

**Final Results of Redetermination Pursuant to Remand Order**  
**Diamond Sawblades and Parts Thereof from the People’s Republic of China**  
*Advanced Technology & Materials Co., Ltd., Beijing Gang Yan Diamond Products Company,*  
*and Gang Yan Diamond Products, Inc. with Bosun Tools Group Co. Ltd. v. United States and*  
*Diamond Sawblades Manufacturers Coalition, Weihai Xiangguang Mechanical Industrial Co.,*  
*Ltd., and Qingdao Shinhan Diamond Industrial Co., Ltd., Consol.*  
Court No. 09-00511, Slip op. 12-147 (CIT2012)

**SUMMARY**

The Department of Commerce (“Department”) has prepared these final results of redetermination pursuant to the U.S. Court of International Trade’s (“Court”) remand order in *Advanced Technology & Materials Co., Ltd., Beijing Gang Yan Diamond Products Company, and Gang Yan Diamond Products, Inc. with Bosun Tools Group Co. Ltd. v. United States and Diamond Sawblades Manufacturers Coalition, Weihai Xiangguang Mechanical Industrial Co., Ltd., and Qingdao Shinhan Diamond Industrial Co., Ltd.*, Slip Op. 12-147 (November 30, 2012). These final results address the Department’s final less-than-fair-value determination issued in the antidumping duty investigation of diamond sawblades and parts thereof (“diamond sawblades”) from the People’s Republic of China (“PRC”),<sup>1</sup> as well as the Department’s first remand redetermination.<sup>2</sup> In its slip opinion, the Court remanded two aspects of the Department’s *First Remand Redetermination*. First, the Court found that the Department’s determination to grant

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<sup>1</sup> 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 (May 22, 2006) (“*Final Determination*”).

<sup>2</sup> See *Final Results of Redetermination Pursuant to Remand Order in Advanced Technology & Materials Co., Ltd., Beijing Gang Yan Diamond Products Company, and Gang Yan Diamond Products, Inc. with Bosun Tools Group Co. Ltd. v. United States and Diamond Sawblades Manufacturers Coalition, Weihai Xiangguang Mechanical Industrial Co., Ltd., and Qingdao Shinhan Diamond Industrial Co., Ltd.*, dated March 28, 2012 (“*First Remand Redetermination*”).

the Advanced Technology & Materials Co., Ltd. (“AT&M”) Entity<sup>3</sup> (“respondent”) a separate rate, as challenged by the Diamond Sawblades Manufacturers Coalition (“Petitioner”), was not supported by substantial evidence.<sup>4</sup> Second, the Court remanded the Department’s reevaluation of the surrogate value (“SV”) for 30 CrMo steel plate used to make diamond sawblade cores, for further explanation or reconsideration.<sup>5</sup>

## **I. Separate-Rate Status for the AT&M Entity**

### **Background**

In vacating the Department’s separate rates determination for the AT&M Entity, the Court held that it could not “sustain the remand results on the bases articulated by Commerce” because the Department had “failed to consider important aspects of the problem” and “offered explanations that run counter to the evidence before it.”<sup>6</sup> The Court then described its concerns with the explanation the Department had provided for its separate rates determination in the *First Remand Redetermination*. In summary, the Court addressed: (1) the concept of “ownership” of separate rate applicants; (2) the three Chinese laws and regulations discussed in the *First Remand Redetermination*; (3) the factual bases for the Department’s analysis of the AT&M Entity; and (4) the separate rate test, the relationship between *de jure* and *de facto* analyses, and specific issues identified in the Court’s order. With respect to these concerns, the Court remanded to the

