

October 22, 2009

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

FROM: John M. Andersen
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

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

Summary

In the third sunset review of the antidumping duty order on barium chloride from the People's Republic of China ("PRC"), Chemical Products Corporation ("CPC"), a U.S. producer of barium chloride, and interested party under 19 U.S.C. 1677(9)(C), has submitted timely notice of intent to participate and an adequate substantive response. No respondent interested party has submitted a substantive response. In accordance with our analysis of CPC's adequate substantive response, we recommend that you approve the positions described in the instant memorandum. The following is a complete list of issues in the instant sunset review for which we received a substantive response:

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

Background

On October 17, 1984, the Department of Commerce (the "Department") issued an antidumping duty order on imports of barium chloride from the PRC.¹ Since that time the Department has completed several administrative reviews, including two 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"). In the first and second administrative reviews, the Department determined a dumping margin of 27.70 percent for SINOCEM for the period from April 6, 1984 to September 30, 1984,² and 7.82 percent for

¹ See Antidumping Duty Order: Barium Chloride From the People's Republic of China, 49 FR 40635 (October 17, 1984).

² See Barium Chloride from the People's Republic of China; Final Results of Antidumping Duty Administrative Review, 54 FR 52 (January 3, 1989) ("AR2")

SINOCHEM for the period from October 1, 1984 to September 30, 1985.³ Also in the second administrative review, the Department determined a dumping margin of 60.84 percent for SINOCHEM (based on facts available) for the period from October 1, 1985 to September 30, 1986.⁴ In the fifth administrative review⁵ the Department determined, based on adverse facts available, a PRC-wide rate of 155.50 percent for the period from October 1, 2000 to September 30, 2001.⁶ The antidumping order remains in effect for all manufacturers, producers, and exporters of barium chloride from the PRC.

On July 1, 2009, the Department published the notice of initiation of the third sunset review of the order on barium chloride from the PRC pursuant to section 751(c) of the Tariff Act of 1930, as amended (the “Act”).⁷ On July 6, 2009, the Department received a notice of intent to participate from CPC, the petitioner in the original investigation and participant in every subsequent segment, within the deadline specified in 19 CFR 351.218(d)(1)(i).⁸ CPC claimed interested party status as a domestic producer of barium chloride in the United States under section 771(9)(C) of the Act. On July 31, 2009, the Department received a complete substantive response from CPC within the deadline specified in 19 CFR 351.218(d)(3)(i).⁹ The Department did not receive a 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)(2), the Department determined to conduct an expedited review of the order.¹⁰

Legal Framework

In accordance with section 751(c)(1) of Act, the Department conducted this sunset review to determine whether revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping. Sections 752(c)(1)(A) and (B) of the Act provide that, in making these determinations, the Department shall consider both the weighted-average dumping margins determined in the investigation and subsequent reviews as well as the volume of imports of the subject merchandise for the period before and after the issuance of the antidumping duty order. As explained in the Statement of Administrative Action (“SAA”) accompanying the Uruguay

³ See Barium Chloride From the People’s Republic of China; Final Results of Antidumping Duty Administrative Review, 52 FR 313 (January 5, 1987).

⁴ See AR2.

⁵ There were no changes to the dumping margins in the third administrative review, and in the fourth administrative review the Department assigned SINOCHEM’s 60.84 percent dumping margin to the PRC-wide entity. See Barium Chloride From the People’s Republic of China; Final Results of Antidumping Duty Administrative Review, 64 FR 62168 (November 16, 1999).

⁶ 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) (“Fifth Administrative Review”).

⁷ See Initiation of Five-year (“Sunset”) Review, 74 FR 31412 (July 1, 2009).

⁸ See Letter from domestic interested party titled, “Barium Chloride from the People’s Republic of China,” dated July 6, 2009.

⁹ See Letter from domestic interested party titled, “Barium Chloride from the People’s Republic of China: Third ‘Sunset’ Review: Chemical Products Corporation’s Substantive Response to the Notice of Initiation,” dated July 31, 2009 (“Substantive Response”).

¹⁰ See Letter to the International Trade Commission (“ITC”) titled, “Conduct of Expedited Sunset Reviews,” dated August 20, 2009.

