

SORBATES FROM JAPAN

**Determination of No Injury in
Investigation No. AA1921-183
Under the Antidumping Act,
1921, as Amended Together With
the Information Obtained
in the Investigation**

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UNITED STATES INTERNATIONAL TRADE COMMISSION

COMMISSIONERS

Joseph O. Parker, Chairman
Bill Alberger, Vice Chairman
George M. Moore
Catherine Bedell
Italo H. Ablondi
Daniel Minchew

Kenneth R. Mason, Secretary to the Commission

This report was prepared by:

Abigail Eltzroth, Investigator
Office of Operations

E. William Fry, Supervisory Investigator
Office of Operations

N. Timothy Yaworski, Attorney Advisor
Office of the General Counsel

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

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Note.--Information which would disclose confidential operations of individual concerns may not be published and therefore has been deleted from this report.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

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

[AA1921-183]

September 13, 1978

SORBATES FROM JAPAN

Determination of No Injury

On the basis of its investigation, the Commission has unanimously determined (Commissioners Ablondi and Minchew not participating) that an industry in the United States is not being and is not likely to be injured, and is not prevented from being established, by reason of the importation of sorbates from Japan that are being, or are likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended.

On June 13, 1978, the United States International Trade Commission received advice from the Department of the Treasury (Treasury) that sorbates from Japan are being, or are likely to be, sold at less than fair value (LTFV) within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)). Treasury excluded from its LTFV determination sorbates produced by Chisso Corp. and Daicel, Ltd. on the basis of no margins and discontinued the investigation with respect to Ueno Fine Chemical Industries, Ltd. on the basis of minimal margins in relation to total sales. On June 16, 1978, the Commission instituted investigation No. AA1921-183 under section 201(a) of said act to determine whether an industry in the United States is being or is likely to be injured, or is prevented from being established by reason of the importation of such merchandise into the United States.

Notice of the institution of the investigation and of the public hearing held in connection therewith was published in the Federal Register of June 23, 1978 (43 F.R. 27252). On August 1, 1978, a hearing was held in Washington, D.C., at which all persons who requested the opportunity were permitted to appear in person or by counsel.

In arriving at its determination, the Commission gave due consideration to written submissions from interested parties and information adduced at the hearing as well as information obtained by the Commission's staff from questionnaires, personal interviews, and other sources.

Views of Chairman Joseph O. Parker
and Commissioners Bill Alberger, George M. Moore,
and Catherine Bedell

In order for a Commissioner to make an affirmative determination in an investigation under the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)) it is necessary to find that an industry in the United States is being or is likely to be injured, or is prevented from being established, and the injury or likelihood thereof, or the prevention of establishment must be by reason of imports at less than fair value (LTFV).

Determination

On the basis of information obtained in this investigation, we determine that an industry in the United States is not being and is not likely to be injured, and is not prevented from being established, by reason of the importation of sorbates from Japan which are being or are likely to be sold at LTFV as determined by the Department of the Treasury (Treasury).

The Imported Article and the Domestic Industry

Sorbates -- sorbic acid and potassium sorbate -- are free-flowing powders or granules which are used commercially as food preservatives. In this investigation we consider the relevant domestic industry to consist of the facilities in the United States used in the production of sorbates. Monsanto Co., which operates a sorbate production facility in Chocolate Bayou, Texas, is the sole U.S. producer of food grade sorbates.

LTFV Sales

Treasury investigated the sales of four Japanese producers, which account for nearly all of the sorbate imports from Japan, during the period from March 1, 1977 through August 31, 1977. A weighted average LTFV margin of 5.6 percent was found on the U.S. sales of Nippon Synthetic Chemical Industry Co., Ltd. (Nippon). No margins were found for two producers and the margin on another firm was so minimal in relation to its sales that Treasury discontinued its antidumping investigation of sorbates produced by that firm.

The Question of Injury or Likelihood, or Prevention of Establishment by Reason of LTFV Sales

U.S. imports -- From 1970 until June 1977 there was no domestic production of sorbates. During this period consumption was entirely supplied by imports from Japan and Germany. Although total Japanese exports of sorbates to the United States increased from 1974 to 1977, Nippon's share of those exports dropped by nearly 30 percent during the same time frame. At the same time Nippon's share of the U.S. market for sorbates was declining, its exports to the petitioner, Monsanto Co. (Monsanto), were increasing. During the period of Treasury's investigation, 63 percent of all the LTFV imports from Japan were entered for Monsanto's account.

Production and shipments -- Monsanto began production at its sorbate facility in June, 1977. After a small output in the April-June 1977 period, production jumped sharply in each succeeding quarter through April-June 1978. Shipments followed a similar pattern with domestically produced sorbates being relatively limited in 1977, but growing significantly both in actual terms and as a portion of U.S. consumption through the second quarter of 1978.

Capacity utilization -- Monsanto's plant at Chocolate Bayou, Texas, is the largest sorbates facility in the world. The decision to build a plant of such capacity was based on projections by the company's market researchers that demand in the United States would increase rapidly between 1978 and 1985. Monsanto clearly understood that its additional capacity could not be absorbed by the current market, and that it would be necessary to operate its facility at levels significantly below full capacity until the increased demand for sorbates materialized. Capacity utilization in January-June 1978 was in excess of the company's own projections.

Inventories -- Inventories for both Monsanto and U.S. importers of sorbates have increased from 1975 through June, 1978. This increase appears to be attributable in part to the building of stocks to supply an expanding market. An estimated additional 4 million pounds of sorbates a year will be required for use in bacon beginning in 1979. The recent growth in Monsanto's inventory is compounded by the fact that the company has continued to import significant quantities of sorbates.

Consumption -- With the exception of the recessionary year of 1975, U.S. consumption showed a steady growth from 1974 through 1977 and continuing into 1978.

Profits -- When Monsanto determined it would establish a sorbates production facility, its internal marketing reports forecast a period of several years before the facility would return significant profits. In the little more than a year the facility has operated, substantial losses have

been experienced. These losses which were in part attributable to start-up expenses are diminishing as Monsanto continues to lower its cost per pound to produce sorbates.

Prices -- While there has been some price depression, the evidence does not point to LTFV sales as a cause. In fact, since Monsanto began production, it has been the lowest priced supplier of sorbates in the U.S. market. Therefore, it appears Monsanto, as a new entrant in the industry, set its prices at a level to gain market share and establish itself as a major sorbates supplier.

Lost sales -- The Commission was unable to verify that any of the instances cited by Monsanto where it either lost sales or was forced to lower its price to make a sale were attributable to sales by Nippon. On the contrary, the Commission did find cases where Nippon and a U.S. importer lost significant sales due to Monsanto's low prices.

Summary -- Monsanto did not begin production of sorbates until June, 1977. From that starting point to the present its production and shipments have made strong gains, taking an ever increasing share of the U.S. market. While capacity utilization is not high, it is ahead of Monsanto's own projections for this point in the life of its sorbates operation. Losses have been incurred, due largely to high start-up costs, but the financial picture should improve as Monsanto's costs of production go down and its market share continues to grow. Based on these factors we conclude that there is no injury to the domestic sorbates industry.

