



A-570-007
Sunset Review
Public Document
E&C/OV: ES

January 21, 2021

MEMORANDUM TO: Christian Marsh
Acting 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 Fifth Sunset Review of the Antidumping Duty Order on Barium Chloride from the People's Republic of China

I. SUMMARY

We have analyzed the response of a domestic producer of barium chloride in the expedited fifth sunset review of the antidumping duty (AD) order on barium chloride 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 17, 1984, the Department of Commerce (Commerce) published the AD order on barium chloride from China.¹ On October 1, 2020, Commerce initiated the fifth sunset review of the AD order on barium chloride from China pursuant to section 751(c) of the Act.² Commerce received a notice of intent to participate from the petitioner in this proceeding, Chemical Products Corporation (CPC), within the deadline specified in 19 CFR 351.218(d)(1)(i).³ CPC claimed interested party status under section 771(9)(C) of the Act as a producer of the domestic like product. On October 30, 2020, Commerce received an adequate substantive response from

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

² See *Initiation of Five-Year (Sunset) Reviews*, 85 FR 61928 (October 1, 2020) (*Notice of Initiation*).

³ See CPC's Letter, "Notice of Intent to Participate," dated October 6, 2020.



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 November 20, 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 *Order*.

III. SCOPE OF THE *ORDER*

The merchandise covered by the *Order* is barium chloride, a chemical compound having the formulas BaCl₂ or BaCl₂·2H₂O, currently classifiable under subheading 2827.39.4500 of the Harmonized Tariff Schedule of the United States (HTSUS).⁶ Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

IV. HISTORY OF THE *ORDER*

On August 27, 1984, Commerce published the *Final Determination* in the less-than-fair-value (LTFV) investigation of barium chloride from China.⁷ On October 17, 1984, Commerce issued the *Order*.⁸

Commerce found the following *ad valorem* dumping margins:⁹

Exporter	Weighted-Average Margin (percent)
China National Chemicals Import and Export Corporation (SINOCHEM)	14.50
China-Wide Entity	14.50

Since the issuance of the *Order*, Commerce has completed five administrative reviews.¹⁰ During the 2000-2001 *Administrative Review*, Commerce assigned a dumping margin of 155.50 percent

⁴ See CPC's Letter, "Fifth Five-Year Review of Barium Chloride from China: Substantive Response to Notice of Initiation," dated October 30, 2020 (Substantive Response).

⁵ See Commerce's Letter, "Sunset Reviews Initiated on October 1, 2020," dated November 20, 2020.

⁶ The scope reflects the HTSUS subheading currently in effect.

⁷ 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*).

⁸ See *Order*, 49 FR at 40635.

⁹ *Id.*

¹⁰ See *Barium Chloride from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 54 FR 52 (January 3, 1989). The first and third administrative reviews were conducted within the same segment. Commerce calculated two different dumping margins for each respective review period. See *Barium Chloride from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 52 FR 313 (January 5, 1987); and *Barium Chloride from the People's Republic of China; Final Results of Antidumping*

to the China-wide entity based entirely on adverse facts available (AFA).¹¹ We have not conducted any administrative reviews since the 2001-2002 administrative review. With respect to sunset reviews, Commerce has completed four sunset reviews of the *Order*.¹² In each of the four prior sunset reviews, we found that revocation of the *Order* would be likely to lead to continuation or recurrence of dumping.¹³ In the fourth sunset review, Commerce determined the margin likely to prevail if the *Order* was revoked to be 155.50 percent.¹⁴ 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.¹⁵ Thus, Commerce published the notice of continuation of the *Order*.¹⁶

Commerce has not conducted any 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/or exporters of barium chloride.

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 *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,¹⁷ the House Report,¹⁸ and the Senate Report,¹⁹

Duty Administrative Review, 64 FR 62168 (November 16, 1999); and *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) (2000-2001 Administrative Review), and accompanying Issues and Decision Memorandum (IDM).

