

FINAL REMAND REDETERMINATION
Gang Yan Diamond Products, Inc. v. United States
Court No. 14-00148; Slip Op. 15-127

FINAL RESULTS OF REDETERMINATION PURSUANT TO COURT REMAND

A. Summary

The Department of Commerce (the Department) prepared these final results of remand redetermination pursuant to the remand order of the U.S. Court of International Trade (CIT or the Court), in *Gang Yan Diamond Products, Inc. v. United States*, Court No. 14-00148, slip op. 15-127 (Ct. Int'l Trade Nov. 9, 2015) (*Remand Order*) and Order (Ct. Int'l Trade Nov. 10, 2015). These remand results concern *Diamond Sawblades and Parts Thereof From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 35723 (June 24, 2014) (*AR3 Final*) covering the period of review November 1, 2011, through October 31, 2012.

The Court has remanded the *AR3 Final* to the Department, stating that the *AR3 Final* “appear{s} anachronistic” when compared with the final results of remand redeterminations for the first and second administrative reviews.¹ In the final results of the first and second reviews the Department granted the ATM Single Entity² a separate rate and determined a calculated

¹ See *Remand Order* at 4.

² The *Remand Order* refers to the ATM Single Entity as the “ATM Entity.” We will continue to refer to the ATM Single Entity herein, consistent with the *AR3 Final*. In the LTFV investigation, we determined that Advanced Technology & Materials Co., Ltd. (AT&M), Beijing Gang Yan Diamond Products Company (BGY), and Yichang HXF Circular Saw Industrial Co., Ltd. (HXF), were affiliated and treated them as a single entity for purposes of calculating an antidumping duty margin (ATM Entity). See *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 71 FR 29303, 29304, 29306-07 (May 22, 2006) (*LTFV Final*). In the first review we considered additional affiliates as part of the ATM Single Entity, referring to the collapsed group as the “ATM Single Entity,” which comprised of AT&M, BGY, HXF, AT&M International Trading Co., Ltd. (ATMI), and Cliff International Ltd. (Cliff). See *Diamond Sawblades and Parts Thereof From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Intent To Rescind Review in Part*, 76 FR 76135 (December 6, 2011), unchanged in *Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of the Antidumping Duty Administrative Review; 2009-2010*, 78 FR 11143, 11144 (February 15, 2013) (*ARI Final*). In the second review we continued to refer to the group designated as the ATM Single

weighted-average dumping margin applicable to the companies constituting the ATM Single Entity.³ On remand in the first and second reviews, in accordance with the Court's analysis in *Advanced Tech 2012*,⁴ the Department determined that the ATM Single Entity was not eligible for a separate rate, and incorporated the calculated weighted-average dumping margin of the ATM Single Entity as an element of the PRC-wide entity when calculating the PRC-wide rate.⁵ In both of these remand redeterminations, the Department calculated a simple average of the pre-existing PRC-wide rate, determined in the less-than-fair-value (LTFV) investigation, 164.09 percent, with the final weighted-average margin calculated for the ATM Single Entity in each review, 0.15 percent for the first review and zero percent in the second review, yielding new PRC-wide rates of 82.12 percent and 82.05 percent, respectively.⁶ The Court has sustained these

Entity in the first review by the same name. See *Diamond Sawblades and Parts Thereof From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2010-2011*, 77 FR 73417 (December 10, 2012) (AR2 Prelim), unchanged in *Diamond Sawblades and Parts Thereof From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 36166 (June 17, 2013) (AR2 Final), as amended in *Diamond Sawblades and Parts Thereof From the People's Republic of China: Amended Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 42930 (July 18, 2013) (AR2 Amended Final). During the period of the second review, HXF changed its name to HXF Saw Co., Ltd. See AR2 Prelim, 77 FR at 73419 n.14, unchanged in AR2 Final. In this review, we continued to refer to the group designated as the ATM Single Entity in the first and second reviews by the same name. See *Diamond Sawblades and Parts Thereof From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 77098, 77099 (December 20, 2013), unchanged in AR3 Final.