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<sup>3</sup> Although the original respondent was Beijing Gang Yan Diamond Products Company (“BGY”), during the course of the underlying investigation it came to the Department’s attention that this respondent was affiliated with AT&M, which was also part owner of another exporter of diamond sawblades. See BGY’s response to the Department’s supplemental section A questionnaire, dated September 20, 2005. We found all three companies to be affiliated and collapsed them as a single entity, the AT&M Entity. See Memorandum to the File from Anya Naschak: Affiliation and Treatment as a Single Entity of Beijing Gang Yan Diamond Product Company, Advanced Technology & Materials Co., Ltd., and Yichang HXF Circular Saw Industrial Co., Ltd.; Affiliation of Gang Yan Diamond Products, Inc. and Beijing Gang Yan Diamond Product Company; and Affiliation of Gang Yan Diamond Products, Inc., SANC Materials, Inc., and Cliff (Tianjin) International, Ltd., dated December 20, 2005 (“Collapsing Memorandum”). The AT&M Entity includes: AT&M, BGY, and Yichang HXF Circular Saw Industrial Co., Ltd. (“Yichang HXF”).

<sup>4</sup> See Slip Op. at 3-32.

<sup>5</sup> See Slip Op. at 32-37.

<sup>6</sup> See Slip Op. at 7.

Department for clarification of certain terms, resolution of certain perceived inconsistencies, and reconsideration of certain evidence. The Court concluded: “As to what that implies for purposes of remand, no opinion is here expressed;” the Court “simply seeks to discern the reasonableness of a determination, and the wisdom to do so.”<sup>7</sup> In compliance with the Court’s order, we present our analysis below.<sup>8</sup>

### **Court’s Analysis of Ownership**

The Court began its analysis by observing that CISRI’s<sup>9</sup> ownership of AT&M should be considered relevant, despite the Department’s long-standing practice of finding that corporate form may insulate a company from government control.<sup>10</sup> The Court warned that such a tradition “may indicate ossification, undeserving of deference.”<sup>11</sup> The Court agreed with the Department that government ownership is not dispositive of control, but that corporate form *alone* cannot be the whole proof that there is a *de jure* absence of control.<sup>12</sup>

### **The Department’s Analysis of Ownership**

In response to and consistent with the Court’s analysis of ownership, which is summarized above, the Department finds that ownership is relevant to the separate rates analysis to the extent that ownership, as well as the degree of ownership, affects *de facto* control. The relevance of ownership to our determination in this remand is discussed in more detail below in the section titled “The Department’s Analysis of the AT&M Entity.”

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<sup>7</sup> See Slip Op. at 32.

<sup>8</sup> The Department is respectfully conducting this remand under protest with respect to the separate rate determination. See *Viraj Group, Ltd. v. United States*, 343 F.3d 1371 (Fed. Cir. 2003).

<sup>9</sup> CISRI is the Central Iron & Steel Research Institute.

<sup>10</sup> See Slip Op. at 8-9.

<sup>11</sup> See *id.*

<sup>12</sup> See Slip Op. at 9 (emphasis added).

## Court's Analysis of Chinese Law

The Court addressed the following laws and regulations: the PRC Interim Regulations, the Company Law, and the Code of Corporate Governance.

With regard to the Interim Regulations, the Court held that the Department incorrectly treated the implementation of the Interim Regulations as a form-over-substance change in the law and failed to recognize that these regulations were an “obvious declaration of re-centralized *de jure* control.”<sup>13</sup> The Court observed that the Interim Regulations require that companies “shall accept” the supervision and administration of the State-owned Assets Supervision and Administration Commission (“SASAC”) and that SASAC can hire or fire individuals involved with these companies.<sup>14</sup> Noting the potential for SASAC to influence CISRI, the Court also observed that the Interim Regulations will trump CISRI’s articles of association if the two conflict and that CISRI cannot be considered simply a passive investor in AT&M.<sup>15</sup>

With regard to the Company Law, the Court held that the “Company Law appears neutral,” and that it was unclear how a company’s corporate form could demonstrate the absence of government control because the government could control the company through traditional corporate control.<sup>16</sup> The Court held that “‘government control’ in the context of the separate rate test appears to be a fuzzy concept at least to this court, since a ‘degree’ of it can obviously be traced from the controlling shareholder, to the board, to the general manager, and so on along the chain to ‘day-to-day decisions of export operations.’”<sup>17</sup> The Court concluded: “To summarize: given that the separate rate test factors are not facially restricted to obvious ‘direct’ control of

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<sup>13</sup> See Slip Op. at 11.

