

Public Document

December 31, 2008

TO: David M. Spooner
Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

RE: Issues and Decision Memorandum for the Final Results in the Expedited Sunset Review of the Antidumping Duty Order on Barium Carbonate from the People's Republic of China

SUMMARY

We have analyzed the substantive response of the domestic interested party in the sunset review of the antidumping duty order on barium carbonate from the People's Republic of China ("PRC").¹ We recommend that you approve the positions we describe in this memorandum. Below is a complete list of issues in these sunset reviews for which we received a substantive response:

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

HISTORY OF THE ORDER

On August 6, 2003, the Department of Commerce ("Department") published the final determination in the investigation of barium carbonate from the PRC. *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). On September 26, 2003, the United States

¹The 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 antidumping duty 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).

International Trade Commission (“ITC”) issued its affirmative injury determination in the investigation. *See Barium Carbonate from China*, 68 FR 55653 (September 26, 2003).

Thereafter, the Department issued the antidumping duty order on barium carbonate from the PRC. *See Antidumping Duty Order: Barium Carbonate From the People’s Republic of China*, 68 FR 56619 (October 1, 2003) (“*Order*”). 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.

BACKGROUND

On September 2, 2008, the Department initiated a sunset review of the *Order* pursuant to section 751(c) of the Tariff Act of 1930, as amended (“Act”). *See Initiation of Five-year (“Sunset”) Review*, 73 FR 51275 (September 2, 2008) (“*Sunset Initiation*”). On September 16, 2008, the Department received a timely notice of intent to participate in the sunset review from CPC, pursuant to 19 C.F.R. 351.218(d)(1)(i). In accordance with 19 C.F.R. 351.218(d)(1)(ii)(A), CPC claimed interested party status under section 771(9)(C) of the Act as a producer of the domestic like product. On October 2, 2008, CPC filed a substantive response in the sunset review within the 30-day deadline, as specified in 19 C.F.R. 351.218(d)(3)(i). The Department did not receive a substantive response from any respondent interested party in the sunset review. On October 14, 2008, the Department made its adequacy determination in the sunset review finding that the Department did not receive a substantive response from any respondent interested party. *See “Sunset Review of the Antidumping Duty Order on Barium Carbonate from the People’s Republic of China: Adequacy Determination,”* Memorandum from Juanita H. Chen, Special Assistant to the Senior Enforcement Director, to Edward Yang, Director, SEC Office, dated October 14, 2008. Based on the lack of an adequate response in the sunset review from any respondent party, 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). *See also Procedures for Conducting Five-year (“Sunset”) Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516, 13519 (March 20, 1998) (the Department normally will conduct an expedited sunset review where respondent interested parties provide an inadequate response). Our analysis of CPC’s comments submitted in their substantive response is set forth in the “Discussion of the Issues” section, *infra*.

DISCUSSION OF THE ISSUES

In accordance with section 751(c)(1) of the Act, the Department conducted this sunset review to determine whether revocation of this antidumping order would be likely to 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 period before and the period after the issuance of this antidumping order. In addition, section 752(c)(3) of the Act states that the Department shall provide to the ITC the magnitude of the margins of dumping that are likely to prevail if this antidumping order was revoked.

1. Likelihood of Continuation or Recurrence of Dumping

Interested Party Comments

CPC asserts that, based on the factors used by the Department to evaluate the likelihood of resumed dumping² and on its experience in the U.S. market with Chinese imports since the entry of the *Order*, revocation of the *Order* would likely result in a resumption of large volumes of barium carbonate imports from the PRC at prices substantially below fair value.

CPC asserts that the antidumping investigation and subsequent entry of an antidumping duty order had a dramatic and immediate impact on imports of barium carbonate from the PRC. CPC contends that the record of imports following the entry of the *Order* clearly reflect two of the three circumstances outlined in Policy Bulletin 98:3: (i) dumping continued at any level above *de minimis* after issuance of the order; and (ii) imports of the subject merchandise ceased after the issuance of the order. *Id.*

CPC asserts that import data reflects that imports of barium carbonate from the PRC rose dramatically in the three years preceding the initiation of antidumping proceedings (2000 through 2002) and then fell dramatically following the entry of the *Order* in 2003 and have not approached pre-*Order* levels since. Specifically, CPC states that import data indicates that 5,858 metric tons of barium carbonate was imported into the United States from the PRC in 2000, followed by 4,561 metric tons in 2001, and 13,018 metric tons in 2002. During the same period the average value of imports from the PRC declined by more than 30%, from \$360 per metric ton in 2000 to \$255 per metric ton in 2002. CPC states that in 2003 (the year the *Order* went into effect), however, only 175 metric tons of barium carbonate were imported into the United States from the PRC, and that in 2004 imports fell to 80 metric tons, followed by small increases in imports from 2005-2007. In support of its assertions, CPC provides a chart showing the imports of barium carbonate from the PRC for the period from 2000 through 2007, which is based on import data, collected by the United States Census Bureau (“Census Bureau”) and available through the ITC website under subheading 2836.60.0000 of the Harmonized Tariff Schedule of the United States (“HTSUS”). *See* Barium Carbonate from the People’s Republic of China-

² CPC states that the Department “normally will determine” that dumping will continue or resume when any of the following three circumstances apply: (i) dumping continued at any level above *de minimis* after the issuance of the order; (ii) imports of the subject merchandise ceased after the issuance of the order; or (iii) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly. *See Policies Regarding the Conduct of Five-year (“Sunset”) Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871, 18872 (April 16, 1998) (“*Policy Bulletin 98:3*”).

Sunset Review: Substantive Response from CPC, dated October 2, 2008, at Exhibit 1 (“CPC Response”).

