

April 26, 2011

**TO:** Paul Piquado  
Acting Deputy Assistant Secretary  
for Import Administration

**FROM:** Christian Marsh  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

**RE:** Issues and Decision Memorandum for the Final Results of 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

## **SUMMARY**

We have analyzed the substantive responses of the domestic interested parties in the third sunset review of the antidumping duty (“AD”) orders on Hand Tools<sup>1</sup> from the People's Republic of China (“PRC”). We recommend that you approve the positions we describe 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; and
2. Magnitude of the dumping margin likely to prevail.

### History of the Order

On May 2, 1990, the Department of Commerce (“Department”) initiated the AD investigations on Hand Tools from the PRC.<sup>2</sup> On January 3, 1991, the Department determined that Hand Tools were being sold in the United States at less than fair value (“LTFV”).<sup>3</sup> As the PRC-wide rate in the Final Determination, the Department calculated dumping margins of 15.02 percent for axes & adzes, 50.81 percent for picks & mattocks, 31.76 percent for bars & wedges, and 45.42

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<sup>1</sup> Heavy Forged Hand Tools (“Hand Tools”) (*i.e.*, Axes & Adzes, Bars & Wedges, Hammers & Sledges, and Picks & Mattocks).

<sup>2</sup> See Initiation of Antidumping Duty Investigations: Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China, 55 FR 18364 (May 2, 1990).

<sup>3</sup> See Final Determinations of Sales at Less Than Fair Value: Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China, 56 FR 241 (January 3, 1991) (“Final Determination”).

percent for hammers & sledges.<sup>4</sup> On February 19, 1991, following an affirmative injury determination by the International Trade Commission (“ITC”), the Department published the AD orders on Hand Tools.<sup>5</sup>

Since the issuance of the Orders, the Department has conducted several administrative reviews, a new shipper review, two sunset reviews and several scope rulings. On February 4, 2000, the Department published the final results of the first sunset review of Hand Tools for the AD orders on axes & adzes, and picks & mattocks.<sup>6</sup> On June 2, 2000, the Department published the final results of the first sunset review of Hand Tools for the AD orders on bars & wedges, and hammers & sledges.<sup>7</sup> On August 10, 2000, the Department published the notice of continuation of the AD orders on Hand Tools.<sup>8</sup> On November 7, 2005, the Department published the final results of the second sunset review of Hand Tools for the AD orders on axes & adzes, picks & mattocks, bars & wedges, and hammers & sledges.<sup>9</sup> On November 7, 2005, the Department published the notice of continuation of the AD orders on Hand Tools.<sup>10</sup> In both the first and second sunset reviews, the Department found that the likelihood of continued or recurring dumping would occur at the rates established in the original investigation.

## Background

On January 3, 2011, the Department published the notice of initiation of the third five-year sunset review of the AD orders on Hand Tools from the PRC pursuant to section 751(c) of the Tariff Act of 1930, as amended (“Act”).<sup>11</sup> On January 12, 2011, the Department received notices to participate from two domestic interested parties: 1) Ames True Temper (“Ames”)<sup>12</sup>; and 2) Council Tool Company, Inc. (“Council Tool”). Submissions of the notices of intent to participate filed by both interested parties were within the deadline specified in section 351.218(d)(1)(i) of the Department’s regulations. Both domestic interested parties claimed interested party status under section 771(9)(C) of the Act, as they both are domestic producers of Hand Tools in the United States. On February 2, 2011, the Department received adequate substantive responses from both domestic interested parties within the deadline specified in

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<sup>4</sup> Id.

<sup>5</sup> See Antidumping Duty Orders: Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles From the People's Republic of China, 56 FR 6622 (February 19, 1991) (“Orders”).

<sup>6</sup> See Final Results of Expedited Sunset Reviews: Axes and Adzes and Picks and Mattocks From the People's Republic of China, 65 FR 5497 (February 4, 2000).

<sup>7</sup> See Final Results of Full Sunset Reviews: Bars and Wedges and Hammers and Sledges From the People's Republic of China, 65 FR 35321 (June 2, 2000).

<sup>8</sup> See Continuation of Antidumping Duty Order: Bars, Wedges, Axes, Adzes, Picks, and Mattocks (Heavy Forged Hand tools) From the People's Republic of China, 65 FR 48962 (August 10, 2000).

<sup>9</sup> See Heavy Forged Hand Tools (i.e., Axes & Adzes, Bars & Wedges, Hammers & Sledges, and Picks & Mattocks) from the People's Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Orders, 70 FR 67451 (November 7, 2005).

<sup>10</sup> See Heavy Forged Hand Tools (i.e., Axes & Adzes, Bars & Wedges, Hammers & Sledges, and Picks & Mattocks) from the People's Republic of China: Continuation of Antidumping Duty Order, 71 FR 8276 (February 16, 2006).

<sup>11</sup> See Initiation of Five-Year (“Sunset”) Review, 76 FR 89 (January 3, 2011).

<sup>12</sup> Ames is the successor company to Woodings-Verona Tools Works, the petitioner in the original investigation.

section 351.218(d)(3)(i) of the Department's regulations. The Department did not receive substantive responses from any respondent interested party to this proceeding. As a result, pursuant to section 751(c)(3)(B) of the Act and section 351.218(e)(1)(ii)(C)(2) of the Department's regulations, the Department determined to conduct an expedited sunset review of the Orders.

### Discussion of the Issues

In accordance with section 751(c)(1) of the Act, the Department is conducting a sunset review to determine whether revocation of the AD orders would likely 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 the period after, the issuance of the AD orders. In addition, section 752(c)(3) of the Act states that the Department shall provide to the ITC the magnitude of the margin of dumping likely to prevail if the orders were revoked. Below we address the comments made by the domestic interested parties in this proceeding.

