

UNITED STATES INTERNATIONAL TRADE COMMISSION

HEAVY FORGED HANDTOOLS FROM CHINA

Investigations Nos. 731-TA-457 (A-D) (Review)

DETERMINATIONS AND VIEWS OF THE COMMISSION

(USITC Publication No. 3322, July 2000)

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DETERMINATIONS

On the basis of the record¹ developed in the subject five-year reviews, the United States International Trade Commission determines, 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 orders on heavy forged handtools 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 these reviews on July 1, 1999 (64 F.R. 35682) and determined on October 1, 1999 that it would conduct full reviews (64 F.R. 55958, October 15, 1999). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* on February 10, 2000 (65 F.R. 6626). The hearing was held in Washington, DC, on May 16, 2000, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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

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 orders covering imports of heavy forged handtools 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.

I. BACKGROUND

In January 1991, the Commission determined that an industry in the United States was being materially injured by reason of imports of striking tools from China that were being sold at less than fair value. The Commission also made the same determinations with respect to imports of digging tools, hewing tools and bar tools from China that were being sold at less than fair value, corresponding to three separate additional industries.² On February 19, 1991, Commerce issued antidumping duty orders on heavy forged handtools from China.³

On April 16, 1997, a major importer and distributor of heavy forged handtools, including picks and mattocks, filed a request for a changed circumstances review, but the Commission declined to initiate an investigation.⁴

On July 1, 1999, the Commission instituted this review pursuant to section 751(c) of the Tariff Act of 1930, as amended (“the Act”), to determine whether revocation of the antidumping duty orders on heavy forged handtools would likely lead to continuation or recurrence of material injury.⁵ The Commission received an individual response to the notice of institution from Woodings-Verona, a division of O. Ames Co. (“Ames”), which is a domestic manufacturer of each of the four domestic like products. Ames was unable to provide an estimate of the percentage of total U.S. production of each domestic like product accounted for by its production and there is no publicly available information concerning U.S. production of the domestic like products during 1998. However, according to the original staff report, in 1989 Ames accounted for *** percent of total U.S. production of all four domestic like products combined and its shares of U.S. shipments were *** percent of axes/adzes, *** percent of bars/wedges, *** percent of hammers/sledges, and *** percent of picks/mattocks. The Commission also received a joint response from five Chinese exporters of subject merchandise: Fujian Machinery & Equipment I/E Corp., Liaoning Machinery I/E. Corp., Shandong Huarong General Group Corp., Shandong Machinery I/E Corp., and

² Heavy Forged Handtools from the People’s Republic of China, Inv. No. 731-TA-457 (Final), USITC Pub. 2357, at 3 (“Original Determination”).

³ 56 Fed. Reg. 6622 (Feb. 19, 1991). Following issuance of the orders, two of the three exporters of the subject merchandise appealed Commerce’s and the Commission’s affirmative determinations to the Court of International Trade, which upheld Commerce’s calculation of the dumping margins and remanded to the Commission an issue concerning standing. Tianjin Machinery Import & Export Corp. v. United States, 16 CIT 1020 (1992). The court found that the Commission’s final determination was “silent” on the issue of the opposition of one manufacturer, a significant producer of hewing tools, to the petition, such that the determination with respect to hewing tools was not supported by substantial evidence. The Commission’s remand decision, *i.e.* that a determination regarding standing is within the purview of Commerce, was affirmed. Tianjin Machinery Import & Export Corp. v. United States, 820 F. Supp. 1456 (Ct. Int’l Trade 1993).

⁴ 62 Fed. Reg. 36305 (July 7, 1997).

⁵ 64 Fed. Reg. 35682 (July 1, 1999).

Tianjin Machinery I/E Corp.⁶ There is no publicly available information on foreign production/exports of the subject merchandise or U.S. imports of the subject merchandise during 1998, and the respondent interested parties were unable to provide an estimate of the percentage of total Chinese production or exports of the subject merchandise accounted for by their production and exports to the United States.

On October 1, 1999, the Commission determined that the domestic interested party group response to the notice of institution was adequate for picks and mattocks, hammers and sledges, and bars and wedges, but was inadequate with respect to axes and adzes. The Commission also determined that the respondent interested party group response was adequate with respect to all heavy forged handtools.⁷ Pursuant to 19 U.S.C. § 1675(c)(5), the Commission decided to conduct a full review of these orders.⁸

Ames opposed revocation of the subject orders, filed a response to the Commission's notice of institution, completed the Commission's questionnaires, filed prehearing and posthearing briefs in this review, and participated in the hearing. The respondents filed a response to the Commission's notice of institution, but only one firm submitted a *** response to the Commission's foreign producer questionnaire. Counsel for respondents then informed Commission staff that ***.⁹ Respondents did not otherwise respond to the Commission's requests for information and did not file prehearing or posthearing briefs or participate in the hearing.

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 "domestic industry."¹⁰ 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."¹¹ In a section 751(c) review, the Commission must also take into account "its prior injury determination."¹²

⁶ Huarong is also a producer of bars/wedges.

