

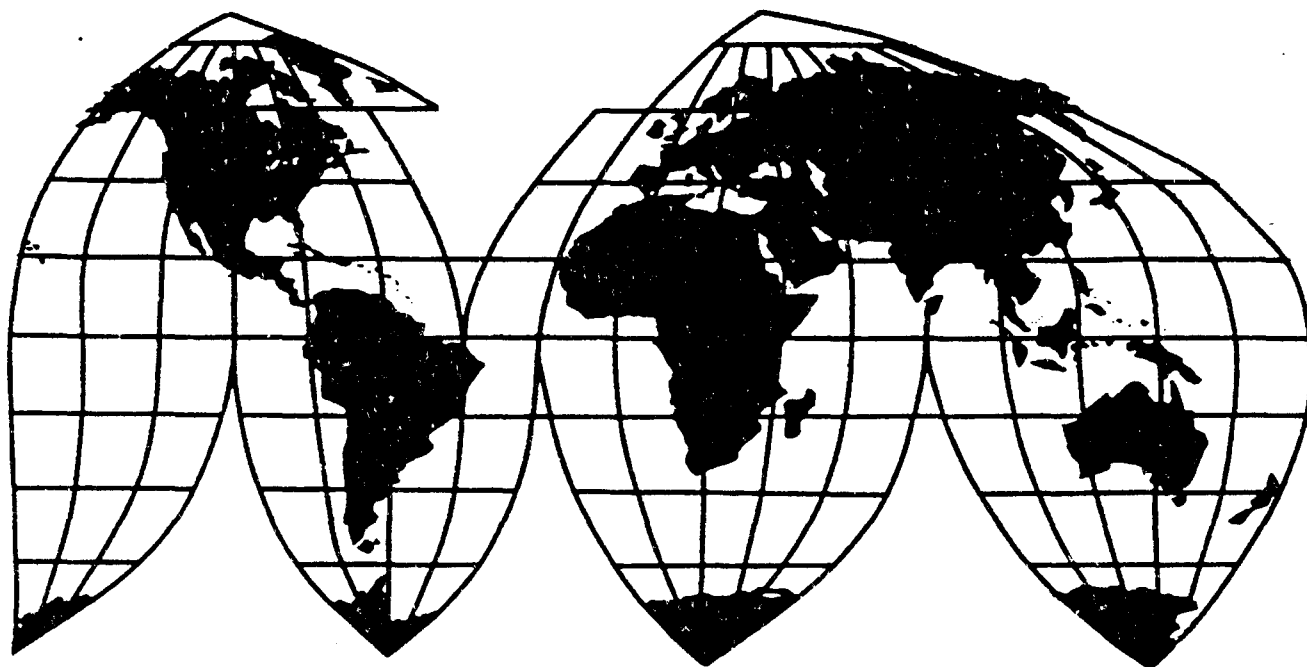
Chloropicrin From China

Investigation No. 731-TA-130 (Review)

Publication 3175

April 1999

U.S. International Trade Commission



Washington, DC 20436

U.S. International Trade Commission

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CONTENTS

	<i>Page</i>
Determination	1
Views of the Commission	3
Information obtained in the review	I-1
Introduction	I-3
The original investigation	I-3
Commerce's final results of expedited sunset review	I-3
The product	I-4
Scope	I-4
Description and uses	I-4
The industry in the United States	I-5
U.S. producers	I-5
U.S. production, capacity, and shipments	I-5
U.S. imports and consumption	I-6
U.S. imports	I-6
Apparent U.S. consumption	I-7
The industry in China	I-7
Appendix	
A. <i>Federal Register</i> notices	A-1
B. Statement on adequacy	B-1
Tables	
I-1. Chloropicrin: U.S. producers' capacity, production, and U.S. shipments, 1980-83 and 1997	I-6
I-2. Chloropicrin: U.S. imports from China, 1980-83 and 1997	I-7
I-3. Chloropicrin: U.S. producers' U.S. shipments, U.S. imports, and apparent U.S. consumption, 1980-83 and 1997	I-8

Note.--Information that would reveal confidential operations of individual concerns may not be published and therefore has been replaced by asterisks (***)

GLOSSARY

ASHTA	ASHTA Chemicals, Inc.
Commerce	U.S. Department of Commerce
Commission	U.S. International Trade Commission
Customs	U.S. Customs Service
Dow	Dow Chemical Co.
EPA	U.S. Environmental Protection Agency
FR	<i>Federal Register</i>
HoltraChem	HoltraChem Manufacturing Co., L.L.C.
HTS	Harmonized Tariff Schedule of the United States
LCP	LPC Chemicals & Plastics, Inc.
Niklor	Niklor Chemical Co., Inc.
<i>Response</i>	Response to the Commission's Notice of Institution
SINOCHEM	China National Chemicals Import and Export Corp.
Trinity	Trinity Manufacturing, Inc.

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation No. 731-TA-130 (Review)

CHLOROPICRIN FROM CHINA

DETERMINATION

On the basis of the record¹ developed in the subject five-year review, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)) (the Act), that revocation of the antidumping duty order on chloropicrin from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

BACKGROUND

The Commission instituted this review on November 2, 1998 (63 F.R. 58761), and determined on February 4, 1999, that it would conduct an expedited review (64 F.R. 9173, Feb. 24, 1999).

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

VIEWS OF THE COMMISSION

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

I. BACKGROUND

In March 1984, the Commission determined that an industry in the United States was being materially injured by reason of imports of chloropicrin from China that were being sold at less than fair value.¹ That same month, the Department of Commerce (“Commerce”) issued an antidumping duty order on imports of chloropicrin from China.² On November 2, 1998, the Commission instituted a review pursuant to section 751(c) of the Act to determine whether revocation of the antidumping duty order on chloropicrin from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.³

In five-year reviews, the Commission first determines whether to conduct a full review (which would include a public hearing, the issuance of questionnaires, and other procedures) or an expedited review. Specifically, the Commission determines whether individual responses to the notice of institution are adequate and, based on those responses deemed individually adequate, whether the collective responses submitted by two groups of interested parties -- domestic interested parties (such as producers, unions, trade associations, or worker groups) and respondent interested parties (such as importers, exporters, foreign producers, trade associations, or subject country governments) -- demonstrate a sufficient willingness among each group to participate and provide information requested in a full review, and if not, whether other circumstances warrant a full review.⁴ If responses from either group of interested parties are found to be inadequate, the Commission may determine, pursuant to section 751(c)(3)(B) of the Act, to conduct an expedited review because inadequate responses from a group of parties indicate that they are not sufficiently willing to participate in a full review and provide information requested throughout such a proceeding.

In this review, the Commission received a joint response, containing company-specific information, from four domestic producers: ASHTA Chemicals, Inc. (“ASHTA”), HoltraChem Manufacturing Company, L.L.C. (“HoltraChem”), Niklor Chemical Company, Inc. (“Niklor”), and Trinity Manufacturing, Inc. (“Trinity”). The participating producers account for all known domestic production of chloropicrin. These producers also filed joint comments on adequacy, arguing that the review should be expedited because no respondent interested party responded to the Commission’s notice of institution.⁵

The Commission determined that the domestic producers’ responses to the Commission’s notice of institution were adequate.⁶ The Commission also determined that the respondent interested party group

¹ Chloropicrin from the People’s Republic of China, Inv. No. 731-TA-130 (Final), USITC Pub. No. 1505 (Mar. 1984) (“Original Determination”).

² 49 Fed. Reg. 10691 (Mar. 22, 1984).

³ 63 Fed. Reg. 58761 (Nov. 2, 1998).

⁴ See 19 C.F.R. § 207.62(a); 63 Fed. Reg. 30599, 30602-05 (June 5, 1998).

⁵ See 19 C.F.R. § 207.62(b) (authorizing, *inter alia*, all interested parties that have responded to the notice of institution to file comments with the Commission on whether the Commission should conduct an expedited review).