<sup>14</sup> See *id.* SASAC, which is a PRC-government agency, is tasked with, *inter alia*, the responsibilities of the investor, as specified in the Company Law, with regard to state-owned enterprises.

<sup>15</sup> See Slip Op. at 11-13.

<sup>16</sup> See Slip Op. at 13-19.

<sup>17</sup> See Slip Op. at 18.

export pricing . . . the court, as mentioned, continues to be mystified as to why Commerce reflexively interprets the Company Law to *preclude* the PRC Government, *de jure*, from lawful control, *de facto*, through ownership of a company including its export operations.”<sup>18</sup>

With regard to the Code of Corporate Governance, the Court held that the relevant provisions “reveal little to an inquiry into ‘governmental control’ in the running of a company including its export operations,” and that it could not “understand how Commerce interprets these provisions to curtail in any manner a controlling shareholder’s *de jure* control of a company.”<sup>19</sup>

In sum, the Court observed that these laws did not demonstrate an absence of *de jure* control, but rather enabled government control of these companies. The Court held that, at most, these laws were neutral on the issue of control.

### **The Department’s Analysis of Relevant Chinese Laws and Regulations**

The Chinese laws and regulations at issue provide a framework for various corporate entities to form and operate at some distance from the central government.<sup>20</sup> While the Interim Regulations (SASAC law) also indicate the existence of some degree of government control, the Department finds that the overall legal environment is permissive of individual firms maintaining independent operations. This is consistent with how the Department has applied the separate rate test.

In response to and consistent with the Court’s analysis of the relevant Chinese laws and regulations, the Department finds that these Chinese laws and regulations are not dispositive with regard to control. In the Department’s experience applying the separate rate test, the *de jure*

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<sup>18</sup> See Slip Op. at 18-19 (emphasis in original).

<sup>19</sup> See Slip Op. at 21, 19.

<sup>20</sup> As noted by the Court, the extent to which a company may operate independently from the central government is not clear from the laws and regulations themselves. Therefore, this question, in the context of the Department’s separate rate test, is the focus of the *de facto* analysis.

factors are not overridingly indicative of the absence of control in the typical case, but rather they demonstrate an ability on the part of the exporter to control its own commercial decision-making. In large part, the laws and regulations that the Department has examined over the years, such as the laws discussed above, indicate that a certain level of control has devolved in that the commercial decision-making can lie with the various corporate entities operating under these laws and regulations, which in turn, merits an analysis of the record evidence to ensure that there is an absence of *de facto* aspects of government control. This is supported by our findings over the years that numerous Chinese respondents operating under such laws also maintain *de facto* control over their export functions. These situations where parties are found to be entitled to a separate rate are, however, based on the individual facts with respect to each such party. Because of the centralized control inherent in the PRC's status as a non-market economy ("NME") country,<sup>21</sup> we presume that decision making of an enterprise in an NME country is under a form of centralized government control (whether at the central, provincial, or local level). Nevertheless, the Company Law and other laws and regulations appear, as the Court observed, similar to market concepts of corporate governance.<sup>22</sup> Thus, these laws demonstrate that, within the PRC's NME, distance can exist between decisions made at the central government level and decisions made at the firm level with respect to exports. Thus, while the PRC remains an NME, the separate rate test recognizes that individual firms may demonstrate autonomy in setting export prices.<sup>23</sup>

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<sup>21</sup> See section 771(18)(A) of the Tariff Act of 1930, as amended ("Act") ("The term 'nonmarket economy country' means any foreign country that the administering authority determines does not operate on market principles of cost or pricing structures, so that sales of merchandise in such country do not reflect the fair value of the merchandise."); see also section 771(18)(C)(i) of the Act ("Any determination that a foreign country is a nonmarket economy country shall remain in effect until revoked by the administering authority.").

