

**DEPARTMENT OF COMMERCE****International Trade Administration**

[A-570-001]

**Final Results of Expedited Sunset Review: Potassium Permanganate 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: Potassium Permanganate 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 potassium permanganate 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 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:** April 7, 1999.

**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 potassium permanganate from the People's Republic of China ("PRC"), an inorganic chemical produced in free-flowing, technical, and pharmaceutical grades.<sup>1</sup> Potassium permanganate is classifiable under item 2841.61.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS 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 potassium permanganate from the PRC.

**Background**

On November 2, 1998, the Department initiated a sunset review of the antidumping order on potassium permanganate from the People's Republic of China (63 FR 58709), pursuant to section 751(c) of the Act. The Department received a Notice of Intent to Participate on behalf of Carus Chemical Company ("Carus") on November 16, 1998, within the deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations*. Carus claimed interested party status under 19 U.S.C. 1677(9)(C) as a U.S. producer of potassium permanganate. In addition, Carus indicated that it was the original petitioner in this proceeding and that it has regularly participated in all administrative reviews. We received a complete substantive response from Carus on December 3, 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 section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C), the Department determined to conduct an expedited, 120-day review of this order.

The Department determined that the sunset review of the antidumping duty order on potassium permanganate from the People's Republic of China is extraordinarily complicated. In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). (See section 751(c)(6)(C) of the Act.) Therefore, on March 2, 1999, the Department extended the time limit for

<sup>1</sup> On May 19, 1995, the Department determined that plastic ignitor spheres containing potassium permanganate are not within the scope of the order (60 FR 26871).

completion of the final results of this review until not later than June 1, 1999, in accordance with section 751(c)(5)(B) of the Act.<sup>2</sup>

**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-average 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, Carus' 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

<sup>2</sup> See *Potassium Permanganate from Spain and the People's Republic of China: Extension of Time Limit for Final Results of Five-Year Review*, 64 FR 10991 (March 8, 1999).

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 substantive response from any respondent interested party. Pursuant to section 351.218(d)(2)(iii) of the *Sunset Regulations*, this constitutes a waiver of participation.

The antidumping duty order on potassium permanganate from the PRC was published in the **Federal Register** on January 31, 1984 (49 FR 3897). Since that time, the Department has conducted two administrative reviews.<sup>3</sup> The order remains in effect for all manufacturers and exporters of the subject merchandise.

In its substantive response, Carus argues that it is highly likely that dumping would continue if the antidumping order in this case were to be revoked. (See December 3, 1998, Substantive Response of Carus at 2.) With respect to whether dumping continued at any level above *de minimis* after the issuance of the order, Carus argued that high dumping margins have been continuously in place for the almost 15 years since the date of the order. Carus further argues that the uninterrupted existence of high margins over the life of the order, and the continued failure of any PRC producer or exporter to successfully complete an annual review, provides compelling evidence that PRC exporters would engage in dumping at very high rates in the absence of the order. According to Carus, even with the severe discipline of the order in place, PRC exporters have continued to dump. (See December 3, 1998, Substantive Response of Carus at 7.)

With respect to whether imports of the subject merchandise ceased after the issuance of the order, Carus, citing its own shipment data and official U.S.

Census Bureau import statistics, argued that reported imports of potassium permanganate from the PRC effectively ceased after May 1994, when the Department issued the final results of the 1990 administrative review. (See December 3, 1998, Substantive Response of Carus at 7.) Carus argues that PRC producers/exporters were attempting to circumvent the order by shipping subject merchandise through a number of Hong Kong resellers who had not been subject to increased margin rates assigned to PRC producers and certain Hong Kong resellers in the final results of the 1989 administrative review (56 FR 19640).<sup>4</sup> Carus further argues that while imports of Chinese potassium permanganate were subject to the 39.64 percent deposit rate (1984–1990), annual imports surged by almost 580%—from 432,000 lbs. in 1984 to over 2.1 million lbs. in 1989 to over 2.5 million lbs. in 1990. (See December 3, 1998, Substantive Response of Carus at 22.) According to Carus, imports of the subject merchandise ceased after the deposit rate increased to reflect the actual level of dumping and purported absorption and, thus, the “loophole” associated with sales through Hong Kong resellers was eliminated.

