or as needed during the period covered by the contract, rather than in one shipment.

Carus' allegations of sales lost to the Chinese product involved 25 purchasers and a volume of * * * pounds during the period January 1981-August 1983. The allegations accounted for * * * percent of U.S. consumption during the period under consideration (* * * percent of consumption excluding Chemagro) and for * * * percent of importers' domestic shipments of Chinese material. The Commission sent purchaser questionnaires to 20 of the purchasers, which accounted for a volume of * * * pounds, or 96 percent of the volume alleged to have been lost to the Chinese product. Sixteen purchasers, which accounted for * * * pounds or 94 percent of the alleged lost sales volume, responded to the questionnaire. Twelve of the firms purchased Chinese material. An analysis of the questionnaire responses as they relate to lost sales verification is provided below.

1/ Kirk-Othmer Encyclopedia of Chemical Technology, John Wiley & Sons, New York, 3d ed., vol. 14, pp. 872-873.

2/ Statement of Zhang Furong, Mar. 22, 1983, pp. 1-2.

3/ Report from U.S. Embassy, Beijing, 1983.

Purchaser No. 1: * * * was alleged to have purchased Chinese technical-grade potassium permanganate in * * *, resulting in lost sales to Carus of * * * pounds. Actual purchases were as follows (in pounds):

Country of origin	1980	1981	1982	January-August--	
				1982	1983
China-----	***	***	***	***	***
Spain-----	***	***	***	***	***
United States-----	***	***	***	***	***

* * * purchased * * * pounds of the Chinese technical-grade product on a spot basis from * * * in * * * at a delivered price of * * * per pound. * * * also received an offer of Chinese material from * * * at a delivered price of * * * per pound and an offer of domestic material from * * * at a delivered price of * * * per pound.

Because the data received from the remaining 15 purchasers that responded to the questionnaire are confidential and are presented in a format nearly identical to that for Purchaser No. 1, no discussion pertaining to those purchasers is shown in this report.

Lost revenue

Carus provided the Commission with information on instances of sales to end users in which Carus lowered its initial price quotation in order to meet competition from imports from China. The petitioner made five lost revenue allegations concerning imports from China. They involved four end users, a volume of * * * pounds, and represented * * * in allegedly lost revenue during 1982 and early 1983. The quantity of sales involved in the allegations accounted for * * * percent of U.S. consumption and * * * percent of Carus' domestic shipments during 1982 and January-August 1983. Three of the four purchasers, accounting for * * * pounds and * * * in allegedly lost revenue, or 64 percent of the total revenue alleged to have been lost as a result of imports from China, responded to the questionnaire. An analysis of the questionnaire responses as they relate to lost revenue verification is provided below.

Purchaser No. 1: Carus alleged that in * * * it had to lower its price to * * * from * * * per pound to * * * per pound because of an offer of * * * per pound from a distributor of Chinese material. The allegation involved * * * pounds of technical-grade potassium permanganate. * * * reported that, after receiving an offer of * * * per pound from Carus in * * *, it solicited an offer of * * * per pound from a distributor of the Chinese product. As a result of this offer, Carus lowered its price to * * * per pound and was awarded the contract, which involved * * *.

Purchaser No. 2: The petitioner alleged that in * * * it had to lower its price to * * * from * * * per pound to * * * per pound because of an offer of * * * per pound from a distributor of Chinese material. The allegation involved * * * pounds of technical-grade potassium permanganate. * * * reported that Carus lowered its price from * * * per pound to * * * per pound to match an offer by a distributor of the Chinese product in * * *. * * * indicated that the purchase from Carus involved * * *.

Purchaser No. 3: Carus alleged that in * * * it lowered its price to * * * from * * * per pound to * * * per pound because of an offer of * * * per pound from a distributor of Chinese material. * * *. * * *, the customer solicited offers from different distributors, and after receiving a low offer on Chinese material, informed Carus of the offer and allowed Carus to lower its price. Carus obliged * * * and was awarded the contract. * * *.

APPENDIX A

**THE COMMISSION'S NOTICE OF INVESTIGATIONS AND
HEARING AND NOTICE OF POSTPONEMENT OF HEARING**

[Investigations Nos. 731-TA-125 and 126
(Final)]

**Potassium Permanganate From the
People's Republic of China and Spain**

AGENCY: International Trade
Commission.

ACTION: Institution of final antidumping
investigations and scheduling of a
hearing to be held in connection with
the investigations.

EFFECTIVE DATE: August 9, 1983.

