

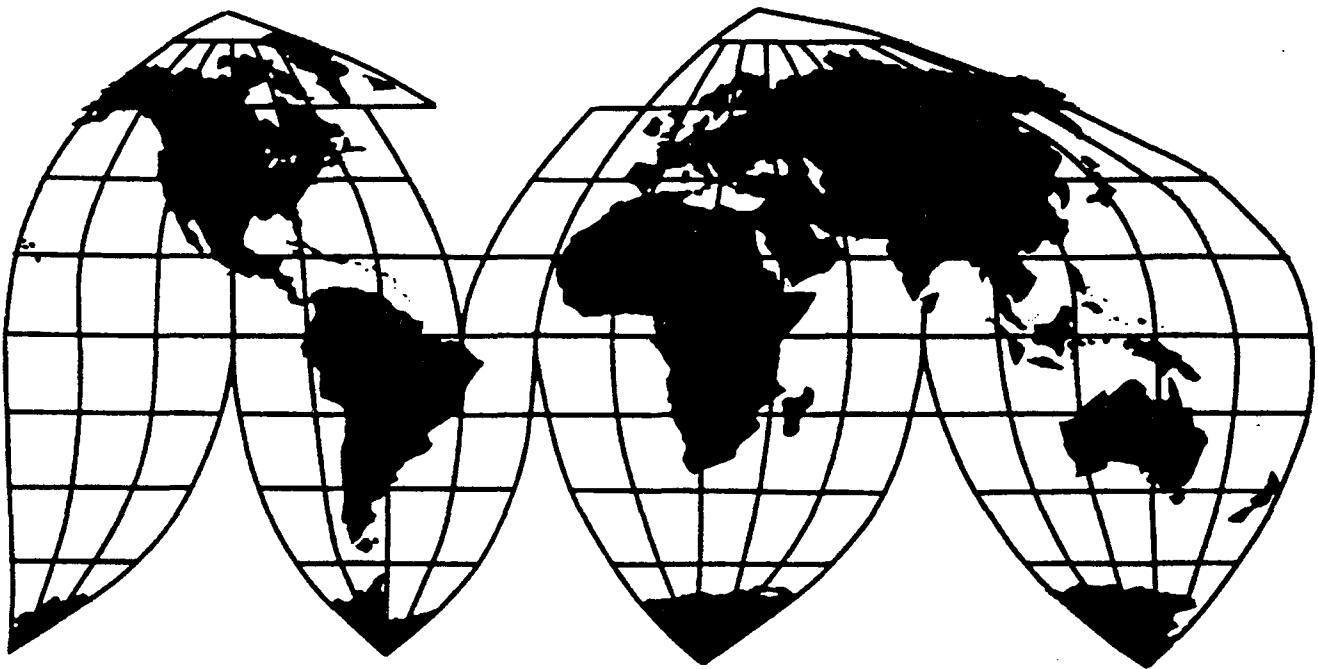
# Barium Chloride From China

Investigation No. 731-TA-149 (Review)

Publication 3163

March 1999

**U.S. International Trade Commission**



# **U.S. International Trade Commission**

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## **Barium Chloride From China**



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**Note.**—Information that would reveal confidential operations of individual concerns may not be published and therefore has been replaced by asterisks (\*\*\*).

## GLOSSARY

Commerce .....	U.S. Department of Commerce
Commission .....	U.S. International Trade Commission
CPC .....	Chemical Products Corp.
Customs .....	U.S. Customs Service
FR .....	<i>Federal Register</i>
HTS .....	Harmonized Tariff Schedule of the United States
<i>Response</i> .....	Response to the Commission's Notice of Institution
SINOCHEM .....	China National Chemicals Import and Export Corp.

# **UNITED STATES INTERNATIONAL TRADE COMMISSION**

Investigation No. 731-TA-149 (Review)

## **BARIUM CHLORIDE FROM CHINA**

### **DETERMINATION**

On the basis of the record<sup>1</sup> developed in the subject five-year review, the United States International Trade Commission determines,<sup>2</sup> pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)) (the Act), that revocation of the antidumping duty order on barium chloride from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

### **BACKGROUND**

The Commission instituted this review on October 1, 1998, (63 F.R. 52750) and determined on January 7, 1999, that it would conduct an expedited review (64 F.R. 3308, Jan. 21, 1999).

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<sup>1</sup> The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

<sup>2</sup> Commissioner Crawford dissenting.





## VIEWS OF THE COMMISSION

Based on the record in this five-year review, we determine under section 751(c) of the Tariff Act of 1930, as amended ("the Act"), that revocation of the antidumping duty order covering barium chloride from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.<sup>1</sup>

### I. BACKGROUND

In October 1984, the Commission determined that an industry in the United States was being materially injured by reason of imports of barium chloride from China that were being sold at less than fair value.<sup>2</sup> On October 17, 1984, the Department of Commerce issued an antidumping duty order on imports of barium chloride from China.<sup>3</sup> On October 1, 1998, the Commission instituted a review pursuant to section 751(c) of the Act to determine whether revocation of the antidumping duty order on barium chloride from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.<sup>4</sup>

In five-year reviews, the Commission first determines whether to conduct a full review (which would include a public hearing, the issuance of questionnaires, and other procedures) or an expedited review. Specifically, the Commission determines whether individual responses to the notice of institution are adequate and, based on individually adequate responses, whether the collective responses submitted by two groups of interested parties -- domestic interested parties (such as producers, unions, trade associations, or worker groups) and respondent interested parties (such as importers, exporters, foreign producers, trade associations, or subject country governments) -- demonstrate a sufficient willingness among each group to participate and provide the information requested in a full review, and if not, whether other circumstances warrant a full review.<sup>5</sup>

In this review, the Commission received one response to its notice of institution. The response was submitted by Chemical Products Corporation ("CPC"), the largest U.S. producer of barium chloride and the sole petitioner in the original investigation. CPC also filed comments on adequacy and argued that the review should be expedited because no Chinese producer of barium chloride responded to the Commission's notice of institution.<sup>6</sup>

On January 7, 1999, the Commission determined that the domestic interested party group response to its notice of institution was adequate. In this regard, it found that the only domestic respondent, CPC, accounted for the vast majority of domestic barium chloride production in 1997. The Commission also determined that the response from the respondent interested party group was inadequate, given that no

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<sup>1</sup> Commissioner Crawford dissenting. Commissioner Crawford determined that revocation of the order in this review would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. See Dissenting Views of Commissioner Carol T. Crawford. She joins in Sections I, II, III.A and III.B of these views, except as otherwise noted.

<sup>2</sup> Barium Chloride from China, Inv. No. 731-TA-149 (Final), USITC Pub. 1584 (October 1984) ("Original Determination"). The staff report for this investigation is included in USITC Pub. 1584.

<sup>3</sup> 49 Fed. Reg. 40635 (Oct. 17, 1984).

<sup>4</sup> 63 Fed. Reg. 52750 (Oct. 1, 1998).

<sup>5</sup> See 19 C.F.R. § 207.62(a); 63 Fed. Reg. 30599, 30602-05 (June 5, 1998).

<sup>6</sup> See 19 C.F.R. § 207.62(b) (authorizing, *inter alia*, all interested parties that have responded to the notice of institution to file comments with the Commission on whether the Commission should conduct an expedited review).

respondent interested parties responded to the notice of institution. Accordingly, pursuant to section 751(c)(3)(B) of the Act, the Commission voted to conduct an expedited review.<sup>7</sup>

On February 9, 1999, CPC filed comments ("CPC Comments") pursuant to 19 C.F.R. § 207.62(d) urging the Commission to determine that revocation of the antidumping duty order on barium chloride would be likely to lead to recurrence of material injury within a reasonably foreseeable time.

## II. DOMESTIC LIKE PRODUCT AND INDUSTRY

### A. Domestic Like Product

In making its determination under section 751(c), the Commission defines "the domestic like product" and the "industry."<sup>8</sup> The Act defines "domestic like product" as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle."<sup>9</sup> In its final five-year review determination, the Department of Commerce ("Commerce") defined the imported product covered by the existing antidumping duty order as "barium chloride, a chemical compound having the formula BaCl<sub>2</sub> or BaCl<sub>2</sub> · 2H<sub>2</sub>O . . ."<sup>10</sup>

Barium chloride is produced in crystalline and anhydrous form. Crystalline barium chloride is used primarily as a cleansing agent in the production of certain chemicals and lubricating oil additives and as a raw or intermediate material in the production of molecular sieves, chemicals, pigments and paper coatings. The anhydrous form of barium chloride is used primarily as an ingredient in heat-treating salts and metal fluxes.<sup>11</sup>

We find, based on the facts available, that the appropriate definition of the domestic like product in this expedited five-year review is the same as Commerce's scope: all barium chloride, whether crystalline or anhydrous.<sup>12</sup>

### B. Domestic Industry

Section 771(4)(A) of the Act defines the relevant industry as the "domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product."<sup>13</sup> In defining the domestic industry, the Commission's general practice has been to include in the industry producers of all domestic production of the like product,

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<sup>7</sup> 19 U.S.C. § 1675(c)(3)(B); *see* 63 Fed. Reg. 70157 (Dec. 18, 1998).

<sup>8</sup> 19 U.S.C. § 1677(4)(A).

<sup>9</sup> 19 U.S.C. § 1677(10). *See Nippon Steel Corp. v. United States*, 19 CIT 450, 455 (1995); *Timken Co. v. United States*, 913 F. Supp. 580, 584 (Ct. Int'l Trade 1996); *Torrington Co. v. United States*, 747 F. Supp. 744, 748-49 (Ct. Int'l Trade 1990), *aff'd*, 938 F.2d 1278 (Fed. Cir. 1991). *See also* S. Rep. No. 96-249, at 90-91 (1979).

<sup>10</sup> 64 Fed. Reg. 5633 (February 4, 1999). Barium chloride is currently classified under Item 2827.38.00 of the Harmonized Tariff Schedule. *Id.*

<sup>11</sup> CR at I-5; PR at I-4.