⁷ See Explanation of Commission Determination of Adequacy in Heavy Forged Handtools from China. *See also* 64 Fed. Reg. 55958 (Oct. 15, 1999). With respect to picks and mattocks, hammers and sledges, and bars and wedges, Chairman Bragg and Commissioner Crawford determined that both the domestic and respondent group responses were inadequate and voted for an expedited review. With regard to axes and adzes, Vice Chairman Miller and Commissioners Hillman and Koplan concluded that the domestic group response was inadequate and the respondent group response was adequate, but that other circumstances warranted a full review; Commissioner Askey concluded that both the domestic and respondent group responses were adequate and voted for a full review; Chairman Bragg and Commissioner Crawford concluded that both the domestic and respondent group responses were inadequate and voted for an expedited review.

⁸ The Commission found that other circumstances warranted conducting a full review with respect to axes and adzes. 64 Fed. Reg. at 55958.

⁹ Confidential Report ("CR") at IV-11, Public Report ("PR") at IV-4.

¹⁰ 19 U.S.C. § 1677(4)(A).

¹¹ 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 (CIT 1996); *Torrington Co. v. United States*, 747 F. Supp. 744, 748-49 (CIT 1990), *aff'd*, 938 F.2d 1278 (Fed. Cir. 1991). *See also* S. Rep. No. 96-249 at 90-91 (1979).

¹² 19 U.S.C. §1675(a)(1)(a).

In its final five-year review determination, Commerce defined the subject merchandise as: HFHTs [heavy forged handtools] include heads for drilling, hammers, sledges, axes, mauls, picks, and mattocks, which may or may not be painted, which may or may not be finished, or which may or may not be imported with handles; assorted bar products and track tools including wrecking bars, digging bars and tampers; and steel wood splitting wedges. HFHTs are manufactured through a hot forge operation in which steel is sheared to the required length, heated to forging temperature, and formed to final shape on forging equipment using dies specific to the desired product shape and size. Depending on the product, finishing operations may include shot-blasting, grinding, polishing, and painting, and the insertion of handles for handled products. . . . Specifically excluded are hammers and sledges with heads 1.5 kilograms (3.33 pounds) in weight and under, and hoes and rakes, and bars 18 inches in length and under.¹³

Heavy hammers may be distinguished from claw-type (carpenters') hammers or ball peen type (machinists') hammers by the weight of the tool head, which ranges from two to 20 pounds. Sledge hammers are heavy hammers that are used for driving stakes or wedges into wood. Woodsplitting mauls resemble sledge hammers, except that mauls have one axe-like edge, and are intended primarily to split wood without the use of wedges (however, the blunt end may be used for striking stakes, wedges, or other objects in a manner similar to a sledge hammer).

Bars and wedges include crowbars, wrecking bars, digging bars, and tampers. The principal product in this group is the crowbar, which is a relatively long steel bar that is usually flattened and slightly bent at one or both ends and used as a lever.

Picks are produced in a number of styles and differ principally in the weight of the head, the angle and size of the prongs, and the shape of the pick points. They are used for digging in hard soil. Mattocks are similar to picks but have one end broad instead of pointed. Mattocks are used for digging in soft soil.

Axes are usually divided into two groups: large axes (for chopping wood) and special-purpose axes. Axes may have a single cutting edge (single bit) or double cutting edge (double bit). The single bit axe has a hammer face (used for pounding) on the opposite side of the axe head. The mattock axe is a single bit axe with an adze-shaped grubbing blade on the back, designed for digging, prying, or chopping.

Heavy forged handtools are produced by a basic forging process, wherein fine grain, special bar quality steel is heated and stamped using forging hammers, usually with dies. The material is then trimmed, heat-treated, ground, polished, and sometimes painted. There are no significant differences reported in the manufacturing process between imported and domestically produced products.¹⁴

The starting point of the Commission's like product analysis in a five-year review is the like product definition in the Commission's original determination.¹⁵ In the original investigation, the

¹³ 65 Fed. Reg. 35321 (June 2, 2000) (Commerce's notice regarding bars and wedges and hammers and sledges); 65 Fed. Reg. 5497 (Feb. 4, 2000) (Commerce's notice regarding axes and adzes and picks and mattocks). In the original investigation, the Commission determined to include all hammers with heads weighing two pounds or more in the like product. Original Determination at 10. The Commission also found that the like product should include bars of all lengths. Original Determination at 12.

¹⁴ CR at I-14 - I-15, PR at I-8.

¹⁵ In the like product analysis for an investigation, the Commission generally considers a number of factors, including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) common manufacturing facilities, production processes and production employees; (5) customer or producer perceptions;

(continued...)

Commission determined that there were four like products: 1) hammers and sledges, with heads weighing two pounds or more, with or without handles (striking tools); 2) all bar tools, track tools, and wedges (bar tools); 3) picks and mattocks, with or without handles (digging tools); and 4) axes, adzes and hewing tools, other than machetes, with or without handles (hewing tools).¹⁶ None of the parties responding to the Commission's notice of institution raised any objections to the original like product definitions.¹⁷ While the record could also support a single like product finding, given the Commission's original like product determination and the absence of any contrary argument from the parties, we find four like products as identified in our original determination.