SUMMARY: As a result of affirmative
preliminary determinations by the U.S.
Department of Commerce that there is a
reasonable basis to believe or suspect
that imports of potassium permanganate
from the People's Republic of China
(China) and Spain, provided for in item
420.28 of the Tariff Schedules of the
United States, are being, or are likely to

be, sold in the United States at less than fair value (LTFV) within the meaning of section 731 of the Tariff Act of 1930 (19 U.S.C. 1673), the United States International Trade Commission hereby gives notice of the institution of investigations Nos. 731-TA-125 and 126 (Final) under section 735(b) of the act (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of such merchandise. Unless the investigations are extended, the Department of Commerce will make its final dumping determinations in the cases on or before October 17, 1983, and the Commission will make its final injury determinations by December 7, 1983 (19 CFR 207.25).

FOR FURTHER INFORMATION CONTACT: Mr. Robert Carpenter, Office of Investigations, (202-523-0399), U.S. International Trade Commission, Washington, D.C. 20436.

SUPPLEMENTARY INFORMATION:

Background.—On April 8, 1983, the Commission determined, on the basis of the information developed during the course of its preliminary investigations, that there was a reasonable indication that an industry in the United States was materially injured by reason of allegedly LTFV imports of potassium permanganate from China and Spain. The preliminary investigations were instituted in response to a petition filed on February 22, 1983, by counsel on behalf of Carus Chemical Co., of LaSalle, Ill.

Participation in the investigations.—Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's Rules of Practice and Procedure (19 CFR 201.11) not later than 21 days after the publication of this notice in the *Federal Register*. Any entry of appearance filed after this date will be referred to the Chairman, who shall determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Upon the expiration of the period for filing entries of appearance, the Secretary shall prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations, pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)). Each document filed by a party to these investigations must be served on all other parties to the investigations (as

identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service (19 CFR 201.16(c), as amended by 47 FR 33682, Aug. 4, 1982).

Staff report.—A public version of the prehearing staff report containing preliminary findings of fact in these investigations will be placed in the public record on October 13, 1983, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing.—The Commission will hold a hearing in connection with these investigations beginning at 10:00 a.m. on October 28, 1983, in the Hearing Room, U.S. International Trade Commission Building, 701 E Street, NW., Washington, D.C. 20436. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission, not later than the close of business (5:15 p.m.) on October 17, 1983. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 10:00 a.m. on October 18, 1983, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is October 24, 1983.

Testimony at the public hearing is governed by section 207.23 of the Commission's rules (19 CFR 207.23, as amended by 47 FR 33682, Aug. 4, 1982). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 (19 CFR 207.22, as amended by 47 FR 33682, Aug. 4, 1982). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on November 7, 1983.

Written submissions.—As mentioned, parties to these investigations may file prehearing and posthearing briefs by the dates shown above. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before November 7, 1983. A signed original and fourteen (14) true copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the

Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired shall be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

For further information concerning the conduct of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and C (19 CFR Part 207, as amended by 47 FR 33682, Aug. 4, 1982), and Part 201, subparts A through E (19 CFR Part 201, as amended by 47 FR 33682, Aug. 4, 1982).

This notice is published pursuant to section 207.20 of the Commission's rules (19 CFR 207.20)

Issued: August 22, 1983.

By order of the Commission.

Kenneth R. Mason,
Secretary.

(FR Doc. 83-23943 Filed 8-30-83; 8:48 am)
BILLING CODE 7020-02-M

[Investigation Nos. 731-TA-125 and 126
(Final)]

**Potassium Permanganate From the
People's Republic of China and Spain**

AGENCY: United States International
Trade Commission.

ACTION: In conformance with the
determination of the International Trade
Administration of the Department of
Commerce to amend its schedule for the
conduct of the referenced investigations,
the Commission hereby revises its
schedule as follows: the prehearing
conference will be held on November 21,
1983; the hearing will be held on
December 2, 1983; and the Commission's
final determinations shall be issued on
or before January 5, 1984.

EFFECTIVE DATE: October 7, 1983.

SUPPLEMENTARY INFORMATION: The
Commission instituted these final
antidumping investigations effective
August 9, 1983, and scheduled a hearing
to be held in connection therewith for
October 28, 1983 (48 FR 39519, Aug. 31,
1983). However, the Department of
Commerce extended the investigations
in response to requests from producers
of the subject merchandise in the
People's Republic of China and Spain.
The effect of the extensions was to
change the scheduled date for
Commerce to make its final
determinations from October 17, 1983, to
November 22, 1983. Accordingly, the
Commission is revising its schedule in
the investigations to conform with
Commerce's new schedule.