<sup>12</sup> In its original determination, the Commission found that there was one like product, consisting of barium chloride, in both its crystalline and anhydrous forms. Original Determination at 4. In a brief footnote to the opinion, the Commission found that high purity barium chloride produced for laboratory use was not included in the like product, noting that it was produced "only in very small amounts and at a relatively high price" and that this form of barium chloride "does not compete for general industrial use with the petitioner's or the imported product." *Id.*, n.8. The Commission did not make a separate injury finding with respect to the high purity product and Commerce has not explicitly excluded this merchandise from the scope of the order. Thus, the scope of this review appears to include high purity barium chloride.

<sup>13</sup> 19 U.S.C. § 1677(4)(A).

whether toll-produced, captively consumed, or sold in the domestic merchant market, provided that adequate production-related activity is conducted in the United States.<sup>14</sup> Accordingly, we find that the domestic industry includes all domestic producers of barium chloride.

### III. REVOCATION OF THE ORDER ON BARIUM CHLORIDE IS LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME<sup>15</sup>

#### A. Legal Standard

In a five-year review conducted under section 751(c) of the Act, Commerce will revoke an antidumping duty order unless it makes a determination that dumping is likely to continue or recur and the Commission makes a determination that material injury would be likely to continue or recur if the order is revoked, as described in section 752(a).

Section 752(a) of the Act states that in a five-year review “the Commission shall determine whether revocation of an order, or termination of a suspended investigation, would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.”<sup>16</sup> The Uruguay Round Agreements Act (“URAA”) Statement of Administrative Action (“SAA”) indicates that “under the likelihood standard, the Commission will engage in a counter-factual analysis; it must decide the likely impact in the reasonably foreseeable future of an important change in the status quo – the revocation [of the order] . . . and the elimination of its restraining effects on volumes and prices of imports.”<sup>17</sup> Thus, the likelihood standard is prospective in nature.<sup>18</sup> The statute states that “the Commission shall consider that the effects of revocation . . . may not be imminent, but may manifest themselves only over a longer period of time.”<sup>19</sup> According to the SAA, a “‘reasonably foreseeable time’ will vary from case-to-case, but normally will exceed the ‘imminent’ time frame applicable in a threat of injury analysis [in antidumping and countervailing duty determinations].”<sup>20</sup>

Although the standard in five-year reviews is not the same as the standard applied in original antidumping or countervailing duty determinations, it contains some of the same elements. The statute provides that the Commission is to “consider the likely volume, price effect, and impact of imports of the

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<sup>14</sup> See, e.g., United States Steel Group v. United States, 873 F. Supp. 673, 682-83 (Ct. Int’l Trade 1994), *aff’d*, 96 F.3d 1352 (Fed. Cir. 1996).

<sup>15</sup> Commissioner Crawford does not find that revocation of the antidumping duty order on barium chloride is likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time but joins the majority’s discussion of the appropriate legal standard and conditions of competition in this market, except as otherwise noted.

<sup>16</sup> 19 U.S.C. § 1675a(a).

<sup>17</sup> URAA SAA, H.R. Rep. No. 103-316, vol. I, at 883-84 (1994).

<sup>18</sup> While the SAA states that “a separate determination regarding current material injury is not necessary,” it indicates that “the Commission may consider relevant factors such as current and likely continued depressed shipment levels and current and likely continued prices for the domestic like product in the U.S. market in making its determination of the likelihood of continuation or recurrence of material injury if the order is revoked.” SAA at 884.

<sup>19</sup> 19 U.S.C. § 1675a(a)(5).

<sup>20</sup> SAA at 887. Among the factors that the Commission should consider in this regard are “the fungibility or differentiation within the product in question, the level of substitutability between the imported and domestic products, the channels of distribution used, the methods of contracting (such as spot sales or long-term contracts), and lead times for delivery of goods, as well as other factors that may only manifest themselves in the longer term, such as planned investment and the shifting of production facilities.” *Id.*

subject merchandise on the industry if the order is revoked.” It directs the Commission to take into account its prior injury determination, whether any improvement in the state of the industry is related to the order under review, and whether the industry is vulnerable to material injury if the order is revoked.<sup>21 22</sup>

Section 751(c)(3) of the Act and the Commission’s regulations provide that in an expedited five-year review the Commission may issue a final determination “based on the facts available, in accordance with section 776.”<sup>23</sup> We have relied on the facts available in this review, which consist primarily of the record in the original investigation, information submitted by CPC, and limited public information collected by the Commission.

For the reasons stated below, we determine that revocation of the antidumping duty order on barium chloride from China would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.<sup>24</sup>

## **B. Conditions of Competition**

In evaluating the likely impact of the subject imports on the domestic industry if the order is revoked, the statute directs the Commission to evaluate all relevant economic factors “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”<sup>25</sup> In performing our analysis under the statute, we have taken into account the following conditions of competition in the U.S. barium chloride market.

First, the limited record in this expedited review suggests that the domestic barium chloride market is a mature market that is in some decline.<sup>26</sup> This was also true during the Commission’s original injury determination in 1984, where the Commission noted that the domestic market for barium chloride was “contracting due to the introduction of new products and industrial processes replacing those using [barium chloride].”<sup>27</sup> In its original determination, the Commission also noted that domestic consumption had declined significantly during the period of investigation.

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<sup>21</sup> 19 U.S.C. § 1675a(a)(1). The statute further provides that the presence or absence of any factor that the Commission is required to consider shall not necessarily give decisive guidance with respect to the Commission’s determination. 19 U.S.C. § 1675a(a)(5). While the Commission must consider all factors, no one factor is necessarily dispositive. SAA at 886.

<sup>22</sup> Section 752(a)(1)(D) of the Act directs the Commission to take into account in five-year reviews involving antidumping proceedings “the findings of the administrative authority regarding duty absorption.” 19 U.S.C. § 1675a(a)(1)(D). Commerce has not issued any duty absorption findings in this matter. 64 Fed. Reg. at 5633-35.

<sup>23</sup> 19 U.S.C. § 1675(c)(3)(B); 19 C.F.R. § 207.62(e). Section 776 of the Act, in turn, authorizes the Commission to “use the facts otherwise available” in reaching a determination when: (1) necessary information is not available on the record, or (2) an interested party or any other person withholds information requested by the agency, fails to provide such information in the time or in the form or manner requested, significantly impedes a proceeding, or provides information that cannot be verified pursuant to section 782(i) of the Act. 19 U.S.C. § 1677e(a).

<sup>24</sup> Commissioner Crawford determined that revocation of the order in this review would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See Dissenting Views of Commissioner Carol T. Crawford.*

<sup>25</sup> 19 U.S.C. § 1675a(a)(4).

<sup>26</sup> Commissioner Crawford concurs that the domestic barium chloride market is a mature market, but she finds that the market is relatively stable and is not in decline. *See Dissenting Views of Commissioner Carol T. Crawford.*

<sup>27</sup> Original Determination at 4.

Aggregate domestic consumption of barium chloride in 1997 was somewhat smaller than aggregate domestic consumption in 1981, the first year of the period of investigation in the original injury proceeding.<sup>28</sup> As in the original investigation, this general reduction in demand appears to have resulted from the introduction of new products that are substitutes for barium chloride and the introduction of industrial processes replacing those using barium chloride.<sup>29</sup> In this regard, the record in this review suggests that, since imposition of the order, barium chloride has been replaced by calcium chloride in certain pigment production processes, primarily because of environmental concerns. Moreover, since imposition of the order, gasoline producers have entirely discontinued production of leaded gasoline, a major use of barium chloride identified in the original investigation.<sup>30</sup>

Second, as was also true in the original determination, CPC remains the only significant domestic producer of barium chloride, accounting for nearly all domestic production and the large majority of overall shipments of barium chloride.<sup>31</sup>

Third, the available evidence suggests that nonsubject imports presently account for a market share nearly equal to the level they held at the beginning of the original period of investigation. In 1997, nonsubject imports accounted for approximately \*\*\* percent of the U.S. market, only slightly less than the \*\*\* percent market share they held in 1981.<sup>32 33</sup>

Finally, as in the original investigation, the available evidence suggests that barium chloride is a commodity product and that there is a relatively high degree of substitutability between imported and domestic barium chloride.<sup>34</sup> Accordingly, the available evidence suggests, as in the original investigation, that price is an important consideration in the purchasing decision for barium chloride.<sup>35</sup>

Based on the record evidence, we find that these conditions of competition in the barium chloride market have prevailed since the original investigation and are not likely to change in the reasonably foreseeable future. Accordingly, in this review, we find that current conditions in the barium chloride market provide us with a reasonable basis on which to assess the effects of revocation of the order.

### C. Likely Volume of Subject Imports

In evaluating the likely volume of imports of subject merchandise if the order under review is revoked, the Commission is directed to consider whether the likely volume of imports would be significant either in absolute terms or relative to production or consumption in the United States.<sup>36</sup> In doing so, the Commission must consider "all relevant economic factors," including four enumerated factors: (1) any likely increase in production capacity or existing unused production capacity in the exporting country; (2)

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<sup>28</sup> Apparent consumption of barium chloride was approximately \*\*\* millions pounds in 1981 but was approximately \*\*\* million pounds in 1997. CR and PR at Table I-3. Apparent consumption of barium chloride was \*\*\* million and \*\*\* million pounds in 1982 and 1983, respectively, the last two years of the period. *Id.*

<sup>29</sup> CR at I-5; PR at I-4.

<sup>30</sup> CR at I-5; PR at I-4.

<sup>31</sup> Original Determination at 5; CR at I-5; PR at I-4-5.

<sup>32</sup> CR and PR at Table I-3.

<sup>33</sup> Commissioner Crawford does not join the remainder of this opinion. *See* Dissenting Views of Commissioner Carol T. Crawford.

<sup>34</sup> *See* Original Staff Report at A-4; CPC Response at 12.

<sup>35</sup> In this regard, the evidence in the original investigation indicated that barium chloride was sold principally on the basis of price and that all of the purchasers contacted in connection with the domestic industry's lost sales allegations reported that price was the principal reason for selecting the Chinese product. Original Determination at 7.