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."¹⁸ Given our finding of four domestic like products, we find four domestic industries, consisting of: 1) domestic producers of hammers and sledges, with heads weighing two pounds or more, with or without handles (striking tools); 2) domestic producers of all bar tools, track tools, and wedges (bar tools); 3) domestic producers of picks and mattocks, with or without handles (digging tools); and 4) domestic producers of axes, adzes and hewing tools, other than machetes, with or without handles (hewing tools).

We note that the Commission sought data for each of the four domestic industries and received separate data for each with the exception of financial data. Only one domestic producer was able to provide specific financial data for the four domestic industries, so the best financial data available are in the aggregate for all heavy forged handtools production with appropriate adjustments made by the staff.¹⁹ The statute allows the Commission to rely on such aggregate financial information when "available data do not permit the separate identification of production in terms of such criteria as the production process or the producer's profits."²⁰ Thus, we may rely on the financial data for the handtools industry as a whole in analyzing the impact of the subject imports on the four domestic industries.²¹

C. Related Parties

¹⁵ (...continued)

and, where appropriate, (6) price. *See Timken Co. v. United States*, 913 F. Supp. 580, 584 (CIT 1996). No single factor is dispositive, and the Commission may consider other factors relevant to a particular investigation. The Commission looks for clear dividing lines among possible like products, and disregards minor variations. *See, e.g., S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979); Torrington*, 747 F. Supp. at 748-49.

¹⁶ Original Determination at 15. With minor differences, these definitions corresponded to the Department of Commerce's class or kind definitions.

¹⁷ Ames Response to Notice of Institution at 13; Joint Respondents' Response to Notice of Institution at 8.

¹⁸ 19 U.S.C. § 1677(4)(A).

¹⁹ CR at III-9, PR at III-2.

²⁰ 19 U.S.C. § 1677(4)(D).

²¹ The parties generally made their arguments with respect to one aggregate handtools industry, although they agree that there should be four separate domestic like products.

We must further determine whether any producer of the domestic like product should be excluded from any of the domestic industries as a related party pursuant to section 771(4)(B), which allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of subject merchandise, or that are themselves importers. Exclusion of such a producer is within the Commission's discretion based upon the facts presented in each case.²²

In this review, one of the domestic producers is an importer of subject merchandise. ***²³ In the original investigation, based on confidential information not disclosed in the opinion²⁴ the Commission determined not to exclude *** from any of the domestic industries of which it was a member.²⁵

In this review, as noted above, *** imported subject axes in 1999 and therefore may be excluded from the domestic industry if appropriate circumstances exist. In 1999, *** accounted for *** percent of domestic production of axes and adzes.²⁶ Its level of subject imports relative to its domestic production is quite small, indicating that its primary interest is in domestic production, rather than in importing. *** did not indicate in its questionnaire responses why it imported subject merchandise. In terms of its financial position, *** ratio of operating income to net sales was *** percent in 1998 and *** percent in 1999, which is consistent with the financial performance of other members of the industry, indicating that it gained no

²² See Sandvik AB v. United States, 721 F. supp. 1322, 1331-32 (CIT 1989), *aff'd without opinion*, 904 F.2d 46 (Fed. Cir. 1990); Empire Plow Co. v. United States, 675 F. Supp. 1348, 1352 (CIT 1987). The primary factors the Commission has examined in deciding whether appropriate circumstances exist to exclude such parties include:

- (1) the percentage of domestic production attributable to the importing producer;
- (2) the reason the U.S. producer has decided to import the product subject to investigation, *i.e.*, whether the firm benefits from the LTFV sales or subsidies or whether the firm must import in order to enable it to continue production and compete in the U.S. market; and
- (3) the position of the related producer vis-à-vis the rest of the industry, *i.e.*, whether inclusion or exclusion of the related party will skew the data for the rest of the industry.

See, e.g., Torrington Co. v. United States, 790 F. Supp. 1161, 1168 (CIT 1992), *aff'd without opinion*, 991 F.2d 809 (Fed. Cir. 1993). The Commission has also considered the ratio of import shipments to U.S. production for related producers and whether the primary interest of the related producer lies in domestic production or importation. *See, e.g., Sebacic Acid from the People's Republic of China*, Inv. No. 731-TA-653 (Final), USITC Pub. 2793, at I-7 - I-8 (July 1994).

²³ CR at I-17, PR at I-9.

²⁴ The Commission's practice at the time of the original investigation was to issue only public opinions.

²⁵ Original Determination at 20. The Commission did determine to exclude Madison Mill, Inc., an importer of subject merchandise, from the three domestic industries to which it belonged based on its opposition to the petition and the fact that it clearly benefitted from the subject imports. Original Determination at 19. Madison Mill is a producer of wood products (including handles for the subject imports) and an ***. Although in the original investigation the Commission included it in three industries, Original Determination at 17, we determine not to do so in this review. We note that in the original investigation the Commission declined to include within the domestic industries companies that did no more than assemble imported heads with handles purchased from a domestic manufacturer, which appears to be somewhat inconsistent with its determination to include Madison Mill within three domestic industries (Madison Mill does make its own handles rather than purchase them, however). Original Determination at 17-18. On the basis of the limited information in the record, we do not find that Madison Mill engages in sufficient production-related activity to be considered a domestic producer. CR at I-16 n.9, PR at I-16 n.9.

