

MEMORANDUM TO: James J. Jochum
Assistant Secretary
for Import Administration

FROM: Ronald K. Lorentzen
Acting Director
Office of Policy

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

Summary:

We have analyzed the substantive response of the only interested party participating in the sunset review of the antidumping duty order on barium chloride from the People's Republic of China ("China"). We recommend that you approve the positions we have developed 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 comments by the domestic interested party:

1. Likelihood of continuation or recurrence of dumping
 - A. Weighted-average dumping margin
 - B. Volume of imports
2. Magnitude of the margin likely to prevail

More recent margin

History of the Order

The antidumping duty order on barium chloride from China was published on October 17, 1984.¹ Since that time the Department has completed several administrative reviews, including a five-year sunset review.²

In the antidumping duty order, the Department established a weighted-average margin of 14.5 percent for China National Chemicals Import and Export Corporation (“SINOCHEM”), and a China-wide rate of 14.50 percent. In the first administrative review, the Department determined a dumping margin of 7.82 percent for SINOCHEM, and a China-wide rate of 7.82 percent. In the second administrative the Department determined a dumping margin of 60.84 percent for SINOCHEM (based on facts available), and a China-wide rate of 60.84 percent. In the third administrative review the Department determined a dumping margin of 155.50 percent for SINOCHEM based on adverse facts available (“AFA”), and a China-wide rate of 155.50 percent.

The antidumping order remains in effect for all manufacturers, producers, and exporters of barium chloride from China.

Background

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

² See Barium Chloride from the People’s Republic of China; Final Results of Antidumping Duty Administrative Review, 52 FR 313 (January 5, 1987); Barium Chloride from the People’s Republic of China; Final Results of Antidumping Duty Administrative Review, 54 FR 52 (January 3, 1989); Barium Chloride from the People’s Republic of China; Final Results of Antidumping Duty Administrative Review, 57 FR 29467 (July 2, 1992), Final Results of Expedited Sunset Review: Barium Chloride From the People’s Republic of China (PRC), 64 FR 5633 February 4, 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).

On February 2, 2004, the Department initiated a sunset review of the antidumping order on barium chloride from China pursuant to section 751(c) of the Tariff Act of 1930 as amended (the “Act”).³ The Department received a Notice of Intent to Participate from Chemical Products Corporation (“CPC”) on February 17, 2004, within the deadline specified in section 315.218(d)(1)(i) of the Department’s regulations (“Sunset regulations”). CPC claimed interested party status under section 771(9)(C) of the Act as a U.S. producer of barium chloride. CPC asserts that it is the sole remaining producer of barium chloride in the United States, and was the petitioner in the original antidumping investigation that led to the antidumping duty order. CPC has participated in all of the administrative reviews, including the first sunset review, which resulted in the Department’s continuing the order.⁴ On March 3, 2004, the Department received a complete substantive response from the CPC within the deadline specified in section 351.218(d)(3)(I) of the Department’s regulations. We did not receive responses from any respondent interested parties to this proceeding. As a result, pursuant to section 751(c)(3)(B) of the Act and section 351.218(e)(1)(ii)(C)(2) of the Department’s regulations, the Department conducted an expedited (120-day) review of this order.

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 the antidumping duty order would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making these determinations, the

³ See Initiation of Five-Year Sunset (“Sunset”) Reviews, 69 FR 4921 (February 2, 2004).

⁴ See Continuation of Antidumping Duty Order: Barium Chloride From the People’s Republic of China, 64 FR 42654 (August 5, 1999).

Department shall consider the weighted-average dumping margins determined in the investigations and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping duty order. In addition, section 752(c)(3) of the Act provides that the Department shall provide to the Commission the magnitude of the margin of dumping likely to prevail if the order were revoked. Below we address the comments of the interested parties.

1. Likelihood of Continuation or Recurrence of Dumping

Interested Party Comments

CPC contends that revocation of the antidumping duty order on barium chloride from China would result in the resumption of export shipments on a large scale and at prices well below fair value. See CPC, Substantive Response, March 3, 2004, at 3. CPC supports its contention by stating that dumping continued at level above de minimis after the issuance of the order, and that imports ceased. Id. at 3 - 9.

CPC claims that Chinese exports of barium chloride declined substantially upon completion of the investigation, and remained at low levels, and ceased for a period after the imposition of the order. CPC provided statistics based on trade data collected by the U.S. Census Bureau for the period, 1980 through 2003. Id. at Attachment A. In this report, CPC illustrates that pre-order shipments of barium chloride from China exceeded post-order volumes significantly and remained at low levels after the issuance of the order. CPC specifically points to the cessation of imports after the issuance of the order for the period 1991 through 1993, and 2002 through 2003.

CPC argues that dumping is likely to continue or recur if the order were revoked because weighed-average margins continue to be levels above de minimis. Id. at 9-11. Since the original

investigation, weighted-average margins have ranged from 7.82 percent to 155.50 percent. Id. at 11.

CPC contends that the existence of dumping margins above de minimis levels, coupled with low import volumes and cessation of subject imports, demonstrates sufficient evidence to continue this order.

CPC reiterates that (1) its pursuit of the antidumping case through the investigation process resulted in a substantial decline in imports from China, (2) following the finding of a dumping margin of 60.84 percent in the second administrative review, the level of imports dropped precipitously, and, for three full calendar years, there were no imports, (3) the shipments that resumed in the 1990's have been dumped imports subject to significant antidumping duties (there has been no finding of any sales at fair value since the antidumping duty order was issued, and (4) following the promulgation of a new antidumping duty rate of 155.50 percent, shipments of barium chloride from China have again ceased completely. Id. at 7.