³ The final margins for the ATM Single Entity were 0.15 percent in the first review and zero percent in the second review. See AR1 Final, 78 FR at 11145 and AR2 Final, 78 FR at 36167.

⁴ See *Advanced Tech. & Material Co. v. United States*, 885 F. Supp. 2d 1343 (CIT 2012) (*Advanced Tech 2012*).

⁵ See Final Results of Redetermination pursuant to *Diamond Sawblades Manufacturers' Coalition v. United States*, Court No. 13-00078, slip op. 14-50 (Ct. Int'l Trade Apr. 29, 2014), dated April 10, 2015, at 13, and available at <http://enforcement.trade.gov/remands/14-50.pdf>, and Final Remand Redetermination pursuant to *Diamond Sawblades Manufacturers Coalition v. United States*, Court No. 13-00241, slip op. 14-112 (Ct. Int'l Trade Sept. 23, 2014), dated May 18, 2015, at 42, and available at <http://enforcement.trade.gov/remands/14-112.pdf>, respectively.

⁶ *Id.*

final remand redeterminations.⁷ Both of these decisions are on appeal to the U.S. Court of Appeals for the Federal Circuit (CAFC).⁸

In its *Remand Order* the Court explained that in the “first and second administrative review redeterminations, Commerce considered, and successfully defended, that once it was determined that the ATM {Single} Entity was ineligible for a separate rate, the circumstance triggered a ‘review’ of the PRC-wide rate...and that ATM {Single} Entity’s ‘cooperation’ needed to be taken into account in such ‘reviews.’”⁹ Further, the Court determined that this matter requires remand for clarification of “why the determination of the ATM {Single} Entity’s ineligibility for a separate rate did not trigger a similar ‘review’ of the PRC-wide rate, and specifically what Commerce’s policy or practice was at the time, if it was not described in the decision with respect to the results of redetermination of the first administrative review.”¹⁰

B. Background

During the course of litigation concerning the LTFV investigation, we issued a remand redetermination in which, consistent with the Court’s analysis in that case, we decided that the ATM Entity had not demonstrated an absence of *de facto* control by the government of the People’s Republic of China (the PRC), and that the ATM Entity was not entitled to a separate rate.¹¹ The CIT sustained it and the CAFC affirmed the CIT’s decision to sustain it.¹² This

⁷ See *Diamond Sawblades Manufacturers’ Coalition v. United States*, Court No. 13-00078, slip op. 15-105 (Ct. Int’l Trade Sept. 23, 2015), and *Diamond Sawblades Manufacturers’ Coalition v. United States*, Court No. 13-00241, slip op. 15-116 (Ct. Int’l Trade Oct. 21, 2015), respectively.

⁸ See *Diamond Sawblades Manufacturers’ Coalition v. United States*, Court No. 13-00078, Notice of Appeal (November 20, 2015), and *Diamond Sawblades Manufacturers’ Coalition v. United States*, Court No. 13-00241, Notice of Appeal (November 20, 2015).

⁹ See *Remand Order* at 4.

¹⁰ *Id.*, citing *Diamond Sawblades Manufacturers’ Coalition v. United States*, Court No. 13-00078, slip op. 15-105 (Ct. Int’l Trade Sept. 23, 2015), at 11.

¹¹ See Final Results of Redetermination Pursuant to Remand Order in *Advanced Tech 2012*, dated May 6, 2013 (2013 Final Remand Redetermination) and available at <http://enforcement.trade.gov/remands/12-147.pdf>.

denial of separate rate status for the ATM Entity reversed our previous determination in the *LTFV Final* that the ATM Entity had demonstrated an absence of *de facto* control by the government of the PRC.¹³

Following the CAFC's affirmance, and based on facts similar to those present in the LTFV investigation, in the *AR3 Final*, we denied the ATM Single Entity a separate rate because we found the existence of *de facto* government control of the ATM Single Entity.¹⁴ In the *AR3 Final* we applied the existing PRC-wide rate to the ATM Single Entity, 164.09 percent, determined in the LTFV investigation for the PRC-wide entity.¹⁵

C. Analysis

In this review the PRC-wide entity came under review for two similar reasons: (1) 27 non-selected companies which were initiated on did not rebut the presumption of government control; (2) a mandatory respondent, the ATM Single Entity, failed to rebut the presumption of government control in its responses to our original and supplemental questionnaires. These events led us in this review to review the PRC-wide entity¹⁶ and apply the PRC-wide rate from the previous review. Therefore, similar to the first and second reviews, the failure of 27 non-selected companies and the ATM Single Entity to rebut the presumption of government control

¹² See *Advanced Technology & Materials Co. v. United States*, 938 F. Supp. 2d 1342 (Ct. Int'l Trade Oct. 11, 2013) (*Advanced Tech 2013*), *aff'd*, *Advanced Tech. & Materials Co. v. United States*, 2014 U.S. App. LEXIS 20800 (Fed. Cir. Oct. 24, 2014).

¹³ Compare 2013 Final Remand Redetermination with *LTFV Final* unchanged in *Notice of Amended Final Determination of Sales at Less Than Fair Value: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 71 FR 35864 (June 22, 2006) (*LTFV Amended Final*).

¹⁴ As a result of the denial of a separate rate in this redetermination, all members of the ATM Single Entity are a part of the PRC-wide entity. See *AR3 Final* and the accompanying Issues and Decision Memorandum at Comment 1.

¹⁵ See *LTFV Final* unchanged in *LTFV Amended Final*.

¹⁶ Our practice has since been refined with respect to the conditional review of the nonmarket economy (NME) entity. The PRC-wide entity is no longer subject to conditional review. Instead, for the PRC-wide entity to be subject to review, we now require a request for review of the PRC-wide entity. Therefore, the inclusion of initiated companies within the NME entity does not result in a review of the NME entity or in a change of the NME entity rate. See *Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings*, 78 FR 65963 (November 4, 2013).

triggered a review of the PRC-wide entity and we applied the only PRC-wide rate available at that time, 164.09 percent, which was determined in the LTFV investigation.¹⁷

The ATM Single Entity was fully cooperative in this review;¹⁸ however, where the Court sustained the 2013 Final Remand Redetermination, in which the Department determined that the ATM Single Entity was not entitled to a separate rate and, instead, was part of the PRC-wide entity, prior to the preliminary results of this review¹⁹ and because the Department was faced with a similar set of ownership circumstances (compared to those in the LTFV investigation) concerning the ATM Single Entity in this review,²⁰ the Department denied the ATM Single Entity a separate rate in this review.²¹

In the *Initiation Notice*, the Department stated that if any company for which the review was initiated “does not qualify for a separate rate, all other exporters of Diamond Sawblades and Parts Thereof from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.”²² The PRC-wide entity was not found to be non-cooperative in this review, rather, 27 companies for which the review was initiated (other than the ATM Single Entity) did not submit separate rate

¹⁷ See *AR3 Final*, 79 FR at 35725.

¹⁸ The Department issued the original questionnaire on February 25, 2013, and supplemental questionnaires on July 19, 2013, October 25, 2013, and October 29, 2013. The ATM Single Entity responded to the original questionnaire on March 25, 2013, April 24, 2013, and April 30, 2013, and the supplemental questionnaires on August 9, 2013, August 16, 2013, and November 18, 2013.

¹⁹ See *Advanced Tech 2013* which precedes *Diamond Sawblades and Parts Thereof From the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 77098 (December 20, 2013) (*AR3 Prelim*).

²⁰ See Memorandum from Michael Romani to the File, dated June 18, 2014, entitled “Administrative Review of the Antidumping Duty Order on Diamond Sawblades and Parts Thereof from the People’s Republic of China: Final Analysis Memorandum for ATM Single Entity” at 1-2.

²¹ See *AR3 Prelim* and the accompanying Preliminary Decision Memorandum at 9-10 unchanged in *AR3 Final* and the accompanying Issues and Decision Memorandum at Comment 3 (the application of the PRC-wide rate is not adverse facts available because failure to rebut the presumption of government control does not amount to failure to cooperate). See also 2013 Final Remand Redetermination (denying a separate rate to the ATM Entity).

²² See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 77 FR 77017, 77029 n.5 (December 31, 2012) (*Initiation Notice*).

applications or separate rate certifications and the ATM Single Entity failed to qualify for a separate rate, placing the entire PRC-wide entity under review.²³ As a result of the 27 companies' and ATM Single Entity's failure to qualify for a separate rate, "all other exporters of Diamond Sawblades and Parts Thereof from the PRC who have not qualified for a separate rate...are deemed to be covered by this review."²⁴

Because we denied the ATM Single Entity separate rate status in this review, we did not calculate a weighted-average dumping margin for the ATM Single Entity in this review. We applied the existing rate previously determined for the NME entity. When conducting the first and second review remand redeterminations, we modified the NME entity rate to include the previously calculated weighted-average dumping margin for the ATM Single Entity. Namely, for each review period, the ATM Single Entity's weighted-average dumping margin was averaged with the previous PRC-wide rate (from the LTFV investigation) because neither the ATM Single Entity, nor any element of the PRC-wide entity, failed to cooperate in those reviews and we had previously calculated a final weighted-average margin for the ATM Single Entity in each period of review. In this review, the situation is materially different. Unlike in the *AR1 Final* and the *AR2 Final*, in the *AR3 Final*, we determined that the ATM Single Entity was not eligible for a separate rate in this review and, thus, we did not calculate a weighted-average dumping margin for it. Therefore, we do not have a contemporaneous weighted-average dumping margin based on the experience of the ATM Single Entity to include in the PRC-wide rate to reflect the experience of the ATM Single Entity as part of the PRC-wide entity. For this reason, in these final results of redetermination, we are assigning the rate determined for the

²³ See, e.g., *Honey From the People's Republic of China: Preliminary Results of Review*, 77 FR 46699, 46700 (August 6, 2012), unchanged in *Administrative Review of Honey From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 77 FR 70417 (November 26, 2012).

²⁴ See *Initiation Notice*, 77 FR at 77029 n 5.

PRC-wide entity in the remand redetermination of the prior segment of this proceeding, *i.e.*, the remand redetermination of the second review of this order.²⁵ While not determinative of our decision to apply this rate, we note that this rate includes the experience of a fully cooperative element of the PRC-wide entity, in this case, the ATM Single Entity, because the 82.05 percent PRC-wide rate determined in the remand redetermination of the second review, which has been affirmed by the CIT, includes the experience of the same fully cooperative element of the PRC-wide entity in that review (again the ATM Single Entity).

D. Interested Party Comments

On January 14, 2016, we released the draft results of the remand redetermination and invited comments from interested parties. We received no comments from interested parties.

E. Final Results of Redetermination

Pursuant to the *Remand Order*, we have reconsidered our determination as described above and are applying the PRC-wide rate, 82.05 percent, as determined for the second review upon remand, as affirmed by the Court, to the PRC-wide entity, including the ATM Single Entity and its individual members, in this review.



Paul Piquado
Assistant Secretary
for Enforcement and Compliance



Date

²⁵ See, e.g., *Small Diameter Graphite Electrodes From the People's Republic of China: Preliminary Results and Partial Rescission of Administrative Review*, 77 F 13284, 13289 (March 6, 2012), unchanged in *Small Diameter Graphite Electrodes From the People's Republic of China: Final Results of the Antidumping Duty Administrative Review*, 77 FR 40854 (July 11, 2012).