⁶ Confidential Report (“CR”) at Appendix B, Public Report (“PR”) at Appendix B. See also 64 Fed. Reg. 9173 (continued...)

response was inadequate because no foreign producers or U.S. importers of subject merchandise responded to the Commission's notice of institution. Pursuant to section 751(c)(3)(B) of the Act, the Commission voted to conduct an expedited review.⁷

On March 9, 1999, the domestic producers filed comments pursuant to 19 C.F.R. § 207.62(d) urging the Commission to determine that revocation of the antidumping duty order on chloropicrin would be likely to lead to recurrence of material injury within a reasonably foreseeable time.

II. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. Domestic Like Product

In making its determination under section 751(c), the Commission defines the "domestic like product" and the "industry."⁸ The Act defines "domestic like product" as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle."⁹ In its final five-year review determination, Commerce defined the subject merchandise as "chloropicrin, also known as trichloronitromethane ... a pre-plant soil fumigant (pesticide) ... currently classifiable under Harmonized Tariff Schedule (HTS) item number 2904.90.50."¹⁰

Chloropicrin is a highly toxic liquid chemical compound, used primarily as an active agent in pre-plant soil fumigants for killing fungi. Small amounts are also used to control insects and rodents in grain storage and to prevent wood decay. The expense of using chloropicrin normally limits its application to high-value crops such as strawberries, flowers, and fruit trees, although it is also used for relatively lower-value crops which require less fumigant per acre.¹¹

We find, based on the facts available, that the appropriate definition of the domestic like product in this expedited five-year review is the same as Commerce's scope¹² and unchanged from the Commission's original determination.¹³

B. Domestic Industry

Section 771(4)(A) of the Act defines the relevant 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."¹⁴ In defining the domestic industry, the Commission's general practice has been to include in the industry producers of all domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market, provided that

⁶ (...continued)
(Feb. 24, 1999).

⁷ 19 U.S.C. § 1675(c)(3)(B); *see* 64 Fed. Reg. 9173 (Feb. 24, 1999).

⁸ 19 U.S.C. § 1677(4)(A).

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

¹⁰ 64 Fed. Reg. 11440 (Mar. 9, 1999).

¹¹ CR at I-4 to I-5, PR at I-4.

¹² CR at I-4, PR at I-4.

¹³ Original Determination at 3.

¹⁴ 19 U.S.C. § 1677(4)(A).

adequate production-related activity is conducted in the United States.¹⁵ Accordingly, we find that the domestic industry includes all domestic producers of chloropicrin.

III. REVOCATION OF THE ORDER ON CHLOROPICRIN IS LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME

A. Legal Standard

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

Section 752(a) of the Act states that in a five-year review “the Commission shall determine whether revocation of an order, or termination of a suspended investigation, would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.”¹⁶ The Uruguay Round Agreements Act (“URAA”) Statement of Administrative Action (“SAA”) states that “under the likelihood standard, the Commission will engage in a counter-factual analysis; it must decide the likely impact in the reasonably foreseeable future of an important change in the status quo -- the revocation [of the order] ... and the elimination of its restraining effects on volumes and prices of imports.”¹⁷ Thus, the likelihood standard is prospective in nature.¹⁸ The statute states that “the Commission shall consider that the effects of revocation ... may not be imminent, but may manifest themselves only over a longer period of time.”¹⁹ According to the SAA, a “‘reasonably foreseeable time’ will vary from case-to-case, but normally will exceed the ‘imminent’ timeframe applicable in a threat of injury analysis [in antidumping and countervailing duty investigations].”^{20 21}

¹⁵ See, e.g., United States Steel Group v. United States, 873 F. Supp. 673, 682-83 (Ct. Int’l Trade 1994), *aff’d*, 96 F.3d 1352 (Fed. Cir. 1996).

¹⁶ 19 U.S.C. § 1675a(a).

¹⁷ URAA SAA, H.R. Rep. No. 103-316, vol. I, at 883-84 (1994).

¹⁸ While the SAA states that “a separate determination regarding current material injury is not necessary,” it indicates that “the Commission may consider relevant factors such as current and likely continued depressed shipment levels and current and likely continued prices for the domestic like product in the U.S. market in making its determination of the likelihood of continuation or recurrence of material injury if the order is revoked.” SAA at 884.

¹⁹ 19 U.S.C. § 1675a(a)(5).

²⁰ SAA at 887. Among the factors that the Commission should consider in this regard are “the fungibility or differentiation within the product in question, the level of substitutability between the imported and domestic products, the channels of distribution used, the methods of contracting (such as spot sales or long-term contracts), and lead times for delivery of goods, as well as other factors that may only manifest themselves in the longer term, such as planned investment and the shifting of production facilities.” *Id.*

²¹ In analyzing what constitutes a reasonably foreseeable time, Commissioners Crawford and Koplan examine all the current and likely conditions of competition in the relevant industry. They define “reasonably foreseeable time” as the length of time it is likely to take for the market to adjust to a revocation. In making this assessment, they consider all factors that may accelerate or delay the market adjustment process including any lags in response by foreign producers, importers, consumers, domestic producers, or others due to: lead times; methods of contracting; the need to establish channels of distribution; product differentiation; and any other factors that may only manifest themselves in the longer term. In other words, their analysis seeks to define “reasonably foreseeable (continued...)”

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

Section 751(c)(3) of the Act and the Commission’s regulations provide that in an expedited five-year review the Commission may issue a final determination “based on the facts available, in accordance with section 776.”^{24 25} As noted above, no respondent interested parties responded to the Commission’s notice of institution. Accordingly, we have relied on the facts available in this review, which consist primarily of the record in the original investigation, limited information collected by Commission staff since the institution of this review, and information submitted by ASHTA, HoltraChem, Niklor, and Trinity.

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

²¹ (...continued)

time” by reference to current and likely conditions of competition, but also seeks to avoid unwarranted speculation that may occur in predicting events into the more distant future.

²² 19 U.S.C. § 1675a(a)(1). The statute further provides that the presence or absence of any factor that the Commission is required to consider shall not necessarily give decisive guidance with respect to the Commission’s determination. 19 U.S.C. § 1675a(a)(5). While the Commission must consider all factors, no one factor is necessarily dispositive. SAA at 886.

²³ Section 752(a)(1)(D) of the Act directs the Commission to take into account in five-year reviews involving antidumping proceedings “the findings of the administrative authority regarding duty absorption.” 19 U.S.C. § 1675a(a)(1)(D). Commerce has not issued an affirmative duty absorption finding in this matter. 64 Fed. Reg. at 11442 (Mar. 9, 1999).

²⁴ 19 U.S.C. § 1675(c)(3)(B); 19 C.F.R. § 207.62(e). Section 776 of the Act, in turn, authorizes the Commission to “use the facts otherwise available” in reaching a determination when: (1) necessary information is not available on the record or (2) an interested party or any other person withholds information requested by the agency, fails to provide such information in the time or in the form or manner requested, significantly impedes a proceeding, or provides information that cannot be verified pursuant to section 782(i) of the Act. 19 U.S.C. § 1677e(a). The statute permits the Commission to use adverse inferences in selecting from among the facts otherwise available when an interested party has failed to cooperate by acting to the best of its ability to comply with a request for information. 19 U.S.C. § 1677e(b). Such adverse inferences may include selecting from information from the record of our original determination and any other information placed on the record. *Id.*

²⁵ Chairman Bragg and Commissioner Askey note that the statute authorizes the Commission to take adverse inferences in five-year reviews, but emphasize that such authorization does not relieve the Commission of its obligation to consider the record evidence as a whole in making its determination. “[T]he Commission balances all record evidence and draws reasonable inferences in reaching its determinations.” URAA SAA at 869 [emphasis added]. Practically speaking, when only one side has participated in a five-year review, much of the record evidence is supplied by that side, though that data is supplemented with publicly available information. We generally give credence to the facts supplied by the participating parties and certified by them as true, but base our decision on the evidence as a whole, and do not automatically accept the participating parties’ suggested interpretation of the record evidence. Regardless of the level of participation and the interpretations urged by participating parties, the Commission is obligated to consider all evidence relating to each of the statutory factors and may not draw adverse inferences that render such analysis superfluous. “In general, the Commission makes determinations by weighing all of the available evidence regarding a multiplicity of factors relating to the domestic industry as a whole and by drawing reasonable inferences from the evidence it finds most persuasive.” *Id.*

B. Conditions of Competition

In evaluating the likely impact of the subject imports on the domestic industry if the order is revoked, the statute directs the Commission to evaluate all relevant economic factors “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”²⁶ In performing our analysis under the statute, we have taken into account the following conditions of competition in the U.S. market for chloropicrin.