The Commission's hearing, which was
to have been held on October 28, 1983,
has been rescheduled to begin at 10 a.m.
on December 2, 1983, in the Hearing
Room, U.S. International Trade
Commission Building, 701 E Street NW.,
Washington, D.C. Requests to appear at
the hearing should be filed in writing
with the Secretary to the Commission
not later than the close of business (5:15
p.m.) on November 18, 1983. All persons
desiring to appear at the hearing and
make oral presentations should file
prehearing briefs and attend a
prehearing conference to be held at
10:30 a.m. on November 21, 1983, in

room 177 of the U.S. International Trade
Commission Building. The deadline for
filing prehearing briefs is November 28,
1983. A public version of the prehearing
staff report containing preliminary
findings of fact in these investigations
will be placed in the public record on
November 17, 1983. The deadline for
filing posthearing briefs will be
announced at the hearing.

FOR FURTHER INFORMATION CONTACT:
Robert Carpenter (202-523-0399), Office
of Investigations, U.S. International
Trade Commission, Washington, D.C.
20436.

By order of the Commission.

Issued: October 11, 1983.

Kenneth R. Mason,
Secretary.

[FR Doc. 88-28424 Filed 10-18-83; 8:45 am]

BILLING CODE 7020-02-01

A-11

APPENDIX B

**THE COMMISSION'S CALENDAR
OF THE PUBLIC HEARING**

CALENDAR OF PUBLIC HEARING

Those listed below appeared as witnesses at the United States International Trade Commission's hearing:

Subject : Potassium Permanganate from The
People's Republic of China and
Spain

Inv. Nos. : 731-TA-125 and 126 (Final)

Date and time : December 2, 1983 - 10:00 a.m.

Sessions were held in connection with the investigation in the Hearing Room of the United States International Trade Commission, 701 E Street, N.W., in Washington.

In support of the imposition of antidumping duties:

Winston & Strawn)
Washington, D.C.)
Debevoise and Liberman) --Counsel
Washington, D.C.)
on behalf of

Carus Chemical Company of LaSalle, Illinois

John J. Bortak, Vice President of Carus Corporation
and General Manager of Carus Chemical Company

Winston & Strawn

Paul Bousquet)
Kenneth Berlin) --OF COUNSEL

Debevoise and Liberman

Charles R. Johnson, Jr. --OF COUNSEL

In opposition to the imposition of antidumping duties:

Stein, Shostak, Shostak & O'Hara--Counsel
Washington, D.C.
on behalf of

ICC Industries, Inc., of New York, N.Y.,
The ICD Group, of New York, N.Y., and
Wego Chemical and Mineral Corporation, New York, N.Y.

Paul Falick, General Counsel, ICC Industries, Inc.

Jeffrey S. Kane, Product Manager, ICC Industries, Inc.

Salvatore Morreale, Product Manager, ICD Group, Inc.

Jiang Yunlung, Representative of China National Chemicals
Import & Export Corporation (Sinochem)

Steven P. Kersner)
Irwin P. Altshuler)--OF COUNSEL
Donald S. Stein)

Haight, Gardner, Poor & Havens--Counsel
Washington, D.C.
on behalf of

China National Chemical Import & Export Corporation

Randi Breslow--OF COUNSEL

Kaplan, Russin & Vecchi--Counsel
Washington, D.C.
on behalf of

Asturquimica, S.A. of Spain

Dennis James, Jr.)
Kathleen F. Patterson)--OF COUNSEL

APPENDIX C

**THE DEPARTMENT OF COMMERCE'S
FINAL DETERMINATION**

[A-570-001]

Final Determination of Sales at Less Than Fair Value; Potassium Permanganate From the People's Republic of China

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We have determined that potassium permanganate from the People's Republic of China (PRC) is being sold in the United States at less than fair value and that "critical circumstances" exist with respect to exports of potassium permanganate from the PRC. The U.S. International Trade Commission (ITC) will determine, within 45 days of publication of this notice, whether these imports are materially injuring, or are threatening to materially injure, a United States industry and whether material injury or threat of material injury is by reason of massive imports of the merchandise over a relatively short period of time.

EFFECTIVE DATE: December 29, 1983.

FOR FURTHER INFORMATION CONTACT: John R. Brinkmann, Jr., Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377-4929.

SUPPLEMENTARY INFORMATION:

Final Determination

We have determined that potassium permanganate from the PRC is being sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (19 U.S.C. 1673) (the Act).

We found that the foreign market value of potassium permanganate from the PRC exceeded the United States price on 100 percent of sales. These margins ranged from 36.78 percent to 42.24 percent. The overall weighted-average margin on all sales compared is 39.63 percent *ad valorem*.