With respect to the issue of the likelihood of injury, we have concluded such likelihood does not exist. Production, shipments, capacity utilization, and consumption are following definite upward trends and employment has maintained a steady level since Monsanto entered the market as a producer of sorbates. Overall imports and inventories are up. In the case of imports, however, the one Japanese company selling at LTFV prices has reduced its imports sharply. With regard to inventories, they are up for both importers and Monsanto in response to a continuing increase in demand. Monsanto did not turn a profit in the first year of its sorbates operation, but as we stated earlier, a good deal of the loss was incurred by start-up costs. With its increasing market share, a better financial performance appears to be in the offing for the domestic producer. These factors clearly do not indicate the likelihood of injury.

The issue of prevention of establishment of an industry by reason of LTFV imports has been raised by the petitioner.^{1/} Clearly, the domestic producer has been able to obtain a significant market share in the little over a year it has produced sorbates domestically. As the apparent price leader, it is gaining market share and is running ahead of its own projections for success in this industry. The technology for Monsanto's sorbates plant came from the only Japanese firm found to be making LTFV sales, a major percentage of which were made to Monsanto. It is clear that Monsanto has been aided by Nippon, and they also benefited from the LTFV sales. Monsanto is certainly not being prevented from establishing a domestic sorbates industry by reason of LTFV sales from Japan.

^{1/} Commissioner George M. Moore notes that the criteria for an affirmative determination based on the prevention of the establishment of an industry in the United States (see Regenerative Blower/Pumps from West Germany, Investigation No. AA1921-140, USITC Publication 676, (1974), p. 10) have not been satisfied in this investigation, in that the evidence does not support the contention that LTFV sales have frustrated or forestalled the development of a stable and viable U.S. industry.

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SUMMARY

On June 16, 1978, the United States International Trade Commission (Commission) instituted investigation No. AA1921-183 following receipt of advice from the Department of the Treasury (Treasury) that sorbates from Japan are being, or are likely to be, sold in the United States at less than fair value (LTFV) within the meaning of the Antidumping Act, 1921, as amended. The Commission must determine whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of this merchandise into the United States.

Sorbates--sorbic acid and potassium sorbate--are free-flowing powders or granules used commercially as fungistatic agents in foods. They are regarded as very safe for human consumption and superior in many respects to other widely used food preservatives.

Treasury's investigation of U.S. imports of sorbates from Japan covered the 6-month period extending from March 1, 1977, through August 31, 1977. This investigation covered four Japanese concerns--Chisso Corp. (Chisso), Daicel Ltd. (Daicel), Nippon Synthetic Chemical Industry Co., Ltd. (Nippon), and Ueno Fine Chemical Co., Ltd. (Ueno)--which together accounted for virtually all imported sorbates from Japan. On June 12, 1978, Treasury announced weighted average LTFV margin of 5.6 percent on all sales compared of sorbates produced by Nippon. No margins were found with respect to any sales by Chisso and Daicel. Treasury determined that Ueno's weighted average margin was minimal in relation to total volume of sales and, as a consequence, discontinued the antidumping investigation of sorbates produced by Ueno. This left Nippon as the only remaining Japanese respondent in the investigation.

Monsanto Co. (Monsanto), the complainant before Treasury, is the only producer of sorbates in the United States. The sorbate production process utilized by Monsanto is highly complex, utilizing, under license from Nippon, the most modern technology available.

In its petition to Treasury Monsanto stated that Japanese sales of sorbates at LTFV prevent Monsanto from establishing a sorbate industry in the United States. Today, after operating its sorbate production facility for about 13 months, Monsanto contends that its original petition was correct, and that the infant U.S. industry is not viable and will have to close down if dumping is continued. Thus, in effect, Monsanto contends that sales at LTFV prevent a domestic industry from being established.

Imports accounted for all U.S. sorbate consumption between 1970 when Union Carbide Corp. discontinued sorbate production in the United States and June 1977 when Monsanto commenced production. According to official U.S. Department of Commerce data, U.S. imports of sorbates increased from 6.2 million pounds in 1975 to 8.4 million in 1977. Japan's share of the import market increased from 82 to 99 percent during this period. Nippon's share of Japanese sorbate exports to the United States averaged * * * percent during 1975-77. Monsanto purchased about * * * percent of Nippon's exports to the

United States during this period, including 63 percent of the exports by Nippon found by Treasury to have been sold at LTFV during the period of the Treasury investigation.

Six U.S. importers accounted for over 90 percent of all sorbates imported into the United States during 1975-77 and January-June 1978. Nippon exported primarily to * * *.

* * * * *

At the request of the Commission, Monsanto submitted a listing of * * * instances in which it had to reduce its price or lose sales in 1977 and 1978 because of imports from Japan. When contacted by the the Commission, however, purchasers did not verify that any of these instances was attributable to sales of sorbates produced by Nippon. Importers, however, have supplied the Commission with documentary evidence that they lost large customers to Monsanto because of pricing competition.

INFORMATION OBTAINED IN THE INVESTIGATION

Introduction

On June 13, 1978, the United States International Trade Commission received advice from the Department of the Treasury that sorbates from Japan with the exception of merchandise produced by Chisso Corp., Daicel, Ltd, and Ueno Fine Chemical Industries, Ltd., are being, or are likely to be, sold in the United States at less than fair value (LTFV) within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 (a)). 1/ Accordingly, on June 16, 1978, the Commission instituted investigation No. AA1921-183 under section 201(a) of said act to determine whether an industry in the United States is being or is likely to be injured, or is prevented from being established by reason of the importation of such merchandise into the United States. By statute the Commission must render its determination within 3 months of its receipt of advice from Treasury--in this case by September 13, 1978.

Notice of the institution of the investigation and of a public hearing was given by posting copies of the notice at the Office of the Secretary, U.S. International Trade Commission, Washington, D.C., and at the Commission's office in New York City, and by publishing the notice in the Federal Register of June 23, 1978 (43 F.R. 27252). 2/ The public hearing was held in Washington, D.C., on August 1, 1978.

The complaint which led to Treasury's determination of sales at LTFV was filed by counsel representing Monsanto Co. (Monsanto). Treasury's notice of investigation was published in the Federal Register of August 23, 1977 (42 F.R. 42423). A notice of tentative determination of sales at LTFV and notice of withholding of appraisement were published in the Federal Register of March 2, 1978 (43 F.R. 8681). Treasury's final determination of sales at LTFV was published in the Federal Register of June 16, 1978 (43 F.R. 26175). 3/

On July 12, 1978, Monsanto informed Treasury of its "desire to contest" Treasury's final determination. On the same day the Commission received a letter from counsel representing Monsanto requesting that the Commission suspend investigation No. AA1921-183 pending the outcome of its appeal. This request was denied on July 24, 1978.

On July 28, 1978, counsel for Monsanto filed an action in the U.S. District Court for the District of Columbia, (Monsanto Company v. United States of America, et al. (Civil Action No. 78-1392)) seeking to enjoin the

1/ A copy of Treasury's letter to the Commission concerning LTFV sales of sorbates from Japan is presented in app. A.

2/ A copy of the Commission's Federal Register notice of investigation and hearing is presented in app. B.

3/ Copies of Treasury's Federal Register notices on sorbates are presented in app. C.

Commission from continuing investigation No. AA1921-183. Monsanto's request for a temporary restraining order was denied on July 28, 1978; and its request for a preliminary injunction was denied on August 7, 1978.

Description and Uses

Sorbates--sorbic acid ($\text{CH}_2\text{CH}=\text{CHCH}=\text{COOH}$) and potassium sorbate ($\text{CH}_2\text{CH}=\text{CHCH}=\text{COOK}$)--are free-flowing powders or granules. Sorbates are used commercially as fungistatic agents in foods. They inhibit the growth of most fungi and a few of the bacteria associated with food spoilage.