¹¹ See *2000-2001 Administrative Review*, 68 FR at 12670.

¹² See *Final Results of Expedited Sunset Review: Barium Chloride from the People's Republic of China*, 64 FR 5633 (February 4, 1999) (*First Sunset*); *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); *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); and *Barium Chloride from the People's Republic of China: Final Results of Expedited Fourth Sunset Review of the Antidumping Duty Order*, 80 FR 36973 (June 29, 2015) (*Fourth Sunset*), and accompanying IDM.

¹³ *Id.*

¹⁴ See *Fourth Sunset* IDM at 7-8.

¹⁵ See, e.g., *Barium Chloride from China Determination*, 80 FR 66935 (October 30, 2015); see also *Barium Chloride from China*, USITC Investigation No. 731-TA-149 (Fourth Review), USITC Publication 4574 (October 2015).

¹⁶ See *Fourth Sunset*.

¹⁷ See Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA), H.R. Doc. 103-316, vol. 1 (1994).

¹⁸ See H. Rep. No. 103-826, pt. 1 (1994) (House Report).

¹⁹ 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.²⁰ 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.²¹ 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.²²

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.²³ 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.²⁴

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.²⁵ 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").²⁶ Pursuant to section 752(c)(4)(A) of the Act, a dumping margin of zero or *de minimis* shall not by itself require Commerce to determine that revocation of an order would not be likely to lead to a continuation or recurrence of sales at LTFV.²⁷

²⁰ See SAA at 879; see also House Report at 56.

²¹ 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*).

²² See SAA at 889-890; see also House Report at 63.

²³ 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.

²⁴ 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; see also *Ferrovanadium 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.

²⁵ 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.

²⁶ See SAA at 890-91.

²⁷ 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.

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 and was subject to the *Final Modification for Reviews*.²⁸ 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.²⁹ 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.³⁰ 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 AFA, and dumping margins where no offsets were denied because all comparison results were positive.”³¹

VI. DISCUSSION OF THE ISSUES

1. Likelihood of Continuation or Recurrence of Dumping

Interested Party Comments³²

CPC argues that revocation of the *Order* would lead to a continuation or recurrence of dumping by producers and exporters of barium chloride 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 chloride 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.”³³ CPC further asserts that, without the discipline of the *Order* and the current substantial dumping margin, imports of barium chloride would lead to resumption of dumping in the United States.

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 or recurrence 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

²⁸ 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*).

²⁹ *Id.*, 77 FR at 8102, 8105, and 8109.

³⁰ *Id.*

³¹ *Id.*

³² See Substantive Response at 7-10.

³³ *Id.* at 7 (citing SAA at 890).

the SAA, the 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.”³⁴ In addition, “declining import volumes accompanied by the continued existence of dumping margins after the issuance of the 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.”³⁵ 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.³⁶

Since the *Fourth Sunset*, Commerce has not conducted any reviews of the *Order*. Given the continued existence of above *de minimis* margins since the fourth sunset review, and because the China-wide entity rate of 155.50 percent remains in place for all producers and exporters of the subject merchandise, we determine that dumping has continued since the fourth sunset review period.

We also considered CPC’s statement on the decline of imports of subject merchandise into the United States year over year since the imposition of the *Order*. CPC provided public import statistics,³⁷ which list year-on-year import levels from 1989 through 2019. CPC stated that there were no imports at all during many of the years since the publication of the *Order*.³⁸ While we are unable to compare the import levels of subject merchandise for the periods before and after the issuance of the *Order*, consistent with the guidance of the SAA, the existence of margins above *de minimis* during this sunset review period is a sufficient basis to conclude that dumping would likely continue were the *Order* revoked.³⁹ Based on the data on the record, Commerce finds that imports decreased after the issuance of the *Order* and that dumping continued at levels above *de minimis*. Accordingly, pursuant to section 752(c)(1) of the Act, we determine that revocation of the *Order* would likely result in the continuation or recurrence of dumping in the United States.