Consumption of chloropicrin has *** in the years since the original determination, when imports from China represented nearly *** of total domestic consumption.²⁷ With the disappearance of imports from China since the imposition of the antidumping duty order, domestic production recaptured its earlier share of the market. While domestic consumption of chloropicrin has grown, domestic supply capacity has ***.²⁸ The domestic producers characterize the market as one with continuing price competition and also note that they currently have ***.²⁹ There are no nonsubject imports.³⁰

The domestic market for chloropicrin appears to be a mature one. While production has increased in the years since the original determination, technology and production methods are essentially unchanged.³¹ Both availability and prices of raw materials have been steady.³²

Chloropicrin can be used alone, but is frequently used in conjunction with other chemical agents, notably methyl bromide. Use of methyl bromide in the United States is scheduled to be phased out over the next six years under existing environmental regulations.³³ The effect of this phase-out on chloropicrin demand is uncertain.³⁴

As in the original determination, the available evidence suggests that chloropicrin is a commodity product and that there is a relatively high degree of substitutability between imported and domestic chloropicrin.³⁵ Accordingly, the available evidence suggests, as in the original investigation, that price is an important consideration in the purchasing decision for chloropicrin.

Based on the record evidence, we find that these conditions of competition in the chloropicrin market (aside from the effects, if any, from the phase-out of methyl bromide) are not likely to change significantly in the reasonably foreseeable future. Accordingly, in this review, we find that current

²⁶ 19 U.S.C. § 1675a(a)(4).

²⁷ Total apparent U.S. consumption in 1997 was 12.3 million pounds, up from *** in 1983. Imports from China accounted for *** of the 1983 total. CR at Table I-3, PR at Table I-3. The record in this review indicates there have been no imports of chloropicrin from China from late 1983 to the present. CR at I-8, PR at I-6.

²⁸ CR at Table I-1, PR at Table I-1.

²⁹ Response of Domestic Producers at 6.

³⁰ CR at Table I-3, PR at Table I-3.

³¹ CR at I-5, PR at I-4 to I-5.

³² CR at I-5, PR at I-5.

³³ CR at I-5, PR at I-4. The goals, as of October 1998, are to achieve a 25 percent reduction from 1991 levels in 1999, 50 percent reduction in 2001, 70 percent reduction in 2003, and 100 percent reduction in 2005, although critical agricultural uses allocated after 2005 and pre-shipment and quarantine uses are exempt. *Id.*

³⁴ CR at I-5, PR at I-4.

³⁵ Original Determination at A-3 to A-4. There are two methods of producing chloropicrin. All domestic producers use a method that requires nitromethane. At the time of the original investigation, no producer outside the United States used that method, relying instead on an older method that used picric acid. Domestic producers abandoned the picric acid method in the 1950s under regulatory pressure. It is unknown at this time which method is currently used by Chinese producers, although the record in this review indicates that China produces and exports nitromethane to the United States. CR at I-11, note 33, PR at I-9, note 33.

conditions in the chloropicrin market provide us with a reasonable basis on which to assess the effects of revocation of the order in the reasonably foreseeable future.³⁶

C. Likely Volume of Subject Imports

In evaluating the likely volume of imports of subject merchandise if the order under review is revoked, the Commission is directed to consider whether the likely volume of imports would be significant either in absolute terms or relative to production or consumption in the United States.³⁷ In doing so, the Commission must consider "all relevant economic factors," including four enumerated factors: (1) any likely increase in production capacity or existing unused production capacity in the exporting country; (2) existing inventories of the subject merchandise, or likely increases in inventories; (3) the existence of barriers to the importation of the subject merchandise into countries other than the United States; and (4) the potential for product shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products.³⁸

We conclude, based on the facts available,³⁹ that subject import volume is likely to increase significantly and would be significant if the order is revoked. In making this finding, we recognize that no subject imports are currently in the domestic market.⁴⁰ In a five-year review, however, our focus is on whether subject import volume is likely to be significant in the reasonably foreseeable future if the antidumping duty order is revoked.

The record from the original investigation indicates that Chinese chloropicrin producers had the ability and willingness to quickly establish a significant presence in the U.S. market. From 1980 to 1983, China was the source of virtually all imported chloropicrin for the United States, accounting for *** percent of the total quantity of all imports during the period.⁴¹ The volume of Chinese imports increased sharply over this time period, rising from *** in 1980 to *** at its peak in 1982.⁴²

During the original investigation, Chinese production was highly oriented toward exports, with exports accounting for *** percent of all production.⁴³ China's existing chloropicrin industry was capable of rapidly increasing exports to the United States. Between 1980 and 1982, the volume of Chinese exports

³⁶ In analyzing whether revocation of a finding or order would be likely to lead to a continuation or recurrence of material injury within a reasonably foreseeable time, Commissioner Crawford takes as her starting point the date on which the revocation would actually take place. In this review, the order would be revoked in January 2000. 19 U.S.C. § 1675(c)(6)(A)(iv).

³⁷ 19 U.S.C. § 1675a(a)(2).

³⁸ 19 U.S.C. § 1675a(a)(2)(A)-(D). The record contains little or no information pertaining to existing inventories of the subject merchandise, the existence of barriers in other countries, or the potential for product shifting in China with respect to chloropicrin.

³⁹ See 19 U.S.C. § 1677e(a).

⁴⁰ The record shows no imports from China subject to the antidumping duty order in 1997. CR at Table I-2, PR at Table I-2.

⁴¹ CR at I-7 to I-8 and Table I-2, PR at I-6 and Table I-2.

⁴² CR at Table I-2, PR at Table I-2.

⁴³ CR at I-9, PR at I-7 to I-8.

rose ***.⁴⁴ By 1983 the U.S. market was China's primary export market, accounting for *** percent of all Chinese exports that year.^{45 46}

The original investigation found annual Chinese production capacity of *** at a plant located in Dalian,⁴⁷ China had also notified the U.S. Environmental Protection Agency that five other plants could produce chloropicrin, although none of the plants were known to be producing it at that time.⁴⁸ The record contains some evidence that these additional plants ***.⁴⁹ The domestic producers assert that Chinese production of chloropicrin has continued, and that the industry in China still exports its product in significant volumes to ***.⁵⁰ Based on the facts available, we infer that, at a minimum, the Dalian plant continues to have the production capacity identified in the original investigation. At the time of the original determination, Chinese production capacity available for export was *** of current total apparent U.S. consumption.⁵¹ This suggests that Chinese producers have ample ability to export significant volumes of chloropicrin to the United States if the order is revoked. Because of the similarity in the conditions of competition prevailing today and those existing prior to the imposition of the order, it is likely that Chinese producers would resume shipping significant volumes to the U.S. market in the absence of the antidumping duty order.⁵²

Thus, based on the limited record in this review, we find that significant volumes of chloropicrin from China are likely to be exported to the United States in the reasonably foreseeable future if the antidumping duty order is revoked. Consequently, we conclude that subject imports would increase to a significant level in the absence of the antidumping duty order and likely would regain significant U.S. market share absent the restraining effect of the order.⁵³

D. Likely Price Effects of Subject Imports

In evaluating the likely price effects of subject imports if the antidumping duty order is revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared to domestic like products and if the subject imports are likely to enter the United

⁴⁴ CR at Table I-2, PR at Table I-2.

⁴⁵ CR at I-9, PR at I-8.

⁴⁶ Chairman Bragg infers that, in the absence of the order, Chinese producers would revert to their historical emphasis on exporting to the United States evidenced in the Commission's original determination. Based upon the record in this review, Chairman Bragg finds that this historical emphasis will likely result in significant volumes of subject imports into the United States if the order is revoked.

⁴⁷ CR at I-9, PR at I-7 to I-9.

⁴⁸ CR at I-9, note 31, PR at I-9, note 31.

⁴⁹ CR at I-9, note 31, PR at I-9, note 31.

