



A-570-007  
Sunset Review  
**Public Document**  
E&C/V: IG

DATE: June 23, 2015

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 Fourth Sunset  
Review of the Antidumping Duty Order on Barium Chloride from  
the People's Republic of China

### **Summary**

In the fourth sunset review of the antidumping duty ("AD") order covering barium chloride from the People's Republic of China ("PRC"), Chemical Products Corporation ("Petitioner"), a U.S. producer of barium chloride, submitted timely notice of intent to participate<sup>1</sup> and an adequate substantive response.<sup>2</sup> No respondent interested party submitted a substantive response. In accordance with our analysis of Petitioner's Substantive Response, we recommend adopting the positions described below.

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

### **Background**

On May 1, 2015, the Department of Commerce (the "Department") published a notice of initiation of the sunset review of the AD order on barium chloride from the PRC.<sup>3</sup> On May 11, 2015, Petitioner filed a letter of intent to participate in this fourth sunset review. On June 1, 2015, Petitioner filed a substantive response in the sunset review within the 30-day deadline, as specified in 19 CFR 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 CFR

<sup>1</sup> See Petitioner's May 11, 2015, letter re; "Notice of Intent to Participate in Review of Chemical Products Corporation."

<sup>2</sup> See Petitioner's June 1, 2015, submission, re; "Substantive Response to the Notice of Initiation of Five-Year Review of Chemical Products Corporation."

<sup>3</sup> See Initiation of Five-Year ("Sunset") Review, 80 FR 24900 (May 1, 2015).



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 the order is barium chloride, a chemical compound having the formulas BaCl<sub>2</sub> or BaCl<sub>2</sub>·2H<sub>2</sub>O, currently classifiable under item number 2827.39.45.00 of the Harmonized Tariff Schedule of the United States ("HTSUS").<sup>4</sup> Although the HTSUS item number is provided for convenience and for U.S. Customs and Border Protection purposes, the written description remains dispositive.

### **History of the Order**

On August 27, 1984, the Department published the final determination in the antidumping duty investigation of barium chloride from the PRC.<sup>5</sup> On October 17, 1984, the Department issued an antidumping duty order on imports of barium chloride from the PRC.<sup>6</sup> Since that time the Department completed several administrative reviews, including three five-year sunset reviews.

In the antidumping duty Order, the Department established a weighted-average margin of 14.50 percent for China National Chemicals Import and Export Corporation ("SINOCEM"), and a PRC-wide rate of 14.50 percent. In the first administrative review, covering the April 6, 1984 to September 30, 1984, review period, the Department determined a dumping margin of 27.70 percent for SINOCEM.<sup>7</sup>

In the second administrative, covering the October 1, 1984 to September 30, 1985, review period, the Department determined a dumping margin of 7.82 percent for SINOCEM and the PRC-wide entity.<sup>8</sup> In the third administrative review, covering the October 1, 1985, to September 30, 1986 review period, the Department determined a dumping margin, based on adverse facts available ("AFA"), of 60.84 percent for SINOCEM and the PRC-wide entity.<sup>9</sup>

The Department conducted an administrative review covering the October 1, 1990 to September 30, 1991, review period, wherein the Department determined that the single company under review, SINOCEM, had no exports during the relevant period. Thus, we continued to apply

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<sup>4</sup> The scope reflects the HTSUS item number currently in effect.

<sup>5</sup> See Final Determination of Sales at Less Than Fair Value; Barium Chloride From the People's Republic of China, 49 FR 33916 (August 27, 1984) ("Final Determination").

<sup>6</sup> See Antidumping Duty Order; Barium Chloride From the People's Republic of China, 49 FR 40635 (October 17, 1984) ("Order").

<sup>7</sup> See Barium Chloride from the People's Republic of China; Final Results of Antidumping Duty Administrative Review, 54 FR 52 (January 3, 1989) ("AR1 and AR3"). The first and third administrative reviews were conducted within the same segment. The Department calculated two different dumping margins for each respective review period: April 6, 1984, through September 30, 1984 (AR1) and October 1, 1985, through September 30, 1986.

