UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D C 20230

A-570-803
Sunset Review
**Public Document**
E&C/V: PW

October 31, 2016

**TO:** Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

**RE:** Fourth Expedited Sunset Review of the Antidumping Duty Orders on Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles From the People's Republic of China: Issues and Decision Memorandum for the Final Results

---

## I. Summary

We analyzed the substantive responses of the interested parties in the fourth sunset review of the antidumping duty ("AD") orders covering heavy forged hand tools, finished or unfinished, with or without handles ("HFHTs")[1] from the People's Republic of China ("PRC"). No respondent interested party submitted a substantive response. Accordingly, we conducted an expedited (120-day) sunset review of this order. We recommend that you approve the positions we describe in the "Discussion of the Issues" section of this memorandum. Below is a complete list of issues in this sunset review for which we received substantive responses:

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

## II. Background

On February 19, 1991, the Department of Commerce (the "Department") published the notice of the AD orders on HFHTs from the PRC.[2] On July 1, 2016, the Department published the notice of initiation of the fourth sunset review of the *AD Orders*, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the "Act").[3] In July 2016, the Department received a notice of intent

---

[1] There are four orders on HFHTs from the PRC: axes & adzes, bars & wedges, hammers & sledges, and picks & mattocks.

[2] *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) ("*AD Orders*").

[3] *See Initiation of Five-Year ("Sunset") Review*, 81 FR 43185 (July 1, 2016). This notice inadvertently referred to

to participate from two domestic interested parties: 1) AMES True Temper ("AMES")[4]; and 2) Council Tool Company, Inc. ("Council Tool"), within the deadline specified in 19 CFR 351.218(d)(1)(i).[5] Domestic Interested Parties claimed interested party status under section 771(9)(C) of the Act, as manufacturers in the United States of a domestic like product. On August 1, 2016, the Department received complete and adequate substantive responses from Domestic Interested Parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).[6] The Department received no substantive responses from respondent interested parties with respect to the *AD Orders*. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted an expedited sunset review of the *AD Orders*.

## III. Scope of the Orders

The products covered by the *AD Orders* are HFHTs from the PRC, comprising the following classes or kinds of merchandise: (1) hammers and sledges with heads over 1.5 kg (3.33 pounds); (2) bars over 18 inches in length, track tools and wedges; (3) picks and mattocks; and (4) axes, adzes and similar hewing tools. HFHTs 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 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. HFHTs are currently provided for under the following Harmonized Tariff System of the United States ("HTSUS") subheadings: 8205.20.60, 8205.59.30, 8201.30.00, 8201.40.60, and 8205.59.5510. Specifically excluded from the scope are hammers and sledges with heads 1.5 kg. (3.33 pounds) in weight and under, hoes and rakes, and bars 18 inches in length and under.

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the orders is dispositive.

## IV. History of the Orders

This is the fourth sunset review of the *AD Orders*. On January 3, 1991, the Department published its final determination in the less-than-fair-value ("LTFV") investigation of HFHTs from the PRC.[7] On February 19, 1991, following an affirmative injury determination by the

---

this segment as the third review, however, this is the fourth sunset review of these orders.

4 AMES is the successor company to Woodings-Verona Tools Works, the petitioner in the original investigation.

5 *See* Council Tool's July 11, 2016 submission; and AMES' July 18, 2016 submission. Hereafter we have collectively referred to these parties as "Domestic Interested Parties."

6 *See* AMES' August 1, 2016 submission ("AMES' Substantive Response"); Council Tool's August 1, 2016 submission ("Council Tool's Substantive Response").

7 *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*").

International Trade Commission ("ITC"), the Department published the *AD Orders* on HFHTs from the PRC.[8] The Department reported the following dumping margins as the PRC-wide rate in the *Final Determination*: 15.02 percent for axes & adzes, 50.81 percent for picks & mattocks, 31.76 percent for bars & wedges, and 45.42 percent for hammers & sledges.[9]

Since the issuance of the *AD Orders*, the Department has conducted several administrative reviews, a new shipper review, three sunset reviews and several scope rulings. On February 4, 2000, the Department published the final results of the first sunset review of HFHTs for the orders on axes & adzes, and picks & mattocks.[10] On June 2, 2000, the Department published the final results of the first sunset review of HFHTs for the orders on bars & wedges, and hammers & sledges.[11] On August 10, 2000, the Department published the continuation notice pursuant to the first sunset review.[12] On November 7, 2005, the Department published the final results of the second sunset review.[13] On February 16, 2006, the Department published the continuation notice pursuant to the second sunset review.[14] On May 3, 2011, the Department published the final results of the *Third Sunset Review*.[15] On August 22, 2011, the Department published the continuation notice pursuant to the third sunset review.[16] In the first, second and third sunset reviews, the Department found that the likelihood of continued or recurring dumping would occur at the rates established in the original investigation. The *AD Orders* remain in effect for all manufacturers and exporters of HFHTs from the PRC.