Foods in which sorbates have been demonstrated to have commercially effective activity include baked goods, cheese, confectionery (cake frostings and icings), chocolate coatings, dried fruits, fish products, fruit batters, fruit juices and fresh fruit salads, jellies (artificially sweetened), margarines, nonalcoholic beverages, pastry fillings, pet foods, pickled foods, poultry, prepared salads, salad dressing, sauces, sausage casings, dry sausage, syrups, and wines. In addition, the U.S. Department of Agriculture will require the use of sorbates, in combination with nitrite, in bacon beginning May 1979, unless tests show that this chemical combination is not sufficiently effective in protecting consumers against botulism poisoning.

The toxicity of sorbates is extremely low. Sorbates are on the list that specifies products "generally recognized as safe" (GRAS) issued by the U.S. Food And Drug Administration (FDA). Sorbic acid and potassium sorbate have been cleared for use and approved as food preservatives by the FDA.

Sorbates are generally more effective than other commercially used chemical food preservatives, such as benzoates and propionates, and, as a consequence, lesser amounts are required. In addition, sorbates, unlike benzoates and propionates, can be used in most bland foods with no effect on taste. Like benzoates and propionates, sorbates require an acidic pH for effectiveness, but function at higher pH values than either benzoates or propionates. The concentration of sorbic acid used in foods varies from about 0.02 percent to about 0.3 percent by weight of the food.

Sorbates are sold in four grades as follows:

1. Dust free sorbic acid
2. Powder sorbic acid
3. Granular potassium sorbate
4. Powder potassium sorbate

The acid forms provide a greater antimicrobial potency; the potassium salts offer greater water solubility. When the potassium salt form is used, the potency on an equivalent weight basis to the acid is 74 percent.

Sorbates can be applied to foods in a variety of methods. The five most common are: direct addition into the product, dipping, spraying, dusting, or

incorporation into the wrapping. The choice of application is often based on the ease with which the preservative can be added to the existing processing or packaging process.

U.S. Tariff Treatment

Sorbic acid is dutiable under the provisions of item 425.87 of the Tariff Schedules of the United States (TSUS). The column 1 (most-favored-nation) rate of duty is 6 percent ad valorem, and has been in effect since 1972 when the final stage of the concessions granted in the Kennedy round of trade negotiations became effective. Potassium sorbate is dutiable under the provisions of item 426.84 of the TSUS. The column 1 rate of duty is 4 percent ad valorem, and also has been in effect since 1972. The column 2 rate of duty is 25 percent ad valorem for both sorbic acid and potassium sorbate.

Title V of the Trade Act of 1974 authorizes the establishment of a Generalized System of Preferences (GSP) for eligible articles imported from designated beneficiary developing countries. The President has designated both sorbic acid and potassium sorbate as eligible for duty-free treatment under the provisions of GSP, but countries eligible for GSP treatment currently possess little or no capacity to produce sorbates.

Nature and Extent of Sales at LTFV

Treasury's investigation of U.S. imports of sorbates from Japan covered the 6-month period extending from March 1, 1977 through August 31, 1977. This investigation covered four Japanese concerns--Chisso Corp. (Chisso), Daicel, Ltd. (Daicel), Nippon Synthetic Chemical Industry Co., Ltd. (Nippon), and Ueno Fine Chemical Industry Co., Ltd. (Ueno)--which together accounted for virtually all sorbates imported from Japan. On June 12, 1978, Treasury announced the weighted average LTFV margins for the four manufacturers as follows:

	<u>Percent</u>
Chisso-----	0
Daicel-----	0
Nippon-----	5.6
Ueno-----	0.2

The weighted average LTFV margin on all sales Treasury compared was 1.14 percent. Sales of sorbates by the four Japanese producers during the period of Treasury's investigation are shown in table 1:

Table 1.--Sorbates: Sales by 4 Japanese manufacturers,
Mar. 1, 1977-Aug. 31, 1977

Firm	: Net : value : of : sales	: Net : value : of sales : compared	:Percent : of : sales : compared	:Percent : Sales at: : margin	:Percent : of sales : at : margin	: Range of : margin	: Weighted : average : mar- : gin 1/
Chisso----	***	***	***	***	0	0	0
Daicel----	***	***	***	***	0	0	0
Nippon----	***	***	***	***	57.8	4 -14.8	5.6
Ueno-----	***	***	***	***	13.08	1.10- 1.42	.16
Total-	5,336,963	4,788,912	89.73	661,002	13.80	1.10-14.8	1.14

1/ Based on all sales compared.

Source: Derived from confidential files of the U.S. Department of the Treasury.

No margins were found with respect to any sales by Chisso and Daicel. Treasury determined that Ueno's weighted average margin of 0.16 percent was minimal in relation to its total volume of sales. In addition, formal assurances have been received by Treasury that Ueno would make no further sales at LFTV. As a consequence, Treasury has discontinued the antidumping investigation of sorbates produced by Ueno.

Treasury's analysis of price information received from Nippon resulted in a weighted average margin of 5.6 percent on all sales investigated. Nippon is the only Japanese producer of sorbates left as a respondent in this investigation.

Domestic Producers

Monsanto, the complainant before Treasury, is the only producer of Food Grade sorbates in the United States. Monsanto's headquarters is located in St. Louis, Mo., and its sorbate facility is in Chocolate Bayou, Texas. The Chocolate Bayou sorbate facility, which came on stream in June 1977, has a yearly capacity of 10 million pounds or .5 million pounds more than estimated U.S. consumption of sorbates in 1977.

Union Carbide Corp. produced sorbates in the United States until 1970 when, according to company officials, it discontinued production because * * *. According to data submitted by Union Carbide in response to the Commission's "Synthetic Organic Chemical Production and Sales Questionnaires," the unit value of sorbates produced by Union Carbide fell from * * * a pound in 1965 to * * * a pound in 1970.

Besides Monsanto, there are two other small producers of sorbates in the United States which together account for less than * * * percent of total U.S. consumption. One manufacturer, Dederich Corp., located in Hubertus, Wis., began last year to produce potassium sorbate by * * *. This potassium sorbate, which amounts to about * * * percent of total U.S. sorbate consumption, is sold to * * *. The other small sorbate manufacturer, Atomergic Chemetals Corp. (Atomergic) located in Plainview, N.Y., produces about * * * pounds a year of very highly refined sorbic acid for use as a chemical reagent. This sorbic acid is purer than Food Grade sorbic acid and is not competitive with the sorbic acid produced by Monsanto or imported from Japan. Atomergic has been producing this specialty sorbic acid since 1976.

In its petition to Treasury requesting an antidumping investigation, Monsanto stated that Japanese sales of sorbates at LTFV prevent Monsanto from establishing a sorbate industry in the United States. Today, after operating its Chocolate Bayou sorbate facility for about 13 months, Monsanto contends that its petition was correct, and that the infant U.S. industry is not viable and will have to close down if dumping is continued. Thus, in effect, Monsanto contends that sales at LTFV prevent a domestic industry from being established.