⁵⁰ CR at I-10 to I-11, PR at I-9. Domestic producers also note that China is a significant source and exporter of nitromethane, a raw material essential to chloropicrin production as practiced in the United States. CR at I-11, PR at I-9.

⁵¹ CR at I-9 and Table I-3, PR at I-9 and Table I-3; Original Determination at Table 13.

⁵² SAA at 884 ("If the Commission finds that pre-order conditions are likely to recur, it is reasonable to conclude that there is likelihood of continuation or recurrence of injury.").

⁵³ Vice Chairman Miller and Commissioner Hillman emphasize that they reached this conclusion in the absence of any contrary evidence or argument from respondent interested parties.

States at prices that would have a significant depressing or suppressing effect on the price of domestic like products.^{54 55}

The record in this expedited review contains a limited amount of pricing data. In the original determination, the Commission found that subject imports from China exhibited significant margins of underselling during 1980-83.⁵⁶ By 1983, the third year of significant imports from China, domestic unit values dropped below 1981 levels.⁵⁷

In its original determination, the Commission found chloropicrin to be a commodity product and that the subject merchandise and the domestic like product had a relatively high level of substitutability.⁵⁸ This level of substitutability suggested that price was an important, if not critical, criterion in the purchasing decision for customers, and there is no evidence in the current record to suggest these facts have changed. Given these facts, it is likely that the Chinese producers would offer attractively low prices to U.S. purchasers in order to regain market share, as they did in the original investigation, if the antidumping duty order is revoked. Thus, we believe that prices for domestically produced chloropicrin would likely decline to a significant degree in response to the likely significant volumes of substitutable subject imports offered at lower prices.⁵⁹

Accordingly, we find that revocation of the antidumping duty order would be likely to lead to significant price effects, including significant underselling by the subject imports of the domestic like product, as well as significant price depression and suppression, in the reasonably foreseeable future.⁶⁰

E. Likely Impact of Subject Imports

In evaluating the likely impact of imports of subject merchandise if the order is revoked, the Commission is directed to consider all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including but not limited to: (1) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity; (2) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and (3) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more advanced version of the domestic like product.⁶¹ All relevant economic factors are to be considered within the context of the business cycle and the conditions of

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

⁵⁵ Commissioner Crawford finds from the evidence available that the likely price effects resulting from a revocation of the existing order would not be significant in the reasonably foreseeable future. She does not join in the remainder of this section.

⁵⁶ Original Determination at 5.

⁵⁷ CR at Table I-1, PR at Table I-1.

⁵⁸ Original Determination at A-3 to A-4.

⁵⁹ Chairman Bragg notes in this regard that the URAA SAA states that “[i]f the Commission finds that pre-order conditions are likely to recur, it is reasonable to conclude that there is likelihood of continuation or recurrence of injury.” SAA at 884.

⁶⁰ Vice Chairman Miller and Commissioner Hillman emphasize that they reached this conclusion in the absence of any contrary evidence or argument from respondent interested parties.

⁶¹ 19 U.S.C. § 1675a(a)(4).

competition that are distinctive to the industry.⁶² As instructed by the statute, we have considered the extent to which any improvement in the state of the domestic industry is related to the antidumping duty order at issue and whether the industry is vulnerable to material injury if the order is revoked.⁶³

In the original determination the Commission found material injury to the domestic industry by reason of increased imports of chloropicrin at less than fair value, both in absolute terms and relative to domestic consumption.⁶⁴ It found declines in production and in shipments and market share, as well as declines in capacity utilization and deterioration of the domestic industry's financial condition.⁶⁵

Since imposition of the antidumping duty order, the domestic industry's market share increased as subject imports exited the market. As noted above, the domestic industry, rather than non-subject imports, gained the market share lost by the subject imports subsequent to imposition of the antidumping duty order.⁶⁶ The basic substitutability of the product has enabled the domestic industry to readily replace subject imports and regain domestic market share. Demand is unlikely to be increased by product development or new technology. Thus it is likely that any future increase in the market share of subject imports would be largely at the expense of the domestic industry.

We note that the future demand for this product is somewhat uncertain, given the phase-out of a product, methyl bromide, used in conjunction with chloropicrin. On this basis, the domestic producers argue that they are vulnerable to material injury.⁶⁷ However, we note that chloropicrin is also used alone or in conjunction with chemicals other than methyl bromide.⁶⁸ We also note that the domestic industry is currently operating at lower levels of capacity utilization than during the original investigation and **. ⁶⁹ While we have considered this factor, we find that the limited information on the record is inconclusive. Therefore, we do not find that the industry is in a "weakened state," as contemplated by the vulnerability criterion of the statute.^{70 71}

⁶² 19 U.S.C. § 1675a(a)(4). Section 752(a)(6) of the Act states that "the Commission may consider the magnitude of the margin of dumping" in making its determination in a five-year review. 19 U.S.C. § 1675a(a)(6). The statute defines the "magnitude of the margin of dumping" to be used by the Commission in five-year reviews as "the dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title." 19 U.S.C. § 1677(35)(C)(iv). *See also* SAA at 887. Commerce's expedited determination in its five-year review provided a likely margin of 58.0 percent for one specific chloropicrin manufacturer/exporter in China. The "all others" margin also is 58.0 percent. 64 Fed. Reg. at 11442 (Mar. 9, 1999).

⁶³ The SAA states that in assessing whether the domestic industry is vulnerable to injury if the order is revoked, the Commission "considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they may also demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports." SAA at 885.

⁶⁴ Original Determination at 5.

⁶⁵ Original Determination at 4.

⁶⁶ CR at I-9, PR at I-7.

⁶⁷ Response of Domestic Producers at 11.

⁶⁸ CR at I-5, PR at I-4.

⁶⁹ CR at I-6, PR at I-5.

⁷⁰ SAA at 885 ("The term 'vulnerable' relates to susceptibility to material injury by reason of dumped or subsidized imports. This concept is derived from existing standards for material injury and threat of material injury....If the Commission finds that the industry is in a weakened state, it should consider whether the industry will deteriorate further upon revocation of an order...").

⁷¹ Commissioner Crawford finds that the magnitude of any adverse effects of revocation is likely to increase with the degree of vulnerability in the industry. She finds that the domestic industry in this review is not

(continued...)

As discussed above, based on the limited record in this review, we conclude that if the order is revoked, the likely volume of subject imports would be significant and that these imports would have significant adverse price effects.⁷² Given the substitutable nature of the product, we find that a significant volume of low-priced subject imports would likely have a significant adverse impact on the production, shipment, sales, and revenue levels of the domestic industry. This reduction in the industry's production, sales and revenue levels would have a direct adverse impact on the industry's profitability and employment levels as well as its ability to raise capital and make and maintain necessary capital investments. Accordingly, we conclude that, if the antidumping duty order is revoked, the subject imports would be likely to have a significant adverse impact on the domestic industry within a reasonably foreseeable time.⁷³

CONCLUSION

For the foregoing reasons, we determine that revocation of the antidumping duty order covering chloropicrin from China would be likely to lead to continuation or recurrence of material injury to the domestic chloropicrin industry within a reasonably foreseeable time.

⁷¹ (...continued)

particularly vulnerable to injury if the order is revoked.

⁷² Commissioner Crawford bases her affirmative determination on the likely volume effects resulting from a revocation of the existing antidumping duty order.

⁷³ Vice Chairman Miller and Commissioner Hillman emphasize that they reached this conclusion in the absence of any contrary evidence or argument from respondent interested parties.

INFORMATION OBTAINED IN THE REVIEW

INTRODUCTION

On November 2, 1998, the Commission gave notice that it had instituted a review to determine whether revocation of the antidumping duty order on chloropicrin from China would be likely to lead to a continuation or recurrence of material injury within a reasonably foreseeable time.¹ On February 4, 1999, the Commission determined that the domestic interested party response to its notice of institution was adequate;² the Commission also determined that the respondent interested party response was inadequate because no response was received. The Commission found no other circumstances that would warrant a full review. Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)(3)).³ The Commission voted on this review on March 24, 1999, and notified Commerce of its determination on April 1, 1999.