<sup>36</sup> 19 U.S.C. § 1675a(a)(2).

existing inventories of the subject merchandise, or likely increases in inventories; (3) the existence of barriers to the importation of the subject merchandise into countries other than the United States; and (4) the potential for product shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products.<sup>37</sup>

As an initial matter, we note that our analysis is based largely on the record from the original investigation and information submitted by the domestic industry in this review. We note in this regard that the statute permits the Commission to use adverse inferences in selecting from among the facts otherwise available when an interested party has failed to cooperate by acting to the best of its ability to comply with a request for information.<sup>38</sup> Such adverse inferences may include selecting from any information placed on the record and information from the record of our original determination.<sup>39 40</sup> As noted above, no respondent interested parties responded to the Commission's notice of institution. Accordingly, we believe that it is appropriate to rely in large part on the information submitted by the domestic industry.<sup>41</sup>

As discussed below, we conclude based on the facts available<sup>42</sup> that subject import volume is likely to increase significantly and would be significant if the order is revoked. In making this finding, we recognize that the volume of subject imports is currently at a low level relative to total consumption.<sup>43</sup> In a five-year review, however, our focus is on whether subject import volume is likely to be significant in the reasonably foreseeable future if the antidumping duty order is revoked.

The Commission found in its original investigation that imports from China increased significantly during the period of investigation, rising from 4 million pounds in 1981 to 5.3 million pounds in 1983.<sup>44</sup> The Commission further found that imports from China had greatly increased their market share during the period of investigation and that they more than doubled as a percentage of domestic shipments during the period of investigation.<sup>45</sup> Finally, the Commission noted that the level of imports dropped sharply after

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<sup>37</sup> 19 U.S.C. § 1675a(a)(2)(A)-(D). The record contains little or no information pertaining to existing inventories of the subject merchandise or the potential for product shifting in China with respect to barium chloride.

<sup>38</sup> 19 U.S.C. § 1677e(b).

<sup>39</sup> *Id.*

<sup>40</sup> Commissioner Askey does not dispute that the statute authorizes the Commission to take adverse inferences in sunset reviews, but she wishes to emphasize that such authorization does not relieve the Commission of its obligation to consider the record evidence as a whole in making its determination. "[T]he Commission balances all record evidence and draws reasonable inferences in reaching its determinations." URAA SAA at 869. Practically speaking, when only one side has participated in a sunset review, much of the record evidence is supplied by that side, though that data is supplemented with publicly available information. Commissioner Askey generally gives credence to the facts supplied by the participating parties and certified by them as true, but she bases her decision on the evidence as a whole, and does not automatically accept the participating parties' suggested interpretation of the record evidence. Regardless of the level of participation and the interpretations urged by participating parties, the Commission is obligated to consider all evidence relating to each of the statutory factors and may not draw adverse inferences that render such analysis superfluous. "In general, the Commission makes determinations by weighing all of the available evidence regarding a multiplicity of factors relating to the domestic industry as a whole and by drawing reasonable inferences from the evidence it finds most persuasive." *Id.*

<sup>41</sup> Chairman Bragg refers to her footnote *infra* (fn. 49) regarding the use of adverse inferences.

<sup>42</sup> See 19 U.S.C. § 1677e(a).

<sup>43</sup> Imports of barium chloride from China subject to the antidumping duty order accounted for only \*\*\* percent of apparent U.S. consumption in 1997. CR and PR at Table I-3.

<sup>44</sup> Original Determination at 6.

<sup>45</sup> Original Determination at 6. The market share of the Chinese subject imports increased from \*\*\* percent in (continued...)

imposition of preliminary dumping duties by Commerce in December 1983 and that Chinese shipments to the European Community dropped sharply after the European Community made an affirmative dumping finding against them. Given that the current conditions of competition are similar to those in existence prior to imposition of the order, we believe that it is reasonable to infer that Chinese producers would resume exporting significant volumes of barium chloride to the United States if the order is revoked.<sup>46</sup>

The record in this review shows that the amount of barium chloride imported from China declined consistently and significantly during the seven years after the order was imposed and that imports from China have remained at minimal levels since then.<sup>47</sup> Indeed, shortly after Commerce imposed significantly higher dumping duties on the subject imports in 1989, the level of imports from China dropped to zero. We believe that these historical trends further suggest that the order has imposed a level of discipline on subject imports of barium chloride and that removal of the order would result in the resumption of injurious volumes of imports by the Chinese producers.

Moreover, the available record evidence indicates that the Chinese producers have the ability to increase significantly their export levels to the United States within a reasonably foreseeable time. The limited record evidence indicates that the Chinese barium chloride industry has more than \*\*\* its production capacity since the original period of investigation, with capacity increasing from \*\*\* million pounds in 1983 to \*\*\* million pounds currently.<sup>48</sup> This capacity level was more than \*\*\* times the size of the U.S. barium chloride market in 1997 and suggests that these producers have ample ability to export significant volumes of barium chloride to the United States if the order is revoked.<sup>49</sup> Finally, given the relative health of the U.S. economy when compared to the Chinese and other Asian economies, the Chinese producers may have an additional incentive to ship significant amounts of barium chloride to the United States if the order is revoked.

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<sup>45</sup> (...continued)

1981 to \*\*\* percent in 1983. CR and PR at Table I-3.

<sup>46</sup> Chairman Bragg notes that the URAA SAA states that “[i]f the Commission finds that pre-order conditions are likely to recur, it is reasonable to conclude that there is likelihood of continuation or recurrence of injury.” SAA at 884.

<sup>47</sup> CR and PR at Figure I-1. Imports of barium chloride from China declined from a high of 5.3 million pounds in 1983 to no pounds in 1991. *Id.*; CPC Response at Attachment A. Imports from China have not exceeded 322 thousand pounds since 1991. *Id.*

<sup>48</sup> CR at I-9-11; PR at I-6-7.

<sup>49</sup> Chairman Bragg notes that, pursuant to statute, when relying upon facts available the Commission may take adverse inferences against parties that fail to respond adequately to the Commission’s information request. 19 U.S.C. §§ 1675(c)(3)(B), 1677e(b). Chairman Bragg further notes that respondent parties failed to cooperate in this review; indeed, no Chinese producer or exporter, or U.S. importer, of barium chloride subject to the antidumping duty order provided any information in response to the Commission’s notice of institution.

The record in the original investigation identified three plants in China that produced barium chloride for export to the United States, i.e., Zhang Jia Ba, Tangshan, and Tianjin. Production capacities were determined for Zhang Jia Ba and Tangshan, but not for Tianjin.

In the instant review, CPC identified seven additional plants producing barium chloride for export. While the record in this review contains capacity estimates for these seven newly identified plants, no such data was obtained for the three plants identified in the original investigation. According to CPC, these three plants continue to have substantial production capacities.

In the absence of such record information and based upon the failure of Zhang Jia Ba and Tangshan to respond to the notice of institution, Chairman Bragg infers that, at a minimum, these two plants continue to possess the respective production capacity determined for each plant in the original investigation.

For the foregoing reasons, we find that the likely volume of imports of the subject merchandise would be significant if the antidumping duty order is revoked.<sup>50</sup>

#### **D. Likely Price Effects of Subject Imports**

In evaluating the likely price effects of subject imports if the antidumping duty order is revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared to domestic like products and if the subject imports are likely to enter the United States at prices that otherwise would have a significant depressing or suppressing effect on the price of domestic like products.<sup>51</sup>

The record in this expedited review contains a limited amount of pricing data. In its original determination, the Commission found that the subject merchandise had substantially undersold the domestic product during every quarter of the period of investigation for which comparisons were available and that domestic prices had declined during the latter half of the period as a result of this underselling. The information available in this review indicates that the average customs unit values of the small volume of Chinese merchandise now in the market are roughly equal to the average customs unit values of the subject merchandise during the original period of investigation and that the prices of domestic merchandise were higher in 1997 than in the original investigation.<sup>52</sup> Given that the current conditions of competition are similar to those in existence prior to imposition of the order and that there is no indication that the nature of the imported product has changed, we believe that it is reasonable to infer that Chinese producers would resume selling barium chloride in the United States at price-suppressing or depressing prices if the order is revoked.<sup>53</sup>

The record in this expedited review indicates that barium chloride is a commodity product and that the subject merchandise and the domestic product have a relatively high level of substitutability. These facts suggest that price remains an important, if not critical, criterion in the purchasing decision for customers. Given the relatively high level of substitutability between the imported and domestic merchandise and the importance of price in the purchasing decision, it is likely that the Chinese producers would offer attractively low prices to U.S. purchasers in order to regain market share if the order is revoked. Thus, we believe that prices for domestically produced barium chloride would likely decline to a significant degree in response to the likely significant volumes of substitutable subject barium chloride offered at lower prices.

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<sup>50</sup> Vice Chairman Miller and Commissioner Hillman emphasize that this conclusion was reached in the absence of any contrary evidence or argument from respondent interested parties.

<sup>51</sup> 19 U.S.C. § 1675a(a)(3). The SAA states that “[c]onsistent with its practice in investigations, in considering the likely price effects of imports in the event of revocation and termination, the Commission may rely on circumstantial, as well as direct, evidence of the adverse effects of unfairly traded imports on domestic prices.” SAA at 886.

<sup>52</sup> The average customs unit value for the subject merchandise in 1997 was 8.3 cents per pound, while the average customs unit value for the subject merchandise ranged between 7.5 and 8.8 cents during the original period of investigation. The average unit value for domestic shipments was \*\*\* cents per pound in 1997 and ranged between \*\*\* and \*\*\* cents per pound in the original period of investigation. Compare CR and PR at Table I-1 with CR and PR at Table I-2.

<sup>53</sup> Chairman Bragg notes that the URAA SAA states that “[i]f the Commission finds that pre-order conditions are likely to recur, it is reasonable to conclude that there is likelihood of continuation or recurrence of injury.” SAA at 884.