³⁴ See SAA at 890.

³⁵ *Id.* at 889; see also House Report at 63; and Senate Report at 52.

³⁶ See SAA at 889-90; see also House Report at 63; and Senate Report at 52.

³⁷ See Substantive Response at Attachment 1.

³⁸ *Id.* at 8-9.

³⁹ See SAA at 890 (“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”).

2. Magnitude of the Margins Likely to Prevail

Interested Party Comments⁴⁰

According to CPC, consistent with the fourth sunset review, the 155.50 percent margin determined in the fifth administrative review best reflects the increase in the dumping margin that has taken place over the life of the *Order*, and is the magnitude of the dumping margin that is likely to prevail.⁴¹

Commerce's Position

Pursuant to section 752(c)(3) of the Act, Commerce shall provide the ITC with the magnitude of the margin of dumping that is likely to prevail if an order were revoked. Normally, Commerce will base the magnitude of the margin that is likely to prevail if an AD order were revoked on the weighted-average dumping margin from the LTFV investigation.⁴² Commerce's preference is to select a weighted-average dumping margin from the LTFV investigation for this purpose because it is the only calculated dumping margin that reflects the behavior of the manufacturers, producers, and exporters without the discipline of an order in place.⁴³

However, as noted in sections II B. 2 and 3 of the Sunset Policy Bulletin, where appropriate, Commerce 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.⁴⁴ Since the LTFV investigation, Commerce has completed five administrative reviews. As discussed in the *Fourth Sunset*, in each of these administrative reviews, Commerce calculated above-*de minimis* dumping margins.⁴⁵ In the most recently completed administrative review of barium chloride from China (*i.e.*, *2000-2001 Administrative Review*) Commerce applied AFA to assign a rate of 155.50 percent to the China-wide entity pursuant to section 776(a) and (b) of the Act.⁴⁶

We also noted in the *Fourth Sunset* that, consistent with our practice articulated in the *Final Modification for Reviews*, the 155.50 percent margin is not affected by the denial of offsets in accordance with *Final Modification for Reviews*⁴⁷ because it is a rate based entirely on AFA

⁴⁰ See Substantive Response at 8-10.

⁴¹ *Id.* at 10.

⁴² See SAA at 890; see also *Persulfates Second Sunset Review* IDM at Comment 2.

⁴³ See SAA at 890; see also *Sunset Policy Bulletin* at 18872 (April 16, 1998) at section II.B.1; and *Persulfates Second Sunset Review* IDM at Comment 2.

⁴⁴ See *Sunset Policy Bulletin*.

⁴⁵ See *Fourth Sunset* IDM at 6.

⁴⁶ See *2000-2001 Administrative Review*, 68 FR at 12670, where we stated that “because the remaining companies {including SINOCEM} did not respond to {Commerce’s} questionnaire, we consider them to be part of the {China}-wide entity, and applied AFA. In the preliminary results of this review, we recalculated the {China}-wide rate using information placed on the record by the petitioner as appropriately adjusted by {Commerce}. We have continued to take this approach in the final results.”

⁴⁷ As stated in the *Final Modification for Reviews*, Commerce “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 {AFA}, and dumping margins where no offsets were denied because all comparison results were positive.” See *Final Modification for Reviews*, 77 FR at 8103.

from information provided by the petitioner in the *2000-2001 Administrative Review*.⁴⁸ Accordingly, consistent with section 752(c) of the Act, Commerce will report to the ITC the rate as indicated in the Final Results of Sunset Review section below.

VII. FINAL RESULTS OF SUNSET REVIEW

We determine that revocation of the *Order* would be likely to lead to continuation or recurrence of dumping, and that the magnitude of the dumping margins likely to prevail would be up to 155.50 percent.

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

1/21/2021

X



Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance

Commerce 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).

⁴⁸ See *2000-2001 Administrative Review*, 68 FR at 12669, and accompanying IDM at Comment 1.