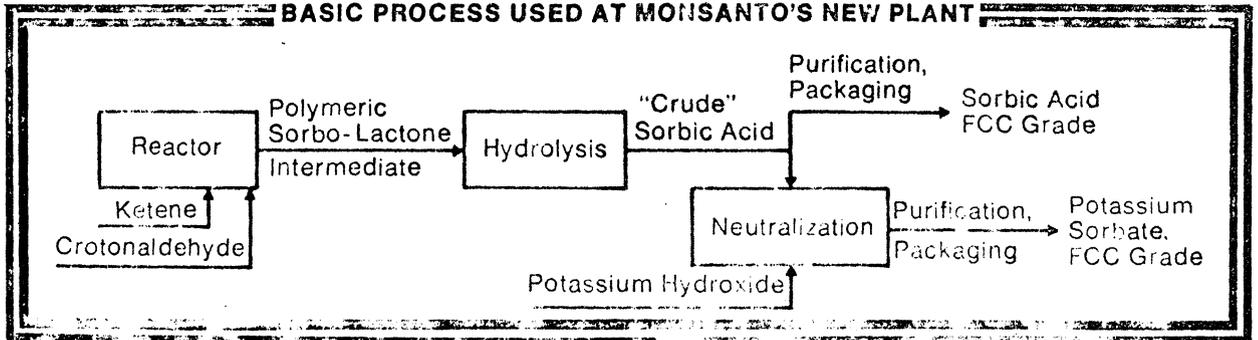
Monsanto's Chocolate Bayou facility is comprised of numerous production units for the manufacture of seven chemicals. One separate unit of the Chocolate Bayou plant is devoted solely to the production of sorbates. The sorbate production process utilized by Monsanto is highly complex, utilizing, under license from Nippon (the Japanese producer found by Treasury to be selling at LFTV), the most modern technology available. * * *. The sorbate facility covers the approximate area of a square block and is even more complicated than its Nippon prototype because of its scaled-up character, high degree of automation, and the stricter U.S. environmental and safety regulations with which it must comply.

According to Monsanto engineers, the sophisticated engineering of the sorbate production process requires that the sorbate facility operate at least at * * * percent capacity; the facility is most efficient, however, at * * * percent capacity from both an economic and from an engineering point of view. If the sorbate facility is not used in the production of sorbates, according to Monsanto officials, it could not be used efficiently for the production of any other chemical. In the event of termination of production, the equipment could only be sold for scrap at 3 to 5 percent of its original value.

Monsanto's process for sorbate production is essentially identical to that employed by Nippon. Over 25 chemicals are used; 250 pounds of chemicals produce 100 pounds of sorbate with no usable byproducts. The production process is based on the reaction of ketene with crotonaldehyde to form a polyester which, in turn, is hydrolyzed to crude sorbic acid. The crude acid is purified by carbon treatment and crystallization to produce sorbic acid which is then dried and packaged for sale. A major part of the crude sorbic acid, however, is neutralized with potassium hydroxide to form potassium sorbate. This salt is purified, crystallized, and converted to granules or powder for

sale. Figure 1 illustrates the basic manufacturing process utilized by Monsanto.

Figure 1.--Sorbates: Basic manufacturing process used by Monsanto.



Source: Food Engineering, April 1977.

The principal raw materials used in sorbate production are ketene and crotonaldehyde. Monsanto has recently developed a new, highly economical process to produce acetic acid, the base from which ketene is derived. Acetic acid is available to the Chocolate Bayou facility from Monsanto's production unit at Texas City. The petrochemicals which are used as a base in acetic acid production are obtained domestically. Crotonaldehyde is obtained under a contractual arrangement with * * *.

Unlike Monsanto, all Japanese producers are totally dependent upon imported petroleum as a base for their acetic acid. Nippon and Daicel, however, have been granted licenses by Monsanto to use Monsanto's new acetic acid production technology.

Monsanto sells sorbates to one rebrander, * * *, five distributors, and direct consumers. Figure 2 illustrates the channels of distribution used by Monsanto.

* * * * *

Foreign Producers

There are 5 major foreign producers of sorbates, as follows:

Chisso
Daicel

Nippon
Ueno
Hoechst Corp.

Chisso, Daicel, Nippon, and Ueno are large Japanese chemical concerns which were respondents in Treasury's investigation. The Hoechst Corp. is a West German firm which produces sorbates in West Germany primarily for sale in the European market. Monsanto advised the Commission that * * * contemplated establishing a sorbate facility in the United States after Union Carbide ceased producing sorbates in 1970. * * *, according to this source, dropped these plans in 1974, * * *.

* * * * *

U.S. Importers

The six largest U.S. importers of sorbates are as follows:

* * * * *

The six importers account for over 90 percent of all sorbates imported into the United States during 1975 through June 1978. According to Treasury files, the Japanese producers of sorbates sold primarily to the following U.S. sorbate importers during Treasury's investigation, from March through August 1977:

* * * * *

The antidumping investigation resulted in the termination of the long-standing trade relationship between Nippon and its licensee, Monsanto. Nippon ceased to export sorbates to Monsanto in October 1977. After Treasury announced in March 1978 the withholding of appraisalment, Nippon ceased all sorbate exports to the United States. * * *.

Consideration of Injury, Likelihood of Injury, or
Prevention of Establishment

Monsanto's market projections

As a part of its response to the Commission's questionnaires, Monsanto submitted five of its studies of the sorbate market. Figures 3, 4, 5, and 6

are excerpted from Monsanto's January 1978 market study. These figures present Monsanto's estimates of world capacity and demand, estimates of new U.S. markets, estimates of total U.S. markets, and estimates of Monsanto's shipments for 1975 through 1985. * * *. It now appears that an additional 4 million pounds of sorbates a year will be required for use in bacon by mid-1979.

* * * * *

Monsanto believes that the following competitive advantages should enable it to become a viable and profitable sorbate producer in the United States: Its large size and up-to-date technology enable it to produce sorbates at great savings. Its location in the center of the world's largest sorbate market will enable Monsanto to provide its customers with rapid service, and timely technological assistance, and be responsive to changes in market demands.

U.S. consumption

U.S. consumption of sorbates increased from an estimated 7.6 million pounds in 1974 to 9.6 million pounds in 1977. Consumption in January-June 1978 was approximately 6 million pounds. Year-by-year consumption estimates are shown in the following tabulation:

<u>Period</u>	<u>U.S. consumption</u> <u>(1,000 pounds)</u>
1974-----	7,626
1975-----	5,912
1976-----	8,277
1977-----	9,559
1978 (January-June)-----	5,956

The year 1975 was the only one in which U.S. sorbate consumption failed to grow rapidly. According to * * * and * * *, 1975 was a year of worldwide shortages and relatively high prices, which may have led to some diversion to other markets of sorbates normally shipped to the United States. It was also a recession year in the U.S. economy, which may have produced some softening of the U.S. demand for sorbates.

Imports accounted for all U.S. sorbate consumption between 1970, when Union Carbide discontinued sorbate production in the United States, and June 1977, when Monsanto commenced production. According to official U.S. Department of Commerce statistics, U.S. imports of sorbates increased from 6.2

million pounds in 1975 to 8.4 million pounds in 1977. Table 2 shows U.S. imports of sorbates by type and by principal source.

* * * * *

Inventories

* * * * *

Inventories of other U.S. importers of sorbates also increased in this period rising from approximately * * * million pounds in December 1975 to * * * million in June 1978. In response to the Commission's questionnaire, * * * reports that its inventory increased from 53,000 pounds in June 1977 to 1.2 million pounds in June 1978 because * * *. Another importer, * * *, attributes its increase in inventories from 128,000 pounds in June 1977 to 259,000 pounds in June 1978 to poor sales results.

