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Sunset Review
IA/AD/CVD/9: CLR
Public Document

October 31, 2005

MEMORANDUM TO: Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Expedited Sunset
Review of the Antidumping Duty Orders on Heavy Forged Hand
Tools (*i.e.*, Axes & Adzes, Bars & Wedges, Hammers & Sledges,
and Picks & Mattocks) from the People's Republic of China: Final
Results

Summary

We have analyzed the substantive responses of the domestic interested parties in the second sunset review of the four antidumping duty orders on heavy forged hand tools (*i.e.*, axes & adzes, bars & wedges, hammers & sledges, and picks & mattocks) (“HFHTs”) from the People’s Republic of China (“PRC”).¹ We recommend that you approve the positions we developed in this memorandum. Below is a complete list of issues in this sunset review for which we received a substantive response:

1. Likelihood of continuation or recurrence of dumping
2. Magnitude of the dumping margin likely to prevail

History of the Orders

On January 3, 1991, the Department of Commerce (“the Department”) published its final determination in the investigation of HFHTs from the PRC, finding dumping margins of 15.02 percent for axes & adzes, 50.81 percent for picks and mattocks, 31.76 percent for bars and wedges, and 45.42 percent for hammers and sledges, as the country-wide rate. *See* 56 FR 241 (January 3, 1991). On February 19, 1991, following an affirmative injury determination by the International Trade Commission (“ITC”), the Department issued antidumping duty (“AD”) orders on HFHTs. *See* 56 FR 6622 (February 19, 1991). On February 4, 2000, the Department

¹ We received no responses from respondent interested parties.

published the final results of the first sunset review of HFHTs for AD orders on axes & adzes, and picks & mattocks. *See* 65 FR 5497 (February 4, 2000). On June 2, 2000, the Department published the final results of the first sunset review of HFHTs for AD orders on bars & wedges, and hammers & sledges. *See* 65 FR 35321 (June 2, 2000). The Department found in these two sunset reviews the likelihood of continued or recurring dumping at the rates established in the original investigation. On August 10, 2000, the Department published the notice of continuation of AD orders on HFHTs. *See* 65 FR 48962 (August 10, 2000). There have been five administrative reviews since the issuance of the final results of the first sunset review.

The Department has issued seven conclusive scope rulings regarding the merchandise covered by these orders: (1) On August 16, 1993, the Department found the “Max Multi-Purpose Axe,” imported by the Forrest Tool Company, to be within the scope of the axes/adzes order; (2) on March 8, 2001, the Department found “18-inch” and “24-inch” pry bars, produced without dies, imported by Olympia Industrial, Inc. and SMC Pacific Tools, Inc., to be within the scope of the bars/wedges order; (3) on March 8, 2001, the Department found the “Pulaski” tool, produced without dies by TMC, to be within the scope of the axes/adzes order; (4) on March 8, 2001, the Department found the “skinning axe,” imported by Import Traders, Inc., to be within the scope of the axes/adzes order; (5) on December 9, 2004, the Department found the “Scrapek MUTT,” imported by Olympia Industrial, Inc., under HTSUS 8205.59.5510, to be within the scope of the axes/adzes order; (6) on May 23, 2005, the Department found 8 inch by 8 inch and 10 inch by 10 inch cast tampers, imported by Olympia Industrial, Inc. to be outside the scope of the orders; and (7) on October 14, 2005, the Department found the “Mean Green Splitting Machine” imported by Avalanche Industries to be within the scope of the bars/wedges order.²

In addition, on September 22, 2005, the Court of International Trade sustained the Department’s finding that cast picks are outside the scope of the picks/mattocks order. *See Tianjin Machinery Import & Export Corporation v. United States and Ames True Temper*, Slip Op. 05-127, Court No. 03-00732 (September 22, 2005). To date, the Department has not issued any duty absorption findings in this case.

Background

On July 1, 2005, the Department initiated a sunset review of the AD orders on HFHTs pursuant to section 751(c) of the Tariff Act of 1930, as amended (“the Act”). *See Initiation of Five-Year (Sunset) Reviews*, 70 FR 38101 (July 1, 2005). On July 18, 2005, Ames True Temper (“Ames”), a domestic producer of the subject merchandise, submitted its intent to participate in this sunset review, followed by submissions of its four substantive responses with respect to the

² *See* “Final Scope Ruling: Antidumping Duty Order on Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People’s Republic of China,” from James C. Doyle, Office Director, Office 9, for Import Administration, to Gary Taverman, Acting Deputy Assistant Secretary for Import Administration, dated October 14, 2005.

four AD orders on HFHTs on August 1, 2005.³ Also, on July 18, 2005, Council Tool Company (“Council Tool”) submitted its intent to participate in this sunset review, followed by submission of its substantive response on August 1, 2005.⁴ Ames and Council Tool will be collectively referred to hereinafter as “domestic interested parties.”

