



A-570-880
Sunset Review
Public Document
E&C/OV: ES

April 29, 2020

MEMORANDUM TO: Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

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

I. SUMMARY

We have analyzed the response of a domestic producer of barium carbonate in the third sunset review of the antidumping duty (AD) order on barium carbonate from the People's Republic of China (China). No other interested party submitted a substantive response. Accordingly, we conducted an expedited (120-day) sunset review pursuant to section 751(c)(3)(B) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.218(e)(1)(ii)(C)(2). We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in this sunset review for which we received a substantive response:

1. Likelihood of Continuation or Recurrence of Dumping
2. Magnitude of the Margins Likely to Prevail

II. BACKGROUND

On October 1, 2003, the Department of Commerce (Commerce) published the AD order on barium carbonate from China.¹ On January 2, 2020, Commerce initiated a sunset review of the AD order on barium carbonate from China pursuant to section 751(c) of the Act.² Commerce received a notice of intent to participate from a domestic interested party, Chemical Products Corporation (CPC), within the deadline specified in 19 CFR 351.218(d)(1)(i).³ CPC claimed

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

² See *Initiation of Five-Year (Sunset) Reviews*, 85 FR 67 (January 2, 2020).

³ See CPC's Letter, "Third Five-Year Review of Barium Carbonate from China – Notice of Intent to Participate," dated January 13, 2020.



interested party status under section 771(9)(C) of the Act as a producer of the domestic like product. On January 29, 2020, Commerce received an adequate substantive response from CPC within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).⁴ Commerce received no responses from respondent interested parties with respect to the *Order* covered by this sunset review.

On February 25, 2020, Commerce notified the U.S. International Trade Commission (ITC) that it did not receive an adequate substantive response from respondent interested parties.⁵ As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted an expedited (120-day) sunset review of the AD order on barium carbonate from China.

III. SCOPE OF THE *ORDER*

The merchandise covered by the *Order* is barium carbonate, regardless of form or grade. The product covered by this order 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.

IV. HISTORY OF THE *ORDER*

On August 6, 2003, Commerce published its *Final Determination* in the less-than-fair-value (LTFV) investigation with respect to imports of barium carbonate from China.⁶ Commerce found the following *ad valorem* dumping margins:⁷

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

Following the issuance of Commerce's *Final Determination*, the ITC found that the U.S. industry was materially injured by reason of imports from China pursuant to section 735(b)(1)(A)(i) of the Act.⁸ Subsequently, Commerce published the *Order*.

⁴ See CPC's Letter, "Third Year Review of Barium Carbonate from China- Substantive Response to Notice of Initiation," dated January 29, 2020 (Substantive Response).

⁵ See Commerce's Letter, "Sunset Reviews Initiated on January 2, 2020," dated February 25, 2020.

⁶ 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*).

⁷ *Id.*, 68 FR at 46579.

⁸ See *Barium Carbonate from China*, USITC Investigation No. 731-TA-1020 (Final), USITC Publication 3631 (September 2003).

Since the issuance of the *Order*, Commerce has not conducted an administrative review. In the first sunset review, we found that revocation of the *Order* would be likely to lead to continuation or recurrence of dumping.⁹ In addition, the ITC determined, pursuant to section 751(c) of the Act, that revocation of the *Order* would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.¹⁰ Thus, Commerce published the notice of continuation of the *Order*.¹¹

In the second sunset review, we also found that revocation of the *Order* would be likely to lead to continuation or recurrence of dumping.¹² In addition, the ITC also determined, pursuant to section 751(c) of the Act, that revocation of the *Order* would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.¹³ Thus, Commerce published the notice of continuation of the *Order*.¹⁴

Commerce has not conducted any administrative reviews, new shipper reviews, or changed circumstances reviews, made any scope rulings, or found duty absorption over the history of the *Order*. The *Order* remains in effect for all Chinese producers and exporters of barium carbonate.

V. LEGAL FRAMEWORK

In accordance with section 751(c)(1) of the Act, Commerce is conducting this sunset review to determine whether revocation of the *Order* would be likely to lead to a continuation or recurrence of dumping. Sections 752(c)(1)(A) and (B) of the Act provide that, in making this determination, Commerce 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 AD order. In addition, section 752(c)(3) of the Act provides that Commerce shall provide to the ITC the magnitude of the margin of dumping likely to prevail if the order were revoked.

In accordance with the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act, specifically the SAA,¹⁵ the House Report,¹⁶ and the Senate Report,¹⁷

⁹ See *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*) and accompanying Issues and Decision Memorandum (IDM).

¹⁰ See *Barium Carbonate from China*, USITC Investigation No. 731-TA-1020 (Review), USITC Publication 4060, January 2009.

¹¹ See *Barium Carbonate from the People's Republic of China: Continuation of Antidumping Duty Order*, 74 FR 11348 (March 17, 2009).

¹² See *Barium Carbonate from the People's Republic of China: Final Results of Expedited Second Sunset Review of the Antidumping Duty Order*, 79 FR 32221 (June 4, 2014) (*Second Sunset Review Final*), and accompanying IDM.