Table 4.--Sorbates: Inventories held by Monsanto and other major importers as of Dec. 31, 1974-77, June 30, 1977, and June 30, 1978

(In thousands of pounds)

Item	As of Dec. 31--				As of June 30--	
	1974	1975	1976	1977	1977	1978
Monsanto:						
Imported-----	1/	***	***	***	***	***
U.S.-produced-----	2/	2/	2/	***	***	***
Total-----	1/	***	***	***	***	***
Other major importers-----	***	***	***	***	1/	***
Total, Monsanto and other major importers-----	1/	1,958	2,499	2,117	1/	3,735

1/ Not available.

2/ No U.S. production.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Table 2.--Sorbates: U.S. imports for consumption, by types and by principal sources, 1973-77, January-June 1977, and January-June 1978

Type and source	1973	1974	1975	1976	1977	Jan.-June--	
						1977	1978
Quantity (1,000 pounds)							
Sorbic acid:							
Japan-----	1,604	2,507	2,310	3,118	3,338	1,830	2,863
West Germany-----	605	1,007	653	336	42	42	42
All other-----	1	4	37	0	0	0	5
Total-----	2,210	3,519	3,000	3,454	3,380	1,872	2,911
Potassium sorbate:							
Japan-----	1/	1/	2,791	4,670	5,018	3,037	1,422
West Germany-----	1/	1/	433	162	34	11	122
All other-----	1/	1/	13	13	6	0	15
Total-----	1/	1/	3,237	4,845	5,059	3,048	1,560
Total, sorbic acid and potassium sorbate:							
Japan-----	1/	1/	5,101	7,788	8,356	4,867	4,286
West Germany-----	1/	1/	1,086	498	76	53	165
All other-----	1/	1/	49	13	6	0	20
Total-----	1/	1/	6,237	8,299	8,439	4,921	4,411
Value (1,000 dollars)							
Sorbic acid:							
Japan-----	1,456	3,147	3,344	4,322	4,799	2,596	4,185
West Germany-----	524	1,354	967	459	60	60	62
All other-----	1	7	44	0	0	0	7
Total-----	1,981	4,508	4,356	4,782	4,860	2,656	4,254
Potassium sorbate:							
Japan-----	1/	1/	3,978	6,387	7,227	4,281	2,122
West Germany-----	1/	1/	627	216	44	15	184
All other-----	1/	1/	21	18	9	0	22
Total-----	1/	1/	4,626	6,621	7,280	4,296	2,328
Total, sorbic acid and potassium sorbate:							
Japan-----	1/	1/	7,322	10,709	12,027	6,877	6,306
West Germany-----	1/	1/	1,594	675	104	75	246
All other-----	1/	1/	65	18	9	0	30
Total-----	1/	1/	8,982	11,140	12,140	6,593	6,582
Unit value (per pound) ^{2/}							
Sorbic acid:							
Japan-----	\$0.91	\$1.26	\$1.45	\$1.39	\$1.44	\$1.42	\$1.46
West Germany-----	.87	1.34	1.48	1.37	1.43	1.43	1.45
All other-----	1.41	1.68	1.21	-	-	-	1.49
Average-----	.90	1.28	1.45	1.38	1.44	1.42	1.46
Potassium sorbate:							
Japan-----	1/	1/	1.42	1.37	1.44	1.41	1.50
West Germany-----	1/	1/	1.45	1.33	1.29	1.34	1.49
All other-----	1/	1/	1.64	1.37	1.43	-	1.50
Average-----	1/	1/	1.43	1.37	1.44	1.41	1.49

1/ Not available.

2/ Calculated from the unrounded figures.

A-12

Source: Compiled from official statistics of the U.S. Department of Commerce.

Note.--Because of rounding, figures may not add to the totals shown.

* * * * *

Consideration of the Causal Relationship between LTFV Imports and Alleged Injury or Prevention of Establishment

Market penetration of imports from Nippon and imports by Monsanto from Nippon

Monsanto began to import sorbates in 1972. It imported between * * * percent and * * * percent of Nippon's exports to the United States between 1975 and 1977. Table 7 and figure 7 show Japanese exports of sorbates to the United States and third countries, and Nippon's exports to the United States and to Monsanto for the years 1973 through 1977.

* * *. Because of the withholding of appraisement ordered by Treasury, Nippon discontinued exports to the United States in February 1978.

Pricing

* * * * *

The average unit value of U.S. shipments of sorbates increased from \$1.44 a pound in 1974 to \$1.76 a pound in 1975, a year of shortages. Unit values declined to \$1.66 a pound in 1976 and increased to \$1.69 a pound in 1977 . The average unit value declined \$0.13 a pound from January-June 1978, when compared with the average price in the corresponding period in 1977.

* * * * *

Table 7.--Sorbates: Total Japanese exports to the United States and to third countries, and Nippon's exports to the United States and to Monsanto, 1973-77

Item	1973	1974	1975	1976	1977
Japanese exports:					
To United States-----1,000 pounds--	4,250	5,408	5,031	7,738	7,560
To third countries-----do-----	3,494	4,727	4,323	5,262	7,943
Total-----do-----	7,745	10,135	9,354	13,001	15,503
Nippon's exports:					
To United States-----1,000 pounds--	***	***	***	***	***
To Monsanto-----do-----	***	***	***	***	***
Nippon's share of Japanese exports to					
United States-----percent--	***	***	***	***	***
Exports to Monsanto as a percent of--					
Total Japanese exports to United					
States-----percent--	***	***	***	***	***
Total Nippon exports to United					
States-----do-----	***	***	***	***	***

Source: Derived from data submitted by counsel for Nippon.

Note.--Because of rounding, figures may not add to the totals show.

* * * * *

Table 9.--Sorbates: Average unit value of U.S. shipments of U.S.-produced and imported sorbates, by importers and U.S. producer, 1974-77, January-June 1977, and January-June 1978

Importer/producer	(Per pound)					
	1974	1975	1976	1977	Jan.-June	
					1977	1978
Bentley-----	***	***	***	***	***	***
Gillies-----	***	***	***	***	***	***
American Hoechst-----	***	***	***	***	***	***
Kanematsu-----	***	***	***	***	***	***
Mitsui-----	***	***	***	***	***	***
Monsanto-----	***	***	***	***	***	***
Tanabe-----	***	***	***	***	***	***
Toyomenka-----	***	***	***	***	***	***
Transchemic-----	***	***	***	***	***	***
Universal-----	***	***	***	***	***	***
Average, all shippers-----	\$1.44	\$1.76	\$1.66	\$1.69	\$1.75	\$1.62
	:	:	:	:	:	:

1/ Not available.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

* * * * *

Purchasers of sorbates, both distributors and consumers, reported in response to Commission questionnaires that both the offered selling price and the quality are the primary considerations in selecting a supplier. Other factors, such as availability, desire to have more than one source, and speed of delivery are of secondary importance as shown in the following tabulation:

<u>Criteria</u>	<u>Average rating</u> (1 = high; 8 = low)
Price-----	1.3
Quality-----	1.5
Availability-----	3.2
Desire to have more than one source-----	4.0
Speed of delivery-----	4.2
Historical source-----	6.2
Technical assistance-----	6.4
"Buy American" policy-----	6.4

Lost sales

Monsanto supplied the Commission with information concerning * * * instances in which it had to lower its price or it lost sales in 1977 and 1978 because of imports from Japan. On inquiry by the Commission, purchasers did not verify that any of these instances where Monsanto reduced its price or lost sales was attributable to sales of sorbates produced by Nippon.

