



A-570-880
Sunset Review
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DATE: May 28, 2014

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: Christian Marsh *CM*
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Expedited Second
Sunset Review of the Antidumping Duty Order on Barium
Carbonate from the People's Republic of China

Summary

In the second sunset review of the antidumping duty (AD) order covering barium carbonate from the People's Republic of China ("PRC"), domestic interested party, Chemical Products Corporation ("Petitioner")¹, submitted an adequate substantive response on March 5, 2014.² No respondent(s) submitted a response. In accordance with our analysis of Petitioner's Substantive Response, we recommend adopting the positions described below. The following is a complete list of issues in this sunset review for which we received substantive responses:

1. Likelihood of continuation or recurrence of dumping; and
2. Magnitude of the dumping margin likely to prevail.

Background

On February 3, 2014, the Department of Commerce (the "Department") published a notice of initiation of the sunset review of the AD order on barium carbonate from the PRC.³ On February 14, 2014, Petitioner filed a letter of intent to participate in this second sunset review.⁴ On March 5, 2014, Petitioner filed a substantive response in the sunset review within the 30-day deadline,

¹ The domestic interested party in this sunset review is Chemical Products Corporation ("CPC"), the sole producer of barium carbonate in the United States and the petitioner in the less than fair value ("LTFV") investigation concerning imports of barium carbonate from the PRC. See Notice of Initiation of Antidumping Duty Investigation: Barium Carbonate From the People's Republic of China, 67 FR 65534 (October 25, 2002). See also Barium Carbonate from the People's Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order, 74 FR 882 (January 9, 2009) ("First Sunset Review Final").

² See Petitioner's March 5, 2014, submission ("Substantive Response").

³ See Initiation of Five-Year ("Sunset") Review, 79 FR 6163 (February 3, 2014).

⁴ See Petitioner's February 14, 2014, letter of intent to participate.



as specified in 19 C.F.R. 351.218(d)(3)(i). The Department did not receive a response from any respondent interested party in the sunset review. Consequently, the Department is conducting an expedited (120-day) sunset review consistent with section 751(c)(3)(B) of the Act and 19 C.F.R. 351.218(e)(1)(ii)(C)(2). Our analysis of Petitioner's comments submitted in its substantive response is set forth in the "Discussion of the Issues" section, below.

Scope of the Order

The merchandise covered by this order is barium carbonate, regardless of form or grade. The product is currently classifiable under subheading 2836.60.0000 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

History of the Order

On August 6, 2003, the Department published the final determination in the investigation of barium carbonate from the PRC.⁵ On September 26, 2003, the United States International Trade Commission ("ITC") issued its affirmative injury determination in the investigation.⁶ On October 1, 2003, the Department issued the AD order on barium carbonate from the PRC.⁷ The calculated margins set forth in the Order were 34.44 percent for Qingdao Red Star Chemical Import & Export Co., Ltd. and a PRC-wide rate of 81.30 percent. There have been no administrative reviews since issuance of the Order. There have been no related findings or rulings (e.g., changed circumstances review, scope ruling, duty absorption review) since issuance of the Order. The Order remains in effect for all manufacturers, producers, and exporters of subject merchandise.

On January 9, 2009, the Department published the final results of the expedited first sunset review of this Order.⁸ On March 10, 2009, the ITC published its final results of the expedited sunset review.⁹ On March 17, 2009, the Department published the continuation of the Order.¹⁰

Discussion of the Issues

Legal Framework

In accordance with section 751(c)(1) of the Act, the Department is conducting this sunset review to determine whether revocation of the Order would likely lead to continuation or recurrence of

⁵ See Notice of Final Determination of Sales at Less Than Fair Value: Barium Carbonate From the People's Republic of China, 68 FR 46577 (August 6, 2003) ("Final Determination").

⁶ See Barium Carbonate from China; Investigation No. 731-TA-1020 (Final), 68 FR 55653 (September 26, 2003).

⁷ See Antidumping Duty Order: Barium Carbonate From the People's Republic of China, 68 FR 56619 (October 1, 2003) ("Order").

⁸ See First Sunset Review Final, 74 FR at 882.