¹³ See *Barium Carbonate from China*, USITC Investigation No. 731-TA-1020 (Second Review), USITC Publication 4518, February 2015.

¹⁴ See *Barium Carbonate from the People's Republic of China: Continuation of Antidumping Duty Order*, 80 FR 8286 (February 17, 2015).

¹⁵ See Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA), H.R. Doc. 103-316, vol. 1 (1994).

¹⁶ See H. Rep. No. 103-826, pt. 1 (1994) (House Report).

¹⁷ See S. Rep. No. 103-412 (1994) (Senate Report).

Commerce's determinations of likelihood will be made on an order-wide, rather than a company-specific, basis.¹⁸ In addition, Commerce normally determines that revocation of an AD 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.¹⁹ Alternatively, Commerce normally will determine that revocation of an AD order is not likely to lead to continuation or recurrence of dumping where dumping was eliminated after issuance of the order and import volumes remained steady or increased.²⁰

Furthermore, as a base period of import volume comparison, it is Commerce'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 the investigation may dampen import volumes and, thus, skew the comparison.²¹ Also, when analyzing import volumes for second and subsequent sunset reviews, Commerce's practice is to compare import volumes during the year preceding initiation of the underlying investigation to import volumes since the issuance of the last continuation notice.²²

In addition, section 752(c)(3) of the Act states that the magnitude of the margin of dumping that is likely to prevail if the order were revoked shall be provided by Commerce to the ITC. Generally, Commerce selects the weighted-average dumping margins from the final determination in the original investigation, as these rates are the only calculated rates that reflect the behavior of exporters without the discipline of an order in place.²³ In certain circumstances, however, a more recently calculated rate may be more appropriate (*e.g.*, "if dumping margins have declined over the life of an order and imports have remained steady or increased, {Commerce} may conclude that exporters are likely to continue dumping at the lower rates found in a more recent review").²⁴ Finally, pursuant to section 752(c)(4)(A) of the Act, a margin of dumping likely to prevail of "zero or *de minimis* shall not by itself require" Commerce to

¹⁸ See SAA at 879; *see also* House Report at 56.

¹⁹ See SAA at 889-890; House Report at 63-64; Senate Report at 52; and *Policies Regarding the Conduct of Five-year (Sunset) Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871, 18872 (April 16, 1998) (*Sunset Policy Bulletin*).

²⁰ See SAA at 889-890; *see also* House Report at 63.

²¹ 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 IDM at Comment 1.

²² See, *e.g.*, *Certain Welded Carbon Steel Pipes and Tubes from India, Thailand, and Turkey: Final Results of the Expedited Fourth Sunset Reviews of the Antidumping Duty Orders*, 82 FR 46485 (October 5, 2017), and accompanying IDM; and *Ferrovandium from the People's Republic of China and the Republic of South Africa: Final Results of the Expedited Second Sunset Review of the Antidumping Duty Orders*, 79 FR 14216 (March 13, 2014), and accompanying IDM.

²³ 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) (*Persulfates Second Sunset Review*), and accompanying IDM at Comment 2.

²⁴ See SAA at 890-91.

determine that revocation of an AD order would not be likely to lead to a continuation or recurrence of sales at less than fair value.²⁵

Regarding the margin of dumping likely to prevail, in the *Final Modification for Reviews*, Commerce announced that in five-year (*i.e.*, sunset) reviews, it will not rely on weighted-average dumping margins that were calculated using the zeroing methodology that was found to be World Trade Organization (WTO)-inconsistent.²⁶ However, Commerce explained in the *Final Modification for Reviews* that it “retain{s} the discretion, on a case-by-case basis, to apply an alternative methodology, when appropriate” in both investigations and administrative reviews pursuant to section 777A(d)(1)(B) of the Act.²⁷ In the *Final Modification for Reviews*, Commerce stated that “only in the most extraordinary circumstances” would it rely on margins other than those calculated and published in prior determinations.²⁸ Commerce 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 recalculated pursuant to Section 129 proceedings, dumping margins determined based on the use of total adverse facts available (AFA), and dumping margins where no offsets were denied because all comparison results were positive.”²⁹

VI. DISCUSSION OF THE ISSUES

1. Likelihood of Continuation or Recurrence of Dumping

Interested Party Comments³⁰

CPC argues that revocation of the *Order* would lead to a continuation or recurrence of dumping by producers and exporters of barium carbonate from China due to the declining import volume of subject merchandise after the issuance of the *Order*. CPC asserts that, since the issuance of the *Order*, imports from China of barium carbonate declined significantly and that the SAA provides that “if imports cease after the order is issued, it is reasonable to assume that the exporters could not sell in the United States without dumping, and that, to reenter the U.S. market, they would have to resume dumping.” CPC further asserts that third country markets have implemented measures to address Chinese barium carbonate pricing, indicating that revocation of the *Order* would likely lead to a resumption of dumping in the United States.

²⁵ 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 IDM at Comment 1.

²⁶ 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*).

²⁷ *Id.*, 77 FR at 8102, 8105, 8109.

²⁸ *Id.*

²⁹ *Id.*

³⁰ See Substantive Response at 8-13.