<sup>22</sup> See Slip Op. at 18, n.11.

<sup>23</sup> See section 771(18)(D) of the Act.

The Department agrees that these corporate forms and the oversight permitted by these laws and regulations create the potential for (but, in and of themselves, do not demonstrate the clear existence of) government control to be passed through to the firm level. On remand here, we have undertaken further analyses of certain *de facto* criteria for which the Court questioned the potential for government influence on making decisions. The Department has performed further analysis to determine how ownership affects *de facto* control. Where a *de facto* analysis demonstrates that the government control enabled by the Chinese laws and regulations is applied to the company under consideration (and not simply potential), the Department may conclude that a company is not eligible for a separate rate.

### **Court's Analysis of the AT&M Entity**

The Court observed that the *First Remand Redetermination* made unclear the distinction between *de jure* and *de facto* analyses, and that the Department had conflated the two concepts.<sup>24</sup> However, the Court noted that, “{a}part from *de jure*, the overriding question is whether there is *de facto* governmental control over export operations.”<sup>25</sup> The Court held that the Department’s analysis of *de facto* control over AT&M was inconclusive and not based on substantial evidence, in particular because the Department only analyzed whether CISRI directly controlled AT&M’s board but left “unclear whether the ‘independent’ directors are free of such government control *in toto*.”<sup>26</sup> Further, the Court held that the Department provided no “corroboration of ‘independence’ from ‘government control’ of the five ‘non-CISRI’ directors. Their independence seems assumed.”<sup>27</sup> The Court concluded that if all Chinese entities, including board members, “are properly presumed subject to government control, directly or indirectly,

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<sup>24</sup> See Slip Op. at 21-22.

<sup>25</sup> See Slip Op. at 23.

<sup>26</sup> See Slip Op. at 21-25.

<sup>27</sup> See Slip Op. at 23-24.

then true independence and autonomy remain in doubt until proven otherwise. If they are not so presumed, then the presumption of state control is without purpose or application. Examination of subjugation, therefore, ought to have been a necessary extension of any inquiry into ‘governmental control,’ a question not to be conflated with any *de jure* directorial obligations.”<sup>28</sup> Finally, the Court remanded to the Department to address the degree of interrelated finance between AT&M and CISRI in the context of the presumption of state control.<sup>29</sup>

### **The Department’s Analysis of the AT&M Entity**

In response to and consistent with the Court’s analysis of the AT&M Entity, the Department recognizes that record evidence shows the following. First, SASAC owned 100 percent of the shares in CISRI. Additionally, CISRI held a majority share in AT&M at the outset of the period of investigation (“POI”) (CISRI’s ownership share changed to slightly under 50 percent during the POI, albeit CISRI remained by far the largest shareholder), and was the only shareholder able to nominate candidates for AT&M’s board of directors. Because CISRI was the largest shareholder of AT&M and was the only shareholder able to nominate candidates to the board of directors, this demonstrates that it had the capacity to influence AT&M’s affairs. As an initial matter, therefore, consistent with the Court’s analysis, given that CISRI was wholly-owned by SASAC, government control had the potential to pass from SASAC through to the AT&M Entity via CISRI and the question then must necessarily turn to whether this potential is exercised here.

As noted above, the record in this case shows that CISRI placed four of its senior officials (its director and three vice directors) on AT&M’s board.<sup>30</sup> Moreover, the record shows

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<sup>28</sup> See Slip Op. at 25.

<sup>29</sup> See Slip Op. at 29.