⁹ See Barium Carbonate From China; Investigation No. 731-TA-1020 (Review), 74 FR 10278 (March 10, 2009).

¹⁰ See Barium Carbonate from the People's Republic of China: Continuation of Antidumping Duty Order, 74 FR 11348 (March 17, 2009).

dumping. Sections 752(c)(1)(A) and (B) of the Act provide that, in making this determination, the Department shall consider both the weighted-average dumping margins determined in the investigation and subsequent reviews, and the volume of imports of the subject merchandise for the periods before, and the periods after, the issuance of the Order.

In accordance with the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act, specifically the Statement of Administrative Action, H.R. Doc. 103-316, vol. 1 (1994) (“SAA”),¹¹ the House Report, H. Rep. No. 103-826, pt. 1 (1994) (House Report),¹² and the Senate Report, S. Rep. No. 103-412 (1994) (Senate Report), the Department’s determinations of likelihood will be made on an order-wide, rather than company-specific, basis.¹³ In addition, the Department normally determines that revocation of an AD order is likely to lead to continuation or recurrence of dumping when, among other scenarios: (a) dumping continued at any level above de minimis after the issuance of the order; (b) imports of the subject merchandise ceased after issuance of the order; or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly.¹⁴ Alternatively, the Department normally will determine that revocation of an AD order is not likely to lead to continuation or recurrence of dumping where dumping margins declined or were eliminated and import volumes remained steady or increased after issuance of the order.¹⁵ In addition, as a base period of import volume comparison, it is the Department’s practice to use the one-year period immediately preceding the initiation of the investigation, rather than the level of pre-order import volumes, as the initiation of an investigation may dampen import volumes and, thus, skew comparison.¹⁶

Further, section 752(c)(3) of the Act states that the Department shall provide to the ITC the magnitude of the margin of dumping likely to prevail if the order were revoked. Generally, the Department selects the dumping margins from the final determination in the original investigation, as this is the only calculated rate that reflects the behavior of exporters without the discipline of an order in place.¹⁷

The Department recently announced it was modifying its practice in sunset reviews such that it will not rely on weighted-average dumping margins that were calculated using the methodology found to be World Trade Organization (“WTO”)-inconsistent, *i.e.*, zeroing/the denial of offsets.¹⁸ In the Final Modification for Reviews, the Department stated that “only in the most extraordinary circumstances” would it rely on margins other than those calculated and published

¹¹ Reprinted in 1994 U.S.C.C.A.N. 4040 (1994).

¹² Reprinted in 1994 U.S.C.C.A.N. 3773 (1994).

¹³ See SAA at 879, and House Report at 56.

¹⁴ See SAA at 889-90, House Report at 63-64, and Senate Report at 52.

¹⁵ See SAA at 889-90, and House Report at 63.

¹⁶ See, e.g., Stainless Steel Bar from Germany: Final Results of the Sunset Review of the Antidumping Duty Order, 72 FR 56985 (October 5, 2007) and accompanying Issues and Decision Memorandum at Comment 1.

¹⁷ See SAA at 890; see also Persulfates from the People’s Republic of China: Notice of Final Results of Expedited Second Sunset Review of Antidumping Duty Order, 73 FR 11868 (March 5, 2008) and accompanying Issues and Decision Memorandum at Comment 2.

¹⁸ See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings: Final Modification, 77 FR 8101, 8103 (February 14, 2012) (“Final Modification for Reviews”).

in prior determinations.¹⁹ The Department further stated that apart from the “most extraordinary circumstances,” it would “limit its reliance to margins determined or applied during the five-year sunset period that were not determined in a manner found to be WTO-inconsistent” and that it “may also rely on past dumping margins that were not affected by the WTO-inconsistent methodology, such as dumping margins recalculated pursuant to Section 129 proceedings, dumping margins determined based on the use of total adverse facts available, and dumping margins where no offsets were denied because all comparison results were positive.”²⁰

Finally, pursuant to section 752(c)(4)(A) of the Act, a dumping margin of zero or de minimis shall not by itself require the Department to determine that revocation of an AD order would not be likely to lead to a continuation or recurrence of sales at LTFV.²¹ Our analysis of the comments submitted by domestic interested parties follows.