Case History

On February 22, 1983, we received a petition from counsel for Carus Chemical Company on behalf of the potassium permanganate industry. In accordance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of potassium permanganate from the 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 these imports

are materially injuring, or threaten to materially injure, a United States industry. The petition was amended on June 28, 1983, to allege that critical circumstances exist with respect to exports of potassium permanganate from the PRC. After reviewing the petition, we determined that it contained sufficient grounds to initiate an antidumping investigation. We notified the ITC of our action and initiated the investigation on March 14, 1983 (48 FR 11482). On April 8, 1983, the ITC found that there is a reasonable indication that imports of potassium permanganate are materially injuring a United States industry.

A questionnaire was presented to counsel for China National Chemicals Import and Export Corporation (SINOCHEM) on March 25, 1983. Responses were received on May 2, May 25, and June 29, 1983.

We published a preliminary determination of sales at less than fair value on August 9, 1983 (48 FR 36175). On November 19–December 2, we conducted verifications in the PRC of the responses submitted by SINOCHEM and in Thailand of the data used to value the PRC factors of production. Our notice of the preliminary determination provided interested parties with an opportunity to submit views orally or in writing. On August 29, 1983, we held a public hearing.

As discussed under the "Foreign Market Value" section, we determined that the PRC is a state-controlled-economy country for the purposes of this investigation.

Scope of Investigation

The merchandise covered by this investigation is potassium permanganate, an inorganic chemical produced in free flowing, technical, and pharmaceutical grades. Potassium permanganate is currently classifiable under item 420.2800 of the *Tariff Schedules of the United States Annotated* (TSUSA).

This investigation covers the period from April 1 to December 31, 1982. Since SINOCHEM is the only known PRC exporter of potassium permanganate to the United States, we limited our investigation to that company. We examined 100 percent of United States sales made during the period of investigation.

Fair Value Comparison

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

United States Price

As provided in section 772 of the Act, we used the purchase price of the subject merchandise to represent the United States price because the merchandise was sold to unrelated purchasers prior to its importation into the United States. We calculated the purchase price based on the packed CIF United States port price less discount, to the unrelated purchaser. We made deductions from the price for PRC inland freight, ocean freight, and marine insurance.

Foreign Market Value

In accordance with section 773 of the Act, we determined foreign market value by constructing a value for potassium permanganate based on surrogate country costs. The petitioner alleged that the economy of the PRC is state-controlled to the extent that sales of the subject merchandise from that country do not permit a determination of foreign market value under 19 U.S.C. 1677b(a). After analyzing the PRC's economy and considering briefs submitted by the parties, we concluded that the PRC is a state-controlled economy country for purposes of this investigation. Among the factors involved in determining the state-controlled issue were that output quotas for purchase by the state are set and that prices are administered at least up to the quota level.

As a result, section 773(c) of the Act requires us to use prices or the constructed value of such or similar merchandise in a "non-state-controlled economy" country. Section 353.8 of the *Commerce Regulations* establishes a preference for foreign market value based upon sales prices. The regulations further provide that, to the extent possible, we should determine sales prices on the basis of prices in a "Non-state-controlled economy" country at a stage of economic development comparable to the country with the state-controlled economy.

After an analysis of countries which produce potassium permanganate, we determined that India would be the most appropriate surrogate selection. However, the Indian government declined to participate in the investigation. When we determined that there was no other country which manufactures potassium permanganate and which is at a comparable economic level as the PRC, we inquired whether there is a product which is such or similar (as defined in section 771(16) of the Act) to the PRC potassium permanganate.

Based on available information, we did not find any product that could be considered such or similar merchandise within the meaning of the Act. Therefore, pursuant to section 773 of the Act, we proceeded to construct a value based on specific components or factors of production in the PRC, valued on the basis of prices and costs in a non-state-controlled economy country "reasonably comparable" in economic development to the PRC. After analyzing those non-state-controlled economies most similar to the PRC, we concluded that Thailand was a comparable economy for valuation of the PRC factors of production. Valuation of the PRC raw materials, labor and energy was based on publicly available pricing and cost information in Thailand. Valuation of certain costs included in factory overhead were based on the factory experience of a chemical industry company in Thailand. To these values we added an amount for general expenses and profit as required by section 773(e)(1)(B) of the Act, and the cost of all containers and coverings and other expenses, as required by section 773(3)(1)(C) of the Act.

Verification

In accordance with section 776(a) of the Act, we verified data used in making this determination in this investigation by using verification procedures which included on-site inspection of manufacturer's facilities and examination of company records and selected original source documentation containing relevant information.