On August 11, 2005, the Department issued its adequacy determination in this review, finding that the Department did not receive a substantive response from any respondent interested party. As a result, the Department decided, pursuant to 19 CFR 351.218(e)(1)(ii)(C)(2), to conduct an expedited sunset review. *See* the memorandum entitled “Adequacy Determination: Sunset Reviews of the Four Antidumping Duty Orders on Heavy Forged Hand Tools from the People’s Republic of China (Axes & Adzes, Bars & Wedges, Hammers & Sledges, and Picks & Mattocks) from the Sunset Team to James C. Doyle, Director, AD/CVD Operations, Office 9, Import Administration, dated August 11, 2005.

On September 9, 2005, Council Tool submitted comments supporting the Department’s decision to conduct an expedited sunset review.⁵ Our analysis of domestic interested parties’ comments submitted in the substantive responses is set forth in the “Discussion of the Issues” section below.

Discussion of the Issues

In accordance with section 751(c)(1) of the Act, the Department conducted this sunset review to determine whether revocation of the AD orders would be likely to lead to continuation or recurrence of dumping. Sections 752(c)(1)(A) and (B) of the Act provide that, in making these determinations, the Department shall consider both the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and after the issuance of the AD order. In addition, section 752(c)(3) of the Act provides that the Department shall provide to the ITC the magnitude of the margin of dumping likely to prevail if the AD order were revoked. Below we address the comments of the interested parties.

³ *See* Ames’ submissions on August 1, 2005: Sunset Review of the Antidumping Order on Heavy Forged Hand Tools from the People’s Republic of China (Bars & Wedges)/(Hammers & Sledges)/(Picks & Mattocks)/(Axes & Adzes) (“PRC heavy forged hand tools”): Substantive Response to Notice of Initiation (collectively, “Ames responses”).

⁴ *See* Council Tool’s submission on August 1, 2005: Heavy Forged Hand Tools (i.e., Axes & Adzes, Bars & Wedges, Hammers & Sledges, and Picks and Mattocks) from the People’s Republic of China: Five Year (“Sunset”) Reviews of the Antidumping Order - Substantive Response to Notice of Initiation (“Council Tool response”).

⁵ *See* Council Tool’s submission on September 9, 2005: Heavy Forged Hand Tools (i.e., Axes & Adzes, Bars & Wedges, Hammers & Sledges, and Picks and Mattocks) from the People’s Republic of China: Five Year (“Sunset”) Reviews of the Antidumping Order.

1. Likelihood of Continuation or Recurrence of Dumping

Interested Party Comments

The domestic interested parties maintain that the Department should find that revocation of the AD orders would likely lead to a continuation or recurrence of dumping of HFHTs in the U.S. market. The domestic interested parties argue that the vast majority of the PRC producers subject to the administrative reviews since the imposition of the dumping order have received calculated dumping margins in excess of *de minimis* levels.⁶ Ames further alleges that even for those few respondents which received *de minimis* margins, the Department has not granted any exporter's request to revoke the antidumping duty order.

Ames maintains that not only has the Department found that margins exist, but the Department has also found that the magnitude of the dumping margins has increased over time.⁷ Ames claims that the increased dumping margins are reflective of an increasingly aggressive attempt by the PRC exporters and producers to penetrate the U.S. marketplace and to obtain additional market share through dumped sales. *See, e.g.*, Ames' response regarding Axes & Adzes at page 3.

Furthermore, Ames suggests that the Department consider certain "other factors" under section 752(c)(2) of the Act. First, Ames points out that certain PRC exporters refused to participate in the administrative review of the AD orders covering axes and adzes, and picks and mattocks in recent administrative reviews. In addition, Ames notes that, for these orders as well as the order on hammers and sledges, some exporters have refused to provide the Department information necessary to calculate normal value and any resultant dumping duty rates. It asserts that one may assume that the exporters' refusal to report information to the Department was a result of the exporters' realization that the potential duty liabilities would exceed the duty rates in effect during the POR. *See, e.g.*, Ames' responses regarding Axes & Adzes at pages 4 and 5.