Accordingly, we find that revocation of the antidumping duty order would be likely to lead to significant price effects, including significant underselling by the subject imports of the domestic like product, as well as to significant price depression or suppression in the reasonably foreseeable future.<sup>54</sup>

#### E. Likely Impact of Subject Imports

In evaluating the likely impact of imports of subject merchandise if the order is revoked, the Commission is directed to consider all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including but not limited to: (1) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity; (2) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and (3) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more advanced version of the domestic like product.<sup>55</sup> All relevant economic factors are to be considered within the context of the business cycle and the conditions of competition that are distinctive to the industry.<sup>56</sup> As instructed by the statute, we have considered the extent to which any improvement in the state of the domestic industry is related to the antidumping duty order at issue and whether the industry is vulnerable to material injury if the order is revoked.<sup>57</sup>

In its original injury determination, the Commission found that the industry's condition had "deteriorated" during the period of investigation, that the industry had suffered significant production, shipments and sales declines throughout the period, and that the financial performance of the industry had not been "healthy" during any year of the period.<sup>58</sup> Moreover, the record of the investigation showed that the industry had suffered a significant loss of market share to the Chinese producers during that same period.<sup>59</sup>

Since imposition of the order on the subject imports, the condition of the industry appears to have improved. The available information suggests that the industry is currently in a reasonably healthy financial condition. Indeed, CPC concedes that it is currently achieving a reasonable rate of return and contends only that injury would recur if the order is revoked.<sup>60</sup> The available record evidence indicates that, in 1997, domestic shipment levels, capacity use, sales revenues, and unit sales values all increased substantially since the period of investigation, although aggregate consumption declined somewhat during

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<sup>54</sup> Vice Chairman Miller and Commissioner Hillman emphasize that this conclusion was reached in the absence of any contrary evidence or argument from respondent interested parties.

<sup>55</sup> 19 U.S.C. § 1675a(a)(4).

<sup>56</sup> 19 U.S.C. § 1675a(a)(4). Section 752(a)(6) of the Act states that "the Commission may consider the magnitude of the margin of dumping" in making its determination in a five-year review. 19 U.S.C. § 1675a(a)(6). The statute defines the "magnitude of the margin of dumping" to be used by the Commission in five-year reviews as "the dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title." 19 U.S.C. § 1677(35)(C)(iv). *See also* SAA at 887. Commerce's expedited determination in its five-year review provided likely margins for one exporter of barium chloride to the U.S., SINOCHEM. The likely margin for this company, as well as the "all others" margin, is 14.5 percent. 64 Fed. Reg. 5633, 5635 (Feb. 4, 1999).

<sup>57</sup> The SAA states that in assessing whether the domestic industry is vulnerable to injury if the order is revoked, the Commission "considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they may also demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports." SAA at 885.

<sup>58</sup> Original Determination at 5-6.

<sup>59</sup> *See* CR and PR at Table I-3.

<sup>60</sup> CPC Response at 16.

that period.<sup>61</sup> Moreover, the domestic industry's market share significantly increased at the same time that the subject imports virtually exited the market.<sup>62</sup> In fact, this increase appears to have been made almost entirely at the expense of the Chinese producers.<sup>63</sup> Consequently, in this mature market, any increase in the market share of the Chinese producers is likely to be largely at the expense of the domestic industry. Thus, the record suggests that the improvement in the condition of the industry resulted largely from the imposition of the order and the departure of the subject imports from the market.

CPC contends, however, that it is vulnerable to material injury by reason of the subject imports because of declining consumption of barium chloride (primarily due to greater environmental regulation), increased capacity in China, and decreased demand in Asian markets because of current economic conditions.<sup>64</sup> While relevant to the Commission's injury analysis, these factors do not suggest that the industry is currently in a "weakened state", as contemplated by the vulnerability criterion.<sup>65</sup> Accordingly, in this review, we do not find that the industry is vulnerable to material injury if the order is revoked.

Nonetheless, we find that the subject imports would likely have a significant adverse impact on the domestic industry if the order is revoked and that material injury is likely to recur.<sup>66</sup> We have concluded that, if the order is revoked, it is likely that the subject imports would increase in volume to a significant level and would have significant price-suppressive or depressive effects. These findings, in turn, indicate that, if the order is revoked, the subject imports would have a significant adverse impact on the production, shipment, sales and revenue levels of the domestic industry. This reduction in the industry's production, shipments, sales and revenue levels would have a direct adverse impact on the industry's profitability and employment levels as well as its ability to raise capital and make necessary capital investments. Accordingly, we conclude that, if the antidumping duty order is revoked, the subject imports would be likely to have a significant adverse impact on the domestic industry within a reasonably foreseeable time.<sup>67</sup>

## CONCLUSION

For the foregoing reasons, we determine that revocation of the antidumping duty order covering barium chloride from China would be likely to lead to continuation or recurrence of material injury to the domestic barium chloride industry within a reasonably foreseeable time.

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<sup>61</sup> CR and PR at Tables I-1 and I-3.

<sup>62</sup> CR and PR at Table I-3. The industry's share of the market in 1981-83 never exceeded \*\*\* percent. In 1997, its share of the market was \*\*\* percent. *Id.*

<sup>63</sup> In this regard, as we noted above, the market share of nonsubject imports is currently at nearly the same level as it was at the beginning of the original period of investigation. CR and PR at Table I-3.

<sup>64</sup> CPC Response at 19-20.

<sup>65</sup> SAA at 885 ("The term 'vulnerable' relates to susceptibility to material injury by reason of dumped or subsidized imports. This concept is derived from existing standards for material injury and threat of material injury . . . If the Commission finds that the industry is in a weakened state, it should consider whether the industry will deteriorate further upon revocation of an order . . .").

<sup>66</sup> See SAA at 884 ("The Commission should not determine that there is no likelihood of continuation or recurrence of injury simply because the industry has recovered after imposition of an order . . .").

<sup>67</sup> Vice Chairman Miller and Commissioner Hillman emphasize that this conclusion was reached in the absence of any contrary evidence or argument from respondent interested parties.

## DISSENTING VIEWS OF COMMISSIONER CAROL T. CRAWFORD

Section 751(d) requires that Commerce revoke a countervailing duty or an antidumping duty order in a five-year ("sunset") review unless Commerce determines that dumping or a countervailable subsidy would be likely to continue or recur, and the Commission determines that material injury would be likely to continue or recur within a reasonably foreseeable time.<sup>1 2</sup> In this review of the antidumping duty order on barium chloride from China, I determine that revocation of the order would not be likely to lead to a continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.<sup>3</sup>

I join my colleagues' discussion regarding the domestic like product and domestic industry definitions, their explanation of the relevant legal standard, and their discussion of the relevant conditions of competition, except as otherwise noted. As a preliminary matter, I note that just one domestic producer accounting for nearly all domestic production and the large majority of overall shipments of barium chloride responded to the Commission's notice of institution. No respondent interested parties chose to participate in this review.<sup>4</sup> Because publicly available data on the barium chloride industry are scarce, most current data in this review were provided by the sole responding domestic producer, Chemical Products Corporation ("CPC"). These circumstances account for the Commission's limited record in this review.<sup>5</sup>

### A. Conditions of Competition

In making its determination, the statute directs the Commission to evaluate all relevant economic factors "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."<sup>6</sup> As previously noted, I join my colleagues' discussion of the conditions of competition, except as otherwise noted.

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<sup>1</sup> 19 U.S.C. §§ 1675(d)(2), 1675a(a)(1) (1994).

<sup>2</sup> In analyzing what constitutes a reasonably foreseeable time, the Commission should examine all the current and likely conditions of competition in the relevant industry. I define "reasonably foreseeable time" as the length of time it is likely to take for the market to adjust to a revocation. In making this assessment, I consider all factors that may accelerate or delay the market adjustment process including any lags in response by foreign producers, importers, consumers, domestic producers, or others due to: lead times; methods of contracting; the need to establish channels of distribution; product differentiation; and any other factors that may only manifest themselves in the longer term. In other words, my analysis seeks to define "reasonably foreseeable time" by reference to current and likely conditions of competition, but also seeks to avoid unwarranted speculation that may occur in predicting events into the more distant future.

<sup>3</sup> In analyzing whether revocation of an order would be likely to lead to a continuation or recurrence of material injury within a reasonably foreseeable time, I take as a starting point the date on which the revocation would actually take place. In this review, the order would be revoked in January 2000. 19 U.S.C. § 1675(c)(6)(iv).

<sup>4</sup> See Confidential Report ("CR") and Public Report ("PR") at I-3. The Commission determined that the respondent interested party group response was inadequate because no response to the Commission's notice of institution was received. 64 Fed. Reg. 3308, 3309 (Jan. 21, 1999).

<sup>5</sup> The statute recognizes that the record in expedited sunset reviews would likely be more limited than that in full reviews and accordingly provided that the Commission's determination would be upheld unless it was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 19 U.S.C. § 1516a(b)(1)(b)(ii). Nevertheless, even under a more relaxed standard of review, the Commission must ensure that its decision is based on some evidence in the record. See Genentech Inc. v. United States Int'l Trade Comm'n, 122 F.3d 1409, 1415 (Fed. Cir. 1997) (discussing the Commission's decision on sanctions).

<sup>6</sup> 19 U.S.C. § 1675a(a)(4).

CPC is the only “significant” domestic producer of barium chloride and accounts for nearly all domestic production. This was equally the case during the original period of investigation. In 1997, domestic production was approximately \*\*\* percent higher, at \*\*\* million pounds, than in 1983 at \*\*\* million pounds. On the other hand, subject imports of barium chloride from China have fallen from 5.3 million pounds in 1983, to 0.2 million pounds in 1997. In 1983, Chinese imports accounted for \*\*\* percent of apparent domestic consumption. In 1997, however, Chinese imports accounted for only \*\*\* percent of apparent domestic consumption, when the domestic industry accounted for a dominant \*\*\* percent share. At the same time, nonsubject imports have remained relatively stable. During the original period of investigation, nonsubject imports peaked at \*\*\* percent of apparent domestic consumption in 1981 and declined to \*\*\* percent in 1983. In 1997, nonsubject imports accounted for \*\*\* percent of apparent domestic consumption.<sup>7</sup>

The market for barium chloride is a mature market, and domestic demand for barium chloride has remained relatively stable. In 1997, apparent U.S. consumption was \*\*\* percent of the 1981 level, but was \*\*\* percent and \*\*\* percent larger than in 1982 and 1983, respectively. The industry has not developed any significant new uses for barium chloride, and increased environmental regulation has resulted in a discontinuation of barium chloride use in certain applications.