CPC provided also a list of Chinese companies, their locations, and production in metric tons per year, that are currently producing barium chloride in China. CPC believes that these companies/plants have substantial production capacity for exporting that production to the United States and that without the discipline of the this order, dumping will continue or resume. Id. at 8-9.

Department's Position

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the SAA, H.R. Doc. No. 103-316, vol. 1 (1994) at 826, the House Report, H. Rep. No. 103-826, pt. 1 (1994), and the Senate Report, S. Rep. No. 103-412 (1994), the Department issued its Sunset Policy Bulletin providing guidance on methodological and analytical issues, including the bases for likelihood determinations. See Policies Regarding the Conduct

of the Five-Year (“Sunset”) Reviews of Antidumping & Countervailing Duty Orders, Policy Bulletin, No. 98.3 (April 16, 1998) (“Sunset Policy Bulletin”). The Department clarified that determinations of likelihood will be made on an order-wide basis. See Sunset Policy Bulletin at section II.A.2. In addition, the Department indicated that normally it will determine that revocation of an antidumping 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 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. See Sunset Policy Bulletin at section II.A.3.

In addition to considering the guidance on likelihood cited above, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of the order would be likely to lead to continuation or recurrence of dumping where a respondent interested party does not participate in the sunset review. In this sunset review, the Department did not receive a response from any respondent interested party. Pursuant to section 351.218(d)(2)(iii) of the Department’s regulations, this constitutes a waiver of participation.

As discussed above, in conducting its sunset review, the Department considers: (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 the period after the issuance of the antidumping duty order when determining whether revocation of the order would lead to continuation or recurrence of dumping. In the original investigation, the Department calculated a weighted-average dumping margin of 14.50 percent. Moreover, in the subsequent administrative reviews of this order, margins above levels of de minimis continued.

Import statistics provided by CPC on subject imports between 1980 and 2003, and confirmed through the Department's examination of import volumes, U.S. Bureau of Census, IM 145 report, demonstrate that following the issuance of the order, imports of barium chloride from China fell significantly, and ceased over a period of time. Current import data continue to 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 order and that dumping continued at levels above de minimis. Moreover, respondent interested parties waived their right to participate in this review. Therefore, given that (1) dumping has continued following the issuance of the order, (2) import volumes declined after the issuance of the 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 order were revoked.

2. Magnitude of the Margin

CPC suggested several reasons why the 155.50 percent margin from the most recently completed administrative review is appropriate rate to report to the Commission. CPC noted that, (1) the 155.50 percent margin best reflects the increase in the dumping margin that has taken place over the life of the order, from 14.5 percent, to 60.84 percent, to 155.50 percent, (2) the 155.50 percent is associated with the recent increase in imports found by the Department, (3) while imports have increased, unit values of those imports have remained at low levels, which is evidence of Chinese intent to expand market share, and (4) this rate best reflects the revised and updated NME methodology now being employed by the Department, as opposed to factors of production usage and valuation data, from

the original investigation that are more than nineteen years old. Id. at 12 - 13.

Department's Position:

In the Sunset Policy Bulletin, the Department stated that it normally will provide to the Commission the margin that was determined in the final determination in the original investigation. For companies not specifically investigated 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 because these rates are the only calculated rates that best reflect the behavior of exporters without the discipline of the order in place. See Sunset Policy Bulletin at section II.B.1. Exception to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. See Sunset Policy Bulletin at section II.B.2 and 3.

The Department agrees with CPC argument concerning the choice of margins to report to the Commission. As noted in sections II B.2 and 3 of the Sunset Policy Bulletin, where appropriate, the Department may report to the Commission 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 China, the Department applied an adverse facts available rate for SINOCHM of 155.50 percent, which differs from the rate calculated for SINOCHM in the underlying investigation and the prior administrative review. The Department recalculated the prior AFA rate of 60.84 percent, and the China-wide rate of 60.84 percent based on CPC's request for a review because of outdated information.⁵ In that administrative review, CPC,

⁵ 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.

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.⁶ 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 Commission the company-specific rate of 155.50 percent for SINOCHEM, and a China-wide rate of 155.50 percent as contained in the Final Results of Review section of this notice.

Final Results of Review

As a result of this review, the Department finds that revocation of the antidumping order would likely lead to continuation or recurrence of dumping at the margin listed below.

Manufacturers/Producers/Exporters	Weighted-average Margin (percent)

China National Chemicals Import and Export Corporation (SINOCHEM)	155.50
China-wide rate	155.50

⁶ In the review, CPC argued that the prior AFA rate of 60.84 percent rate was based on factors of production and valuation data that was old outdated information that did not take into account changes in sales and input prices or changes in the methodology used by the Department of NME cases. See CPC's, Substantive Response, March 3, 2004, at 10. In support of its position, in the administrative review, CPC submitted updated information on factors of production usage and values. The Department agreed with CPC, finding sufficient evidence on the record that demonstrates the 60.84 percent is outdated, and lacked a rational relationship to the China-wide entity. Id. at 11.

Recommendation

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

Agree _____

Disagree _____

James J. Jochum

Assistant Secretary

for Import Administration

Date