* * * has supplied the Commission with documentary evidence that it has lost two customers whose accounts totaled over 1.3 million pounds of sorbates a year to Monsanto. * * *.

In his testimony at the hearing counsel for Nippon stated that in mid-1977 Kraft Foods informed representatives of Nippon that it had decided to purchase sorbates from Monsanto. Kraft Foods was Nippon's largest single customer besides Monsanto.

APPENDIX A

TREASURY DEPARTMENT'S LETTER TO THE COMMISSION
ADVISING THE COMMISSION OF ITS DETERMINATION
OF LTFV SALES FROM JAPAN



A-18
THE GENERAL COUNCIL OF THE TREASURY
WASHINGTON, D.C. 20220

RECORDED

JUN 12 1978

'78 JUN 13 PM 3:24

Dear Mr. Chairman:

In accordance with Section 201(a) of the Antidumping Act, 1921, as amended, you are hereby advised that sorbates from Japan are being, or are likely to be, sold at less than fair value within the meaning of the Act.

This determination excludes sorbates produced by Chisso Corp. and Daicel, Ltd. on the basis of no margins and discontinues the investigation with respect to Ueno Fine Chemical Industries, Ltd. on the basis of minimal margins in relation to total sales.

For purposes of this investigation, the term "sorbates" means both sorbic acid and potassium sorbate, which are classified under item numbers 425.8720 and 426.8420 of the Tariff Schedules of the United States, Annotated (TSUSA).

The U.S. Customs Service is making the files relative to this determination available to the International Trade Commission under separate cover. These files are for the Commission's use in connection with its investigation as to whether an industry in the United States is being, or is likely to be, injured by reason of the importation of this merchandise into the United States. Since some of the data in these files is regarded by the Treasury to be of a confidential nature, it is requested that the Commission consider all information therein contained for the use of the Commission only, and not to be disclosed to others without prior clearance with the Treasury Department.

Sincerely yours,

Robert H. Mundheim
Robert H. Mundheim

The Honorable
Daniel Minchew
Chairman, U.S. International
Trade Commission
Washington, D.C. 20436

COCKET NUMBER #590 JUN 13 1978 U.S. CUSTOMS SERVICE

APPENDIX B

U.S. INTERNATIONAL TRADE COMMISSION NOTICE
CONCERNING INVESTIGATION NO. AA1921-183,
SORBATES FROM JAPAN

Federal Register

June 23, 1978

(43 F.R. 27252)

[7020-02]

[AA1921-183]

SORBATES FROM JAPAN**Investigation and Hearing**

Having received advice from the Department of the Treasury on June 13, 1978, that sorbates from Japan, with the exception of that merchandise produced by Chisso Corp., Daicel, Ltd., and Ueno Fine Chemical Industries, Ltd., are being, or are likely to be, sold at less than fair value, the United States International Trade Commission, on June 16, 1978, instituted investigation No. AA1921-183 under section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)), to determine whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States. For the purpose of its determination concerning sales at less than fair value, the Treasury Department defined "sorbates" as sorbic acid and potassium sorbate, which are classified under item numbers 425.8720 and 426.8420, respectively, of the Tariff Schedules of the United States, Annotated.

Hearing. A public hearing in connection with the investigation will be held in Washington, D.C. beginning at 10:00 a.m., e.d.t., on Tuesday, August 1, 1978. All persons shall have the right to appear by counsel or in person, to present evidence, and to be heard. Requests to appear at the public hearing, or to intervene under the provisions of section 201(d) of the Antidumping Act, 1921, shall be filed with the Secretary of the Commission, in writing, not later than noon, Thursday, July 27, 1978.

Issued: June 20, 1978.

By order of the Commission.

KENNETH R. MASON,
Secretary.

(FR Doc. 78-17481 Filed 6-22-78; 8:45 am)

APPENDIX C

TREASURY DEPARTMENT NOTICES
ON SORBATES FROM JAPAN
AS PUBLISHED IN THE FEDERAL REGISTER

Federal Register
August 23, 1977
(42 F.R. 42423)

Office of the Secretary
SORBATES FROM JAPAN
Antidumping Proceeding

AGENCY: United States Treasury Department.

ACTION: Initiation of Antidumping Investigation.

SUMMARY: This notice is to advise the public that a petition in proper form has been received and an antidumping investigation is being initiated for the purpose of determining whether or not imports of sorbates (sorbic acid and potassium sorbate) from Japan are being, or are likely to be, sold at less than fair value within the meaning of the Antidumping Act of 1921, as amended. Sales at less than fair value generally occur when the prices of merchandise sold for exportation to the United States are less than the prices in the home market.

EFFECTIVE DATE: August 23, 1977.

FOR FURTHER INFORMATION CONTACT:

Edward F. Haley, Duty Assessment Division, Technical Branch, 1301 Constitution Avenue NW., Washington, D.C. 20229 (202-566-5492).

SUPPLEMENTARY INFORMATION: On July 18, 1977, information was received in proper form pursuant to § 153.26 and § 153.27, Customs Regulations (19 CFR 153.26 and 153.27), from counsel acting on behalf of the Monsanto Company, a domestic producer of the subject merchandise, indicating a possibility that sorbates from Japan are being, or are likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 et seq.).

For purposes of this notice, the term "sorbates" means sorbic acid and potassium sorbate, which are classified under item numbers 425.8720 and 426.8420, respectively, of the Tariff Schedules of the United States, Annotated.

There is evidence on record concerning injury to, or likelihood of injury to, or prevention of establishment of an industry in the United States. This evidence indicates that imports of sorbates from Japan have increased their share of the United States market in recent years as a result of possible sales at less than fair value. Furthermore, it appears that

those alleged sales at less than fair value have prevented the petitioner from pricing its merchandise at a level sufficient to realize an adequate return on its investment.

Having conducted a summary investigation as required by § 153.29 of the Customs Regulations (19 CFR 153.29) and having determined that there are grounds for doing so, the United States Customs Service is instituting an inquiry to verify the information submitted and to obtain the facts necessary to enable the Secretary of the Treasury to reach a determination as to the fact or likelihood of sales at less than fair value.

A summary of information from all sources is as follows:

The information received tends to indicate that the prices of merchandise sold for exportation to the United States are less than the prices for home consumption.

This notice is published pursuant to section 153.30 of the Customs Regulations (19 CFR 153.30).

ROBERT H. MUNDHEIM,
General Counsel of the Treasury.

August 17, 1977.

[FR Doc. 77-24331 Filed 8-22-77; 8:45 am]

Federal Register

March 2, 1978

(43 F.R. 8681)

[4810-22]

Office of the Secretary
SORBATES FROM JAPAN

Antidumping Notice of Withholding of Appraisal and Tentative Exclusion from Investigation

AGENCY: U.S. Treasury Department.

ACTION: Withholding of Appraisal and Tentative Exclusion from Investigation.