²⁶ CR at I-16, PR at I-9.

significant benefit from subject imports.²⁷ We note that *** takes no position on revocation of the orders and no party has requested that *** be excluded from the domestic industry.²⁸ *** did state that “the dumping duties have been very good for our company and the entire domestic tool business.”^{29 30}

On these facts, we therefore determine that appropriate circumstances do not exist to exclude *** from the axes and adzes domestic industry.

III. REVOCATION OF THE ANTIDUMPING DUTY ORDERS ON HEAVY FORGED HANDTOOLS FROM CHINA WOULD LIKELY LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME

A. Legal Standard

In a five-year review conducted under section 751(c) of the Act, Commerce will revoke an antidumping duty order unless: (1) it makes a determination that subsidization and/or dumping is likely to continue or recur, and (2) the Commission makes a determination that revocation of an order “would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.”³¹ The SAA states 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.”³² Thus, the likelihood standard is prospective in nature.³³ The statute provides 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.”³⁴ 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 duty investigations].”^{35 36}

²⁷ CR at Table III-6, PR at Table III-6.

²⁸ CR at I-16, PR at I-9.

²⁹ CR at I-17, PR at I-9.

³⁰ Chairman Koplman and Commissioners Miller and Hillman do not find that *** is benefitting significantly from its current level of subject imports such that its inclusion in the domestic industry would affect their assessment of the industry’s vulnerability. They also do not find that *** is likely to benefit substantially from subject imports if the orders are revoked such that *** inclusion in the domestic industry would affect their assessment of the likelihood of material injury.

³¹ 19 U.S.C. § 1675a(a).

³² SAA, H.R. Rep. No. 103-316, vol. I, at 883-84 (1994). The SAA states that “[t]he likelihood of injury standard applies regardless of the nature of the Commission’s original determination (material injury, threat of material injury, or material retardation of an industry).” SAA at 883.

³³ 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 [sic] 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.

³⁴ 19 U.S.C. § 1675a(a)(5).

³⁵ SAA at 887. Among the factors that the Commission should consider in this regard are “the fungibility or
(continued...)

Although the standard in five-year reviews is not the same as the standard applied in original antidumping duty investigations, it contains some of the same fundamental elements. The statute provides that the Commission is to “consider the likely volume, price effect, and impact of imports of the subject merchandise on the industry if the order is revoked.”³⁷ 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.^{38 39}

We note that Section 776(a) of the Act authorizes the Commission to take adverse inferences in five-year reviews, but such authorization does not relieve the Commission of its obligation to consider the record evidence as a whole in making its determination.⁴⁰ We generally give credence to the facts supplied by the participating parties and certified by them as true, but base our decision on the evidence as a whole, and do 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

³⁵ (...continued)

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.*

³⁶ In analyzing what constitutes a reasonably foreseeable time, Chairman Koplan examines all the current and likely conditions of competition in the relevant industry. He defines “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, he considers 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, this 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.

³⁷ 19 U.S.C. § 1675a(a)(1).

³⁸ 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.

³⁹ 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 connection with the orders under review.

⁴⁰ Section 776 of the Act 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). 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. 19 U.S.C. § 1677e(b). Such adverse inferences may include selecting from information from the record of our original determination and any other information placed on the record. *Id.*

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.”⁴¹ As noted above, while respondents filed a response to the Commission’s notice of institution, only one firm submitted a response to the Commission’s foreign producer questionnaire, and that response was ***.⁴² Counsel for respondents then informed Commission staff that *** and respondents did not file prehearing or posthearing briefs, nor did they participate in the hearing. Accordingly, we have relied on the facts available in this review, which consist primarily of the record in the Commission’s original investigation on heavy forged handtools and the limited information collected by the Commission since the institution of these reviews, as well as the information submitted by Ames.

For the reasons stated below, we determine that revocation of the antidumping duty orders on heavy forged handtools from China would be likely to lead to continuation or recurrence of material injury to the domestic industries within a reasonably foreseeable time.

⁴¹ SAA at 869.

⁴² CR at IV-11, PR at IV-4

B. Conditions of Competition⁴³

In evaluating the likely impact of the subject imports on the domestic industries, the statute directs the Commission to consider all relevant economic factors “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”⁴⁴

The record in this review indicates that the market for each of these four products is characterized by several conditions of competition, namely: 1) the production of heavy forged handtools is labor intensive, rather than capital intensive,⁴⁵ and there are no significant differences reported in the manufacturing process between imported and domestically produced products;⁴⁶ 2) there is a moderate to high degree of substitution between the domestic products and subject imports;⁴⁷ 3) demand has been relatively flat since the time of the original investigation;⁴⁸ 4) there has been a shift in demand from the industrial sector to large retail accounts as well as to the do-it-yourself market;⁴⁹ 5) price is an important factor in purchasing decisions, particularly with the large retail accounts;⁵⁰ and 6) since the time of the original investigation, there has been a large increase in nonsubject imports, which now account for a large percentage of total imports.⁵¹