Affirmative Determination of Critical Circumstances

Counsel for petitioner alleged that imports of potassium permanganate from the PRC present "critical circumstances." Under section 735(a)(3) of the Act, critical circumstances exist when we find that: (1)(a) There is a history of dumping in the United States or elsewhere of the merchandise under investigation, or (b) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise under investigation at less than its fair value; and (2) there have been massive imports of the merchandise under investigation over a relatively short period.

In proceeding to consider whether there is a history of dumping of potassium permanganate from the PRC in the U.S. or elsewhere, we reviewed past antidumping findings of the Department of the Treasury as well as past Department of Commerce

antidumping duty orders. There have been no past United States antidumping determinations on potassium permanganate from the PRC. We also reviewed the antidumping actions of other countries made available to us through the Antidumping Code Committee established by the Agreement on Implementation of Article IV of the General Agreement on Tariffs and Trade. We found no history of dumping of this product from the PRC.

In determining whether the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise at less than fair value, we considered all information on the record. In the preliminary determination we determined that the unique circumstances found in this industry are such that we can impute knowledge of sales at less than fair value to the importers even though they could not anticipate the exact basis for our fair value determination.

Counsel for importers of potassium permanganate argues that in past cases we stated that because importers of merchandise from state-controlled economies cannot anticipate how we would calculate the foreign market value in any given case, importers cannot be charged with knowledge, either actual or constructive, that the exporter was selling merchandise at less than its fair value (Canned Mushrooms from the People's Republic of China (48 FR 22770). Therefore, counsel argues we should reverse our preliminary affirmative critical circumstances determination.

"Canned Mushrooms" should not be interpreted so as to imply that in all state-controlled economy cases, an importer could not have or should not have known that the sales in question were at less than fair value simply because they could not anticipate precisely how we would determine foreign market value. Neither the Act nor its legislative history supports a conclusion that Congress intended to exclude state-controlled economy cases from affirmative determinations of critical circumstances when there are massive imports simply because there is no history of dumping.

In state-controlled economy cases a narrow interpretation of the "knowledge of dumping" test would preclude us from ever reaching an affirmative critical circumstances determination in such instances (assuming there is no history of dumping). Therefore, in our analysis of the "knowledge of sales at less than fair value" issue in state-controlled economy investigations, we must develop tests for determining whether

the importers had, or should have had, knowledge of sales at less than fair value which are not dependent upon specific actual or implied knowledge of which country would be chosen as a surrogate for determining fair value.

We must make the required determination on a case by case basis using all the available information and drawing upon market conditions of the industry subject to the investigation. In the instant case, the product under investigation is potassium permanganate, a fungible product which is produced and marketed primarily by Carus Chemicals of the United States, Asturquímica of Spain and several companies in the PRC. While the petitioner, Carus Chemicals, commands the largest share of the U.S. market, its U.S. market share has dropped by approximately six percent from 1982 to 1983 (JAN-AUG). Imports from the PRC and Spain have accounted for virtually all of the remaining U.S. market share in 1982 and in 1983 (JAN-AUG). There are no other known market economy producers of potassium permanganate which export this product to world markets.

According to the ITC Preliminary Report dated April, 1983, distribution of potassium permanganate, whether domestic or imported, takes place through either direct sales to end-users, or sales to distributors who in turn supply end-user markets. While most imported potassium permanganate is sold by importers to other distributors, some sales are made directly to end-users. In general, distributors do not have agreements with domestic or foreign producers, or with importers, to sell one producer's product to the exclusion of the other's.

Based upon the foregoing we can reasonably assume that the potassium permanganate industry is a closely knit industry acutely aware of pricing from all sources, since sources are very limited. U.S. importers, which compete in the U.S. market with imported potassium permanganate from Spain and the PRC, must be aware of competitive market prices.

Counsel for the importers has produced affidavits from several major importers attesting to the fact that, based on the definition of "dumping", especially in a state-controlled economy case, they had no knowledge of or way of knowing that potassium permanganate from the PRC was being "dumped" in the U.S. market. They contend that much of the PRC permanganate they imported into the United States was purchased in Europe at competitive world prices.

We agree that the importers could not have known exactly how we would calculate fair value with regard to potassium permanganate from the PRC. However, after considering all of the circumstances in this industry, we conclude that U.S. importers knew or should have known that potassium permanganate from the PRC was being sold in the United States at less than its fair value. The following factors have led us to that conclusion:

First, since U.S. importers admitted that the potassium permanganate bought at "competitive prices" in the European market and subsequently imported into the United States was PRC material, they were clearly aware of the price at which potassium permanganate from the PRC, both directly from the PRC and indirectly through Europe, was being sold for in the U.S. and European markets.