Analysis

1. *Likelihood of Continuation or Recurrence of Dumping*

Petitioner states that revocation of the Order would likely result in a “surge of unfairly-trade imports of barium carbonate” from the PRC that would “overwhelm the U.S. market and would likely eliminate” Petitioner from the domestic market.²² Petitioner notes that: 1) the Department’s evaluation of the likelihood of resumed dumping, and 2) recent trade remedy cases in the European Union and India regarding dumping of barium carbonate by PRC exporters are sufficient factors in determining that a recurrence of dumping is likely if the Order were revoked. Further, Petitioner argues that the imposition of the Order in 2003 had a dramatic and immediate effect on imports of barium carbonate from PRC exporters.²³ Petitioner also points to a sharp drop in import volume during the year that the Order was imposed.²⁴

Department’s Position

As explained in the Legal Framework section above, when determining whether revocation of the order would be likely to lead to continuation of dumping, sections 752(c)(1)(A) and (B) of the Act instruct the Department to consider: (1) the weighted-average dumping margins determined in the investigation and subsequent reviews; and (2) the volume of imports of the subject merchandise for the period before and after the issuance of the AD order. Thus, one consideration is whether the Department continued to find dumping at above de minimis levels in administrative reviews subsequent to the imposition of the AD order.²⁵ According to the SAA and the House Report, “if companies continue to dump with the discipline of an order in place, it

¹⁹ See id.

²⁰ See id.

²¹ See Folding Gift Boxes from the People’s Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order, 72 FR 16765 (April 5, 2007) and accompanying Issues and Decision Memorandum at Comment 1.

²² See Substantive Response, at 3.

²³ See Substantive Response, at 5 and Exhibit 1.

²⁴ See id.

²⁵ See SAA at 890.

is reasonable to assume that dumping would continue if the discipline were removed.”²⁶ According to the SAA, “{d}eclining import volumes accompanied by the continued existence of dumping margins after the issuance of an order may provide a strong indication that, absent an order, dumping would be likely to continue, because the evidence would indicate that the exporter needs to dump to sell at pre-order volumes.”²⁷ We find that revocation of the Order would likely result in the continuation of dumping in the United States due to the continued existence of dumping margins and a significant decline in import volume since the issuance of the Order.

Petitioner states that the “drop in imports and the lack of participation in administrative reviews clearly demonstrates that Chinese exporters of barium carbonate are unable to participate in the U.S. market without resorting to unfair pricing. This factual record fully supports an affirmative determination by the Department that, if the antidumping duty order were revoked, dumping of barium carbonate from China would continue and that CPC would again suffer from competition with large volumes of unfairly traded imports.”²⁸

Pursuant to section 752(c)(1)(A) of the Act, the Department first considered the weighted-average dumping margins determined in the investigation and any subsequent reviews. In the Final Determination, the Department calculated a weighted-average dumping margin of 34.44 percent for the single mandatory respondent, Qingdao Red Star Chemical Import & Export Co., Ltd. Further, the Department found that the PRC-wide entity failed to cooperate to the best of its ability and, as adverse facts available, assigned it the petition rate, *i.e.*, 81.30 percent.²⁹ Thus, the Department determined rates above de minimis for all PRC manufacturers and exporters during the original investigation.³⁰ There have been no administrative reviews since issuance of the Order. Thus, any entries of subject merchandise into the United States after issuance of the Order were assessed at above de minimis AD rates.³¹ As noted above, the Department normally determines that revocation of an AD order would be likely to lead to continuation or recurrence of dumping when dumping continued at any level above de minimis after issuance of the order.

In addition, pursuant to section 752(c)(1)(B) of the Act, the Department also considered the volume of imports of the subject merchandise in determining whether revocation of the AD order would likely lead to continuation or recurrence of dumping. We reviewed the import data on the record, as provided by Petitioner, which reflects the import quantity (metric tons), landed duty-paid value (\$1000 dollars), and average unit value (\$/metric tons) of imports of barium carbonate from the PRC for the period from 2009 through 2013, which is based on import data, collected by the U.S. Census Bureau and available through the ITC website under HTSUS tariff subheading 2836.60.0000 (“ITC Dataweb”).³² We note that this data³³ was acceptable for our

²⁶ See *id.*; see also House Report, at 63-64.