Based on the record evidence, we find that these conditions of competition in the U.S. heavy forged handtools market are not likely to change significantly in the reasonably foreseeable future. Accordingly, we find that current conditions in the U.S. heavy forged handtools market provide us with a sufficient basis

⁴³ In our following discussion of the conditions of competition and the likely effects of revocation, we consider the four industries separately wherever possible. Attempts were made to gather all necessary information on each of the separate industries. Only *** was capable of supplying financial data on the four industries individually. CR at III-9, PR at III-2. The one domestic producer that filed briefs and appeared at the hearing generally discussed the conditions of competition and the likely effects of revocation on the aggregate handtools industry, rather than on the four industries individually. *See, e.g.*, Ames Prehearing Brief at 21-25. Given that most of the domestic producers make most of the four products, we find that the important conditions of competition are similar for each of the industries, as are the likely effects of revocation as discussed below.

⁴⁴ 19 U.S.C. § 1675a(a)(4).

⁴⁵ Ames Prehearing Brief at 17.

⁴⁶ CR at I-15, PR at I-8.

⁴⁷ CR at II-9; PR at II-7. All responding purchasers and all responding importers indicated that the domestic like product and the subject imports could be used interchangeably. CR at II-11, PR at II-7. While some quality differences may exist, the record indicates that these differences would not be readily apparent to a non-professional purchaser, and these non-professional purchasers represent the most likely source of growth in demand for heavy forged handtools in the future. Tr. at 14 (Mr. Foster); Ames Prehearing Brief at 17.

⁴⁸ CR at II-8, PR at II-5.

⁴⁹ CR at II-8, PR at II-5; Tr. at 14 (Mr. Foster).

⁵⁰ CR at II-10, PR at II-6.

⁵¹ The quantity of nonsubject imports of hammers and sledges has increased from *** in 1989 to *** in 1999; for bars and wedges, the increase was from *** to *** over the same period; for picks and mattocks, the increase was from *** to *** over the same period; and for axes and adzes, the increase was from *** to *** from 1989 to 1999. CR at Tables I-1 - I-3, PR at Tables I-1 - I-3. In 1999, nonsubject imports of hammers and sledges accounted for *** percent of the total value of such imports; similarly, bars and wedges accounted for *** percent; picks and mattocks accounted for *** percent; and axes and adzes accounted for *** percent. CR at Tables I-1 - I-4, PR at Tables I-1 - I-4.

upon which to assess the likely effects of revocation of the antidumping duty orders within the reasonably foreseeable future.

C. Likely Volume of Subject Imports

In evaluating the likely volume of imports of subject merchandise if the orders under review are 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.⁵² 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) 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.⁵³

In the original investigations, the Commission found that the market share of subject imports corresponding to each of the four like products had increased significantly.⁵⁴ Between 1987 and 1989, the share of total domestic consumption of hammers and sledges accounted for by subject imports rose from *** percent to *** percent, as the actual volume of subject imports rose by *** percent, growing from *** units in 1987 to *** in 1989.⁵⁵ The share of total domestic consumption of bars and wedges by volume accounted for by subject imports rose from *** percent in 1987 to *** percent in 1989, with actual imports rising by *** percent, from *** units in 1987 to *** in 1989.⁵⁶ The share of total domestic consumption of picks and mattocks by volume accounted for by subject imports rose from *** percent in 1987 to *** percent in 1989, as the actual volume of imports rose by *** percent, rising from *** units in 1987 to *** in 1989.⁵⁷ For axes and adzes, the share of total domestic consumption by volume accounted for by subject imports rose from *** percent in 1987 to *** percent in 1989; the volume of subject axe and adze imports rose from *** units in 1987 to *** in 1989, or *** percent.

In the instant period of review, subject imports accounted for a significantly lower share of the market for three of the four product groups compared to their share during the original investigation. In 1999, subject imports of hammers accounted for *** percent of the market, subject imports of picks and mattocks accounted for *** percent, and subject imports of axes and adzes accounted for *** percent.⁵⁸ Despite the imposition of antidumping duties, however, subject imports have continued to account for a significant, and increased, share of total domestic consumption of bars and wedges, accounting for *** percent in 1998 and *** percent in 1999.⁵⁹

⁵² 19 U.S.C. § 1675a(a)(2).

⁵³ 19 U.S.C. § 1675a(a)(2)(A)-(D).

⁵⁴ Original Determination at 27-30.

⁵⁵ CR at Table I-1, PR at Table I-1.

⁵⁶ CR at Table I-2, PR at Table I-2.

⁵⁷ CR at Table I-3, PR at Table I-3.

⁵⁸ CR at Tables I-1, I-3, and I-4, PR at Tables I-1, I-3, and I-4.

⁵⁹ CR at Table I-2, PR at Table I-2. However, these figures are inflated by the absence of a questionnaire response from the *** domestic producer of bars. CR at I-17, PR at I-11.