Second, since importers were also aware of pricing of potassium permanganate in the U.S. market place from the two other alternative sources (Carus and Spain), they were aware of the entire range of pricing in a market place where pricing is a major factor in determining sales.

Third, since Spain is not a state-controlled economy country and the only other principal producer of the product that exports to the United States, importers knew or should have known, at least generally, what the value of the product is in market economy countries, and thus the minimum likely fair value of the PRC merchandise.

Fourth, during the period of March through July, 1983, (from Initiation of this investigation to Preliminary Determination), the unit price of potassium permanganate imported into the U.S. from the PRC was 22% less than permanganate imported from Spain (all other sources). Importers should have known how to anticipate our antidumping methodology for Spain. They clearly knew that potassium permanganate from the PRC was being sold well below the Spanish price.

Fifth, knowing that potassium permanganate from the PRC was priced significantly below that sold by the only other non-U.S. market economy producer (i.e., the most likely source of our fair value standard), importers knew or should have known that the PRC exports were at less than fair value.

Based on the preceding analysis, we determine that the unique circumstances found in this industry are such that we can impute knowledge of sales at less than fair value to the importers even though they could not anticipate the

exact basis for our fair value determination.

In determining whether there have been massive imports over a relatively short period, we considered the following factors: Recent import penetration levels; changes in import penetration since the date of the ITC's preliminary affirmative determination of injury; whether imports have surged recently; whether recent imports are significantly above the average calculated over the last several years (1981-1983); and whether the patterns of imports over that period may be explained by seasonal swings. Based upon our analysis of the information, we determine that imports of the products covered by this investigation appear massive over a relatively short period (March through July 1983).

For the reasons described above, we determine that critical circumstances exist with respect to potassium permanganate from the PRC.

Petitioner's Comments

Comment 1

Petitioner contends that the Department should not use as foreign market value a constructed value based on the PRC factors of production valued in Thailand, a non-producer of potassium permanganate, due to inadequacies and inaccuracies in both the PRC factors of production and in the values obtained in Thailand. Petitioner suggests as an alternative that the Department use actual home market sales prices in India, a free-market economy where potassium permanganate is produced and sold.

DOC Position

Section 773(c) of the Act gives preference to using prices of such or similar merchandise in a "non-state-controlled economy" country. We determined that India was the most appropriate surrogate selection, but the Indian government declined to participate in the investigation. Therefore, we determined foreign market value by constructing a value for potassium permanganate based on cost data obtained in Thailand. All data used in constructing a value for potassium permanganate were satisfactorily verified in accordance with section 776(a) of the Act.

Comment 2

Petitioner contends that the Department should use the incomplete data in such a way as to minimize inaccuracies induced by the incomplete information, since SINOCHEM refused to provide to the Department prior to

verification requested information on production volumes and production processes for four of the six plants.

DOC Position

We determined that constructed value should be calculated based on weighted-average factors of production, weighing each plant according to its total output. Indications are that the most efficient of the PRC potassium permanganate plants we verified may be representative of the four plants not verified. However, the PRC did not give us production volume and processes for all plants. Therefore, we will not attribute the factors of production from the most efficient verified plant to the other non-verified plant source that would allow SINOCHEM effectively to reduce margins by selecting the most efficient plant. Accordingly, we based our factors of production for potassium permanganate from the PRC on data from the two verified plants (representing 56 percent of total 1982 production), weighted to reflect their relative production volumes. The net result is that the more efficient plant is weighted as 11 percent and the less efficient plant is weighted as 89 percent of the production under consideration.

Comment 3

The Department must use the actual price quotations it has obtained and verified in Thailand as the basis for valuing the raw materials potassium hydroxide and manganese ore. Any adjustments to these prices to account for the fact that they must be imported or that they do not comport with world market prices would deviate from § 353.6(a)(1) of Commerce Regulations that such cost of materials in the free-market economy be determined in the "ordinary course of business."

DOC Position

In both instances we used those prices actually verified in Thailand. For manganese dioxide we used the average price of the domestic product.

With regard to potassium hydroxide (KOH), we used the imported price of potassium hydroxide from France, as the product is not domestically produced in Thailand but must be imported. Although the PRC potassium permanganate producers do purchase locally produced KOH, we have no information concerning petitioner's allegation that the PRC must import the raw material to produce the KOH. Neither do we have the information from which to develop a verified market price in the country of origin of the imported KOH. Our inability to develop verified information on both issues is

due to failure of respondent to provide, on a timely basis, requested information. Accordingly, the most reliable (and the only verifiable) price for KOH in Thailand is the price from France for 90 percent flake KOH.