The demand for barium chloride appears to be relatively elastic. There is no information in the record regarding the cost of barium chloride as a percentage of downstream production. However, it is reasonable to conclude that it is not significant. As a chemical compound used primarily as a cleansing agent or as an intermediate ingredient in the production of other compounds and industrial materials, barium chloride most likely represents only a small portion of the cost of downstream products. CPC has provided no information to the contrary. This tends to suggest that barium chloride represents only a small portion of the cost of downstream products. Moreover, the record shows that calcium chloride has replaced barium chloride in certain applications and is a good substitute product for barium chloride. Therefore, I find that demand for barium chloride is relatively elastic.

While barium chloride appears to be a commodity product, the available evidence demonstrates that there is not a high degree of substitutability between imported and domestic barium chloride. The evidence available demonstrates that purchases of barium chloride are not necessarily made on the basis of price alone. CPC’s own submission states that current prices of Chinese imports are “dramatically” lower than CPC’s current list prices.<sup>8</sup> Nonetheless, even at such “dramatically” lower prices, purchasers are not buying significant amounts of the Chinese subject imports. Therefore, I conclude that subject imports and domestic barium chloride are not good substitutes for each other.

## **B. General Considerations**

The statute directs the Commission to take into account several general considerations.<sup>9</sup> In accordance with the statute, I have taken into account the Commission’s prior injury determination, including the volume, price effects, and impact of the subject imports on the industry before the order was issued.

Based on the facts available in this review, the record indicates that the domestic industry has improved its position in the U.S. market since the issuance of the order. Both domestic production and

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<sup>7</sup> CR and PR Table I-3.

<sup>8</sup> CPC Response to Notice of Institution (“CPC Response”) at 14-15.

<sup>9</sup> 19 U.S.C. § 1675a(a)(1). The Commission is to consider its prior injury determinations, whether any improvement in the state of the industry is related to the order, whether the industry is vulnerable to material injury in the event of revocation, and whether any duty absorption finding is made by Commerce. *Id.* Commerce has made no findings of duty absorption in this case. See 64 Fed. Reg. 5633 (Feb. 4, 1999).

shipments of barium chloride have increased since imposition of the order.<sup>10</sup> Similarly, domestic market share has improved markedly since the order.<sup>11</sup> Although the domestic industry's performance has improved during the fifteen years that the order has been in effect, it does not automatically or necessarily follow that revocation of the order will result in the continuation or recurrence of material injury.

I have also considered the fact that the magnitude of any adverse effects of revocation is likely to increase with the degree of vulnerability of the industry. The record indicates that the domestic industry has dominated a mature U.S. market for many years. Nonsubject imports have been relatively stable since the imposition of the order and have limited effects on the domestic industry's vulnerability. These facts together lead me to conclude that the domestic industry is not particularly vulnerable to material injury if the order is revoked.

### C. Volume

The Commission is to consider whether the likely volume of subject imports would be significant either in absolute terms or relative to production or consumption in the United States if the order under review is revoked.<sup>12</sup> In so doing, the Commission shall consider "all relevant economic factors," including four enumerated in the statute: (1) any likely increase in production capacity or existing unused production capacity in the exporting country; (2) existing inventories of the subject merchandise, or likely increases in inventories; (3) the existence of barriers to the importation of the subject merchandise in countries other than the United States; and (4) the potential for product shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products.<sup>13</sup>

In the absence of the antidumping duty order, CPC claims that there would be a significant increase in shipments of barium chloride to the United States, principally as a result of substantial available production capacity among Chinese producers of barium chloride. There is no information available regarding Chinese capacity utilization. However, the evidence available in the record supports a conclusion statement that Chinese capacity has increased since the imposition of the order.

CPC also asserts that the current Asian economic crisis and an aggressive Chinese export policy suggest that the U.S. market is prime target for the Chinese production capacity. However, CPC has not attempted to provide any evidence to support its assertion regarding the effects of the Asian economic crisis. Similarly, CPC's assertions regarding Chinese export policy are too vague to have probative value.

In 1997 CPC supplied \*\*\* percent of apparent domestic consumption while the subject imports of barium chloride captured a mere \*\*\* percent of the market. The market share was very small, even though the subject imports were selling at "dramatically" lower prices than barium chloride produced by CPC. At the same time, imports from all other sources accounted for the remaining \*\*\* percent and have remained relatively stable since the original investigation. This suggests that Chinese exporters have been either unable or unwilling to capture market share from nonsubject imports despite lower prices.

Our focus in a sunset review is whether subject import volume is likely to be significant in the reasonably foreseeable future, either in absolute terms or relative to production or consumption in the United States if the antidumping duty order is revoked. The available data suggest that the antidumping duty order has had an effect on the market penetration of Chinese imports of barium chloride. However,

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<sup>10</sup> CR and PR at Table I-1.

<sup>11</sup> CR and PR at Table I-3.

<sup>12</sup> 19 U.S.C. § 1675a(a)(2).

<sup>13</sup> 19 U.S.C. § 1675(a)(2)(A)-(D). The SAA indicates that the statutory factors specified for analysis of volume, price, and impact are a combination of those used to determine both material injury by reason of subject imports and threat of material injury in original antidumping and countervailing duty investigations. *See* SAA at 886.

the failure of the subject imports to obtain a significant market share despite “dramatically” lower prices leads me to conclude that revocation would not be likely to lead to a significant increase in the volume of subject imports.

Based on the foregoing analysis, I find that revocation of the antidumping duty order is not likely to lead to a significant increase in the volume of subject imports in either absolute terms or relative to production or consumption in the United States.

#### D. Price

In evaluating the likely price effects of the subject merchandise in the event of revocation, the Commission shall consider (1) whether there is likely to be significant price underselling by imports of the subject merchandise as compared to domestic like products, and (2) whether imports of the subject merchandise are likely to enter the United States at prices that otherwise would have a significant depressing or suppressing effect on the price of domestic like products.<sup>14</sup>

The record in this review contains little current pricing data.<sup>15</sup> However, the evidence available does support a conclusion that price differences do not form the basis for purchasing decisions of barium chloride. CPC states that barium chloride is a standard commodity chemical product that essentially sells on the basis of price,<sup>16</sup> and that Chinese producers would use an aggressive policy of lower prices to gain significant market share. The record indicates that customs unit values for Chinese barium chloride ranged from 5¢ to 8¢ per pound between 1994 and June 1998. In comparison, CPC states that its current list prices range from 34.5¢ to 43.85¢ per pound.<sup>17</sup> However, the volume of subject imports have remained at extremely low levels, despite the fact that current prices of Chinese imports are “dramatically” lower than domestic prices. I find nothing in the record to justify a conclusion that revocation of the order would be likely to change these pricing relationships.

At current levels, imports of subject merchandise are too small to have discernible adverse price effects. As discussed, the subject imports and the domestic product are not good substitutes for each other. Therefore, revocation of the order is not likely to lead to a large shift in demand away from domestic barium chloride and towards the subject imports.

As discussed in the majority views, replacement chemicals that are cheaper and more environmentally-friendly than barium chloride have appeared on the U.S. market as substitute products. Notwithstanding competition from nonsubject imports and alternative substitute products for barium chloride, CPC has been able to maintain its price levels. This is likely the result of CPC’s dominant role in the domestic industry and the domestic industry’s dominant influence in the market. In light of these facts, and because I have already determined that subject imports are not likely to increase significantly, I determine that subject imports of barium chloride are not likely to have significant effects on domestic prices within a reasonably foreseeable time if the order is revoked.

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<sup>14</sup> 19 U.S.C. § 1675a(3). The SAA states that “[c]onsistent with its practice in investigations, in considering the likely price effects of imports in the event of revocation or termination, the Commission may rely on circumstantial, as well as direct, evidence of the adverse effects of unfairly traded imports on domestic prices.” SAA at 886.

<sup>15</sup> CPC has not provided data for 1997. Instead, it provided a range of “current list prices.”

<sup>16</sup> Response at 3, 12.

<sup>17</sup> Response at 14. CPC states that it normally sells on the basis of list prices.

## **E. Impact**

When considering the likely impact of subject imports, the Commission is directed to consider all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including: (1) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity; (2) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and (3) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more enhanced version of the domestic like product.<sup>18</sup>

Subject imports are not likely to have a significant adverse impact on the domestic barium chloride industry if the order is revoked. As previously stated, subject imports account for only \*\*\* percent of apparent U.S. consumption even though their prices are “dramatically” lower than domestic prices. In light of the extremely small market share now held by Chinese imports of barium chloride, these subject imports would have to increase substantially in order to have any adverse effect on the domestic industry.

As discussed, I find that subject imports are not likely to increase to significant levels. Absent an increase in subject imports to a significant level, the subject imports would not be likely to have a significant effect on the domestic industry as measured by the statutory impact factors. Therefore, I find that revocation of the order is not likely to have a significant impact on the domestic industry within a reasonably foreseeable time.

## **III. CONCLUSION**

If the antidumping duty order is revoked, the volume of subject imports is not likely to be significant, the subject imports are not likely to have significant effects on domestic prices or a significant impact on the domestic industry. Therefore, I determine that revocation of the order in this review would not be likely to lead to a continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

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<sup>18</sup> 19 U.S.C. § 1675a(a)(4).





**INFORMATION OBTAINED IN THE REVIEW**



## INTRODUCTION

On October 1, 1998, the Commission gave notice that it had instituted a review to determine whether revocation of the antidumping duty order on barium chloride from China would be likely to lead to a continuation or recurrence of material injury.<sup>1</sup> On January 7, 1999, the Commission determined that the domestic interested party response to its notice of institution was adequate;<sup>2</sup> the Commission also determined that the respondent interested party response was inadequate because no response was received. The Commission found no other circumstances that would warrant a full review. Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)(3)).<sup>3</sup> The Commission voted on this review on February 22, 1999, and notified Commerce of its determination on March 4, 1999.