#### 1. Likelihood of continuation or recurrence of dumping

### Interested Party Comments

Both domestic interested parties state that revocation of the AD orders would lead to increased or recurring sales at LTFV of Hand Tools in the United States market. Both domestic interested parties also cite as evidence the decrease in imports of subject merchandise from the PRC after the issuance of the AD orders. Ames further alleges that since the imposition of the AD orders, the vast majority of the PRC producers subject to the administrative reviews have received calculated dumping margins in excess of de minimis levels.<sup>13</sup> In addition, Council Tools notes that despite the existence of the current antidumping margins in excess of de minimis levels, PRC producers continue to sell Hand Tools at LTFV.<sup>14</sup>

### Department's Position

Drawing on the guidance provided in the legislative history of the SAA,<sup>15</sup> the Department

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<sup>13</sup> Exceptions include: 1) for picks & mattocks, in the seventh through ninth administrative reviews with respect to Tianjin Machinery Import and Export Corp.; 2) for hammers & sledges, in the tenth and twelfth administrative reviews with respect to Shandong Machinery Import and Export Corp.; 3) for bars & wedges, in the seventh and tenth administrative reviews with respect to Lioning Machinery Import and Export Corporation. See Ames' February 2, 2011, substantive responses (Bars & Wedges, Hammers & Sledges, and Picks & Mattocks), each at pages 8-9.

<sup>14</sup> See Council Tool's February 2, 2011, substantive responses (Bars & Wedges, Hammers & Sledges, Picks & Mattocks, and Axes & Adzes), each at pages 11-13.

<sup>15</sup> See, Statement of Administrative Action ("SAA") accompanying the Uruguay Round Agreements Act ("URAA"), H.R. Doc. No. 103-316, vol. 1, 889 (1994); House Report, H. Rep. No. 103-826, pt. 1 (1994); and Senate Report, S. Rep. No. 103-412 (1994).

normally determines that revocation of an AD 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. In this case, the Department has found dumping at above de minimis levels in the original AD investigations of Hand Tools from the PRC, as well as in the subsequent administrative reviews conducted since the investigations.<sup>16</sup>

The Department finds that the existence of dumping margins, even with orders in place, is highly probative of the likelihood of continuation or recurrence of dumping, if the orders were to be revoked. Therefore, the Department determines that dumping would likely continue if the orders were revoked.

## 2. Magnitude of the Margins Likely to Prevail

### Interested Party Comments

Council Tool states 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 investigations.<sup>17</sup> Citing the SAA at 890 and the Department's Policy Bulletin, Council Tools argues that the Department should find that the magnitude of the margins of dumping is identical to the margins determined to exist in the original investigations because they are the only calculated rates that reflect the behavior of the exporters without the discipline of an AD order in place. Council Tool also notes that this is consistent with the Department's practices in the first and second sunset reviews.

In contrast, Ames contends that the Department should find that the margins likely to prevail are identical to the margins determined in the fifteenth administrative review ("AR") of the Orders. Ames argues that assigning a higher margin to Hand Tools better represents Chinese exporters' and producers' behavior given that the original investigations were completed over 20 years ago.<sup>18</sup> However, Ames also states that in the event the Department does not select the margins from the fifteenth AR, the Department should then select the margins from the original investigations.

### Department Position

Section 752(c)(3) of the Act provides that the administering authority shall provide to the ITC the magnitude of the margin of dumping likely to prevail if the order were revoked. Normally,

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<sup>16</sup> See Council Tool's February 2, 2011, substantive responses (Axes & Adzes, Bars & Wedges, Hammers & Sledges, and Picks & Mattocks), each at attachment I.

<sup>17</sup> See Council Tool's February 2, 2011, substantive responses (Axes & Adzes, Bars & Wedges, Hammers & Sledges, and Picks & Mattocks), each at pages 13 and 14.

<sup>18</sup> See Ames' February 2, 2011, substantive responses (Axes & Adzes, Bars & Wedges, Hammers & Sledges, and Picks & Mattocks), each at pages 14 and 15.

the Department will select a margin from the final determination in the investigation because that is the only calculated rate that reflects the behavior of exporters without the discipline of an order or suspension agreement in place. Furthermore, pursuant to section 752(c)(4)(A), a dumping margin of “zero or de minimis shall not by itself require” that the Department determine that revocation of an AD order would not be likely to lead to a continuation or recurrence of sales at less than fair value. The Department continues to find that the margins calculated in the original investigations are the best indication of the margins likely to prevail if the orders were revoked, because they are the only calculated rates without the discipline of an order in place.

With regard to Ames’ argument, the Department finds that, in certain cases, the Department has provided to the ITC a more recently calculated margin for a particular company. However, in this case, although Ames maintains that the dumping margins from the investigations are over 20 years old, Ames does not provide a 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, there is a lack of evidence on the record demonstrating that imports of the subject merchandise have increased substantially over the life of the AD orders. In conclusion, as we have no company-specific information correlating increases in exports for a company with increases in the dumping margin for that particular company, we do not conclude that use of more recently calculated margins is warranted in this case.

Therefore, consistent with section 752(c)(3) and section 752(c)(4)(A) of the Act, the Department will report to the ITC the corresponding individual company rates and the PRC-wide rate from the original investigations as noted in the “Final Results of Review” section, below.

Final Results of Review

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

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PRC-Wide Margin (percent)  
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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 response received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final results of this sunset review in the Federal Register and notify the ITC of our determination.

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Paul Piquado  
Acting Deputy Assistant Secretary  
for Import Administration

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Date