The Original Investigation

The Commission completed the original investigation⁴ in March 1984, determining that an industry in the United States was being materially injured by reason of imports of chloropicrin from China that were being sold at less than fair value. The Commission found the relevant domestic industry to consist of producers of chloropicrin. After receipt of the Commission's determination, Commerce issued an antidumping duty order on imports of chloropicrin from China.⁵

Commerce's Final Results of Expedited Sunset Review

On March 3, 1999, the Commission received Commerce's "Final Results of Expedited Sunset Review" concerning chloropicrin from China.⁶ The review covered all manufacturers and exporters of chloropicrin from China. Commerce determined that dumping is likely to continue or recur if the antidumping duty order is revoked. The following tabulation provides information with regard to the margin (in percent) of dumping that Commerce found would likely prevail if the antidumping duty order is revoked:

<u>Company</u>	<u>Margin</u>
SINOCHEM	58.0
All others	58.0

¹ 63 FR 58761, Nov. 2, 1998. All interested parties were requested to respond to this notice by submitting the information requested by the Commission.

² A single response to the Commission's notice was filed on behalf of ASHTA, HoltraChem, Niklor, and Trinity; these four firms are the only known U.S. producers of chloropicrin. *Response of domestic producers*, p. 6.

³ 64 FR 9173, Feb. 24, 1999. The Commission's notice of expedited review appears in app. A. See the Commission's web site (<http://www.usitc.gov>) for Commissioner votes on whether to conduct an expedited or full review. A statement on adequacy is presented in app. B.

⁴ The investigation resulted from a petition filed on behalf of Niklor and LCP on Apr. 6, 1983.

⁵ 49 FR 10691, Mar. 22, 1984. This order required the posting of a cash deposit equal to the estimated weighted-average antidumping duty margins, which were 58.0 percent for the reviewed firm, SINOCHEM, and all other firms; an administrative review of the antidumping duty order (50 FR 2844, Jan. 22, 1985) retained the 58 percent dumping margins for SINOCHEM and William Hunt & Co. (International) Ltd., a Hong Kong reseller of Chinese chloropicrin to the United States. Subsequently, there have been no requests for administrative review of the antidumping duty order.

⁶ The *Federal Register* notice of Commerce's final results (64 FR 11440, Mar. 9, 1999) is presented in app. A.

THE PRODUCT

Scope

The imported product covered by this review is chloropicrin, also known as trichloronitromethane. It is classifiable in HTS subheading 2904.90.50 and is dutiable at a general rate of 3.7 percent ad valorem in 1999. The HTS subheading is provided for convenience and for Customs purposes; the written description remains dispositive as to the scope of the product coverage.

Description and Uses

Chloropicrin is a highly toxic liquid chemical compound having the formula CCl_3NO_2 . At the time of the original investigation, it was used primarily as an active agent in pre-plant soil fumigants⁷ for killing fungi; small amounts were used to control insects and rodents in grain storage and to prevent decay in wood.⁸ Because of the high cost of using chloropicrin as a soil fungicide, about \$900 per acre at the time of the original investigation, it was used mostly for high-unit-value crops such as strawberries, flowers, and fruit trees; for relatively low-unit-value crops such as potatoes it was used generally because such crops require less fumigant per acre to achieve the same increase in yield.⁹ Chloropicrin is still used primarily as a soil fumigant; domestic producers reported that its use and application have not changed substantially since the original investigation and that demand conditions for chloropicrin in the United States have remained stable.¹⁰

Chloropicrin can be used alone, but it is usually blended with other chemical agents into a single fumigant. The chloropicrin component of a mixed fumigant can range from less than 1 percent to over 50 percent. A substantial amount of chloropicrin is used for soil fumigation with methyl bromide.¹¹ However, methyl bromide is being gradually phased out over the next 6 years,¹² and it is uncertain how the phaseout of methyl bromide will affect future demand for chloropicrin.¹³

At the time of the original investigation, chloropicrin was produced in the United States by mixing nitromethane and sodium hypochlorite to form chloropicrin and sodium hydroxide (caustic soda). The sodium hydroxide was either wasted or recycled back into the production of sodium hypochlorite (formed from chlorine and caustic soda).¹⁴ U.S. producers report that there have been relatively few changes to the supply conditions, technology, production methods, and development efforts since the original

⁷ Generally, the soil fumigants are injected by machine into the soil shortly before planting to increase plant yields. Plastic tarps are secured to the soil immediately after injection to ensure that the chemicals are not lost to the air by evaporation. (*Staff Report of Feb. 27, 1984*, p. A-5.)

⁸ *Staff Report of Feb. 27, 1984*, p. A-4.

⁹ *Staff Report of Feb. 27, 1984*, p. A-5.

¹⁰ *Response of domestic producers*, p. 11.

¹¹ *Staff Report of Feb. 27, 1984*, p. A-5, and *Response of domestic producers*, p. 11.

¹² *Response of domestic producers*, p. 11. Prior to October 1998, the phaseout of methyl bromide was to be in 2001. However, in October 1998, the U.S. Congress made changes to the Clean Air Act that require the EPA to revise the regulations concerning reductions in the production and importation of methyl bromide from their 1991 levels as follows: 25-percent reduction in 1999, 50-percent reduction in 2001, 70-percent reduction in 2003, and 100-percent reduction in 2005 (except that critical agricultural uses allocated after 2005, and preshipment and quarantine uses are exempt). See EPA's methyl bromide phaseout web site (<http://www.epa.gov/spdpublic/mbr/mbrqa.html>).

¹³ *Response of domestic producers*, p. 11.

¹⁴ *Staff Report of Feb. 27, 1984*, p. A-6.

investigation; the availability of raw material inputs has remained relatively constant and the prices of those inputs have not experienced notable changes.¹⁵

THE INDUSTRY IN THE UNITED STATES

U.S. Producers

In 1984, there were two producers of chloropicrin: Niklor, with a plant in Long Beach, CA, and LCP with plants in Orrington, ME, and Ashtabula, OH.¹⁶ Niklor still produces chloropicrin. The LCP plant at Ashtabula, OH, was acquired by LinChem Inc. in 1989 and has operated as ASHTA since May 1992.¹⁷ The LCP plant at Orrington, ME, was operated by Hanlin Group Inc. until it was acquired by HoltraChem as part of bankruptcy proceedings in 1994.¹⁸ Trinity has produced chloropicrin in Hamlet, NC, since at least 1990.¹⁹

U.S. Production, Capacity, and Shipments

Data reported by U.S. producers of chloropicrin in the Commission's original investigation and in response to its review institution notice are presented in table I-1. U.S. producers reported higher levels of production, capacity, and domestic shipments of chloropicrin for 1997 than during the original investigation. However, unit value in 1997, albeit higher than in 3 of the years of the original investigation, was *** less than in 1982; capacity utilization in 1997 also was less than during the original investigation because the increased capacity was proportionately greater than the increased production. Although no recent financial data are available, per se, price competition for chloropicrin is reportedly high and ***.²⁰ The U.S. industry has made substantial capital investments in recent years²¹ (Niklor is moving to a new production site and ***) that would reportedly be at risk should profitability decline.²²

¹⁵ *Response of domestic producers*, p. 10.

¹⁶ *Staff Report of Feb. 27, 1984*, pp. A-8-9. Two other firms produced chloropicrin in the United States during the period of the original investigation; Dow had produced chloropicrin for about 20 years when it ceased production at its aging plant in November 1980 and began relying exclusively on purchases for its blended fumigants, and International Mineral & Chemical Corp. produced chloropicrin until April 1982 when it sold its Orrington, ME, and Ashtabula, OH, plants to LCP. *Ibid*, p. 8.

¹⁷ LCP's parent company sold the plant to LinChem, an employee group. LinChem changed its name to ASHTA to avoid confusion with its former parent, which had filed for bankruptcy protection. (*Chemical Marketing Reporter*, Mar. 29, 1993, start page 45, and *Chemical Week*, Dec. 22, 1993, start page 29; as obtained online by proquest at <http://proquest.umi.com>.)

¹⁸ *Chemical Week*, Mar. 9, 1994, start page 14, and *Chemical Week*, Aug. 21, 1996, start page 57; as obtained online by proquest at <http://proquest.umi.com>.