Additionally, Ames argues that the Department has determined that several PRC respondents⁸ have undertaken a systematic effort to defraud the United States government by

⁶ For hammers and sledges, exceptions exist in the tenth and twelfth reviews with respect to Shandong Machinery Import and Export Corp. ("SMC") and in the seventh through ninth administrative review with respect to Tianjin Machinery Import & Export Corp. ("TMC"). In addition, the Department found a *de minimis* margin in one new shipper review which covered Shandong Jinma Industrial Group Co., Ltd. ("Jinma"). For bars and wedges, the only exception pertains to the margins obtained in the seventh and tenth administrative reviews with respect to Liaoning Machinery Import & Export Corporation ("LMC"). For picks and mattocks, the only exception pertains to the margins calculated in the seventh through ninth review with respect to TMC. *See* Ames' Responses (Bars and Wedges, Hammers and Sledges, and Picks and Mattocks), each at pages 2 and 3.

⁷ It was noted that dumping margins exceeding 50 percent have been assigned to at least three investigated exporters. *See* page 3 of Ames' responses regarding axes & adzes.

⁸ They include LMC, Shandong Huarong General Group Corp., and TMC.

engaging in “agent” schemes where one PRC exporter “rents” out its duty deposit rates to a second exporter which is subject to higher deposit rates. It asserts that the fact that these PRC exporters have misrepresented manufacturer and agent information is highly probative of the fact that PRC exporters will resume dumping and will increase shipment volumes if the dumping orders are revoked. *See, e.g.*, Ames’ responses regarding Axes & Adzes at pages 4 and 5.

Ames also notes that for axes and adzes, while the total value of subject imports declined steadily from 1989 to 2001, the trend has reversed in that the value of imports has increased in the past three calendar years. For bars and wedges, Ames states that while the total quantity of subject imports declined somewhat from 1989 to 1995, the quantity of imports in the subsequent years has fluctuated, reaching a peak in 2002, before decreasing once again in 2004. Ames suggests that the decrease in volume of imports of bars and wedges correlates with the Department’s findings regarding agent sale schemes. For picks and mattocks, Ames asserts that while the total value of subject imports declined steadily from 1989 to 1993, the value of imports has fluctuated since then, reaching a peak in 2004.⁹ For hammers and sledges, Ames maintains that while the total quantity of subject imports declined steadily from 1989 to 1999, the trend has reversed in four of the last five years with the quantity of imports increasing, reaching a peak in 2003. Ames argues that without question, dumping is continuing and the absence of an order would guarantee the continuation of dumping by the PRC exporters. *See, e.g.*, Ames response (hammers and sledges) at page 4.

Council Tool also states that the record in these proceedings demonstrates indisputably that PRC producers have continued to dump subject merchandise into the U.S. market since the imposition of the original AD orders, despite the existence of AD margins on PRC products. Council Tool argues that if it were not for the discipline imposed by the AD orders, PRC producers would continue to dump their products in the U.S. market and would do so at even higher levels and in more substantial volumes. In support of its argument, Council Tool provides the respective import values and volumes, where applicable, of each of the four types of products covered by the four separate orders (*i.e.*, axes & adzes, bars & wedges, hammers & sledges, and picks & mattocks), since the imposition of the AD orders. Although these import volumes have increased in recent years, Council Tool alleges that they have not increased at the level to which they would have increased if the AD orders covering these products were not in place. *See* Council Tool’s Response at page 6.

Specifically, Council Tool indicates that imports of axes and adzes dropped from \$1,948,065 worth of merchandise in 1989 to \$973,583¹⁰ worth of merchandise in 1991, the year in which the AD order was imposed. *See* Council Tool’s Response at page 5, and Attachment 1. Council Tool alleges that the decline in total value of imports indicates that the volume also declined significantly during that period. Although these volumes have increased in recent years,

⁹ Ames notes that the tariff category includes possibly significant volumes of non-subject merchandise.

¹⁰ Council Tool states that the import quantities for axes and adzes are not available from public statistics.

Council Tool maintains that such increase is not at the level it would have been at if the AD order covering these products (axes and adzes) was not in place.