### The Original Investigation

The Commission completed the original investigation<sup>4</sup> in October 1984, determining that an industry in the United States was being materially injured by reason of imports of barium chloride from China that were being sold at less than fair value. The Commission found the relevant domestic industry to consist of producers of barium chloride. After receipt of the Commission's determination, Commerce issued an antidumping duty order on imports of barium chloride from China.<sup>5</sup>

### Commerce's Final Results of Expedited Sunset Review

On January 29, 1999, the Commission received Commerce's "Final Results of Expedited Sunset Review" concerning barium chloride from China.<sup>6</sup> The review covered all manufacturers and exporters of barium chloride from China. Commerce determined that dumping is likely to continue if the antidumping duty order is revoked. The following tabulation provides information with regard to the margin (in percent) of dumping that Commerce found would likely prevail if the antidumping duty order is revoked.<sup>7</sup>

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<sup>1</sup> 63 FR 52750, Oct. 1, 1998. All interested parties were requested to respond to this notice by submitting the information requested by the Commission.

<sup>2</sup> CPC, the sole U.S. producer responding to the Commission's notice, reported that it is the only commercial producer of barium chloride in the United States. *Response by CPC*, p. 2.

<sup>3</sup> 64 FR 3308, Jan. 21, 1999. The Commission's notice of expedited review appears in app. A. See the Commission's web site (<http://www.usitc.gov>) for Commissioner votes on whether to conduct an expedited or full review.

<sup>4</sup> The investigation resulted from a petition filed on behalf of CPC on Oct. 25, 1983.

<sup>5</sup> 49 FR 40635, Oct. 17, 1984. This order required the posting of a cash deposit equal to the estimated weighted-average antidumping duty margins which were 14.5 percent for the reviewed firm, SINOCHEM, and all other firms. Subsequently, as a result of antidumping duty administrative reviews, the cash deposit required for future imports of barium chloride from China was reduced to 7.82 percent on Jan. 5, 1987 (52 FR 313), and then increased to 60.84 percent on Jan. 3, 1989 (54 FR 52). In the most recent antidumping duty administrative review, the cash deposit required for SINOCHEM remained at 60.84 percent and the rate for all other firms was set at 7.82 percent (57 FR 29467, July 2, 1992).

<sup>6</sup> The *Federal Register* notice of Commerce's final results (64 FR 5633, Feb. 4, 1999) is presented in app. A.

<sup>7</sup> Commerce determined that the margin calculated in the original investigation, which reflects the behavior of exporters without the discipline of the order, is probative of the behavior of the Chinese producers/exporters of barium chloride.

<u>Company</u>	<u>Margin</u>
SINOCHEM .....	14.50
All others .....	14.50

## THE PRODUCT

### Scope

Imports covered by this review are barium chloride, a solid chemical compound having the formula  $\text{BaCl}_2$  (in powdered, or anhydrous, form) or  $\text{BaCl}_2 \cdot 2\text{H}_2\text{O}$  (in crystalline form). Such merchandise is classifiable in HTS subheading 2827.38.00 and is dutiable at a general rate of 4.2 percent ad valorem in 1999. The HTS subheading is provided for convenience and for Customs purposes; the written description remains dispositive as to the scope of the product coverage.

### Description and Uses

CPC produces barium chloride from barite ore (naturally occurring barium sulfate) by crushing the ore, mixing it with petroleum coke, and reducing it at high temperatures to barium sulfide, which is purified and dissolved in water; the barium sulfide solution is then reacted with hydrochloric acid to remove byproduct hydrogen sulfide as a gas, and when the resulting solution is evaporated, barium chloride crystals remain. The crystalline form is reduced to the anhydrous form by applying intense heat, which drives off the water that is molecularly bonded in the crystals.<sup>8</sup> Because of the additional processing and increased concentration, the anhydrous form sells at a premium price.<sup>9</sup>

Crystalline barium chloride is used primarily as a cleansing agent in the removal of soluble sulfates in the production of certain chemicals; as a cleansing ingredient in lubricating oil additives; as a raw material in the production of certain chemicals, pigments, and paper coatings; and as an intermediate material in the production of molecular sieves. The anhydrous form is used primarily as an ingredient in heat-treating salts and metal fluxes—molten baths into which metal parts are inserted for purposes of hardening.<sup>10</sup> The market for barium chloride is a mature one; no significant new uses for barium chloride have been developed since the original investigation. However, one significant use of barium chloride during the original investigation, which was as a raw material in the production of tetraethyl lead, has been eliminated as a result of the discontinued production of leaded gasoline. Increased environmental regulation of barium compounds has also led to the development of new processes in pigment production that substitute cheaper and reportedly more environmentally friendly calcium chloride for barium chloride.<sup>11</sup>

## THE INDUSTRY IN THE UNITED STATES

### U.S. Producers

In 1984, CPC had been the only significant U.S. producer of barium chloride for over a decade and such is still the case. Also, as in 1984, two firms (Barium and Chemicals in Steubenville, OH, and GTE Products Corp. in Towanda, PA) produce small quantities of barium chloride for internal consumption

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<sup>8</sup> *Staff Report of Sept. 17, 1984*, pp. A-4 and A-5, and *Response* by CPC, p. 19.

<sup>9</sup> *Staff Report of Sept. 17, 1984*, p. A-4.

<sup>10</sup> *Staff Report of Sept. 17, 1984*, pp. A-4 and A-5, and *Response* by CPC, p. 19.

<sup>11</sup> *Response* by CPC, pp. 19-20.

only, and G.F. Smith Chemical Co. in Columbus, OH, produces small quantities of ultra-pure barium chloride for laboratory use.<sup>12</sup>

### U.S. Production, Capacity, Shipments, and Prices

Data reported by CPC in the Commission's original investigation and in response to its review institution notice are presented in table I-1. CPC reported higher levels of production, domestic shipments, capacity utilization, and prices<sup>13</sup> of barium chloride for 1997 than during the original investigation. Although no recent financial data are available, per se, CPC reported that with the protection of the antidumping duty order, it has been able to sell its barium chloride products at prices providing a reasonable return.<sup>14</sup>

Table I-1 Barium chloride: CPC's capacity, production, and certain trade data, 1981-83 and 1997				
Item	1981	1982	1983	1997
Production ( <i>1,000 pounds</i> )	***	***	***	***
Capacity ( <i>1,000 pounds</i> )	***	***	***	***
Capacity utilization ( <i>percent</i> )	***	***	***	***
Domestic shipments: Quantity ( <i>1,000 pounds</i> )	***	***	***	***
Value ( <i>1,000 dollars</i> )	***	***	***	***
Unit value ( <i>cents per pound</i> )	***	***	***	***
Price range: Crystalline ( <i>cents per pound</i> )	***	***	***	(1)
Anhydrous ( <i>cents per pound</i> )	***	***	***	(1)
<sup>1</sup> CPC did not provide pricing data for 1997. However, in its Nov. 17, 1998, response to the Notice of Institution, CPC reported that its "current list prices" were 34.5 cents to 43.85 cents per pound and stated that it normally sells on the basis of list prices.				
Source: <i>Staff Report of Sept. 17, 1984</i> , pp. A-11, A-14, and A-25, and <i>Response by CPC</i> , pp. 14 and 18-19.				

<sup>12</sup> *Staff Report of Sept. 17, 1984*, p. A-7, and *Response by CPC*, p. 17. A fifth firm, J.T. Baker in Phillipsburg, NJ, produced for the open market in 1984 (but only intermittently and in very small quantities); CPC did not list J.T. Baker as a producer of barium chloride. *Ibid.*

<sup>13</sup> CPC did not specifically provide prices for 1997, but instead provided a range of "current list prices" (*Response by CPC*, p. 14); CPC's response was dated Nov. 17, 1998.

<sup>14</sup> *Response by CPC*, p. 16.

## U.S. IMPORTS AND CONSUMPTION

### U.S. Imports

As shown in figure I-1 and table I-2, U.S. imports of barium chloride from China increased from 1981 to 1983. Subsequent to the initiation of the antidumping investigation, such imports decreased in the January-June 1984 period, compared with the comparable period of 1983.<sup>15</sup> After the completion of the antidumping investigation, U.S. imports of barium chloride from China remained at slightly below two-thirds of the 1983 level during 1984-85, and then decreased continually until no imports were reported during 1991-93. Although there were imports during 1994-97, they remained low compared with the levels during the original investigation.<sup>16</sup>

Data on the value of annual imports reviewed by Customs that are subject to the antidumping order are proprietary according to the *Case History and Scope Information*, available on Commerce's web site.<sup>17</sup> However, confidential information received from Customs indicates that in FY 1997, antidumping duties of \$\*\*\* were deposited on imports of barium chloride from China having a customs value of \$\*\*\*.<sup>18</sup>

The only pricing data provided by CPC were import unit values, based on customs value of official Commerce statistics. As shown in table I-2, such unit values do not approximate pricing data collected during the original investigation; landed, duty paid, unit values, which bear a closer relationship to pricing data of the original investigation, are also shown in the table. The unit values for imports of barium chloride from China in 1997 were lower than they were in 1983.

During the original investigation, at least 13 firms imported barium chloride from China.<sup>19</sup> CPC reported that it does not know which firm(s) are currently importing the small quantities of barium chloride from China.<sup>20</sup>

### Apparent U.S. Consumption

Apparent U.S. consumption in 1997 exceeded that of 1982-83, but remained below the 1981 level (table I-3). In 1997, imports of barium chloride from China, at \*\*\* percent, accounted for a much lower share of apparent consumption than during any period of the original investigation, and domestic shipments by CPC, at \*\*\* percent, accounted for a greater share than during any period of the original investigation.

## THE INDUSTRY IN CHINA

During October 1, 1982 - September 30, 1983, the period of Commerce's original investigation, SINOCHEM accounted for all of China's known exports of barium chloride to the United States. During the time of the Commission's original investigation, SINOCHEM reported that the capacity to produce barium chloride in China was \*\*\* pounds per year and that only three plants in China produced barium chloride for export to the United States: Zhang Jia Ba in Sichuan Province, with a capacity of \*\*\* pounds per year, Tangshan in Hebei Province, with a capacity of \*\*\* pounds, and Tianjin in Tianjin City, with an

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<sup>15</sup> *Staff Report of Sept. 17, 1984*, p. A-9.

<sup>16</sup> *Response by CPC*, attachment A.

<sup>17</sup> See Commerce's web site ([http://www.ita.doc.gov/import\\_admin/records/sunset](http://www.ita.doc.gov/import_admin/records/sunset)).