²⁷ See SAA at 889.

²⁸ See Substantive Response, at 5 and Exhibit 1.

²⁹ See Final Determination, 68 FR at 46578.

³⁰ See Order, 68 FR at 56619.

³¹ See First Sunset Review Final, 74 FR at 883.

³² See *id.*, at 5-6 and Exhibit 1.

³³ See *id.*, at Exhibit 1.

analysis, as Petitioner obtained it from the ITC Dataweb,³⁴ a source the Department has relied on in the past.³⁵

It is the Department's practice to compare the volume of imports for the one-year period preceding the initiation of the LFTV investigation to the volume of imports during the period of this sunset review. Since the issuance of the Order, import volumes of barium carbonate into the United States from the PRC have declined significantly and remain below pre-investigation levels. In analyzing import volumes for the period of this sunset review, based on U.S. Census Bureau import statistics, the Department has determined that imports from the PRC under HTSUS numbers listed in the scope of the Order have been at levels significantly lower than the year immediately preceding the initiation of the LFTV investigation (i.e., 2002).³⁶ Specifically, the volume of imports for 2002, the year prior to the filing of the petition, was 13,018 metric tons. From 2009 to 2013, the volume of imports has continued to decrease dramatically compared to pre-petition levels: 78 metric tons in 2009, 48 metric tons in 2010, 94 metric tons in 2011, 76 metric tons in 2012, and 20 metric tons in 2013.³⁷ As noted above, the SAA explained that the Department normally determines that revocation of an AD order would likely lead to continuation or recurrence of dumping when, among other things, imports of the subject merchandise ceased after issuance of the order. Thus, while imports have not ceased, record evidence shows that the imports are significantly lower in the last five years when compared to pre-initiation import volumes. This indicates that PRC exporters have not been able to maintain pre-investigation import levels without selling merchandise at dumped prices.³⁸

Therefore, pursuant to section 752(c)(1) of the Act, because the ITC Dataweb data on the record indicates that dumping has continued at levels above de minimis during the period of the sunset review, and the Department found dramatically lower import volumes in the four years examined in comparison to pre-initiation import volumes, we determine that revocation of the Order is likely to lead to continuation or recurrence of dumping.

2. *Magnitude of the Margin of Dumping Likely to Prevail*

Petitioner notes that the rates calculated for PRC exporters in the investigation are the only rates available on the record, as there have been no administrative reviews of the Order since 2003. Accordingly, the Department should report to the ITC the rate of 34.44 percent for Qingdao Red Star and a rate of 81.30 percent for all other PRC exporters.³⁹

³⁴ See id.

³⁵ See, e.g., Circular Welded Carbon-Quality Steel Line Pipe From the People's Republic of China: Final Results of the Expedited First Sunset Review of the Antidumping Duty Order, 79 FR 19052 (April 7, 2014) and accompanying Issues and Decision Memorandum at 5 ("PRC Steel Line Pipe Sunset"). See also Steel Wire Garment Hangers From the People's Republic of China: Final Results of Expedited Sunset Review of the Antidumping Duty Order, 79 FR 1829 (January 10, 2014) and accompanying Issues and Decision Memorandum at 6-7.

³⁶ See Attachment 1 and Substantive Response at Exhibit 1.

³⁷ See id.

³⁸ See, e.g., Non-Malleable Cast Iron Pipe Fittings From the People's Republic of China: Final Results of the Expedited Second Sunset Review of the Antidumping Duty Order, 78 FR 72639 (December 3, 2013); Certain Activated Carbon From the People's Republic of China: Final Results of Expedited Sunset Review of the Antidumping Duty Order, 77 FR 33420 (June 6, 2012), and accompanying Issues and Decision Memorandum at Comment 1.

³⁹ See Substantive Response at 8.