Round Agreements Act, the Department normally determines that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping when: (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 order and import volumes for the subject merchandise declined significantly.¹¹ It is the Department's practice to use as a base period of import volume comparison 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.¹²

In addition, section 752(c)(3) of the Act states that the Department shall provide the ITC the magnitude of the margin of dumping likely to prevail if the order were revoked. Generally, the Department selects the margin(s) 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 or suspension agreement in place.¹³ However, the Department may use a rate from a more recent review where the dumping margin increased as this rate may be a better representative of a company's behavior in the absence of an order (e.g., where a company increases dumping to maintain or increase market share with an order in place).¹⁴ Additionally, pursuant to section 752(c)(4)(A) of the Act, a dumping margin of "zero or de minimis shall not by itself require" that the Department determine that revocation of an antidumping duty order would not be likely to lead to a continuation of recurrence of sales at less than fair value.

Analysis

1. Likelihood of continuation or recurrence of dumping

Domestic Interested Party's Comments

CPC contends that revocation of the antidumping duty order on barium chloride from the PRC would result in the resumption of significant imports from the PRC at prices less than fair value. In support of this contention, CPC provides a detailed analysis of import data collected by U.S. Customs and Border Protection ("CBP") covering imports of barium chloride from the PRC from 1983 through May 2009. According to CPC, these data demonstrate that dumping

¹¹ See SAA, H.R. Rep. No. 103-316, Vol. 1, at 889-890; see also, 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.

¹² See 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 ("Stainless Bar from Germany Final").

¹³ See, e.g., 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.

¹⁴ See, e.g., Stainless Steel Bar from Germany; Preliminary Results of the Sunset Review of Antidumping Duty Order, 72 FR 29970 (May 30, 2007), and accompanying Issues and Decision Memorandum at Comment 2 ("Stainless Bar from Germany Prelim"), as corrected in 72 FR 31660 (June 7, 2007) (unchanged in Stainless Bar from Germany Final).

continued at a level above de minimis after issuance of the order, and that imports have remained at low levels, or ceased altogether, during the period subsequent to the recalculation of the antidumping margin pursuant to administrative reviews.

Specifically, CPC asserts that imports declined substantially after completion of the investigation, from 5,330,112 pounds in 1983, the year prior to the initiation of the investigation, to 3,293,470 pounds in 1984. After 1985, CPC claims that imports continued to drop significantly each year until imports ceased in 1991. While CPC acknowledges that imports resumed in 1994 and rose to 572,651 pounds in 2003, CPC asserts that imports declined significantly in 2004, as a result of the issuance of the recalculated 155.50 percent dumping margin in 2003, and continued to decline significantly until imports again ceased in 2008.

CPC argues that the record of continuous dumping margins above de minimis and the pattern of import decline and cessation demonstrates that PRC producers were willing to dump in the U.S. market even with a 61 percent margin in effect. CPC further argues that imports again declined and ceased only after the margin was recalculated in 2003 to reflect updated circumstances, thereby affirming that barium chloride from the PRC cannot be sold in the United States unless at less-than-fair-value prices. CPC asserts that this supports its contention that absent the order, Chinese producers would re-enter the U.S. market and dumping would continue.

In short, CPC argues that patterns in the CBP data covering barium chloride imports from the PRC subsequent to the imposition of the antidumping order and administrative reviews should lead the Department to retain the order. In support of this argument, CPC cites both the SAA¹⁵ and the Department's Sunset Policy Bulletin¹⁶, which provide that the Department will normally determine that dumping will continue or resume where 1) dumping continued at any level above de minimis after issuance of the order, 2) imports of subject merchandise ceased after issuance of the order, or 3) dumping was eliminated after issuance of the order and import volumes of subject merchandise declined significantly. CPC asserts that the patterns demonstrated in the CBP data satisfy these criteria.

CPC notes that the Department found a weighted-average dumping margin of 14.50 percent in the final determination, and 60.84 percent in the second administrative review.¹⁷ CPC further notes that although it requested administrative reviews for two subsequent periods, those requests were withdrawn and the reviews were terminated by the Department.¹⁸ CPC adds that no further administrative reviews were conducted until its 1990-1991 review request, in which the Department found no shipments and continued the 60.84 percent margin for SINOCEM, the only known Chinese exporter.¹⁹ In the 2000-2001 administrative review requested by CPC,

¹⁵ SAA at 899-90.

¹⁶ 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").

¹⁷ 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), and see also AR2.

¹⁸ See Barium Chloride from the People's Republic of China; Termination of Antidumping Duty Administrative Reviews, 54 FR 9075 (March 3, 1989).

¹⁹ See Barium Chloride From the People's Republic of China; Final Results of Antidumping Duty Administrative

the Department issued its final results recalculating a dumping duty of 155.50 percent, using current factors of production and valuation data.²⁰ According to CPC, the trends in the antidumping duty margins of barium chloride from the PRC, subsequent to the imposition of the order, lead to the conclusion that dumping would continue or recur should the order be revoked.