## V. <u>Legal Framework</u>

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 a continuation or recurrence of dumping. Sections 752(c)(1)(A) and (B) of the Act provide that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews, and the volume of imports of the subject merchandise for the periods before and after, the issuance of the antidumping duty order.

---

[8] *See AD Orders*.
[9] *Id*.
[10] *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).
[11] *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).
[12] *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).
[13] *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).
[14] *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).
[15] *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*, 76 FR 24856 (May 3, 2011) ("*Third Sunset Review*") and accompanying Issues and Decision Memorandum.
[16] *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 Orders*, 71 FR 8276 (August 22, 2011).

In accordance with the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act, specifically the Statement of Administrative Action, H.R. Doc. 103-316, vol. 1 (1994) (*SAA*), the House Report, H. Rep. No. 103-826, pt. 1 (1994) ("House Report"), and the Senate Report, S. Rep. No. 103-412 (1994) ("Senate Report"), the Department's likelihood determinations will be made on an order-wide, rather than company-specific, basis.[17] In addition, the Department normally will determine that revocation of an antidumping duty 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 issuance of the order; or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly.[18] In addition, as a base period of import volume comparison, it is the Department's practice to use the one-year period immediately preceding the initiation of the investigation, rather than the level of pre-order import volumes, as the initiation of an investigation may dampen import volumes and, thus, skew comparison.[19] Also, when analyzing import volumes for second and subsequent sunset reviews, the Department's practice is to compare import volumes during the year preceding initiation of the underlying investigation to import volumes since the issuance of the last continuation notice.[20]

Further, 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 order were revoked. Generally, the Department selects the margin from the final determination in the original investigation, as this is the only calculated rate that reflects the behavior of exporters without the discipline of an order in place.[21] However, in certain circumstances, a more recently calculated rate may be more appropriate (*e.g.*, "if dumping margins have declined over the life of an order and imports have remained steady or increased, {the Department} may conclude that exporters are likely to continue dumping at the lower rates found in a more recent review").[22]

In February 2012, the Department announced it was modifying its practice in sunset reviews such that it will not rely on weighted-average dumping margins that were calculated using the methodology found to be World Trade Organization (WTO)-inconsistent.[23] In the *Final*

---

[17] *See SAA* at 879 and House Report at 56.
[18] *See SAA* at 889-90, House Report at 63-64, and Senate Report at 52 for a description of our practice; *see also Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871, 18872 (April 16, 1998) ("*Sunset Policy Bulletin*").
[19] *See, e.g.*, *Stainless Steel Bar from Germany; Final Results of the Sunset Review of the Antidumping Duty Order*, 72 FR 56985 (October 5, 2007) and accompanying Issues and Decision Memorandum at Comment 1.
[20] *See Ferrovanadium from the People's Republic of China and the Republic of South Africa: Final Results of the Expedited Second Sunset Reviews of the Antidumping Duty Orders*, 79 FR 14216 (March 13, 2014) and accompanying Issues and Decision Memorandum.
[21] *See SAA* at 890; and *Sunset Policy Bulletin* at section II.B.1. *See also, e.g.*, *Persulfates from the People's Republic of China: Notice of Final Results of Expedited Second Sunset Review of Antidumping Duty Order*, 73 FR 11868 (March 5, 2008) ("*Persulfates from the PRC*") and accompanying Issues and Decision Memorandum at Comment 2.
[22] *See SAA* at 890-91; and *Sunset Policy Bulletin* at section II.B.2.
[23] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in*

*Modification for Reviews*, the Department stated that "only in the most extraordinary circumstances" would it rely on margins other than those calculated and published in prior determinations.[24] The Department further stated that apart from the "most extraordinary circumstances," it did not anticipate needing to recalculate dumping margins in the vast majority of future sunset determinations and, instead would "limit its reliance to margins determined or applied during the five-year sunset period that were not determined in a manner found to be WTO-inconsistent" and that it "may also rely on past dumping margins that were not affected by the WTO-inconsistent methodology, such as dumping margins recalculated pursuant to Section 129 proceedings, dumping margins determined based on the use of total adverse facts available, and dumping margins where no offsets were denied because all comparison results were positive."[25]