A price for liquid KOH was not available in Thailand but was derived by applying to the imported flake price, the ratio by which U.S. liquid KOH at 100 percent exceeds the U.S. flake price at 100 percent.

Comment 4

Petitioner contends that since SINOCHEM reported, and the ITA verified, raw material usages in potassium permanganate production in the PRC on a "100 percent basis" (i.e., that usages were reported as if the raw material were 100 percent pure), the Department must ensure that the values obtained for raw material in Thailand are converted from an "as is basis" to a "100 percent basis."

DOC Response

The raw material usages verified and used in the constructed value calculations are derived from the actual amounts of raw materials used. The values obtained in Thailand for these materials are those most like in chemical composition to the actual materials used in the PRC.

Comment 5

Petitioner argues that the Department must discard the coal usage figure it used for one of the verified plants. The Petitioner bases this argument on the following points:

First, it is technologically impossible. Second, it represents a full 50 percent decrease from the figure reported by the PRC. Third, it is considerably less than that reported by the PRC at their other coal-fired plants. Fourth, it is dramatically less than the second verified plant with its eight times greater output and commensurate economies of scale. Fifth, the laboratory report used by the Department to determine that the plant used low cost lignite coal was submitted after the verification process had been completed.

DOC Position

The laboratory report and usage figure in question were verified on site in the PRC. However, we have adjusted the coal usage figure of the verified plant due to the inconsistencies of the coal usage figures noted in the production records of the four plants not verified.

The differences in coal usage by each plant raised questions as to the representativeness of the coal usage of

the verified plant. Since we were denied the opportunity to preview and consider for verification the factors of production for the four other potassium permanganate plants, the verified plant's coal usage figure has been adjusted to reflect a weight-average of coal usage for the four plants for which the information is available.

Comment 6

Petitioner argues that the Department, in calculating constructed value, should use the price of imported chemical grade manganese dioxide imported into Thailand rather than domestic prices for battery grade manganese of unknown purity.

DOC Position

We obtained prices in Thailand for both domestically produced and imported manganese dioxide. When requesting domestic prices for manganese dioxide with a purity equivalent to the type used by the PRC potassium permanganate producers, three different sources responded with price quotations for the battery grade; although information on specific purities was not available. Furthermore, government of Thailand mineral production statistics show a unit price for battery grade manganese dioxide which is two times the unit price for the chemical grade. Finally, if the estimated costs incumbent upon bringing the imported manganese dioxide from the country of origin into Thailand are deducted from the average import price, the adjusted import price is approximately the same as the average domestic price.

Therefore, based on the fact that the PRC potassium permanganate producers purchase their manganese dioxide locally and that the local Thailand price is supported by the estimated adjusted import prices, we used the local Thailand price to value the PRC manganese dioxide.

Respondent's Comments

Comment 1

The Respondent argues that if the Department decides to use the imported price of potassium hydroxide in solid (flake) form in Thailand, all expenses associated with the importation of potassium hydroxide should be deducted. It further argues that an adjustment must be made between the solid and liquid forms based on the pricing differentials in a market economy where both are available.

DOC Response

This issue was discussed in detail in our response to "Petitioner Comment 3." Additionally, we examined the pricing structure of liquid and solid potassium hydroxide in the U.S. and determined that an adjustment to liquid potassium hydroxide was warranted based on price differentials between the two forms. Since our analysis also showed that the price of potassium hydroxide imported into Thailand was consistently below quoted U.S. prices, we felt that any adjustment to the imported price to cover the cost of importing the product would result in an unrealistic distortion of the Thai market price. Accordingly, we made no adjustment to the imported price to cover the costs of importation.

Comment 2

Respondent contends that based on the BTU output of the fuel oil used in one of the verified PRC potassium plants, the Department should use the #1500 fuel oil prices obtained in Thailand. If the Thailand fuel oil is not locally refined the crude oil locally produced, adjustments should be made to account for the fact that the PRC produces and refines its own crude and fuel oil.

DOC Response

As the BTU output of Thailand #1500 fuel oil is approximately equivalent to the BTU output of the fuel oil used in the PRC plant, the cost of #1500 fuel oil was used to value the PRC factor of production. Since the price of fuel oil in Thailand is set by the government, the question of whether or not the fuel oil is refined locally or imported is not a determining factor of the domestic market price for fuel oil. Additionally, in 1982, crude oil imported for distillation was exempt from all duty and taxes, while the duty for imported fuel oil was minimal. Therefore, we find no basis for making the requested adjustment.