In addition, Carus states that there are other factors which support the likelihood of dumping if the order were revoked. Carus argues that the attractiveness of the U.S. market would promote increased imports of Chinese potassium permanganate because U.S. prices of this product are at a premium while prices elsewhere in the world are well below U.S. levels. Carus also argues that Chinese producers have an oversupply of subject merchandise. In this respect, Carus makes four arguments. First, Carus states that the high antidumping duties established by the European Union and India on potassium permanganate from China have effectively shut Chinese exporters of this product out of those markets, increasing their inventories and forcing them to look elsewhere for export markets. Second, Carus argues that advances in Chinese potassium

permanganate production technology have resulted in increased efficiency and enable producers to offer lower prices. These technological advances have resulted in increased production capacities and inventories and, coupled with a lower price, will spur increased exportation. Third, because potassium permanganate has applications in the production of cocaine and China has recently demonstrated greater vigilance in controlling exports of potassium permanganate in situations where it may be used in the production of narcotics, Carus argues that this increased control may result in an additional surplus of Chinese potassium permanganate. According to Carus, this will promote the search for additional export markets which, in turn, may prompt future dumping. Fourth, Carus asserts that the Asian financial crisis has reduced the need for Chinese potassium permanganate in Asia. Carus argues that cash-strapped Asian governments are not likely to begin using large volumes of potassium permanganate in the type of applications for which it is used in the United States—for the treatment of municipal waste and drinking water. According to Carus, these factors may force Chinese producers to look elsewhere to sell their product.

In conclusion, Carus argued that the Department should determine that there is a likelihood that dumping would continue were the order revoked because (1) dumping margins have existed throughout the life of the order, (2) shipments of subject merchandise continued throughout the life of the order and have ceased only recently as the effective margin rate has increased to reflect the actual level of dumping, (3) premium prices for potassium permanganate in the U.S. will promote continued, if not increased, dumping by Chinese producers, (4) Chinese producers have an oversupply of the subject merchandise, for a variety of reasons, and need markets in which to sell and (5) the Asian economic crisis is limiting the number of markets in which Chinese producers of potassium permanganate can sell.

As discussed in Section II.A.3 of the *Sunset Policy Bulletin*, the SAA at 890, and the House Report at 63–64, 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. A dumping margin above *de minimis* continues to exist for shipments of the subject

<sup>3</sup> See *Final Results of Antidumping Duty Administrative Review: Potassium Permanganate from The People's Republic of China*, 56 FR 19640, April 29, 1991 (1989 POR) and *Potassium Permanganate from The People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 59 FR 26625, May 23, 1994 (1990 POR). Prior to the imposition of the order, the Department published *Final Determination of Sales at Less Than Fair Value: Potassium Permanganate from The People's Republic of China*, 48 FR 57347, December 29, 1983.

<sup>4</sup> On April 29, 1991, the Department published *Final Results of Antidumping Duty Administrative Review: Potassium Permanganate from The People's Republic of China* (56 FR 19640) in which all subject merchandise produced and exported directly to the U.S. by Chinese manufacturers became subject to a deposit rate of 128.94 percent. In addition to all PRC producers, a rate of 128.94 percent was established for four of the seven known Hong Kong resellers of the subject merchandise in the 1991 Final Results. In those Final Results, other resellers retained the original 39.63 percent rate established for “all other” producers/exporters in the antidumping duty order (see *Antidumping Duty Order: Potassium Permanganate from The People's Republic of China*, 49 FR 3897, January 31, 1984).

merchandise from all Chinese producers/exporters.<sup>5</sup>

Consistent with section 752(c) of the Act, the Department also considered the volume of imports before and after issuance of the order. The import statistics provided by Carus on imports of the subject merchandise between 1980 and 1998, and those examined by the Department (U.S. Census Bureau IM146 reports), demonstrate that imports of the subject merchandise have continued throughout the life of the order.

Based on this analysis, the Department finds that the existence of dumping margins after the issuance of the order is highly probative of the likelihood of continuation or recurrence of dumping. Deposit rates above a *de minimis* level continue in effect for exports of the subject merchandise by all known Chinese manufacturers/exporters. Therefore, given that dumping has continued over the life of the order and respondent interested parties have waived their right to participate in this review before the Department, and absent argument and evidence to the contrary, the 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 Carus' arguments concerning the attractiveness of the U.S. market, U.S. price premiums for potassium permanganate, Chinese overcapacity and export orientation, or the effects of the Asian economic crisis.