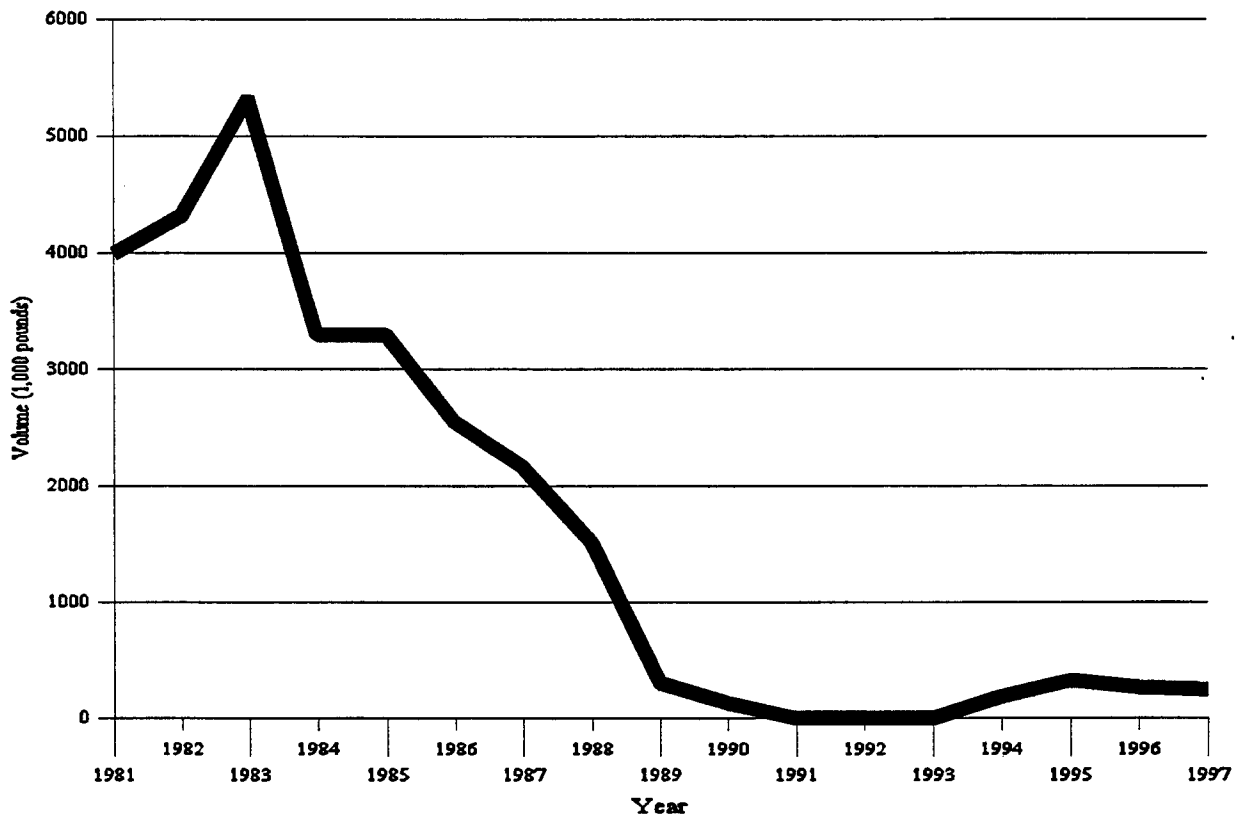
<sup>18</sup> *Antidumping/Countervailing Duty Annual Report*, Nov. 4, 1997, p. 5.

<sup>19</sup> *Staff report of Sept. 17, 1984*, p. A-8.

<sup>20</sup> *Response by CPC*, p. 17.

Figure I-1

Barium chloride: U.S. imports from China, by quantity, 1981-97



Source: Official Commerce statistics.

unknown capacity. At the time of the original investigation, the home market demand for barium chloride in China was expected to increase as a result of anticipated increased demand for leaded gasoline.<sup>21</sup>

The only information on the industry in China provided during this review is that provided by CPC, which reported that it believes that Zhang Jia Ba, Tangshan, and Tianjin continue to have substantial productive capacity. In addition, CPC listed seven other plants that it stated were producing barium chloride in China and that it believed were producing for export; these seven firms reportedly have annual production of about 161.8 million pounds.<sup>22</sup> Using the figures supplied by CPC and presuming that the capacities of Zhang Jia Ba and Tangshan to produce barium chloride have not decreased since the original period of investigation, the current capacity in China to produce barium chloride is estimated to be at least \*\*\* pounds,<sup>23</sup> a more than \*\*\* increase compared with the capacity level reported during the original investigation.

<sup>21</sup> *Staff Report of Sept. 17, 1984*, pp. A-3, A-8, and A-21.

<sup>22</sup> *Response by CPC*, pp. 7-8. The seven plants identified by CPC, their locations, and their annual production quantities are: Red Star in Qingdao City (44.1 million pounds), Linshu in Shangdong Province (44.1 million pounds), Ermeishang in Sichuan Province (22 million pounds), Hengnan in Henan Province (11 million pounds), Buohai in Tianjing City (15.9 million pounds), Kunghan in Jiangshu Province (2.6 million pounds), and Xinji in Hebei Province (22 million pounds).

<sup>23</sup> This figure does not include any estimation for the capacity of the Tianjin plant; also, this figure presumes the capacities of the seven firms are equal to the production reported by CPC.

Table I-2  
Barium chloride: U.S. imports from China, 1981-83 and 1997

Item	1981	1982	1983	1997
Quantity (1,000 pounds)	3,994	4,319	5,330	243
Value (1,000 dollars):				
Customs value	329	322	471	20
Landed, duty paid value	534	542	752	23
Unit value (cents per pound):				
Customs	8.2	7.5	8.8	8.3
Landed, duty paid	13.4	12.6	14.1	9.6
Price range (cents per pound):				
Crystalline	***	***	***	(1)
Anhydrous	(1)	(1)	***	(1)

<sup>1</sup> Not available.

Note.—Unit values are calculated from the unrounded figures.

Source: *Staff Report of Sept. 17, 1984*, pp. A-9 and A-25, for 1981-83 imports quantities and customs values (which were official Commerce statistics) and pricing ranges; and official Commerce statistics for 1997 imports data, and for unit values and landed, duty paid, values in all periods.

Table I-3  
Barium chloride: CPC's domestic shipments, U.S. imports, and apparent U.S. consumption, on the basis of quantity, 1981-83 and 1997

Item	1981	1982	1983	1997
Quantity (1,000 pounds)				
CPC's domestic shipments	***	***	***	***
U.S. imports:				
China	3,994	4,319	5,330	243
Other sources	3,209	1,541	1,475	2,703
Total	7,203	5,860	6,805	2,945
Apparent U.S. consumption	***	***	***	***
Share of consumption (percent)				
CPC's domestic shipments	***	***	***	***
U.S. imports:				
China	***	***	***	***
Other sources	***	***	***	***
Total	***	***	***	***

Note.—Because of rounding, figures may not add to the totals shown.

Source: *Staff Report of Sept. 17, 1984*, p. A-23, for 1981-83 data (of which imports data were official Commerce statistics); *Response by CPC*, p. 18, for its 1997 domestic shipments; and official Commerce statistics for 1997 imports.



**APPENDIX A**  
***FEDERAL REGISTER NOTICES***



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**INTERNATIONAL TRADE  
COMMISSION****[Investigation No. 731-TA-149 (Review)]****Barium Chloride From China****AGENCY:** United States International Trade Commission.**ACTION:** Scheduling of an expedited five-year review concerning the antidumping duty order on barium chloride from China.

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**SUMMARY:** The Commission hereby gives notice of the scheduling of an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty order on barium chloride from China would be likely to lead to continuation or recurrence of material injury. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 F.R. 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at <http://www.usitc.gov/rules.htm>.**EFFECTIVE DATE:** January 7, 1999.**FOR FURTHER INFORMATION CONTACT:** Bonnie Noreen (202-205-3167), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-

205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<http://www.usitc.gov>).

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

On January 7, 1999, the Commission determined that the domestic interested party response to its notice of institution (63 F.R. 52750, Oct. 1, 1998) of the subject five-year review was adequate. The Commission also determined that the respondent interested party response was inadequate because no respondent interested party responded to the Commission's notice. The Commission did not find any other circumstances that would warrant conducting a full review.<sup>1</sup> Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Act.

##### **Staff Report**

A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on February 4, 1999, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

##### **Written submissions**

As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,<sup>2</sup> and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before February 9, 1999, and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by February 9, 1999. If comments contain business proprietary information (BPI), they must

conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

##### **Determination**

The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. § 1675(c)(5)(B).

**Authority:** This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: January 13, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99-1347 Filed 1-20-99; 8:45 am]

BILLING CODE 7020-02-P

<sup>1</sup> A record of the Commissioners' votes is available from the Office of the Secretary and at the Commission's web site.

<sup>2</sup> The Commission has found the response submitted by Chemical Products Corp. to be adequate. Comments from other interested parties will not be accepted (see 19 CFR 207.62(d)(2)).

expedited review. As a result of this review, the Department finds that revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Review section to this notice.

**FOR FURTHER INFORMATION CONTACT:**

Martha V. Douthit or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th St. & Constitution Ave., NW., Washington, D.C. 20230; telephone (202) 482-3207 or (202) 482-1560, respectively.

**EFFECTIVE DATE:** February 4, 1999.

**Statute and Regulations:** This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*"). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*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*").

**Scope:** The merchandise covered by this order is barium chloride, a chemical compound having the formula  $\text{BaCl}_2$  or  $\text{BaCl}_2 \cdot 2\text{H}_2\text{O}$ , currently classifiable under item 2827.38.00 of the Harmonized Tariff Schedules (HTS). The HTS item number is provided for convenience and for Customs purposes. The written descriptions remain dispositive.

This review covers all manufacturers and exporters of barium chloride from China.

**Background:** On October 1, 1998, the Department initiated a sunset review of the antidumping order on barium chloride from China (63 FR 52683) pursuant to section 751(c) of the Act. The Department received a Notice of Intent to Participate from Chemical Products Corporation ("CPC") on October 15, 1998, within the deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations*. CPC claimed interested party status under section 771(9)(C) of the Act, as a United States producer of barium chloride. In its substantive response, CPC stated that it was the petitioner in the original antidumping investigation that led to the issuance of the antidumping duty order on barium chloride from China.