Comment 3

Respondent contends that the labor rates obtained from a U.S. owned chemical plant in Thailand are higher than those which should be applied to the PRC potassium permanganate plant. Specifically, it argues that the rates obtained refer to an employee with a higher overall skill level, greater fringe benefits, and longer years on the job than what would be found in a PRC potassium permanganate plant.

DOC Position

We determined during verification that the PRC potassium permanganate employees are salaried and that

monthly wages are paid when employees were off the job for leave or sickness. The PRC plant employees work 5½ days per week. No other benefits are paid (for health, insurance, etc.). The Thailand labor rates verified were on the same basis as the PRC potassium permanganate plant employees, salaried, with paid leave, and 5½ day week. However, Thailand employees receive health insurance and savings plan benefits which cost the employer about 2 percent of the gross monthly salaries. Accordingly, the Thailand labor rates used to value the PRC labor rates were reduced by 2 percent.

We found no evidence to indicate, as respondent suggests, that the labor rates paid to Thailand workers at different skill levels were any higher in the U.S. owned plant than elsewhere in Thailand.

Importers' Comments

Comment 1

ICC Industries, Inc., the ICD Group, and Advent Chemical Co., U.S. importers of potassium permanganate, entered this proceeding to argue that the Department's finding of "critical circumstances" in the preliminary determination was inconsistent with section 733(e) of the Act and should be reversed. They contend that there is no reasonable basis to believe or suspect that the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of this investigation at less than its fair value. In past antidumping proceedings, Commerce has consistently been unwilling to impute to importers a knowledge of dumping involving state-controlled economies because importers cannot know, or have no way of finding out, whether merchandise from state-controlled economies is being sold in the United States at less than its fair value. This is because in state-controlled economy cases, fair value cannot be ascertained until Commerce has selected a surrogate country, an event which occurs after an antidumping proceeding has already been initiated.

DOC Position

The Department's response to this comment is contained in the "Affirmative Determination of Critical Circumstances" section of this notice.

Comment 2

If the Department persists in imputing to importers a knowledge of dumping it should consider that potassium

permanganate manufactured by the petitioner is available for purchase in Europe, and such potassium permanganate is priced below potassium permanganate from the PRC and Spain. It would be unreasonable to expect importers, who knew they could purchase petitioner's potassium permanganate in Europe at prices less than PRC produced potassium permanganate, to know or even suspect that the latter was priced at less than fair value.

DOC Position

The importer submits no information to substantiate this claim. From information available to the Department it appears that sales by petitioner to Europe terminate before the period of investigation here and thus, even if low-priced, were not relevant to this determination.

Comment 3

There is no reasonable basis to believe or suspect that there have been massive imports of the class or kind of merchandise subject to the investigation over a relatively short period of time. There is no discernible trend of imports steadily increasing on a monthly basis throughout 1983 although there was a one month surge in 1983 (March to April) and in 1982 (February to March), which gives credence to the argument that increases during this calendar period are the result of a seasonal rise in demand for the product. Furthermore, dramatic increases in imports from the PRC in March to April 1983 were matched by even more dramatic increases in imports from all other countries during this period.

DOC Position

The Department's response to this comment is contained in the "Affirmative Determination of Critical Circumstances" section of this notice.

Continuation of Suspension of Liquidation

We are directing the U.S. Customs service to continue to suspend liquidation of all entries of potassium permanganate from the PRC subject to this investigation which are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the Federal Register. The Customs Service shall continue to require a cash deposit, the posting of a bond or other security equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price. The bond or cash deposit

requirements established in our preliminary determination of August 9, 1983, are no longer in effect. The weighted-average margins are as follows:

Manufacturers/producers/exporters	Weighted-average margin percent
SINOCHEN	39.63
All Other Manufacturers/Producers/Exporters	39.63

ITC Notification

In accordance with section 735(d) of the Act, we will notify the ITC of our determination. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

The ITC will make its determination whether these imports are materially injuring, or threatening to materially injure, a U.S. industry within 45 days of the publication of this notice. If the ITC determines that material injury or threat of material injury does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that such injury does exist, we will issue an antidumping duty order directing Customs officers to assess an antidumping duty on potassium permanganate from the PRC entered, or withdrawn from warehouse, for consumption after the suspension of liquidation, equal to the amount by which the foreign market value exceeds the United States price. This determination is being published pursuant to section 735(d) of the Act (19 U.S.C. 1673(d)).

Dated: December 22, 1983.

William T. Archey,

Acting Assistant Secretary for Trade Administration.

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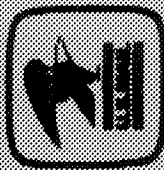
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