Similarly, Council Tool states that import volumes of bars and wedges also declined sharply after the AD order was imposed in 1991, from 2.2 million kilograms in 1989 to 1.6 million kilograms in 1991. Council Tool maintains that these volumes have increased in recent years, but not to the level to which they would have increased if the AD order covering these products (bars and wedges) were not in place. With respect to imports of hammers and sledges, Council Tools asserts that such imports also declined dramatically, from 8,935 units in 1989 to 4,230 units ¹¹ in 1991 and have remained below pre-order levels throughout the history of the AD order, with the exception of 2003. With respect to picks and mattocks, Council Tool argues that the imports of these products dropped from \$1,232,460 worth of merchandise in 1989 to \$769,534 worth of merchandise in 1991. Although import quantities of picks and mattocks are not available, Council Tool claims that the decline in total value of imports indicates that the volume also declined significantly immediately after the imposition of the AD Order. Furthermore, Council Tool maintains that increases in volumes of imports in recent years are not at the level at which they would have been if the AD order covering these products (picks and mattocks) were not in place. *See* Council Tool's Response at page 6, and Attachment 1.

Both Ames and Council Tool claim that the trends in the AD margins and import volumes from China all strongly support the conclusion that dumping of the HFHTs would be likely to continue or recur upon revocation of the AD orders.

Department's Position

Consistent with the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act, specifically the Statement of Administrative Action ("SAA"), H.R. Doc. No. 103-316, vol. 1 (1994), the House Report, H. Rep. No. 103-826, pt. 1 (1994), and the Senate Report, S. Rep. No. 103-412 (1994), the Department's determinations of likelihood will be made on an order-wide basis. In addition, the Department normally will determine that revocation of an 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.

As discussed in the SAA at 890, and the House Report at 63-64, if companies continue to dump with the discipline of an order in place, the Department may reasonably infer that dumping would continue if the discipline were removed. As detailed above, dumping margins well above *de minimis* continue to exist for shipments of the subject merchandise from the PRC. Consistent

¹¹ There appears to be an error regarding these figures. The correct units of imports are 107,225 units in 1989 to 50,757 units in 1991. *See* Attachment 1.

with section 752(c) of the Act, the Department also considers the volume of imports of the subject merchandise before and after issuance of the order. The domestic interested parties argue that revocation of the orders would likely lead to continuation or recurrence of dumping. They base their conclusion on the combined facts that dumping continued over the life of the orders at levels well above *de minimis* and that imports of axes and adzes, picks and mattocks, bars and wedges, and hammers and sledges also declined significantly after the issuance of the orders, although they note that the trend has been reversed in recent years. Using statistics provided by the ITC Dataweb, the Department finds that imports of axes and adzes and hammers and sledges from the PRC have fluctuated over the life of the orders, showing no overall trend. Imports of picks and mattocks and bars and wedges have increased in recent years, notwithstanding the dumping margins.

The SAA provides that the existence of dumping margins after the imposition of the order is highly probative of likelihood of continuation or recurrence of dumping (*see* SAA at 890). Given that dumping continues at above *de minimis* levels, the Department determines that dumping is likely to continue or recur if the AD orders were revoked.

Ames suggests the Department consider respondents' failure to participate in administrative reviews and engagement in certain sales agent schemes as "other factors" relevant to a determination of likelihood of continuation or recurrence of dumping. However, these items would be reflected in respondents' dumping margins, and thus part of the Department's consideration of levels of continued dumping in determining the likelihood of continuation or recurrence of dumping. Therefore, no additional analysis is necessary.

2. Magnitude of the Dumping Margin Likely to Prevail

Interested Party Comments

_____ The domestic interested parties state that revocation of the AD orders would likely lead to the recurrence of dumping of PRC subject merchandise into the United States market at margins equal to or greater than those found in the original investigation. *See* Ames Responses: on axes & adzes at page 5, on picks & mattocks at page 6, on bars & wedges on page 6, and on hammers & sledges on page 6. *See also* Council Tool response at pages 5, 6 and 8.

In accordance with the SAA and the Department's Sunset Policy Bulletin,¹² Council Tool recommends that the Department report to the ITC the margins that were calculated in the final determination reached in the original investigation because they are the only calculated rates that reflect the behavior of the exporters without the discipline of an order in place. Council Tool notes that this is consistent with the first sunset review.

¹² *See* Policies Regarding the Conduct of Five-Year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin ("Sunset Policy Bulletin"), 63 FR 18,871 and 18,872 (April 16, 1998).