Finally, pursuant to section 752(c)(4)(A) of the Act, a dumping margin of zero or *de minimis* shall not by itself require the Department to determine that revocation of an antidumping duty order would not be likely to lead to a continuation or recurrence of sales at LTFV.[26]

## VI. Discussion of the Issues

### 1. *Likelihood of Continuation or Recurrence of Dumping*

Domestic Interested Parties argue that revocation of the *AD Orders* would lead to increased or recurring sales at LTFV of HFHTs in the United States market. Domestic Interested Parties provided data that indicates imports of subject merchandise fluctuated after the issuance of the *AD Orders*, and are currently above pre-investigation levels.[27] Domestic Interested Parties allege 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.[28] Domestic Interested Parties note that the Department has twice determined that respondents perpetrated "agent" schemes (*i.e.*, an invoice selling scheme whereby respondents with low margins would sell their invoices to companies with higher margins) to circumvent duties on HFHTs, and evade the payment of AD duties.[29] Domestic Interested Parties argue that despite the existence of the current margins in excess of *de minimis* levels, PRC producers continue to sell HFHTs at LTFV.[30]

---

*Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101, 8103 (February 14, 2012) (*Final Modification for Reviews*).

[24] *Id*.

[25] *Id*.

[26] *See Folding Gift Boxes from the People's Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order*, 72 FR 16765 (April 5, 2007) and accompanying Issues and Decision Memorandum at Comment 1.

[27] *See* AMES' Substantive Response at Exhibit 1; Council Tool's Substantive Response at Attachment II.

[28] *See*, *e.g.*, Council Tool's Substantive Response at Attachment I.

[29] *See*, *e.g.*, *Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles from the People's Republic of China: Final Results of Antidumping Duty Administrative Reviews, and Final Rescission and Partial Rescission of Antidumping Duty Administrative Reviews,* 71 FR 54269 (September 14, 2006) and accompanying Issues and Decision Memorandum at Comment 1.

[30] *See*, *e.g.*, Council Tool's Substantive Response at Attachment I.

**Department's Position:** As explained in the "Legal Framework" section above, the Department's determinations of likelihood will be made on an order-wide basis.[31] In addition, the Department normally will determine that revocation of an antidumping duty 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.[32]

Additionally, when determining whether revocation of the order would be likely to lead to continuation of dumping, sections 752(c)(1)(A) and (B) of the Act instruct the Department to consider: (1) the weighted-average dumping margins determined in the investigation and subsequent reviews; and (2) the volume of imports of the subject merchandise for the period before and after the issuance of the antidumping duty order. According to the *SAA*, "{d}eclining import volumes accompanied by the continued existence of dumping margins after the issuance of an order may provide a strong indication that, absent an order, dumping would be likely to continue, because the evidence would indicate that the exporter needs to dump to sell at pre-order volumes."[33]

Pursuant to section 752(c)(1)(A) of the Act, the Department first considered the weighted-average dumping margins determined in the investigation and any subsequent reviews. As discussed above and in the *Final Modification for Reviews*, the Department has modified its practice in sunset reviews, such that it does not rely on weighted-average dumping margins that are calculated using the "zeroing" methodology found to be WTO-inconsistent. Accordingly, the Department reviewed its official records to establish whether the dumping margins determined in the LTFV investigation of the *AD Orders* were calculated using zeroing. Based upon the review of the record, the Department found that, in the *Final Determination*, the mandatory respondents and PRC-wide entity failed to respond to the best of their abilities, and as "best information available" (the precursor to adverse facts available) were assigned the highest dumping margins, with some adjustments, found in the petition, specifically 15.02 percent for axes & adzes, 50.81 percent for picks & mattocks, 31.76 percent for bars & wedges, and 45.42 percent for hammers & sledges.[34] These dumping margins were based on the dumping margins for each order found in the petition, and therefore, did not involve zeroing. Accordingly, dumping margins and cash deposit rates above *de minimis* levels remain in effect for PRC companies. The PRC-wide entity rates above, therefore, provide the best evidence of dumping behavior of PRC companies and there is no evidence that indicates dumping has ceased.

Separately, pursuant to section 752(c)(1)(B) of the Act, the Department considered the volume of imports of the subject merchandise for the period before and after the issuance of the *AD Orders*.