<sup>8</sup> See Barium Chloride From the People's Republic of China; Final Results of Antidumping Duty Administrative Review, 52 FR 313 (January 5, 1987) ("AR2").

<sup>9</sup> See AR1 and AR3, where, as explained above, the Department calculated separate dumping margins for two different review periods.

the deposit rate established in the final results of the last administrative review, published in the Federal Register on January 3, 1989 (54 FR 52), 60.84 percent.<sup>10</sup>

The Department conducted an administrative review covering the period October 1, 1997, through September 30, 1998, wherein we determined a dumping margin of 60.84 percent for the PRC-wide entity, based on AFA.<sup>11</sup> The Department conducted the next administrative review of barium chloride covering the October 1, 2000, to September 30, 2001, wherein the Department determined a dumping margin of 155.50 percent for the PRC-wide entity, based entirely on AFA.<sup>12</sup> In this review, the Department re-calculated the PRC-wide entity rate from 60.84 percent to 155.50 percent, based on information provided by Petitioner.<sup>13</sup>

The Department rescinded the administrative review covering the period October 1, 2001, through September 30, 2002.<sup>14</sup> We have not conducted any administrative reviews since the 2001-2002 administrative review. With respect to sunset reviews, the Department has completed three sunset reviews of the AD Order of barium chloride from the PRC.<sup>15</sup> There have been no related findings or rulings (e.g., changed circumstances review, scope ruling, duty absorption review) since issuance of the AD Order. The AD Order remains in effect for all manufacturers, producers, and exporters of barium chloride from the PRC.

## **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 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.

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<sup>10</sup> See Barium Chloride From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 57 FR 29467 (July 2, 1992).

<sup>11</sup> See Barium Chloride From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 64 FR 62168 (November 16, 1999).

<sup>12</sup> See Barium Chloride From the People's Republic of China: Final Results and Rescission in Part of Antidumping Duty Administrative Review, 68 FR 12669 (March 17, 2003) and accompanying Issues and Decision Memorandum ("2000-2001 Review").

<sup>13</sup> *Id.*, 68 FR at 12670 and accompanying Issues and Decision Memorandum at Comment 1, where we stated that "we recalculated the PRC-wide rate following the Department's NME methodology using publicly available U.S. price and factor value information... we consider the information used to calculate the PRC-wide rate to be corroborated to the extent practicable"... and "it is appropriate to use the petitioner's factor usage rates as facts available given that the named respondents that exported during the POR did not reply to the Department's questionnaire and the usage rates are contemporaneous with factor values used in the calculation."

<sup>14</sup> See Barium Chloride From the People's Republic of China: Rescission of Antidumping Duty Administrative Review, 68 FR 9049 (February 27, 2003).

<sup>15</sup> See Final Results of Expedited Sunset Review: Barium Chloride From the People's Republic of China (PRC), 64 FR 5633 (February 4, 1999); Barium Chloride from The People's Republic of China: Final Results of the Sunset Review of Antidumping Duty Order, 69 FR 31791 (June 7, 2004); and Barium Chloride From the People's Republic of China: Final Results of Expedited Third Sunset Review of Antidumping Duty Order, 74 FR 55814 (October 29, 2009) ("3<sup>rd</sup> Sunset Review").

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”),<sup>16</sup> the House Report, H. Rep. No. 103-826, pt. 1 (1994) (House Report),<sup>17</sup> 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.<sup>18</sup> 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.<sup>19</sup> 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.<sup>20</sup> 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.<sup>21</sup>

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.<sup>22</sup>

In 2012, the Department 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.<sup>23</sup> 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 in prior determinations.<sup>24</sup> 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,

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<sup>16</sup> Reprinted in 1994 U.S.C.C.A.N. 4040 (1994).

<sup>17</sup> Reprinted in 1994 U.S.C.C.A.N. 3773 (1994).

<sup>18</sup> See SAA at 879, and House Report at 56.

<sup>19</sup> See SAA at 889-90, House Report at 63-64, and Senate Report at 52.

<sup>20</sup> See SAA at 889-90, and House Report at 63.

<sup>21</sup> 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.