SUMMARY: This notice is to advise the public that there are reasonable grounds to believe or suspect that there are sales of sorbic acid and potassium sorbate—collectively referred to as "sorbates"—from Japan to the United States at less than fair value within the meaning of the Antidumping Act, 1921, with the exception of that produced by Chisso Corp. and Daicel, Ltd. Sales at less than fair

value generally occur when the price of merchandise sold for exportation to the United States is less than the price of such or similar merchandise sold in the home market or to third countries. Appraisal for the purpose of determining the proper duties applicable to entries of this merchandise will be suspended for 6 months, except entries of that merchandise produced by Chisso and Daicel. Interested persons are invited to comment on this action not later than April 3, 1978.

EFFECTIVE DATE: March 2, 1978.

FOR FURTHER INFORMATION CONTACT:

Edward F. Haley, Duty Assessment Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229, 202-566-5492.

SUPPLEMENTARY INFORMATION: On July 18, 1977, information was received in proper form pursuant to §§ 153.26 and 153.27, Customs Regulations (19 CFR 153.26 and 153.27), from counsel acting on behalf of the Monsanto Co., St. Louis, Mo., indicating that sorbic acid and potassium sorbate from Japan are being, or are likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 et seq.) (referred to in this notice as "the Act"). On the basis of this information and subsequent preliminary investigation by the Customs Service, an "Antidumping Proceeding Notice" was published in the FEDERAL REGISTER of August 23, 1977 (42 FR 42423-4).

For purposes of this notice, the term "sorbates" includes both sorbic acid and potassium sorbate. Sorbates are chemical compounds in white powder form used as anti-microbial food preservatives, and classifiable under item numbers 425.8720 (sorbic acid) and 426.8420 (potassium sorbate) of the Tariff Schedules of the United States, Annotated.

TENTATIVE DETERMINATION OF SALES AT LESS THAN FAIR VALUE

On the basis of information developed in Customs investigation and for the reasons noted below, pursuant to section 201(b) of the Act (19 U.S.C. 160(b)), I hereby determine that there are reasonable grounds to believe or suspect that the purchase price of sorbates from Japan, except that produced by Chisso Corp. and Daicel, Ltd., is less than the fair value, and thereby the foreign market value, of such or similar merchandise.

STATEMENT OF REASONS ON WHICH THIS DETERMINATION IS BASED

The reasons and bases for the above tentative determination are as follows:

(a) *Scope of the investigation.* Four manufacturers—Ueno Fine Chemical Industries, Ltd.; Nippon Synthetic Chemical Industry Co., Ltd.; Chisso Corp.; and Daicel, Ltd.—accounted for virtually all of the sorbates from Japan which were sold for export to the United States during the period of investigation (approximately 4 million pounds valued at about \$5.5 million). Therefore, the investigation was limited to these four manufacturers.

(b) *Basis of comparison.* For the purpose of this tentative determination, the proper basis of comparison appears to be between purchase price and the adjusted home market price of such or similar merchandise. Purchase price, as defined in section 203 of the Act (19 U.S.C. 162), was used since all export sales by the four companies appear to have been made to non-related customers in the United States. Home market prices, as defined in section 153.2, Customs Regulations (19 CFR 153.2(b)), were used for fair value purposes since such or similar merchandise appears to have been sold in the home market in sufficient quantities to provide a basis for comparison.

In accordance with section 153.31(b), Customs Regulations (19 CFR 153.31(b)), pricing information was obtained concerning export and appropriate home market sales of sorbates during the period March-August 1977.

(c) *Purchase price.* For the purposes of this tentative determination, since all of the merchandise was purchased or agreed to be purchased, prior to the time of exportation, by the person by whom or for whose account the merchandise was imported, within the meaning of section 203 of the Act, purchase price has been calculated on the basis of the c.i.f. price to a single U.S. customer in one instance and the price to trading companies for export to the United States in other instances. Deductions have been made for Japanese inland freight, export charges, ocean freight, and marine insurance, where applicable.

(d) *Home market price.* For the purposes of this tentative determination, home market prices have been calculated on the basis of the weighted-average price or the preponderant price during the period of investigation to distributors. Deductions were made for inland freight and handling charges, where applicable. Adjustments were made for direct advertising, selling expenses and commissions, rebates, differences in packing and credit costs, technical and servicing costs, and the cost of returned products, as appropriate.

(e) *Result of fair value comparisons.* Using the above criteria, preliminary analysis suggests that in certain instances the purchase price probably will be lower than the home market price of such or similar merchandise. Comparisons were made on approximately 86 percent of the sorbates sold for exportation to the United States during the period of investigation. Margins were tentatively found on sales made by Nippon and Ueno. With respect to Nippon, the margins ranged from 0.2 to 20.2 percent and the weighted-average margin was 7.0 percent on those sales compared. With respect to Ueno, the margins ranged from 1.4 to 4.0 percent and the weighted-average margin was 1.7 percent on those sales compared. No margins were found with respect to any sales by Chisso or Daicel, of which 87 percent and 100 percent of total sales, respectively, were

examined during the investigatory period.

Accordingly, Customs officers are being directed to withhold appraisal of sorbates from Japan, except that produced by Chisso and Daicel, in accordance with section 153.48, Customs Regulations (19 CFR 153.48).

In accordance with §§ 153.40(a) and 153.40(b) Customs Regulations (19 CFR 153.40(a), 153.40(b)), interested persons may present written views or arguments, or request in writing that the Secretary of the Treasury afford an opportunity to present oral views.

Any written request that the Secretary of the Treasury afford an opportunity to present oral views should be addressed to the Commissioner of Customs, 1301 Constitution Avenue NW., Washington, D.C. 20229, in time to be received by his office not later than March 13, 1978. Such requests must be accompanied by a statement outlining the issues to be discussed.

Any written views or arguments should likewise be addressed to the Commissioner of Customs in time to be received by his office not later than April 3, 1978.

This notice, which is published pursuant to § 153.35(b), Customs Regulations (19 CFR 153.35(b)), shall become effective March 2, 1978. It shall cease to be effective at the expiration of six months from the date of this publication, unless previously revoked.

ROBERT H. MUNDHEIM,
General Counsel of the Treasury.

FEBRUARY 24, 1978.

[FR Doc. 78-5474 Filed 3-1-78; 8:45 am]

Federal Register

June 16, 1978
(43 F.R. 26175)

[4810-22]

Office of the Secretary

SORBATES FROM JAPAN

Antidumping Determination of Sales at Less Than Fair Value; Exclusion From and Final Discontinuance of Investigation

AGENCY: United States Treasury Department.

ACTION: Determination of sales at less than fair value; exclusion from and final discontinuance of investigation.

SUMMARY: This notice is to advise the public that an antidumping investigation has resulted in a determination that certain imports of sorbic acid and potassium sorbate—collectively referred to as "sorbates"—from Japan are being sold at less than fair value. This case is being referred to the United States International Trade Commission for a determination whether the sales made at less than fair value have caused or are likely to cause injury to an industry in the United States.

EFFECTIVE DATE: June 16, 1978.

FOR FURTHER INFORMATION CONTACT:

Richard Rimlinger, U.S. Customs Service, Office of Operations, Duty Assessment Division, Technical Branch, 1301 Constitution Avenue NW., Washington, D.C. 20229, telephone 202-566-5492.

SUPPLEMENTARY INFORMATION

On July 18, 1977, information was received in proper form pursuant to sections 153.26 and 153.27, Customs Regulations (19 CFR 153.26 and 153.27) from counsel acting on behalf of the Monsanto Co., St. Louis, Mo., indicating that sorbic acid and potassium sorbate from Japan are being, or are likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 *et seq.*) (referred to in this notice as "the Act"). On the basis of this information and subsequent preliminary investigation by the Customs Service an "Antidumping Proceeding Notice" was published in the FEDERAL REGISTER of August 23, 1977 (42 FR 42423-4).