Department's Position

Normally, the Department will provide to the ITC the company-specific, weighted-average dumping margin from the investigation for each company.⁴⁰ The Department is selecting a rate from the investigation because it is the only calculated rate that reflects the behavior of exporters without the discipline of an order or suspension agreement in place.⁴¹ For companies not investigated individually, or for companies that did not begin shipping until after the order was issued, the Department will normally provide a rate based on the "All-Others" rate from the investigation.⁴² However, for the PRC, which the Department considers to be a non-market economy under section 771(18)(A) of the Act, the Department does not have an "All-Others" rate. Thus, in non-market economy cases, instead of an "All-Others" rate, the Department uses an established country-wide rate, which it applies to all imports from exporters that have not established their eligibility for a separate rate.⁴³

The Department has determined that the weighted-average dumping margins established in the Final Determination, represent the magnitude of the margins of dumping most likely to prevail if the Order were revoked. We have further determined that these margins were not affected by the denial of offsets in accordance with the Final Modification for Reviews.⁴⁴ Specifically, the Department calculated a dumping margin for Qingdao Red Star Chemical & Export Co., Ltd. without employing the "zeroing" methodology because all comparison results were positive.⁴⁵

Further, the dumping margin for the PRC-wide entity in the LFTV investigation was based on the dumping margin from the petition and, therefore, did not include zeroing and is consistent with the Final Modification for Reviews. Therefore, the Department determines that the margin for the PRC-wide entity originally calculated in the LTFV investigation will be reported to the ITC.

⁴⁰ See Eveready Battery Co., Inc. v. United States, 77 F. Supp. 2d 1327, 1333 (CIT 1999).

⁴¹ See id.; see also SAA at 890.

⁴² See Certain Hot-Rolled Carbon Steel Flat Products from Argentina, the People's Republic of China, India, Indonesia, Kazakhstan, Romania, South Africa, Taiwan, Thailand, and Ukraine: Final Results of Expedited Sunset Reviews of the Antidumping Duty Orders, 71 FR 70506 (December 5, 2006) and accompanying Issues and Decision Memorandum at Comment 2.

⁴³ See Bristol Metals L.P. v. United States, 703 F. Supp. 2d 1370, 1378 (CIT 2010) (citation omitted); see also Amanda Foods (Vietnam) Ltd. v. United States, 647 F. Supp. 2d 1368, 1379 (CIT 2009) (citation omitted).

⁴⁴ As stated in the Final Modification for Reviews, "if the dumping margins determined in a manner not found to be WTO-inconsistent in these disputes indicate that dumping continued with the discipline of the order in place, those dumping margins alone can form the basis for a determination that dumping will continue or recur if the order were to be revoked." See Final Modification for Reviews, 77 FR at 8103. The Department announced it would cease zeroing in investigations on December 26, 2006. See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation: Final Modification, 71 FR 77722 (December 27, 2006).

⁴⁵ See "Memorandum to the File, from Irene Gorelik, Senior Trade Compliance Analyst; re: Barium Carbonate Final Determination Calculations," dated concurrently with this memorandum.

Final Results of Review

We determine that revocation of the Order on barium carbonate from the PRC would likely lead to continuation or recurrence of dumping and that the magnitudes of the margins of dumping likely to prevail are as follows:

Exporter	Weighted-Average Dumping Margin (percent)
Qingdao Red Star Chemical Import & Export Co., Ltd.	34.44
PRC-Wide Entity	81.30

Recommendation

Based on our analysis of the Substantive Response received, we recommend adopting the above positions. If these recommendations are accepted, we will publish the final results of this second sunset review in the Federal Register and notify the ITC of our determination.

✓
Agree

Disagree

Paul Piquado
Paul Piquado
Assistant Secretary
for Enforcement and Compliance

28 MAY 2014
(Date)

ATTACHMENT 1

		Imports (metric tons)
	2000	5858
	2001	4561
Year before initiation:	2002	13018
Year during investigation:	2003	175
1st Year after investigation:	2004	80
2nd Year after investigation:	2005	308
3rd Year after investigation:	2006	298
4th Year after investigation:	2007	140
5th Year after investigation:	2008	198
First Sunset Review	2009	78
	2010	48
	2011	94
	2012	76
	2013	20

Source: U.S. Bureau of Census import statistics, obtained from USITC Dataweb