---

[31] *See SAA* at 879 and House Report at 56.
[32] *See SAA* at 889-90, House Report at 63-64, and Senate Report at 52; *see also Sunset Policy Bulletin*, 63 FR at 18872.
[33] *See SAA* at 889.
[34] *See Final Determination.*

Specifically, we reviewed the import data on the record which reflects imports of HFHTs from the PRC for the period from 1989 through 2016, which is based on data collected by the U.S. Census Bureau and available through the ITC website.[35] This data is acceptable for our analysis, and the Department has relied on such information in past proceedings.[36] We find that record evidence shows that imports of PRC HFHTs are higher in the last five years when compared to pre-initiation levels.

The Department also compared the volume of imports for the one-year period preceding the initiation of the investigation to the volume of imports during the period of this sunset review. In comparing these import volumes, we find that since the issuance of the *AD Orders*, import volumes of PRC HFHTs into the United States have fluctuated, but are currently above pre-investigation levels. Specifically, the Department has determined that imports of PRC HFHTs have been at levels higher than the year immediately preceding the initiation of the LTFV investigation (*i.e.*, 1989).[37] We note that import levels are higher on an order by order basis, and current overall imports of PRC HFHTs are approximately eight times higher than 1989 levels.[38]

Given the increase in imports despite the above *de minimis* dumping margins that remain in effect, pursuant to section 752(c)(1) of the Act, the Department determines that dumping would likely continue or recur if the *AD Orders* were revoked.

### 2. *Magnitude of the Margins Likely to Prevail*

Council Tool argues that the magnitudes of the margins of dumping likely to prevail are the margins determined to exist in the original investigation.[39] AMES contends that the magnitude of the margins of dumping likely to prevail are the margins applicable in the 15th administrative review, or in the alternative, the margins determined to exist in the original investigation.[40]

**Department's Position:** Pursuant to section 752(c)(3) of the Act, the administering authority shall provide to the ITC the magnitude of the margin of dumping likely to prevail if the order were revoked. Normally, the Department will select a weighted-average dumping margin from the LTFV investigation to report to the ITC.[41] The Department's preference for selecting a margin from the LTFV 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.

---

35 *See*, *e.g.*, Council Tool's Substantive Response at Attachment II.

36 *See*, *e.g.*, *Circular Welded Carbon-Quality Steel Line Pipe from the People's Republic of China: Final Results of the Expedited First Sunset Review of the Antidumping Duty Order*, 79 FR 19052 (April 7, 2014) and accompanying Issues and Decision Memorandum at 5.

37 *See* Council Tool's Substantive Response at Attachment II; and AMES' Substantive Response at Exhibit I.

38 *Id*.

39 *See* Council Tool's Substantive Response at 16-18.

40 *See* AMES' Substantive Response at 20-23.

41 *See SAA* at 890; *see also, e.g., Persulfates from the PRC*, and accompanying Issues and Decision Memorandum at Comment 2.

In prior sunset reviews of the *AD Orders*, we determined that it was appropriate to provide the ITC with the margins from the LTFV investigation for the magnitude of the margin likely to prevail because these margins best reflected the behavior of manufacturers, producers, and exporters without the discipline of an order in place. As indicated in the "Legal Framework" section above, consistent with the *Final Modification for Reviews*, the Department's current practice is not to rely on weighted-average dumping margins calculated using the zeroing methodology that was found to be WTO-inconsistent. The rates applied in the LTFV investigation were based on rates from the petition that did not involve the denial of offsets. Accordingly, the Department will report to the ITC the rates as indicated in the "Final Results of Review" section below.

Furthermore, we disagree with AMES' argument that the Department use rates calculated in a later review. AMES made the identical argument in the *Third Sunset Review* and we continue to find that there is no company-specific record evidence that PRC companies have increased dumping in order to gain or maintain market share or increase import volumes.[42] In addition, there is no record evidence that imports of the subject merchandise have increased substantially for a specific company over the life of the orders.[43] In conclusion, and consistent with the *Third Sunset Review*, 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.

## VII. Final Results of Review

We determine that revocation of the *AD Orders* would likely lead to continuation or recurrence of dumping. We also determine that the magnitude of the dumping margins likely to prevail would be weighted-average dumping margins up to those listed in the chart below, for each HFHT Order:

| HFHT Order | Weighted-Average Margin (Percent) |
|---|---|
| Axes/Adzes | 15.02 |
| Picks/Mattocks | 50.81 |
| Bars/Wedges | 31.76 |
| Hammers/Sledges | 45.42 |

[42] *See Third Sunset Review* at "Magnitude of the Margins Likely to Prevail."
[43] *Id.*

## VIII. 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 this sunset review in the *Federal Register* and notify the ITC of our determination.

✓ Agree      ______ Disagree

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

21 October 2016
Date