<sup>22</sup> 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.

<sup>23</sup> 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”).

<sup>24</sup> *Id.*

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.”<sup>25</sup>

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.<sup>26</sup> Our analysis of Petitioner’s comments follows.

### *Analysis*

#### 1. *Likelihood of Continuation or Recurrence of Dumping*

Petitioner notes that the information in Attachment A of its Substantive Response demonstrates the importance of the AD Order in curtailing unfairly priced imports of barium chloride from the PRC. Specifically, Petitioners state that “the rise in imports in the 2001-2002 period (preceding the publication of the most recent administrative review results) indicates that Chinese producers were willing to make unfairly-priced sales in the U.S. market even with a nearly 61% antidumping duty rate in effect.”<sup>27</sup> Petitioner continues that “only after the dumping margin was updated to reflect current circumstances, resulting in a 155% margin, did unfairly priced imports begin to decline again.”<sup>28</sup> Petitioner argues that the data provided in Attachment A fully supports an affirmative determination by the Department that, if the AD Order were revoked, dumping of Chinese barium chloride would resume in increased quantities.

### **Department’s Position**

As explained in the Legal Framework section above, the Department’s determination concerning whether revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping is based, in part, upon the guidance provided in the SAA. One consideration is whether the Department has continued to find dumping above de minimis levels in administrative reviews subsequent to imposition of the AD Order.<sup>29</sup> According to the SAA and the House Report, “if companies continue to dump with the discipline of an order in place, it is reasonable to assume that dumping would continue if the discipline were removed.”<sup>30</sup> 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.”<sup>31</sup> We find that revocation of the AD 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 AD Order.

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<sup>25</sup> Id.

<sup>26</sup> 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.

<sup>27</sup> See Substantive Response at 8 and Attachment A.

<sup>28</sup> Id.

<sup>29</sup> See SAA at 890.

<sup>30</sup> Id.; see also House Report, at 63-64.

<sup>31</sup> See SAA at 889.

In the original investigation, the Department calculated a weighted-average dumping margin of 14.50 percent. The Department found dumping at above de minimis levels in the administrative reviews conducted since the original AD investigation (e.g., AR1 and AR3, AR2, and 2000-2001 Review). As discussed above, 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 antidumping duty order when determining whether revocation of the order would be likely to lead to continuation or recurrence of dumping.

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. Petitioner argues that, based on its experience, barium chloride from the PRC cannot be sold in the U.S. market except at prices that are substantially less than fair value. Petitioner also states that the existence of the AD Order has permitted it, as the sole U.S. producer of barium chloride, to continue production in the United States, and, if the AD Order on barium chloride were revoked, Chinese producers would seek to reenter the U.S. market in substantial quantities, resulting in falling market prices.

The information on the record of this sunset review demonstrates that: 1) the volume of imports from the PRC dropped substantially following the AD case filed by Petitioner; 2) the volume of imports from the PRC decreased dramatically after the finding of a 60.84% dumping margin in the second administrative review, resulting in no imports between 1991 and 1993; 3) imports from the PRC resumed in the mid-1990s despite significant AD duties in place (all administrative reviews that were conducted resulted in above-de minimis dumping margins) and; 4) after the 2003 recalculation of the PRC-wide rate of 155.50%, imports of barium chloride from PRC declined.

The import data on the record show a low level of imports compared to pre-Order quantities. Based on the data on the record, the Department finds that imports decreased after the issuance of the AD Order and that dumping continued at levels above de minimis. Moreover, respondent interested parties waived their right to participate in this sunset review. Therefore, given that: (1) dumping has continued following the issuance of the AD Order, (2) import volumes declined after the issuance of the AD Order, (3) respondent interested parties waived their right to participate in this review, and (4) the absence of argument and evidence to the contrary, we find that dumping is likely to continue or recur if the AD Order were revoked.