Only one subject producer in China submitted a response to the Commission's foreign producer questionnaire, and that response did not include capacity data.⁶⁰ The Commission was unable to gather complete capacity data in the course of the original investigations. Information on the subject industries in China is not readily available from public sources.⁶¹ Information regarding general forging capacity in China was submitted by the domestic producer. In the absence of information regarding capacity, we rely on the behavior of subject producers and exporters during the period of the original investigations, along with data supplied by the domestic producer, in reaching our determination.^{62 63 64}

Several factors suggest that the volume of subject imports would increase significantly if the orders are revoked. First, during the original investigation the Chinese producers and exporters demonstrated the ability to rapidly increase exports to the U.S. market. In the years 1987-1989, the volume of subject imports rose between *** and *** percent for each of the four products.⁶⁵ While the volume of subject imports was lower in 1998-1999 for three of the four products, the continuing presence of subject imports in the market, despite the presence of antidumping duties, is an indication that subject foreign producers and exporters and U.S. importers have the contacts and distribution network necessary to support an increase in volume.

⁶⁰ CR at IV-11, PR at IV-4.

⁶¹ CR at IV-10, PR at IV-2.

⁶² Chairman Koplan and Commissioners Miller and Hillman note that five Chinese companies, which appear to account for a significant percentage of Chinese exports of heavy forged handtools, responded to the Commission's notice of institution and expressed their willingness to participate in the review by providing information requested by the Commission. On the basis of their response to the notice of institution, the Commission determined that the respondent interested party group response was adequate and voted to conduct a full review. Subsequently, four of these companies refused to respond to the Commission's questionnaire and the fifth company provided only a partial response, which omitted critical information such as handtools production capacity. Chairman Koplan and Commissioners Miller and Hillman conclude that it is appropriate in such circumstances to take adverse inferences pursuant to 19 U.S.C. § 1677e(b). Accordingly, they rely on the information submitted by O. Ames Co. regarding general forging capacity in China and infer from this information that the Chinese heavy forged handtools industry is large and has substantial excess production capacity.

⁶³ As discussed above, Vice Chairman Okun and Commissioner Askey base their decision on all of the available record evidence. They note that the record contains reliable evidence regarding general forging capacity in China. While this evidence is limited, they believe that it indicates that subject producers in China have significant excess capacity with which to direct a significant volume of heavy forged handtool exports to the U.S. market, for each of the four domestic like products. In addition, they believe the record indicates that, at a minimum, subject producers in China continue to possess the same aggregate production capacity as they did at the time of the original investigation, and that such production capacity similarly would result in significant volumes of imports into the U.S. market in the event of revocation, for each of the four domestic like products.

⁶⁴ While Commissioner Bragg concurs in the reliance upon the unrefuted data on the record regarding general forging capacity in China, she does so under a somewhat different analytical framework. Based upon the record evidence regarding Chinese forging capacity, Commissioner Bragg infers that subject producers in China have significant excess capacity with which to direct a significant volume of heavy forged handtools exports to the U.S. market, for each of the four types of product. Separately, Commissioner Bragg also infers that, at a minimum, subject producers in China continue to possess the same aggregate production capacity as they did at the time of the original investigations, and that such production capacity similarly would result in significant volumes of imports into the U.S. market in the event of revocation, for each of the four types of product.

⁶⁵ CR at Tables I-1 - I-4, PR at Tables I-1 - I-4.

Second, the limited information available indicates that the Chinese industry remains very large. At the time of the original investigations, more than 130 firms in China were believed to be producers of heavy forged handtools.⁶⁶ Subject firms in China responding to the Commission’s notice of institution listed 12 producers of heavy forged handtools.⁶⁷ According to data submitted by the domestic producer, there are approximately 350 “key” forgers in China.⁶⁸ Although many of these producers make other forged products such as automotive parts, handtools production is considered a “major” forging market in China.⁶⁹ Manufacturing industries, including forging, have actively solicited foreign investment.⁷⁰ In light of the importance of the forging industry in China, its pursuit of foreign investment, and its demonstrated ability to rapidly increase imports, we find the available evidence indicates that the industry in China continues to be very large and to have substantial excess capacity.

Third, the United States is the most important export market for Chinese heavy forged handtools.⁷¹ Evidence indicates that subject foreign producers and importers have aggressively pursued accounts in the U.S. market, and that, despite the presence of the antidumping duty orders, this aggressive strategy has been rewarded with contracts at some of the largest and most important domestic mass retailers.^{72 ***}⁷³ Continued presence in the market, the importance of the U.S. market for subject producers and exporters, and the aggressive pursuit of contracts with mass retailers all indicate that subject foreign producers and exporters and U.S. importers would likely significantly increase the volume of subject imports if the orders were revoked.

Based on the record in these reviews, it is likely that producers and exporters in China would significantly increase exports to the U.S. market if the orders are revoked, given significant excess production capacity, previous rapid and significant increases in subject imports from China, and demonstrated continued interest in the U.S. market. We therefore conclude that, based on the record evidence, the volume of subject imports would likely be significant if the orders are revoked.