¹⁹ In Commerce's notice of its determination to not revoke the dumping order, Trinity was listed as one of the U.S. producers of chloropicrin that, on Apr. 2, 1990, objected to the revocation of the order (55 FR 22939, June 5, 1990).

²⁰ *Response of domestic producers*, p. 6.

²¹ *Response of domestic producers*, p. 4.

²² *Response of domestic producers*, p. 6.

Table I-1 Chloropicrin: U.S. producers' capacity, production, and U.S. shipments, 1980-83 and 1997					
Item	1980	1981	1982	1983	1997
Production (1,000 pounds)	***	***	***	***	12,216
Capacity (1,000 pounds)	***	***	***	***	***
Capacity utilization (percent)	***	***	***	***	***
U.S. shipments:					
Quantity (1,000 pounds)	***	***	***	***	12,284
Value (1,000 dollars)	1***	1***	***	***	² 14,938
Unit value (dollars per pound)	1***	1***	***	***	² 1.22
<p>¹ Dow reported *** pounds and *** pounds of intracompany consumption of chloropicrin in 1980 and 1981, respectively; because no values were provided for these quantities, they have been excluded from the unit values shown.</p> <p>² Estimated by the Commission staff. The per-pound unit values derived from the data provided in the response to the Commission's notice of institution were \$*** for ASHTA, \$*** for HoltraChem, \$*** for Niklor, and \$*** for Trinity. Because ***.</p>					
Source: <i>Staff Report of Feb. 27, 1984</i> , pp. A-14 and A-15, and <i>Response of domestic producers</i> , pp. 6 and 8.					

U.S. IMPORTS AND CONSUMPTION

U.S. Imports

Prior to 1980, there were no known imports of chloropicrin from any source. As shown in table I-2, U.S. imports of chloropicrin from China increased from a negligible *** pounds in 1980 to a substantial *** pounds in 1981 and then more than tripled to *** pounds in 1982.²³ During January-September 1983, imports continued to increase (by *** percent) over the January-September 1982 level, but they then ceased following Commerce's September 1983 preliminary dumping determination. The only other known source of chloropicrin during the original investigation was a trial shipment of *** pounds from *** in 1982.²⁴

U.S. producers reported that they are not aware of any significant imports of chloropicrin since the imposition of the antidumping order and that they believe that such imports effectively ceased with the preliminary dumping finding by Commerce in September 1983.²⁵ No information was provided by U.S. producers about imports of chloropicrin from any source other than China. Data on the value of annual

²³ *Staff Report of Feb. 27, 1984*, pp. A-12 and A-13, and *Chloropicrin from the People's Republic of China*, USITC Pub. 1505, March 1984, p. 5.

²⁴ *Staff Report of Feb. 27, 1984*, p. A-12.

²⁵ *Response of domestic producers*, p. 7.

Table I-2 Chloropicrin: U.S. imports from China, 1980-83 and 1997					
Item	1980	1981	1982	1983	1997
Quantity (1,000 pounds)	***	***	***	***	0
Value (1,000 dollars)	***	***	***	***	0
Unit value (dollars per pound)	***	***	***	***	(1)
¹ Not applicable.					
Note.--Unit values are calculated from the rounded figures.					
Source: <i>Staff Report of Feb. 27, 1984</i> , p. A-12 for 1980-83 data; and <i>Case History and Scope Information</i> , available on Commerce's web site for 1997.					

imports that are subject to the antidumping order indicate that there have been no imports of chloropicrin from China during 1993-97.²⁶

During the original investigation, there were four firms that imported chloropicrin from China.²⁷ U.S. producers reported that they do not know of any firms that are currently importing chloropicrin from China.²⁸

Apparent U.S. Consumption

Apparent U.S. consumption in 1997 exceeded that of 1980-83 (table I-3). In 1997, there were no known imports of chloropicrin from China and negligible or nil imports from other sources, so U.S. producers accounted for virtually all of apparent consumption, as they had before the surge of imports experienced during 1980-83.

THE INDUSTRY IN CHINA

During November 1, 1982 - April 30, 1983, the period of Commerce's original investigation, SINOCHEM accounted for all of China's known exports of chloropicrin to the United States.²⁹ During the time of the Commission's original investigation, SINOCHEM reported that the capacity to produce chloropicrin in China was *** pounds per year. Exports accounted for between *** and *** percent of

²⁶ See Commerce's web site (http://www.ita.doc.gov/import_admin/records/sunset) at *Case History and Scope Information*.

²⁷ *Staff report of Feb. 27, 1984*, pp. A-10 and A-11. Two soil fumigant producers, Great Lakes and Trical, accounted for *** of the imports of chloropicrin from China during 1980-83. Great Lakes, directly and indirectly through the trading firm, Toyomenka, accounted for over *** percent of the U.S. imports of chloropicrin from China during 1980-83 (and accounted for ***). Another U.S. soil fumigant producer, Trical, imported Chinese chloropicrin directly and purchased some imported product from Great Lakes during the original investigation. *Ibid*, pp. A-10, A-11, and A-45.

²⁸ *Response of domestic producers*, p. 7.

²⁹ See 49 FR 5982.

Table I-3 Chloropicrin: U.S. producers' U.S. shipments, U.S. imports, and apparent U.S. consumption, 1980-83 and 1997					
Item	1980	1981	1982	1983	1997
Quantity (1,000 pounds)					
U.S. producers' U.S. shipments	***	***	***	***	12,284
U.S. imports: China	***	***	***	***	¹ 0
Other sources	0	0	***	0	(2)
Total	***	***	***	***	(2)
Apparent U.S. consumption	***	***	***	***	12,284
Share of consumption (percent)					
U.S. producers' U.S. shipments	***	***	***	***	100
U.S. imports: China	***	***	***	***	0
Other sources	0	0	***	0	0
Total	***	***	***	***	0
<p>¹ There are no known imports of chloropicrin from China. A Hong Kong reseller of Chinese chloropicrin to the United States was also identified in Commerce's administrative review. (50 FR 2844, Jan. 22, 1995.) U.S. imports in 1997 for the basket category including chloropicrin were zero for Hong Kong and 419 thousand pounds for China.</p> <p>² Believed to be negligible or nil. Besides China, the only known foreign sources of chloropicrin during the original investigation were France and Japan. U.S. imports in 1997 for the basket category including chloropicrin were zero for France, and amounted to only 2 thousand pounds for Japan.</p> <p>Note.--Because of rounding, figures may not add to the totals shown.</p> <p>Source: <i>Staff Report of Feb. 27, 1984</i>, p. A-30 for 1980-83 data; <i>Response of domestic producers</i>, p. 8 for U.S. producers' U.S. shipments; <i>Case History and Scope Information</i>, available on Commerce's web site and <i>Response of domestic producers</i>, p. 7 for China in 1997; and official Commerce statistics for "other sources" for 1997.</p>					

production during 1980-83, and exports to the United States increased from *** percent of exports in 1980 to *** percent in 1983.³⁰

³⁰ *Staff Report of Feb. 27, 1984*, p. A-29.

During the original investigation, there was only one plant in China, in the city of Dalian, that was known to produce chloropicrin.³¹ There are no known public data concerning chloropicrin operations at the Dalian plant; however, the U.S. producers reported that they believe the plant continues to produce chloropicrin and that it exports significant quantities of chloropicrin to ***.³² U.S. producers also cited the availability of nitromethane in China, pointing out that this important raw material for making chloropicrin is not only produced in China but also exported to the United States.³³

³¹ *Staff Report of Feb. 27, 1984*, p. A-10. However, China had notified the EPA that chloropicrin might also be produced at plants in Wuhan, Tientsin, Shanghai, Shenyang, and Qingdao, although none of those plants was known to be producing chloropicrin at the time of the original investigation. *Ibid.* There is no public information on these five plants; however, ***.

³² *Response of domestic producers*, pp. 7-8.