Ames, on the other hand, argues that the dumping margins have increased after the original investigation with respect to the following three AD orders: axes & adzes, picks & mattocks, and bars & wedges. Ames cites the Sunset Policy Bulletin statement that the Department may use a more recently calculated margin that is higher than the margin calculated in the original investigation, if “dumping margins increased after the issuance of the order, even if the increase was a result of the application of best information available or facts available.” See Sunset Policy Bulletin at 18873. Specifically, Ames recommends that the Department use the following rates as the likely dumping margins to prevail for all PRC producers if the AD orders are revoked: 55.74 percent for axes & adzes (the rate for TMC and Shandong Huarong in the 8th review), 98.77 percent for picks & mattocks (the country-wide rate for the 7th and subsequent reviews), and 139.31 percent for bars & wedges (the most recently revised country-wide rate). See Ames’ Responses on axes & adzes at pages 5 and 6, on picks & mattocks at pages 6 and 7, and on bars & wedges on pages 6 and 7.

With respect to hammers and sledges, Ames indicates that the dumping margin has not increased since the institution of the AD order. It claims that the dumping margin likely to prevail would be 45.42 percent (the country-wide rate for the investigation and the most recent administrative review)¹³, if the AD order on hammers and sledges from the PRC were revoked.

Council Tool and Ames recommend the Department report to the ITC the following dumping margins:

<u>Order</u>	<u>Council Tool</u>	<u>Ames</u>
Axes/Adzes	15.02 percent	55.74 percent
Picks/Mattocks	50.81 percent	98.77 percent
Bars/Wedges	31.76 percent	139.31 percent
Hammers/Sledges	45.42 percent	45.42 percent

Department's Position

Section 752(c)(3) of the Act provides that the Department will report to the ITC the magnitude of the margin of dumping that is likely to prevail if the AD orders were revoked. Normally, the Department will provide to the ITC the company-specific margin from the investigation for each company. For companies not investigated specifically or for companies that did not begin shipping until after the order was issued, the Department normally will provide

¹³ There appears to be a typographical error on page 6 of the Ames Response with respect to Hammers & Sledges, where Ames indicates that the Department should use the rate of 55.74 percent. However, Ames clearly states on page 6 that the dumping margin likely to prevail would be 45.42 percent, which is the margin calculated in the original investigation, because the dumping margin has not increased since the institution of this AD order. The 45.42 percent margin was further emphasized in footnote 16 which refers to the margin calculated in the original investigation.

a margin based on the “country-wide” rate from the investigation. The Department’s preference for selecting a margin from the investigation is based on the fact that it is the only calculated rate that reflects the behavior of manufacturers, producers, and exporters without the discipline of an order or suspension agreement in place. See SAA at page 890.

In this case, Ames recommends that the Department deviate from its normal practice of reporting margins from the original investigation and use margins from more recent administrative reviews with respect to axes and adzes, picks and mattocks, and bars and wedges. As noted in the SAA at 890, the Department may provide to the ITC a more recently calculated margin for a particular company. In the instant case, although Ames maintains that PRC exporters are continuing to weather the effect of dumping margins in an effort to maintain and gain market share, neither Ames nor Council Tool provide any company-specific argument or evidence that any PRC companies have increased dumping in order to gain or maintain market share or increase import volumes. Moreover, while it is true that the dumping margins have increased for some PRC companies, we have no company-specific information on the record demonstrating that imports of the subject merchandise have increased substantially over the life of the AD orders. Since we have no company-specific information correlating an increase in exports for a company with an increase in the dumping margin for that particular company, we do not conclude that use of more recently calculated margins is warranted in this case.

Consistent with the SAA, the Department agrees with Council Tool that the margins calculated in the original investigation are probative of the behavior of the PRC producers/exporters if the AD orders were to be revoked as they are the only margins which reflect behavior absent the discipline of the AD orders. *See SAA at 890.* As such, the Department will report to the ITC the PRC-wide rates from the original investigation as contained in the “Final Results of Reviews” section.

Final Results of Reviews

For the reasons stated above, we determine that revocation of the AD orders on HFHTs from the PRC would likely lead to continuation or recurrence of dumping at the following weighted-average percentage margins:

PRC-Wide	Margin (percent)
Axes/Adzes	15.02 percent
Picks/Mattocks	50.81 percent
Bars/Wedges	31.76 percent
Hammers/Sledges	45.42 percent

Recommendation

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

AGREE _____

DISAGREE _____

Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

Date

ATTACHMENT 1