Commerce'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 Commerce 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. According to the SAA, existence of dumping margins after the order “is highly probative of the likelihood of continuation or recurrence of dumping. 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. If imports cease after the order is issued, it is reasonable to assume that the exporters could not sell in the United States without dumping and that, to reenter the U.S. market, they would have to resume dumping.”³¹ In addition, “declining 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.”³² Alternatively, the legislative history provides that declining (or no) dumping margins accompanied by steady or increasing imports may indicate that foreign companies do not have to dump to maintain market share in the United States and that dumping is less likely to continue or recur if the order were revoked.³³

In the LTFV investigation, Commerce calculated a weighted-average dumping margin of 34.44 percent for the single mandatory respondent, Qingdao Red Star Chemical Import & Export Co., Ltd (Qingdao Red Star). Further, Commerce found that the China-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.³⁴ Thus, Commerce determined rates above *de minimis* for all Chinese manufacturers and exporters during the original investigation.³⁵ 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.³⁶ As noted above, Commerce 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 analyzing import volumes for the period of this third sunset review, based on USITC Dataweb import statistics provided by CPC, we determine record evidence demonstrates that barium carbonate imports are lower in the last five years in comparison to pre-2002 import volumes, when annual imports were at or exceeded 4,500 metric tons.³⁷ From 2015 to 2018, combined annual imports of barium carbonate did not exceed 42 metric tons, and in 2018 imports were nonexistent.³⁸ Thus, import volumes substantially continue to be lower than they were pre-

³¹ See SAA at 890.

³² *Id.* at 889; see also House Report at 63; and Senate Report at 52.

³³ See SAA at 889-90; see also House Report at 63; and Senate Report at 52.

³⁴ See *Final Determination*, 68 FR at 46578.

³⁵ See *Order*, 68 FR 56619.

³⁶ See *First Sunset Review Final*, 74 FR at 883; see also *Second Sunset Review Final*, 79 FR at 32222.

³⁷ See Substantive Response at 9.

³⁸ *Id.*

Order. Additionally, we considered CPC's statement that imports of barium carbonate have continued to decline since the imposition of the *Order*. Accordingly, pursuant to section 752(c)(1) of the Act, we determine that revocation of the *Order* would likely result in the continuation of dumping in the United States.

2. Magnitude of the Margins Likely to Prevail

Interested Party Comments³⁹

CPC cites to the SAA and the *Sunset Policy Bulletin* and notes that Commerce normally will select the rate from the original investigation because that is the only calculated rate that reflects the behavior of exporters without the discipline of an order in place. Therefore, CPC argues that, consistent with the SAA and the *Sunset Policy Bulletin*, Commerce should rely upon the dumping margins from the original investigation. As such, CPC contends that Commerce should report to the ITC that the magnitude of the dumping margins that are likely to prevail is indicated in the margins determined in the original AD order (*i.e.*, 34.44 percent for Qingdao Red Star and 81.30 percent for the China-wide entity).⁴⁰

Commerce's Position

Pursuant to section 752(c)(3) of the Act, Commerce shall provide to the ITC the magnitude of the margin of dumping that is likely to prevail if the order were revoked. Normally, Commerce will select a weighted-average dumping margin from the investigation to report to the ITC.⁴¹ Commerce'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 the manufacturers, producers, and exporters without the discipline of an order in place.⁴² Because dumping continued following the issuance of the *Order* and, given the absence of argument and evidence to the contrary, Commerce finds that the margins calculated in the original investigation are probative of the behavior of producers and exporters of subject merchandise from China if the *Order* were revoked. As indicated in the "Legal Framework" section above, consistent with *Final Modification for Reviews*, Commerce's current practice is to not rely on weighted-average dumping margins calculated using the zeroing methodology. The weighted-average dumping margin of 34.44 percent calculated for the single mandatory respondent, Qingdao Red Star, was calculated without employing zeroing methodology because all comparison results were positive.⁴³ The 81.30 percent rate applied in the *Final Determination* was based on a rate from the petition and was calculated without zeroing.⁴⁴ Accordingly, consistent with section 752(c) of the Act, Commerce will report to the ITC the rates as indicated in the Final Results of Sunset Review section below.

³⁹ See Substantive Response at 7-8.

⁴⁰ *Id.* at 12-13.

⁴¹ See SAA at 890; see also, *e.g.*, *Persulfates Second Sunset Review IDM* at Comment 2.

⁴² See SAA at 890; *Sunset Policy Bulletin* at 63 FR at 18872 (April 16, 1998) at section II.B.1; see also *Persulfates Second Sunset Review IDM* at Comment 2.

⁴³ See *Second Sunset Review Final IDM* at 7.

⁴⁴ See *Final Determination*, 68 FR at 46578.

VII. FINAL RESULTS OF SUNSET REVIEW

Commerce determines that revocation of the *Order* would be likely to lead to continuation or recurrence of dumping. Commerce also determines that the magnitude of the dumping margins likely to prevail are as follows.

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

VIII. RECOMMENDATION

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

Agree

Disagree

4/29/2020

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance