

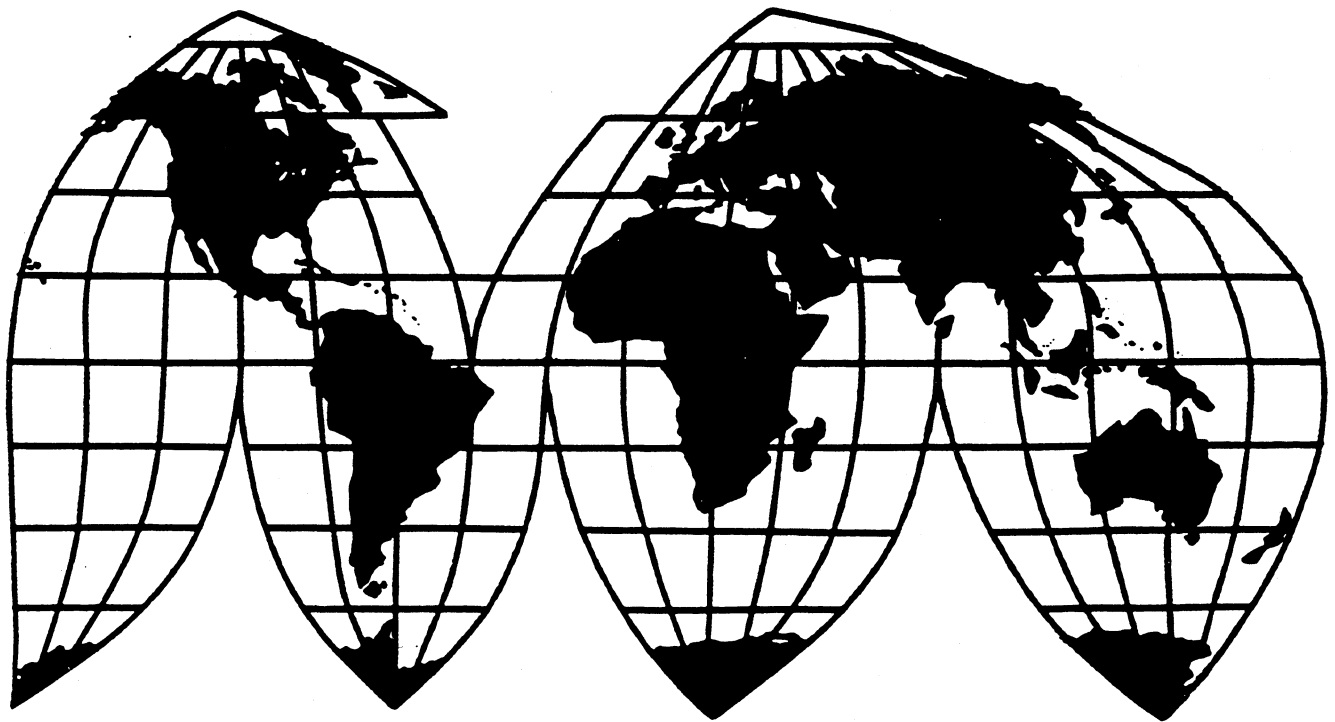
Heavy Forged Handtools From The People's Republic of China

Investigation No. 731-TA-457 (Remand)

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U.S. International Trade Commission



Washington, DC 20436

U.S. International Trade Commission

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In February 1991, the U.S. International Trade Commission determined that industries in the United States were materially injured by reason of imports from the People's Republic of China of the following heavy forged handtools that were found by the U.S. Department of Commerce to be sold in the United States at less than fair value: striking tools, bar tools, digging tools, and hewing tools (USITC Publication No. 2357, February 1991). The Commission's determinations were subsequently challenged before the Court of International Trade (CIT) and, on December 1, 1992, the CIT remanded the Commission's determination concerning hewing tools (*Tianjin Machinery Import & Export Corporation v. United States of America and the United States International Trade Commission*, Slip Op.92-214 (Court No. 91-03-00222)). The attached views were submitted to the CIT on January 15, 1993 in response to the remand (note that the two appendices to the views referenced in footnote 5 are not reproduced here; that material can be found in USITC Publication 2376).

RESPONSE TO THE COURT'S REMAND INQUIRY

In the Judgment and Order issued in Tianjin Machinery Import & Export Corporation v. United States of America and the United States International Trade Commission,¹ this Court directed the Commission to provide an explanation of any determination, with respect to the hewing tool industry, "regarding petitioner's standing to bring the Petition on behalf of the domestic industry, in addition to the underlying reasons for any such determination, in accordance with the views expressed in the opinion." The Court's decision resulted from an appeal from the Commission's four affirmative determinations in Heavy Forged Handtools from the People's Republic of China.² The remand instructions, however, concern only the Commission's decision not to terminate the investigation with respect to hewing tools.

Three Commissioners voted in the affirmative in that determination: Chairman Newquist, Commissioner Rohr, and former Commissioner Lodwick. Although only two of those Commissioners remain on the Commission, the current Commission is readily able to provide to the Court the requested explanation of the decision by providing the Court the views of the majority that voted in the original investigation.

The original Commission determination explained the Commission's decision not to make a determination regarding petitioner's standing to bring the Petition on behalf of the domestic hewing tool industry as follows: "[w]e note that Congress gave the Department of Commerce the statutory authority to make standing determinations."³ The determination also noted that the Commission had considered the opposition of a company representing a majority of the hewing tool industry in making its material injury determination. The determination concluded: "[d]espite this company's opposition to the petition, however, the other data concerning the hewing tools industry as a whole, the financial data for the producers' overall establishments, and the factors summarized in the preceding paragraph on balance, led us to conclude that the hewing tool industry has suffered material injury."⁴

We understand the Court's remand to require a more detailed explanation for the position of the three Commissioners voting in the affirmative in this determination. It so happens that, two months after the Handtools determination, the same three Commissioners expounded upon the same legal issue in more detail in their views in Gray Portland Cement and Cement Clinker from Japan.^{5 6} Commissioners Lodwick and Newquist discussed why

¹ Slip Op. 92-214 (Court No. 91-03-00222). We note that the slip opinion was inadvertently captioned with the caption from the companion case involving an appeal from the Department of Commerce's determination. (Court No. 91-03-00223).

² USITC Pub. 2357 (February 1991).

³ Id. at 25, n.24.

⁴ Id. at 25.

⁵ Inv. No. 731-TA-461 (Final), USITC Pub. 2376 at 3-13 (April 1991). For the Court's convenience, a copy of the views of Commissioners Lodwick and Newquist is attached as Appendix 1, and a copy of the views of Commissioner Rohr is attached as Appendix 2. The views expressed in the determination are incorporated herein by reference for purposes of responding to the Court's remand instructions.

Because both the Handtools and Cement investigations included the views of the same three Commissioners on the same legal issue of standing, the Commission believes it is both appropriate and helpful for purposes of responding to this remand to refer the Court to the subsequent Cement determination for a more complete explanation of these Commissioners' views.

⁶ Chairman Newquist and Commissioner Rohr affirm that their views on standing, as expressed in the Cement determination, are wholly applicable to the Handtools determination.

they believed the Commission should defer to Commerce on standing issues and why the "on behalf of" provision is not jurisdictional.⁷ They stated in part:

Our conclusion that respondents' request [to terminate the investigation for lack of standing] must be denied is based on our interpretation of the statute, its legislative history, and decisions from the Commission's reviewing Courts. . . . The statute explicitly grants authority only to Commerce to determine issues of standing in the context of the 20-day sufficiency of the petition determination. . . . [T]he only time that the statute explicitly authorizes the Commission to terminate an investigation on procedural grounds is when a petitioner withdraws a petition.

. . . Even in that situation, however, the statute prohibits the Commission from terminating an investigation prior to a preliminary determination by Commerce. . . . The statute gives the Commission no discretion but to issue specific findings following specified triggering decisions of Commerce within set times.⁸

Commissioner Rohr joined in the views of Commissioners Lodwick and Newquist on this issue.⁹ In doing so, Commissioner Rohr explained, "The Commission has consistently taken the position that, under the statute that governs antidumping and countervailing duty investigations . . . it does not possess the authority to terminate an investigation based on standing issues. It has traditionally dismissed arguments for such termination in summary fashion in footnotes to its opinions."¹⁰ Indeed, this is precisely what Commissioners Lodwick, Rohr and Newquist did in the Handtools determination.

In sum, the views of the Handtools majority concerning the issue of standing were explained more fully by those same Commissioners in the Cement determination. We respectfully submit that this more detailed elaboration is responsive to the Court's remand instructions.

⁷ USITC Pub. 2376 at 3-13.

⁸ Id. at 5-8 (emphasis in original) (footnotes & citations omitted).

⁹ Id. at 45-46.

¹⁰ Id. at 45.