D. Likely Price Effects

In evaluating the likely price effects of subject imports if the antidumping duty orders are revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared with domestic like products and whether the subject imports are likely to enter the United States at prices that would have a significant depressing or suppressing effect on the prices of domestic like products.⁷⁴

⁶⁶ CR at II-5, PR at II-3.

⁶⁷ CR at II-5, PR at II-3.

⁶⁸ CR at II-6, PR at II-4.

⁶⁹ Ames Prehearing Brief at Attachment 3.

⁷⁰ Ames Prehearing Brief at 10-11.

⁷¹ Ames Prehearing Brief at Attachment 5.

⁷² Ames Posthearing Brief at Attachment 1, p.12.

⁷³ Ames Posthearing Brief at 5.

⁷⁴ 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.

During the original investigation, the Commission found persistent or sustained underselling occurred with subject imports of picks and mattocks and axes and adzes.⁷⁵ The Commission found evidence of underselling of subject imports of hammers and sledges and bars and wedges, although the patterns of underselling were less consistent than those exhibited by the other two products.⁷⁶ During the years 1987-1989, average unit values (AUVs) for subject imports from China were below both the AUVs for the domestic like product and for nonsubject imports for each of the four products.⁷⁷

The Commission was unable to gather significant pricing data in the course of these reviews.⁷⁸ Despite these limitations, the pricing data showed significant underselling by subject imports of ***.⁷⁹ Pricing data on hammers and sledges showed mixed patterns of overselling and underselling, with *** on some products and mixed *** for others.⁸⁰ We note that, with a dumping order in place, overselling is not necessarily indicative of likely behavior absent the order. Moreover, despite the imposition of antidumping duties, AUVs for two of the four products, bars and wedges and picks and mattocks, remain well below AUVs for the domestic like products.⁸¹ The AUV for subject imports of axes and adzes in 1999 was virtually identical to the AUV of domestic shipments of axes and adzes.⁸² The responding domestic producer indicates that Chinese product is the lowest-priced in the market.⁸³ Given this record, we find that increased underselling is likely if the orders are revoked.⁸⁴

We have already noted that a high degree of interchangeability exists between subject imported heavy forged handtools and the domestic like products. We have also noted that demand for heavy forged handtools in the U.S. market is increasingly price-driven, as mass market retailers and do-it-yourself consumers have come to dominate the domestic market. Even with antidumping duties, subject foreign producers and exporters and U.S. importers have aggressively pursued sales to these mass market retailers, and have displaced domestic producers.⁸⁵ Little or no growth in demand is expected. Moreover, nonsubject imports have obtained significant shares in the domestic market for heavy forged handtools. The increase in volume and market share for nonsubject imports of hammers and sledges and picks and

⁷⁵ Original Determination at 29-30.

⁷⁶ Original Determination at 27-28.

⁷⁷ CR at Tables I-1 - I-4, PR at Tables I-1 - I-4.

⁷⁸ The bulk of the pricing data supplied by one of the importers was particularly flawed. CR at V-4 n.4, PR at V-4, n. 4.

⁷⁹ CR at Tables V-4 and V-6 - V-8, PR at Tables V-4 and V-6 - V-8.

⁸⁰ CR at Tables V-1 - V-3, PR at Tables V-1 - V-3. Domestic producer Ames argues that the pricing data for domestic hammers and sledges are skewed towards the low end because Ames did not include its higher-quality hammers and sledges, produced for industrial users, in its pricing data. Ames Posthearing Brief at Attachment 1, pp.4-5.

⁸¹ CR at Tables I-2 - I-3, PR at Tables I-2 - I-3. We note that prices for domestically-produced bars and wedges do not contain data from the largest U.S. producer of bars and wedges. CR at I-17, PR at I-10.

⁸² CR at Table I-4, PR at Table I-4.

⁸³ Ames Posthearing Brief at Attachment 1, p.3.

⁸⁴ Even where the AUVs of nonsubject imports were lower than the AUVs of subject imports, Commissioner Bragg infers that in the event of revocation Chinese producers would price aggressively with regard to exports to the United States, and that significant volumes of highly interchangeable Chinese imports would result in significant price depression or suppression in the U.S. market within a reasonably foreseeable time.

⁸⁵ Ames Posthearing Brief at Attachment 1, p.12.

mattocks has been particularly notable.⁸⁶ The largest gains made by nonsubject imports appear to have come mainly at the expense of subject imports rather than domestic products. In this very competitive market, subject producers and exporters in China and U.S. importers would have a strong incentive to price even more aggressively in order to expand market share. We therefore find that the likely significantly increased volumes of lower-priced subject imports would adversely and significantly affect prices for the domestic like products upon revocation.

Thus, based on the record in this review, we find that revocation of the antidumping duty orders would be likely to lead to significant price suppression or depression by the subject imports of the domestic like product in the reasonably foreseeable future.