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 apparently ceased since 2014, record evidence shows that the imports between 2010 and 2013 were significantly lower when compared to pre-initiation import volumes.<sup>32</sup> This

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<sup>32</sup> See Substantive Response at pages 1-2 of Attachment A.

indicates that PRC exporters have not been able to maintain pre-investigation import levels without selling merchandise at dumped prices.<sup>33</sup>

Therefore, pursuant to section 752(c)(1) of the Act, and evidence 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*

Citing to the prior sunset review conducted for barium chloride from the PRC, Petitioner notes that the 155.50 percent margin, from the most recently completed administrative review (2000-2001), is the appropriate rate to report to the ITC.<sup>34</sup>

### **Department's Position**

Normally, the Department will provide to the ITC the company-specific, weighted-average dumping margin from the investigation for each company.<sup>35</sup> 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.<sup>36</sup> 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.<sup>37</sup>

However, as noted in sections II B. 2 and 3 of the Sunset Policy Bulletin, where appropriate, the Department may report to the ITC a more recently calculated margin, even if the increase was a result of the application of best information available or facts available.<sup>38</sup> In the most recently completed administrative review of barium chloride from the PRC (2000-2001 Review), the Department applied an AFA rate of 155.50 percent to the PRC-wide entity, including

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<sup>33</sup> 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.

<sup>34</sup> See Substantive Response at 11-12, citing to 3<sup>rd</sup> Sunset Review and accompanying Issues and Decision Memorandum at page 7.

<sup>35</sup> See Eveready Battery Co., Inc. v. United States, 77 F. Supp. 2d 1327, 1333 (CIT 1999).

<sup>36</sup> 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.

<sup>37</sup> 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).

<sup>38</sup> See 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").

SINOCHEM, pursuant to section 776(a) and (b) of the Act.<sup>39</sup> In the 2000-2001 Review, the Department recalculated the prior PRC-wide rate of 60.84 percent based on Petitioner's request for a review due to outdated information.<sup>40</sup> The Department determined to recalculate the country-wide margin and found that the outdated information of this AD Order did not take into account changes in sales and input prices or changes in the methodology used by the Department in NME cases. Accordingly, as in the 3<sup>rd</sup> sunset review<sup>41</sup>, we find that it is appropriate to report to the ITC the more recently calculated margin of 155.50 percent, because it best reflects the increase in the dumping margin that has taken place over the life of the AD Order. Furthermore, we have determined that this margin is not affected by the denial of offsets in accordance with the Final Modification for Reviews<sup>42</sup> because it is a rate based entirely on AFA from information provided by Petitioner in the 2000-2001 Review.<sup>43</sup> As a result, we will report to the ITC the PRC-wide rate of 155.50 percent as contained in the "Final Results of Review" section below.

### **Final Results of Review**

We determine that revocation of the AD Order on barium chloride from the PRC would likely lead to continuation or recurrence of dumping and that the magnitude of the margins of dumping likely to prevail would be weighted average margins up to 155.50 percent.

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<sup>39</sup> See 2000-2001 Review, 68 FR at 12670, where we stated that "because the remaining companies {including SINOCHEM} did not respond to the Department's questionnaire, we consider them to be part of the PRC-wide entity, and applied adverse facts available. In the preliminary results of this review, we recalculated the PRC-wide rate using information placed on the record by the petitioner as appropriately adjusted by the Department. We have continued to take this approach in the final results."

<sup>40</sup> Id., at 68 FR 12669 and accompanying Issues and Decision Memorandum at Comment 1. In the 2000-2001 Review, Petitioner supplied updated information demonstrating that costs and prices in the industry had changed, and the existing AFA rate of 60.84 percent was no longer sufficiently adverse to induce cooperation from respondents.

<sup>41</sup> See 3<sup>rd</sup> Sunset Review, 74 FR at 55815.

<sup>42</sup> As stated in the Final Modification for Reviews, the Department "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." 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).

<sup>43</sup> See 2000-2001 Review, 2000-2001 Review, 68 FR 12669 and accompanying Issues and Decision Memorandum at Comment 1; see also 3<sup>rd</sup> Sunset Review, 74 FR at 55815.

**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 fourth sunset review in the Federal Register and notify the ITC of our determination.

✓  
Agree

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Disagree

*Paul Piquado*  
Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

23 JUNE 2015  
(Date)