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**DEPARTMENT OF COMMERCE**

**International Trade Administration**

**[A-570-007]**

**Final Results of Expedited Sunset Review: Barium Chloride From the People's Republic of China (PRC)**

**AGENCY:** Import Administration, International Trade Administration, U.S. Department of Commerce.

**ACTION:** Notice of final results of expedited sunset review: Barium Chloride from the People's Republic of China (PRC).

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**SUMMARY:** On October 1, 1998, the Department of Commerce ("the Department") initiated a sunset review of the antidumping order on barium chloride from China (PRC) (63 FR 52683) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and a complete substantive response filed on behalf of the domestic industry, and inadequate response (in this case no response) from respondent interested parties, the Department determined to conduct an

Further, CPC stated that it has participated in all of the administrative reviews that have been conducted by the Department on barium chloride from China. On October 28, 1998, the Department received a substantive response from CPC, within the 30-day deadline specified in *Sunset Regulations* under section 351.218(d)(3)(i). We did not receive a response from any respondent interested party. As a result, pursuant to section 751(c)(3)(B) of the Act, and our regulations (19 C.F.R. § 351.218(e)(1)(ii)(C)(2)), we determined to conduct an expedited review.

**Determination:** In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making this determination, the Department shall consider 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 the antidumping finding, and it shall provide to the International Trade Commission ("the Commission") the magnitude of the margin of dumping likely to prevail if the finding is revoked.

The Department's determinations concerning continuation or recurrence of dumping and magnitude of the margin are discussed below. In addition, parties' comments with respect to the continuation or recurrence of dumping and the magnitude of the margin are addressed within the respective sections below.

**Continuation or Recurrence of Dumping:** Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the 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 issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the basis for likelihood determinations. The Department clarified that determinations of likelihood will be made on an order-wide basis (see section II.A.3. of the *Sunset Policy Bulletin*). Additionally, the Department normally 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 section II.A.3. of the *Sunset Policy Bulletin*).

The antidumping duty order on barium chloride from China was issued on October 17, 1984.<sup>1</sup> Since that time, the Department has conducted several administrative reviews.<sup>2</sup> The antidumping duty order remains in effect for all imports of barium chloride from China.

In its substantive response, CPC argued that revocation of the antidumping duty order would result in the resumption of export shipments of barium chloride from China on a large scale and at prices well below fair value. CPC based its conclusion on a number of factors, including historical experience, Chinese productive capacity, the Asian economic crisis, and Chinese export policy. CPC argued that the Department should determine that dumping will continue or resume on the basis that dumping continued at levels above de minimis while the order has been in effect and imports of the subject merchandise ceased after the issuance of the order.

With respect to continuation of dumping after the issuance of the order, CPC referred to the final results of administrative reviews issued by the Department<sup>3</sup> and stated that historical experience clearly demonstrates that the subject merchandise has been dumped at margins greater than de minimis since the issuance of the order. CPC stated that the 60.84 percent duty deposit margin currently in effect for Sinochem (the Chinese manufacturer/exporter reviewed) was first imposed in the final results of administrative review issued on January 3, 1989.<sup>4</sup> CPC suggested that, as a result of the 60.84 percent deposit rate, there was a significant decrease in exports and ultimately a cessation of exports. CPC noted that for the October

1, 1990 through September 30, 1991, review period, the Department found that there were no shipments. CPC supports its assertion that the order resulted in the decrease, and ultimate cessation, of exports of barium chloride from China with reference to import statistics.<sup>5</sup> CPC asserts that the Department's issuance of preliminary and final determinations of sales at less than fair value in April and August of 1984, resulted in the decrease of imports from China from 5.3 million pounds in 1983 to 3.2 million pounds in 1984. CPC also noted that with the 1989 issuance on a 60.84 percent duty deposit rate, imports decreased from 1.5 million pounds in 1988 to 0.2 million pounds in 1989, and ultimately to zero by 1991.

CPC acknowledged that imports reappeared in 1994, but at levels significantly below pre-order levels. CPC argued, therefore, that the continuation of dumping combined with the cessation of exports demonstrates that Chinese barium chloride cannot be sold in the U.S. market except through dumping. CPC also asserted that, in addition to the original three Chinese factories producing barium chloride (as identified in the ITC's report), it had obtained information that an additional seven factories (with capacity of 73,400 MT/annum) produce barium chloride in China. Noting that barium chloride is a commodity chemical product with a number of industrial uses and applications, CPC argued that as economic and industrial activity slows in China's traditional Asian markets, the demand for barium chloride will decrease and Chinese exports will decline. Therefore, asserts CPC, without an antidumping order in place, the Chinese producers of barium chloride can be expected to turn their attention to the U.S. market for their excess production. Finally, CPC argues that, as supported by statements of U.S. government officials, China has an aggressive export policy in place that, with the revocation of the order, could be expected to result in the resumption of large-scale shipments to the United States.

In conclusion, CPC stated that for each of the above discussed reasons, without an order in place, dumping from China would likely overwhelm CPC and eliminate the lone remaining U.S. producer of barium chloride.

As discussed in Section II.A.3. of the *Sunset Policy Bulletin*, the SAA at 890,

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

<sup>2</sup> 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); and *Barium Chloride from the People's Republic of China, Final Results of Antidumping Duty Administrative Review*, 57 FR 29467 (July 2, 1992).

<sup>3</sup> *Id.*

<sup>4</sup> The review covered the period October 1, 1985 through September 30, 1986, and set the duty deposit rates for entries on or after the publication date of the notice.

<sup>5</sup> CPC provided data collected from the U.S. Census Bureau and published on Form IM 145 (from 1980 through 1988 the data were reported under TSUS 417.70.00 and for 1989 through 1997 under HTSUS 287.38.0000).

and the House Report at 63-64, "Existence of dumping margins after the order, or the cessation of imports 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." Deposit rates above *de minimis* continue in effect for exports of barium chloride from China. Additionally, exports of barium chloride from China ceased between 1991 and 1993, and although since resumed, have never reached higher than six percent of their pre-order level. Therefore, given that dumping above *de minimis* has continued over the life of the order and imports ceased at least temporarily, and absent argument and evidence to the contrary, the Department determines that dumping is likely to continue if the order were revoked.

**Magnitude of the Margin:** In the *Sunset Policy Bulletin*, the Department stated that, consistent with the SAA and House Report, the Department will provide to the Commission the company-specific margins from the investigation for each company because that is the only calculated rate that reflects the behavior of exporters without the discipline of an order. 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. See section II.B.1 of the *Sunset Policy Bulletin*. Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. See sections II.B.2 and 3 of the *Sunset Policy Bulletin*.

In its substantive response, CPC urged the Department to determine that the magnitude of the margin likely to prevail if the order were revoked is 60.84 percent, the margin determined in the final results of the second administrative review and the current duty deposit rate. CPC asserted that the Department has recognized that dumping margins can increase after the issuance of an order and that a more current and higher margin, even if based

on the best information available, may well be a more appropriate indicator of the magnitude of the margin likely to prevail if the order were revoked. CPC argued that the dumping margin and cash deposit rate for barium chloride from China increased significantly after the issuance of the antidumping duty order—from 14.5 percent to 60.84 percent. CPC stated that the 14.5 percent rate from the original investigation was never actually used as the basis of assessing duties, as it was replaced by a rate of 7.82 percent in the first administrative review. Given that the margin of 60.84 percent has applied to all imports since October 1, 1986, CPC argues that this is the only appropriate and realistic measure of the magnitude of dumping.

In the *Sunset Policy Bulletin*, the Department stated that "a company may choose to increase dumping in order to maintain or increase market share" and that "the Department may, in response to argument from an interested party, provide the Commission a more recently calculated margin for a particular company, where for that particular company, dumping margins increased after the issuance of the order." (See section II.B.2 of the *Sunset Policy Bulletin*.) As detailed in *Final Results of Expedited Sunset Review: Stainless Steel Plate From Sweden* (63 FR 67658, December 8, 1998) the Department's intent was to establish a policy of using the original investigation margin as a starting point, thus providing interested parties the opportunity and incentive to come forward with data which would support a different estimate. In this case, CPC merely argued that the margin from the original determination was never actually used to assess duties and that, by the second review, the margin had increased to a level where it remains today. The import statistics provided by CPC demonstrate that, after steadily increasing from 1980 to 1983, imports of barium chloride from China began decreasing with the issuance of the preliminary and final determinations of sales at less than fair value. We note that the margin from the original investigation served as the duty deposit rate until January 1987, when the final results of the first administrative review were issued. Further, the final results (the 60.84 percent) of the administrative review covering imports from October 1985 through September 1986, were issued in January 1989, five years after the issuance of the order and, at a time when imports had already decreased to

less than 30 percent of the pre-investigation level of imports. Although the statistics provided by CPC demonstrate a slight increase in the volume of imports between 1984 and 1985, import volumes decreased every year thereafter until 1995. Therefore, because there was no increase in imports of barium chloride from China corresponding to the increase in the dumping margin, we find CPC's argument of choosing the rate from the second administrative review (and current deposit rate) unpersuasive. Therefore, we find no reason to deviate from our *Sunset Policy Bulletin* in this review. We determine that the original margin calculated by the Department, which reflects the behavior of exporters without the discipline of the order, is probative of the behavior of the Chinese producers/exporters of barium chloride. The Department will report to the Commission the company-specific and "all others" rate at the levels indicated in the Final Results of the Review section of this notice.

**Final Results of Review:** As a result of this review, the Department finds that revocation of the antidumping finding would be likely to lead to continuation or recurrence of dumping at the margins listed below.

Manufacturer/exporter	Margin (percent)
China National Chemicals Import and Export Corporation (SINO-CHEM) .....	14.50
All Others .....	14.50

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752(i)(1) of the Act.

Dated: January 29, 1999.

Richard W. Moreland,  
Acting Assistant Secretary for Import Administration.

[FR Doc. 99-2673 Filed 2-3-99; 8:45 am]

BILLING CODE 3510-DS-P