E. Likely Impact of Subject Imports

In evaluating the likely impact of imports of subject merchandise if the orders are 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.⁸⁷ 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.⁸⁸ As required 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.⁸⁹

⁸⁶ Nonsubject imports of picks and mattocks accounted for over *** percent of total domestic consumption in 1998-1999, although its share of total domestic consumption never exceeded *** percent in the years 1987-1989. CR at Table I-3, PR at Table I-3. Nonsubject imports accounted for *** percent of total domestic consumption of hammers. CR at Table I-1, PR at Table I-1. For bars and wedges and axes and adzes, nonsubject imports accounted for approximately *** percent of total domestic consumption. CR at Tables I-2 and I-4, PR at Tables I-2 and I-4.

⁸⁷ 19 U.S.C. § 1675a(a)(4).

⁸⁸ 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 found that revocation of the antidumping duty orders would likely lead to continuation or recurrence of dumping at the following margins: hammers and sledges, 45.42 percent; bars and wedges, 31.76 percent; picks and mattocks, 50.81 percent; and axes and adzes, 15.02 percent. CR at I-10, PR at I-4 - I-5.

⁸⁹ The SAA states that in assessing whether the domestic industry is vulnerable to injury if the orders are 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.

In the original investigation, the Commission found that subject imports had a detrimental impact on each of the domestic industries producing heavy forged handtools.⁹⁰ We note that Woodings-Verona, the original complainant and ***, was forced into bankruptcy in 1991 just after the orders were imposed; it was acquired by Ames in 1997.⁹¹ The domestic producers believe that imposition of the orders was crucial to the industries' survival after the injury suffered in the 1980s.⁹²

In both 1998 and 1999 the industries generated operating income, with net income equal to 2.6 and 2.1 percent of sales, respectively.⁹³ Over the two-year period only one firm reported an operating loss and for only one year.⁹⁴ *** made capital expenditures in 1998 and 1999.⁹⁵ In the industries producing hammers and sledges, picks and mattocks, and axes and adzes, employment has been ***, with *** in wages and productivity.⁹⁶ The number of production and related workers in the bars and wedges industry *** between 1998 and 1999, as did the number of hours worked.^{97 98 99}

Even with the orders in place, imports from China have successfully competed for contracts with some of the largest and most important mass market retailers in the U.S. market, contracts that the domestic industries can ill afford to lose.¹⁰⁰ In 1999, capital expenditures and research and development expenses by the industries ***.¹⁰¹ While the industries have continued to generate net income, that net income is ***.¹⁰² Production of heavy forged handtools remains labor intensive, and no improvements in technology or process are likely in the near future to significantly improve costs or the labor-intensive nature of production.

Given the likely significant increase in volume of subject imports and the resultant intense price competition in a market with sluggish demand growth, the domestic industries would likely experience significant declines in output, sales, and income, with eventual losses in employment and capital and research and development expenditures similar to those experienced in the years of the original investigation.

⁹⁰ Original Determination at 26-30.

⁹¹ Ames Prehearing Brief at 1.

⁹² Ames Prehearing Brief at 4-7. As noted above, in making our determination, we have used separate industry data wherever possible, but have relied on the aggregate heavy forged handtools industry data where necessary.

⁹³ CR at Table III-5, PR at Table III-5.

⁹⁴ CR at Table III-5, PR at Table III-5.

⁹⁵ CR at Table III-8, PR at Table III-8.

⁹⁶ CR at Tables III-1 - III-4, PR at Tables III-1 - III-4.

⁹⁷ CR at Table III-2, PR at Table III-2.

⁹⁸ Chairman Koplun and Commissioners Miller and Hillman find the domestic industries to be vulnerable based on the increasingly price-sensitive nature of the market and the weak financial performance of the heavy forged handtools industry. They also took into account the fact that the domestic producer with the strongest financial performance recently lost ***, which would represent approximately *** of the value of the company's total shipments in 1999. Therefore, this large producer, and, consequently, the industry as a whole, appears to be in a significantly weaker financial position than the 1999 financial data would suggest.

⁹⁹ Based on the foregoing, Vice Chairman Okun and Commissioners Bragg and Askey do not find the domestic industry to be in a weakened state.

¹⁰⁰ Ames Posthearing Brief, Attachment 1 at p.12.

¹⁰¹ CR at Table III-8, PR at Table III-8.

¹⁰² CR at Table III-6, PR at Table III-6.

In reaching these determinations, we are mindful that since the original investigation, nonsubject imports of three of the four products have increased significantly.¹⁰³ Despite the presence of fairly significant, and increased, levels of nonsubject imports, we do not find that the impact of increased volumes of subject imports after revocation would fall largely on nonsubject imports. All suppliers, including the domestic producers, compete and are likely to continue to compete most intensely in the large and growing retail segment of the market.

Accordingly, based on the record in this review, we conclude that, if the antidumping duty orders are revoked, subject imports would be likely to have a significant adverse impact on the domestic industries within a reasonably foreseeable time.

CONCLUSION

For the foregoing reasons, we determine that revocation of the antidumping duty orders on heavy forged handtools from China would be likely to lead to continuation or recurrence of material injury to the respective domestic industries within a reasonably foreseeable time.

¹⁰³ CR at Tables I-1 - I-4, PR at Tables I-1 - I-4.