### 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 3 of the *Sunset Policy Bulletin*.)

The Department, in its final determination of sales at less than fair value, published a weighted-average dumping margin for the China National Chemicals Import and Export Corporation (SINOCHEM), the sole Chinese producer/exporter in the original investigation, of 39.63 percent (48 FR 57347, December 29, 1983). The Department also published an "all others" rate of 39.63 percent in this same **Federal Register** notice. With respect to duty absorption findings, Carus argues that duty absorption is likely in this case but, because there have been no completed administrative reviews of the order since the 1990 administrative review, the Department has not had the opportunity to address the issue of duty absorption.

In its substantive response, Carus argues that the Department should provide the Commission a more recently calculated margin. Citing the *Sunset Policy Bulletin*, Carus states that "[a] company may choose to increase dumping in order to maintain or increase market share. As a result, increasing margins may be more representative of a company's behavior in the absence of an order." In the original investigation, the Department established a deposit rate of 39.63 percent for SINOCHEM as well as for "all other" producers/exporters of Chinese potassium permanganate (48 FR 57347, December 29, 1983). Carus asserts that the 39.63 percent margin established in the investigation was far too low to prevent rapid import growth and continued dumping of PRC-origin product, as well as dramatic increases in the Chinese share of the U.S. market. According to Carus, Chinese imports of the subject merchandise surged by almost 580%—from 432,000 lbs. in 1984 to over 2.1 million lbs. in 1989 to over 2.5 million lbs. in 1990.

In January of 1990, Carus requested an administrative review of Chinese exports of potassium permanganate to the United States. In response to this request, the Department conducted a review and established, on April 29, 1991, a new deposit rate for all PRC producers of 128.94 percent. In addition, the Department established a new deposit rate for four of the seven known Hong Kong resellers of this product. According to Carus' information, imports of the subject merchandise then decreased by almost 70 percent, from 2,560,700 lbs. in 1990 to 861,051 lbs. in 1991.

Nevertheless, by 1993, imports of Chinese potassium permanganate had increased to 2,441,453 lbs. and had recaptured over 9 percent of the U.S. market, almost as much of the U.S.

market as Chinese producers/exporters had held just prior to the imposition of the order. Carus claims this resurgence in Chinese imports was attributed to a "loophole" evident in the 1991 Final Results. Specifically, the "all others" rate of 39.63 percent was still being applied as a deposit rate to previously unnamed Hong Kong resellers, not all of whom could be identified for review. Carus argues that the retention of the 39.63 percent rate for Hong Kong resellers subject to the "all others" rate, coupled with the willingness and ability of Chinese producers/exporters to dump, allowed substantial amounts of PRC-origin potassium permanganate to be transshipped through Hong Kong resellers and sold in the U.S. at below fair market value. In the 1991 Final Results, the Department clarified that, in cases involving non-market economies, an "all others" cash deposit rate is not appropriate because any non-market economy country firm must show that it is entitled to a separate rate before a rate other than the non-market economy country-wide rate can be assigned to it, and any intermediate country reseller is properly assigned the rate for its producer unless the reseller affirmatively shows that the merchandise has not simply been transshipped. 59 FR 26630. <sup>6</sup> Because no third country reseller established, during the 1990 administrative review or since, that its merchandise was not being transshipped, such that the first exporter "to the United States" was properly deemed to be the PRC exporter, the "all others" loophole was eliminated in the May 23, 1994 final results of the 1990 administrative review, which established a 128.94 percent deposit rate for all shipments of Chinese potassium permanganate. 59 FR 26625.

Carus submits that the history of this case shows that the margin established in the original investigation was insufficient to prevent an influx of Chinese potassium permanganate and insufficient to prevent Chinese producers/exporters' attempts at increasing market share in the United States through dumping. Carus argues that, between 1984 and 1990, Chinese producers/exporters of potassium permanganate increased their share of the U.S. market by 340 percent, from 2.5 percent to 8.5 percent. December 3, 1998 Substantive Response of Carus. Furthermore, Carus argues that the "loophole" created by the exclusion of certain Hong Kong resellers from the

<sup>5</sup> See *Potassium Permanganate from The People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 59 FR 26625 (May 23, 1994).