³³ *Response of domestic producers*, p. 5. During the original investigation, chloropicrin in the United States was produced (as it is today) from nitromethane; however, a picric acid process whereby chlorine gas is bubbled through a solution of picric acid to form chloropicrin, carbon dioxide gas, and a dilute hydrochloric acid solution had been used in the United States until it was discontinued in the 1950's because of the risk and expense of handling and disposing of picric acid, a highly volatile liquid. During the original investigation, producers in foreign countries were not subject to environmental and safety regulations as strict as those in the United States and all non-U.S. producers used the picric acid process. (*Staff Report of Feb. 27, 1984*, pp. A-6 and A-7.) No information has been provided on whether China currently uses the nitromethane process or the picric acid process.

APPENDIX A
FEDERAL REGISTER NOTICES

**INTERNATIONAL TRADE
COMMISSION**

[Investigation No. 731-TA-130 (Review)]

Chloropicrin From China

AGENCY: United States International Trade Commission.

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

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty order on chloropicrin from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For

further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at <http://www.usitc.gov/rules.htm>.

EFFECTIVE DATE: February 4, 1999.

FOR FURTHER INFORMATION CONTACT:

Bonnie Noreen (202-205-3167), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<http://www.usitc.gov>).

SUPPLEMENTARY INFORMATION:

Background.—On February 4, 1999, the Commission determined that the domestic interested party group response to its notice of institution (63 FR 58761, Nov. 2, 1998) of the subject five-year review was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.¹ Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Act.

Staff report.—A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on March 4, 1999, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the

notice of institution,² and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before March 9, 1999, and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by March 9, 1999. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination.—The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. § 1675(c)(5)(B).

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: February 18, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99-4572 Filed 2-23-99; 8:45 am]

BILLING CODE 7020-02-P

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

² The Commission has found the responses submitted by ASHTA Chemicals, Inc.; HoltraChem Manufacturing Co., L.L.C.; Niklor Chemical Co., Inc.; and Trinity Manufacturing, Inc. to be individually adequate. Comments from other interested parties will not be accepted (see 19 CFR 207.62(d)(2)).

DEPARTMENT OF COMMERCE
International Trade Administration**[A-570-002]****Final Results of Expedited Sunset Review: Chloropicrin from the People's Republic of China**

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

ACTION: Notice of final results of expedited sunset review: chloropicrin from the People's Republic of China

SUMMARY: On November 2, 1998, the Department of Commerce ("the Department") initiated a sunset review of the antidumping order on chloropicrin from the People's Republic of China (63 FR 58709) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and substantive comments filed on behalf of the domestic industry and inadequate response (in this case, no response) from respondent interested parties, the Department determined to conduct an expedited review. As a result of this review, the Department finds that revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the Final Results of the Review section of this notice.

FOR FURTHER INFORMATION CONTACT: Scott E. Smith or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482-6397 or (202) 482-1560, respectively.

EFFECTIVE DATE: March 9, 1999.

SUPPLEMENTARY INFORMATION:**Statute and Regulations**

This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year*

("Sunset") Reviews of Antidumping and Countervailing Duty Orders, 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*"). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Scope

The merchandise subject to this antidumping order is chloropicrin, also known as trichloronitromethane. A major use of the product is as a pre-plant soil fumigant (pesticide). Such merchandise is currently classifiable under Harmonized Tariff Schedule (HTS) item number 2904.90.50. The HTS item number is provided for convenience and U.S. Customs purposes. The written description remains dispositive.

This review covers imports from all manufacturers and exporters of chloropicrin from the People's Republic of China ("PRC").

Background

On November 2, 1998, the Department initiated a sunset review of the antidumping order on chloropicrin from the PRC (63 FR 58709), pursuant to section 751(c) of the Act. The Department received a Notice of Intent to Participate on behalf of ASHTA Chemicals, Inc., HoltraChem Manufacturing Company, L.L.C., Niklor Chemical Company, Inc., and Trinity Manufacturing, Inc. (collectively "the domestic interested parties"), on November 13, 1998, within the deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations*. Each company claimed interested party status under section 771(9)(C) of the Act, as a U.S. manufacturer of a domestic like product. The domestic interested parties note that LCP Chemicals & Plastics, Inc. ("LCP")¹ and Niklor Chemical Company, Inc. filed the original petition in this proceeding. We received a complete substantive response from the domestic interested parties on December 2, 1998, within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i). We did not receive a substantive response from any respondent interested party to this proceeding. As a result, pursuant to 19

¹ The Hanlin Group, Inc., the parent company of LCP, continued to participate in this case until 1993.

CFR 351.218(e)(1)(ii)(C), the Department determined to conduct an expedited, 120-day, review of this order.

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making this determination, the Department shall consider the weighted-averaged dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping order, and shall provide to the International Trade Commission ("the Commission") the magnitude of the margin of dumping likely to prevail if the order is revoked.

The Department's determinations concerning continuation or recurrence of dumping and the magnitude of the margin are discussed below. In addition, parties' comments with respect to continuation or recurrence of dumping and the magnitude of the margin are addressed within the respective sections below.

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103-316, vol. 1 (1994), the House Report, H.R. Rep. No. 103-826, pt. 1 (1994), and the Senate Report, S. Rep. No. 103-412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the bases for likelihood determinations. In its *Sunset Policy Bulletin*, the Department indicated that determinations of likelihood will be made on an order-wide basis (see section II.A.3). In addition, the Department indicated that normally it will determine that revocation of an antidumping order is likely to lead to continuation or recurrence of dumping where: (a) Dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (see section II.A.3).

In addition to guidance on likelihood provided in the *Sunset Policy Bulletin*

and legislative history, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of an order is likely to lead to continuation or recurrence of dumping where a respondent interested party waives its participation in the sunset review. In the instant review, the Department did not receive a response from any interested party. Pursuant to section 351.218(d)(2)(iii) of the *Sunset Regulations*, this constitutes a waiver of participation.

The antidumping order on chloropicrin from the PRC was published in the *Federal Register* on March 22, 1984 (49 FR 10691). Since the imposition of the order, the Department has conducted one administrative review.² The order remains in effect for all manufacturers and exporters of the subject merchandise.

The domestic interested parties argue that the Department should determine that there is a likelihood that dumping would continue were the order revoked for four reasons. First, according to the domestic interested parties, imports of the subject merchandise ceased after imposition of the order. The domestic interested parties argue that, according to the Commission's final determination in March, 1984, imports of chloropicrin ceased in September 1983 after the Department's preliminary antidumping determination.³ Second, there are significant imports to the United States of nitromethane from the PRC, a product that is used in the production of chloropicrin. The domestic interested parties argue that this indicates that the PRC producers have the immediate ability and interest to export chloropicrin to the United States and sell it at less than fair value. Third, chloropicrin is a price-competitive, commodity-type product which could provide an opportunity for PRC producers to capture a large percentage of the market if the order were revoked. And finally, a dumping margin of 58 percent on imports of PRC chloropicrin continues in effect for all PRC exporters (see December 2, 1998, Substantive Response of the Domestic Interested Parties at 10).

In making its determination, the Department considers the existence of dumping margins and the volume of imports before and after the issuance of the order. As discussed in section II.A.3 of the *Sunset Policy Bulletin*, the SAA at 890, and the House Report at 63-64,

² See *Chloropicrin from the People's Republic of China; Final Results of Administrative Review of Antidumping Order*, 50 FR 2844 (January 22, 1985).

³ See *Chloropicrin From the People's Republic of China, Inv. 731-TA-130 (Final)*, USITC Pub. No. 1505 (March 1984) at A-8.

if companies continue dumping with the discipline of an order in place, the Department may reasonably infer that dumping would continue if the discipline were removed. In the instant proceeding, a dumping margin above *de minimis* continues to exist for shipments of the subject merchandise from The China National Chemicals Import and Export Corporation ("SINOCEM") and William Hunt & Co. of Hong Kong, a third country reseller.⁴

The Department also reviewed data on the volume of imports before and after issuance of the order, consistent with section 752(c) of the Act. The Department examined U.S. Census data (IM146 reports) for the years preceding the imposition of the order through the present. This information demonstrates that exports of chloropicrin from the PRC decreased sharply after the imposition of the order. In 1982, exports of the subject merchandise to the United States exceeded 1.25 million kilograms and, in 1983, exports of the subject merchandise to the United States exceeded 2.45 million kilograms. However, in 1985, the year after the imposition of the order, this volume fell to zero. In the years following the imposition of the order, exports of chloropicrin to the United States never reached their pre-order level and have, for the majority of the interim years, remained below 200,000 kilograms per year. Based on this analysis, the Department finds that the imports of the subject merchandise have fallen significantly since the imposition of the order.