In addition, CPC notes that there have been no administrative reviews requested since the *Order* was issued in 2003. CPC asserts that the drop in imports and the lack of participation in administrative reviews clearly reflects that Chinese exporters of barium carbonate are unable to participate in the U.S. market without resorting to unfair pricing.

CPC concludes that the facts it has presented regarding imports and the *Order* satisfy the criteria for an affirmative determination, as laid out in the Department’s *Policy Bulletin 98:3*. Therefore, CPC asserts, the Department should determine that revocation of the *Order* is likely to lead to continuation or recurrence of dumping of barium carbonate from the PRC.

Department’s Position

Consistent with the guidance provided in the legislative history accompanying the URAA, specifically the Statement of Administrative Action (“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’s determination of likelihood will be made on an order-wide basis. In addition, the Department normally determines that revocation of an antidumping duty 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 issuance of the order, or (c) dumping was eliminated after the issuance of the order, and import volumes for the subject merchandise declined significantly. *See* SAA at 889-90. Moreover, pursuant to section 752(c)(1)(B) of the Act, the Department also will consider the volume of imports of subject merchandise for the period before and after the issuance of this *Order*.

In conducting our analysis, we reviewed the data provided by CPC, which included a chart reflecting 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 2000 through 2007, which is based on import data, collected by the Census Bureau and available through the ITC website under HTSUS tariff subheading 2836.60.0000. *See* CPC Response, at Exhibit 1. CPC contends that the record of imports following the entry of the *Order* clearly reflect two of the three circumstances by which the Department “normally will determine” that dumping will continue or resume: (i) dumping continued at any level above *de minimis* after issuance of the order; and (ii) imports of the subject merchandise ceased after the issuance of the order. We note, however, that the Census Bureau statistics provided by CPC do not indicate that imports of barium carbonate actually ceased; there were periods where imports, although in smaller quantities, continued to enter from the PRC. As detailed above, the Department normally will determine revocation of an order is likely to lead to continuation or recurrence of dumping because imports of the subject merchandise ceased after issuance of the order. *See, e.g.,* SAA, at 889. Accordingly, as imports did not cease, the Department cannot find that

revocation of an order is likely to lead to continuation or recurrence of dumping where imports of the subject merchandise ceased after issuance of the order.

However, the Department also normally will determine that revocation of an order is likely to lead to continuation or recurrence of dumping where “dumping continued at any level above *de minimis* after issuance of the order.” *See, e.g., SAA*, at 890. The Department determined rates above *de minimis* for all PRC manufacturers and exporters during the original investigation. *See Order*, 68 FR 56619. As the Department has not conducted any administrative reviews since issuance of the *Order*, the margins from the original investigation are the prevailing margins. Using CPC’s data submitted on the record, we determine that revocation of the *Order* is likely to lead to continuation or recurrence of dumping because dumping has continued at levels above *de minimis* during the period of this sunset review.

We note that while CPC’s data was sufficient for our analysis, we independently and separately conducted a search of annual U.S. imports for consumption data for the PRC available for HTS 2836.60.0000 from the ITC Dataweb website (“ITC Dataweb”), at <http://dataweb.usitc.gov/>. Our ITC Dataweb search revealed the same import quantities, landed duty-paid values, and average unit values as those provided by CPC, and similarly reflect that imports of subject merchandise declined significantly during the period of the sunset review. *See* Attachment I to this memorandum. Because the ITC Dataweb data indicates that dumping has continued at levels above *de minimis* during the period of the sunset review, pursuant to section 752(c)(1)(A) of the Act, we determine that revocation of the *Order* is likely to lead to continuation or recurrence of dumping.

2. Magnitude of the Dumping Margin Likely to Prevail

Interested Party Comments

CPC asserts that in selecting the magnitude of the dumping margin that is likely to prevail in the absence of an order, the Department has stated that “the Department normally will select a margin ‘from the investigation, because that is the only calculated rate that reflects the behavior of exporters...without the discipline of an order in place.’” *See* CPC Response, at 6-7 (citing *Policy Bulletin 98:3*).

CPC notes that as there have been no administrative reviews of the *Order* since it was issued in 2003, the rates calculated for Chinese exporters in the original investigation are the only rates available on the record. Accordingly, CPC asserts that the Department should report to the ITC the rates from the original investigation (*i.e.*, 34.44 percent for Qingdao Red Star Import & Export Co., Ltd., and the PRC-wide rate of 81.30 percent for all other Chinese exporters).

Department’s Position

Section 752(c)(3) of the Act provides that the administering authority shall provide to the ITC

the magnitude of the margin of dumping that is likely to prevail if the order were revoked. Normally, the Department will select a margin from the final determination in the investigation because that is the only calculated rate that reflects the behavior of exporters without the discipline of an order in place. *See* SAA at 890. Because the Department has conducted no administrative reviews, there are no additional dumping margins for the Department to consider in its analysis. Therefore, consistent with section 752(c) of the Act, the Department will report to the ITC the corresponding individual company rate and the PRC-wide rate from the original investigation as noted in the “Final Results of Review” section, *infra*, because they are more probative of the behavior of exporters without the discipline of an order in place.

Final Results of Review

For the reasons stated above, we determine that revocation of the *Order* would likely lead to continuation or recurrence of dumping at the following weighted-average percentage margins:

<u>Manufacturers/Exporters/Producers</u>	<u>Margin (Percent)</u>
Qingdao Red Star Chemical Import & Export Co., Ltd.	34.44
PRC-Wide Entity	81.30

Recommendation

Based on our analysis, we recommend adopting the above positions. If these recommendations are accepted, we will publish the final results of this sunset review in the *Federal Register*.

AGREE _____

DISAGREE _____

David M. Spooner
Assistant Secretary
for Import Administration

Date

ATTACHMENT 1