<sup>6</sup> See also *Yue Pak v. United States*, Slip Op. 96-65 (CIT April 18, 1996), *aff'd* 111 F.3rd 142 (Fed. Cir. 1997).

128.94 percent margin assigned to Chinese exporters in the 1989 administrative review again permitted dramatic increases in Chinese imports of the subject merchandise and the virtual recapture of the Chinese percentage of the U.S. potassium permanganate market.

Therefore, Carus argues, the margin determined in the original investigation does not reflect current Chinese pricing behavior or present levels of globally-traded input prices. In addition, Carus argues the changes in the methodology used by the Department in the calculation of margins renders the margin from the original investigation suspect.

The Department agrees with Carus' argument concerning the choice of the margin rate to report to the Commission. An examination of the margin history of the order as well as an examination of import statistics of the subject merchandise, as provided in U.S. Census Bureau IM146 reports, confirms the scenario outlined by Carus. From 1984, the date the first margins were established for this proceeding (49 FR 3897, January 31, 1984), to 1990, import volumes of the subject merchandise swelled, increasing by almost 600 percent. During this period, a cash deposit rate of 39.64 percent was in effect. In 1991, in an administrative review requested by Carus, the Department established a new deposit rate of 128.94 percent for producers of the subject merchandise from the PRC and for certain named third country resellers (56 FR 19640, April 29, 1991). Import volumes fell substantially in 1991, by almost 70 percent, but then rebounded by 1993, the year immediately preceding the final results of the 1990 administrative review (59 FR 26625, May 23, 1994). In May of 1994, in the Final Results of the 1990 administrative review, the Department established a rate of 128.94 percent for all potassium permanganate of Chinese origin, whether shipped directly from the PRC or transshipped through a third country reseller. Following the establishment of this more inclusive margin rate, shipments of potassium permanganate fell dramatically, and have not exceeded 50,000 lbs. in any year since 1996.

The Department believes that the increase in import volumes and market share between the imposition of the order and the Final Results in the 1989 administrative review (56 FR 19640, April 29, 1991) reflect the willingness and ability of Chinese producers/exporters to dump this product despite the margin rate established by the Department in the original investigation.

Furthermore, the continuation of dumping and the virtual recapture of market share between the final results in the 1989 review and those in the 1990 review reflects attempts by Chinese producers/exporters to circumvent the order by transshipping the subject merchandise through third country resellers with lower deposit rates. This is evidenced by the dramatic reduction in import volumes following the 1990 administrative review (59 FR 26625, May 23, 1994) in which a single rate was established for all potassium permanganate of Chinese origin, regardless of the interim shipping location, absent a showing that either the Chinese exporter was entitled to a separate rate or the third country reseller was not merely engaged in transshipment. This more inclusive margin determination has apparently reduced the ability of Chinese producers/exporters to circumvent the order.

According to the *Sunset Policy Bulletin*, "a company may choose to increase dumping in order to maintain or increase market share. As a result, increasing margins may be more representative of a company's behavior in the absence of an order." Therefore, the Department finds that this most recent rate is the most probative of the behavior of Chinese producers/exporters of potassium permanganate if the order were revoked. As a result, the Department is not addressing current Chinese pricing behavior or changes in methodologies used by the Department in its margin calculations. The Department will report to the Commission the country-wide rate from the administrative review for the period January 1, 1990 through December 31, 1990 (59 FR 26625, May 23, 1994) as 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 likely lead to continuation or recurrence of dumping at the margins listed below:

Manufacturer/exporter	Margin (percent)
Country-wide rate for the People's Republic of China	128.94

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: April 1, 1999.

**Robert S. LaRussa**

*Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-825]

#### Final Results of Expedited Sunset Review: Sebacic Acid 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: Sebacic Acid from the People's Republic of China.

**SUMMARY:** On December 2, 1998, the Department of Commerce ("the Department") initiated a sunset review of the antidumping order on sebacic acid from the People's Republic of China (63 FR 66527) 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 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:** April 7, 1999.

#### Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752 of the Act.