We find the existence of deposit rates above *de minimis* levels and the reduction in export volumes over the life of the order is highly probative of the likelihood of continuation or recurrence of dumping.⁵ Dumping margins continue in effect for exports of the subject merchandise by all known PRC exporters and third country resellers. Given that dumping margins have continued over the life of the order, respondent interested parties waived participation in the sunset review, and absent argument and evidence to the contrary, the

⁴ The dumping margin for both SINOCEM and William Hunt & Co. is 58 percent. See *Chloropicrin from The People's Republic of China; Final Results of Administrative Review of Antidumping Order*, 50 FR 2844 (January 22, 1985).

⁵ The SAA at 890, and the House Report at 63-64, state that the "[e]xistence of dumping margins after the order, or the cessation of imports after the order, is highly probative of the likelihood of continuation or recurrence of dumping. If companies continue to dump with the discipline of an order in place, it is reasonable to assume that dumping would continue if the discipline were removed."

Department determines that dumping is likely to continue if the order were revoked.

Because the Department based this determination on the continued existence of margins above *de minimis* and respondent interested parties' waiver of participation, it is not necessary to address the domestic interested parties' arguments concerning non-U.S. export markets, exports of nitromethane, or the price-competitive nature of chloropicrin.

Magnitude of the Margin

In the *Sunset Policy Bulletin*, the Department stated that it will normally provide to the Commission the margin that was determined in the final determination in the original investigation. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the "all others" rate from the investigation. (See section II.B.1 of the *Sunset Policy Bulletin*.) Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. (See sections II.B.2 and III of the *Sunset Policy Bulletin*.)

The Department published, in the *Federal Register*, the antidumping duty order for chloropicrin from the PRC on March 22, 1984 (49 FR 10691). In this order, the Department established a weighted-averaged margin for SINOCHEM of 58 percent. Also, in this order, the Department established a weighted-averaged margin for any other manufacturer/exporter of the subject merchandise of 58 percent.⁶ We note that, to date, the Department has not issued any duty absorption findings in this case.

In its substantive response, the domestic interested parties recommended that, consistent with the *Sunset Policy Bulletin*, the Department provide to the Commission the original dumping margin of 58 percent established by the Department for all PRC manufacturers/exporters of chloropicrin.

The Department agrees with the domestic interested parties' argument concerning the choice of the margin to report to the Commission. In the original investigation, the Department calculated a margin for SINOCHEM and established an "all others" rate for the remaining companies. The margin from

the original investigation is the only calculated rate that reflects the behavior of exporters without the discipline of the order. Therefore, consistent with the *Sunset Policy Bulletin*, we will report to the Commission the company-specific rate for SINOCHEM and the "all others" rate from the original investigation for all remaining companies as the dumping margin likely to prevail if the order were revoked. These margins are contained in the **FINAL RESULTS OF REVIEW** section of this notice.

Final Results of Review

As a result of this review, the Department finds that revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping at the margins listed below:

Manufacturer/Exporter	Margin (percent)
SINOCHEM	58.0
All Other Manufacturers/Exporters	58.0

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

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: March 3, 1999.

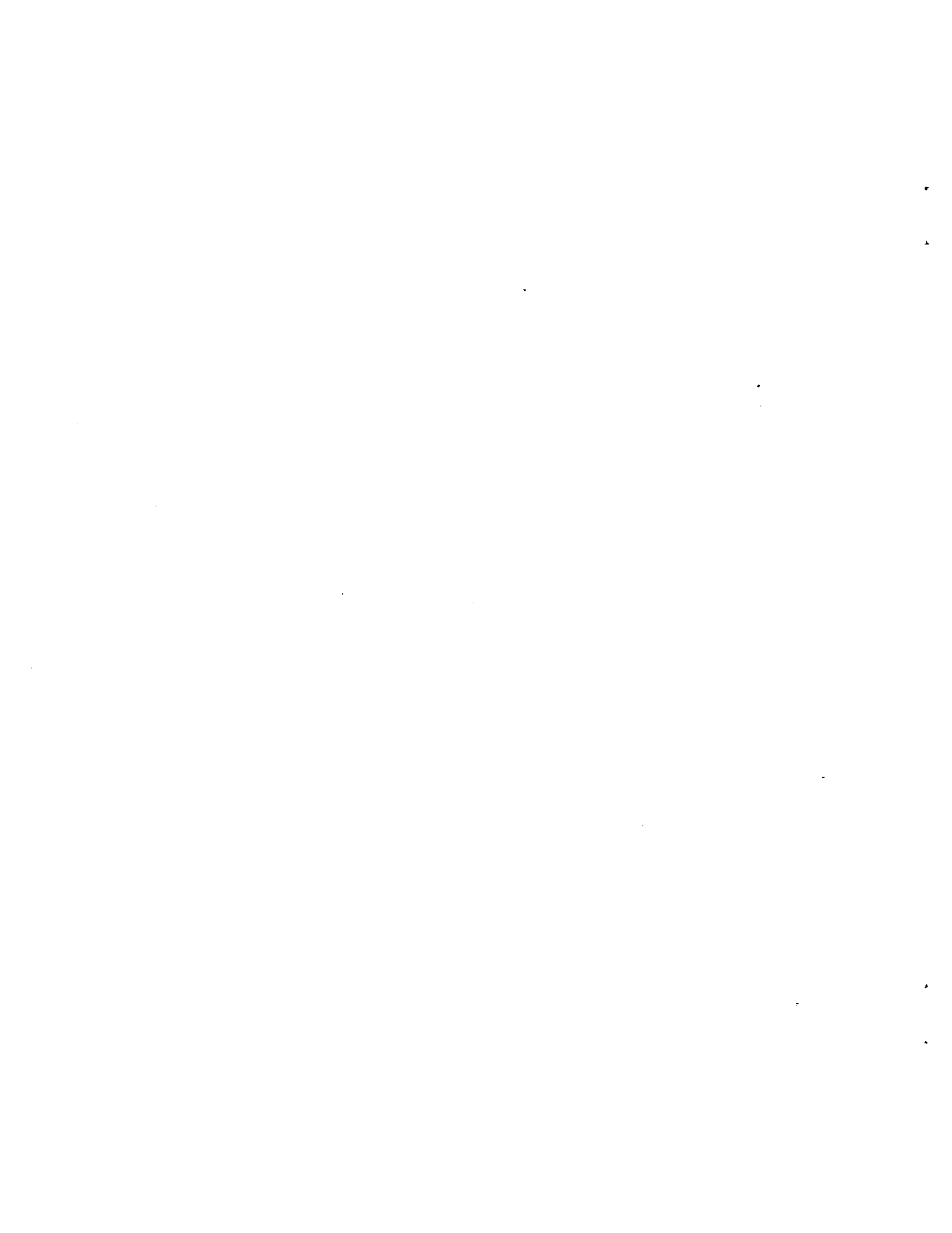
Robert S. LaRussa,
Assistant Secretary for Import Administration.

[FR Doc. 99-5793 Filed 3-8-99; 8:45 am]

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⁶ See *Antidumping Duty Order: Chloropicrin from the People's Republic of China*, 49 FR 10691 (March 22, 1984).

APPENDIX B
STATEMENT ON ADEQUACY



EXPLANATION OF COMMISSION DETERMINATIONS ON ADEQUACY

in

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

On February 4, 1999, the Commission determined that it would conduct an expedited review in the subject five-year review pursuant to section 751(c)(3) of the Act. See 19 U.S.C. § 1675(c)(3)(B).

The Commission determined that the domestic group response was adequate. The Commission received a joint response containing company-specific data from all known domestic producers of chloropicrin. Because the Commission did not receive a response from any respondent interested party, the Commission determined that the respondent interested party group response was inadequate. The Commission did not find any circumstances that would warrant conducting a full review. The Commission therefore determined to conduct an expedited review. See 63 F.R. 30599 (June 5, 1998).