In addition, CPC provided a list of PRC producers, and their respective locations and production in metric tons per year, that are currently producing barium chloride in the PRC for export. CPC believes that these barium chloride producers have substantial production capacity for exporting to the United States, and that without the continuation of the order, dumping will continue or resume. CPC also provided a spreadsheet containing Chinese barium chloride exports by country from January 2008 through May 2009, and claims that the Chinese barium chloride industry exports extremely large quantities of product throughout the world every year.

Department 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 antidumping order. In this proceeding, the Department indeed found dumping at above de minimis levels in the administrative reviews it has conducted since the original antidumping duty investigation (e.g., AR2).

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 the original investigation, the Department calculated a weighted-average dumping margin of 14.50 percent.

Import statistics provided by CPC on subject imports between 1980 and 2009, and confirmed by the Department, demonstrate that following the issuance of the order, imports of barium chloride from the PRC fell significantly and ceased over a period of time, then resumed and increased, only to fall again with the revision of the antidumping duty margin until again ceasing. Based on the data on the record, the Department finds that imports decreased and ceased after the issuance of the order, and that dumping continued at levels above de minimis.

Therefore, given that (1) dumping has continued following the issuance of the order, (2) import volumes declined and ceased after the issuance of the order, and (3) the absence of argument and evidence to the contrary, we find that dumping is likely to continue or recur if the order were revoked.

Review, 57 FR 29467 (July 2, 1992).

²⁰ See Fifth Administrative Review, and accompanying Issues and Decision Memorandum.

2. Magnitude of the Dumping Margins Likely to Prevail

Interested Party Comments

CPC argues that the Department should provide to the ITC the margin the Department reported to the ITC in the second sunset review, 155.50 percent, because the Department determined that this rate, rather than the margin calculated in the investigation, “best reflects the increase in the dumping margin that has taken place over the life of the order” and is based on current methodology used by the Department in non-market economy cases.²¹

Department Position

Normally the Department will provide to the ITC the company-specific margin from the investigation for each company. See Eveready Battery Co. v. United States, 77 F. Supp. 2d 1327, 1333 (CIT 1999). For companies not investigated specifically, 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 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. The Department’s preference for selecting a margin from the investigation is based on the fact that it is the only calculated rate that reflects the behavior of manufacturers, producers, and exporters without the discipline of an order or suspension agreement in place. Id. Under certain circumstances, however, the Department may select a more recently calculated margin to report to the ITC. See Section 752(c)(3) of the Act. See also Final Results of Full Sunset Review: Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide From the Netherlands, 65 FR 65294 (November 1, 2000), and accompanying Issues and Decision Memorandum at Comment 3.

The Department agrees with CPC’s argument concerning the choice of margins to report to the ITC. As noted in sections II B.2 and 3 of the Sunset Policy Bulletin,²² 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. In the most recently completed administrative review of barium chloride from the PRC, the Department applied an adverse facts available rate of 155.50 percent to the PRC-wide entity, which differs from the rate calculated for SINOCEM in the underlying investigation and the prior administrative review. The Department recalculated the prior AFA rate of 60.84 percent and the PRC-wide rate of 60.84

²¹ See Barium Chloride from The People’s Republic of China; Final Results of the Expedited Sunset Review of Antidumping Duty Order, 69 FR 31791 (June 7, 2004) and accompanying Issues and Decision Memorandum at Comment 2.

²² See Sunset Policy Bulletin.

percent based on CPC's request for a review because of outdated information.²³ In that administrative review CPC supplied updated information demonstrating that costs and prices in the industry had changed, and the existing adverse facts available margin was no longer sufficiently adverse to induce cooperation from respondents. The Department determined to recalculate the margin and found that the outdated information of this 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, we find that it is appropriate to use the more recently calculated margin because it best reflects the increase in the dumping margin that has taken place over the life of the order. 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 of this notice.

Final Results of Review

We have determined that revocation of the order on barium chloride from the PRC would likely lead to continuation or recurrence of dumping at the following weighted-average percentage margin:

Exporter/Manufacturer	Margin (percent)
PRC-wide rate	155.50

Recommendation

Based on our analysis of the substantive response received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final results of this sunset review in the Federal Register.

 Ronald K. Lorentzen
 Acting Assistant Secretary
 for Import Administration

 (Date)

²³ See Fifth Administrative Review, and accompanying Issues and Decision Memorandum.