A "Withholding of Appraisement Notice and Tentative Exclusion from

Antidumping Investigation" was published in the FEDERAL REGISTER of March 2, 1978 (43 FR 8581).

For purposes of this notice, the term "sorbates" includes both sorbic acid and potassium sorbate. Sorbates are chemical compounds in white powder form used as anti-microbial food preservatives, and classifiable under item numbers 425.8720 (sorbic acid) and 426.8420 (potassium sorbate) of the Tariff Schedules of the United States, Annotated.

DETERMINATION OF SALES AT LESS THAN FAIR VALUE

On the basis of information developed in Customs' investigation and for the reasons noted below, pursuant to section 201(b) of the Act (19 U.S.C. 160(b)), I hereby determine that sorbates from Japan, except that produced by Chisso Corp., Daicel, Ltd., and Ueno-Fine Chemical Industries, Ltd., are being, or are likely to be, sold at less than the fair value of such or similar merchandise. In the case of

sorbates produced by Chisso and Daicel, I hereby exclude such merchandise from this determination. In the case of such merchandise produced by Ueno, I hereby discontinue the antidumping investigation.

STATEMENT OF REASONS ON WHICH THIS DETERMINATION IS BASED

The reasons and bases for the above determination are as follows:

a. *Scope of the Investigation.* Four manufacturers—Ueno Fine Chemical Industries, Ltd.; Nippon Synthetic Chemical Industry Co., Ltd.; Chisso Corp.; and Daicel, Ltd.—accounted for virtually all of the sorbates from Japan which were sold for export to the United States during the period of investigation (approximately 4 million pounds valued at about \$5.5 million). Therefore, the investigation was limited to these four manufacturers.

b. *Basis of Comparison.* For the purpose of considering whether the merchandise in question is being, or is likely to be, sold at less than fair value within the meaning of the Act, the proper basis of comparison is between purchase price and the adjusted home market price of such or similar merchandise.

Purchase price, as defined in section 203 of the Act (19 U.S.C. 162), was used since all export sales by the four companies were made to non-related customers in the United States. Home market price, as defined in section 153.2, Customs Regulations (19 CFR 153.2), was used since such or similar merchandise was sold in the home market in sufficient quantities to provide a basis for comparison.

In accordance with section 153.31(b), Customs Regulations (19 CFR 153.31(b)), pricing information was obtained concerning export and appropriate home market sales of sorbates during the period March-August 1977.

c. *Purchase Price.* For the purposes of this determination, since all of the merchandise was purchased or agreed to be purchased, prior to the time of exportation, by the person by whom or for whose account the merchandise was imported, within the meaning of section 203 of the Act, purchase price has been calculated on the basis of the c.i.f. price to a single U.S. customer in one instance and the price to trading companies for export to the United States in other instances. Deductions have been made for Japanese inland freight, export charges, ocean freight, marine insurance, and U.S. inland freight, where applicable.

d. *Home Market Price.* For the purpose of this determination, the home market price has been calculated on the basis of the weighted-average price or the preponderant price during the period of investigation to distributors. Deductions were made for inland

freight and handling charges, where applicable. Adjustments were made for direct advertising, selling expenses and commissions, rebates, technical and servicing costs, the cost of returned products, after sale inventory costs and differences in packing, credit and inspection costs, as appropriate.

Adjustments for direct advertising, selling expenses and commissions, rebates, technical and servicing costs, the cost of returned products and after sale inventory costs were based on actual costs incurred in the home market and were directly related to the sales under consideration, in accordance with section 153.10, Customs Regulations (19 CFR 153.10).

Adjustments for packing, credit and inspection costs relate to the difference in those costs between home market sales and sales for export to the United States and were also made in accordance with section 153.10, Customs Regulations (19 CFR 153.10).

Certain claims made by the Japanese manufacturers for adjustments to the home market price were not allowed. Ueno made claims for a proration of salesmen's salaries allegedly incurred on behalf of home market distributors and for cost savings attributable to differences in quantities sold in the two markets. Concerning salesmen's salaries, it has been Treasury's practice not to allow expenses which are overhead in nature and which would have been incurred regardless of whether there had been sales of the merchandise under consideration. Furthermore, Ueno did not adequately substantiate its allocation of those salaries to particular sales of sorbates. With respect to Ueno's claim for cost savings attributable to differences in quantities sold, Ueno failed to adequately document its claim; moreover,

Ueno's prices in the home market did not appear to vary in relation to differences in quantities, as contemplated by section 153.9, Customs Regulations (19 CFR 153.9). Ueno also contended that the home market price should have been calculated on the basis of weighted average over the entire six-month period investigated, instead of monthly weighted averages, on the grounds that certain expenses deducted from the home market price by Customs were deducted only in the months such expenses were paid. Ueno argues such expenses were actually incurred on a continuous basis throughout the six-month period. However, the information supplied by Ueno does not support its argument and furthermore, the use of weighted-average home market prices for as limited a period as possible is preferred in order to avoid distortions in comparisons with individual export prices.

Chisso, Daicel and Nippon all made claims for an adjustment for a difference in "level of trade" based upon dif-

ferences in quantities sold in the two markets. However, the information provided by those companies does not establish that prices in the home market varied as a result of differences in quantities. The companies' selling prices in the home market did not, to any extent, follow the pricing schedule purported to be followed on sales to the United States under which a "premium" was allegedly charged for shipments smaller than standard. Accordingly, that claim was not allowed.

e. *Result of Fair Value Comparisons.* Using the above criteria, the purchase price was found to be lower than the home market price of such or similar merchandise in certain instances.

Comparisons were made on approximately 90 percent of the sorbates sold for exportation to the United States during the period of investigation. Margins were found on sales made by Nippon and Ueno. With respect to Nippon, the margins ranged from 4.0 to 14.8 percent on 58 percent of the sales compared, with the weighted-average margin being 5.6 percent, based on all sales compared. With respect to Ueno, margins ranged from 1.1 to 1.4 percent on 13 percent of the sales compared, with the weighted-average margin, based on all sales compared, being 0.2 percent. No margins were found with respect to any sales by Chisso or Daicel, of which 87 percent and 100 percent of total sales, respectively, were examined during the investigatory period. Sales by Chisso and Daicel have therefore been excluded from the determination of sales at less than fair value.

In the case of Ueno, the weighted-average margin is considered to be minimal in relation to the total volume of sales. In addition, formal assurances have been received from that producer that it would make no future sales at less than fair value within the meaning of the Act.

The Secretary has provided an opportunity to known interested persons to present written and oral views pursuant to § 153.40, Customs Regulations (19 CFR 153.40).

The U.S. International Trade Commission is being advised of this determination.

The order to withhold appraisement on the subject merchandise from Japan, cited above and published in the FEDERAL REGISTER on March 2, 1978 (43 FR 8681), is hereby terminated with respect to Ueno Fine Chemical Industries, Ltd., effective upon publication of this notice.

This determination is being published pursuant to section 201(d) of the Act (19 U.S.C. 160(d)).

Dated: June 12, 1978. A-24

ROBERT H. MUNDHEIM,
General Counsel of the Treasury.