<sup>30</sup> See the AT&M Entity’s January 26, 2006, Supplemental Questionnaire Response at Exhibit SQ4-2.



that these four board members were active in the selection of AT&M's management,<sup>31</sup> which, as discussed in the AT&M Separate Rate Analysis Memo, raises the question about government involvement in the selection of management, as autonomy in selecting management is one of the explicit *de facto* criteria.<sup>32</sup> As to the five AT&M board members that were not CISRI officials, all were nonetheless nominated by CISRI, it being the only shareholder with the right to do so. In addition, one of these five board members (the vice chairman) was in fact AT&M's own president, and CISRI was involved in his selection for that position. Lastly, AT&M's President and Vice Chairman of the Board was the Chairman of the Board and legal representative of BGY, which is important because BGY was the primary producer and exporter of subject merchandise within the AT&M Entity.<sup>33</sup>

The above facts and considerations are relevant as to what may constitute evidence of *de facto* government control of export functions, specifically regarding whether the respondent has autonomy from the government in making decisions regarding the selection of management. Here, as we have described above (and as discussed in more detail in the AT&M Separate Rate Analysis Memo), CISRI, which is 100 percent SASAC-owned, exerted influence over the selection of AT&M's management. Thus, record evidence demonstrates that AT&M did not choose its own management autonomously. Therefore, we find that the AT&M Entity is part of the PRC-wide entity and does not qualify for a separate rate.

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<sup>31</sup> See BGY's submission titled "Diamond Sawblades and Parts Thereof from China – Section A Supplemental Response," dated September 20, 2005, at Exhibit SA-6.

<sup>32</sup> For the specific details regarding how CISRI is involved in the selection of management for AT&M, see the memorandum "Information Regarding CISRI's Involvement in the Selection of AT&M's Management," dated April 2, 2013 ("AT&M Separate Rate Analysis Memo").

<sup>33</sup> See BGY's submission titled "Diamond Sawblades and Parts Thereof from China – Section A Supplemental Response," dated September 20, 2005; see also BGY's submission titled "Diamond Sawblades and Parts Thereof from China – Supplemental Questionnaire Response," dated December 5, 2005; see also Memorandum to the File from James Doyle *et al.* on the subject of Verification of the Sales and Factors Response of Beijing Gang Yan Diamond Product Company in the Antidumping Duty Investigation on Diamond Sawblades and Parts Thereof from the People's Republic of China, dated March 27, 2006.

With respect to the reconsideration of the degree of interrelated finance, the Court notes that, among other things, the separate rate test focuses on controls over the decision-making process on export-related investment, and that due to the fungible nature of money, this implicates profits and losses.<sup>34</sup> Nonetheless, the record holds little evidence as to how interrelated finances between AT&M and CISRI influenced export functions. While what evidence there is on the record regarding the interrelated finances supports denying the AT&M Entity a separate rate, absent the finding on management selection, it would not be sufficient for such a determination.

### **Court's Analysis of the Separate Rate Test and Court's Remand Order**

Finally, the Court held that the Department's explanation in the *First Remand Redetermination* that the separate rate test should focus on the "degree" to which export activities are "controlled" should be rejected because "{u}nfortunately, this does not clarify."<sup>35</sup> Instead, the Court held that the Department would need to explain what evidence would be needed to demonstrate that "the PRC Government (including any agent thereof) did *not* 'set' (however defined) the price of diamond sawblades exported by AT&M."<sup>36</sup> The Court explained that, as an example, "{t}he obvious instance of governmental control of price setting would be direct regulatory approval of a particular export price, but to what extent does the inquiry also concern governmental 'influence' in what might otherwise appear to be the company's decision?"<sup>37</sup> The Court clarified: "The question . . . better phrased as follows: what is the agency's definition of the 'degree' of 'governmental control' in the 'setting' of export prices that must *not* be shown in order for an applicant to receive a separate rate, and where is the line

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<sup>34</sup> See Slip Op. at 30.

<sup>35</sup> See Slip Op. at 25-26.

<sup>36</sup> See Slip Op. at 27 (emphasis in original).

<sup>37</sup> See *id.*

drawn to exclude or include implementation of governmental influence or policy?”<sup>38</sup> The Court held that “{a}fter all, personnel is policy; it is axiomatic that inert entities . . . can only *act* through agency” and quoted a recent European Court of Justice ruling for the proposition that, “{i}n nonmarket economy, a company *de facto* controlled by the State may not be free of influence.”<sup>39</sup>

The Court concluded that it remains “unclear as to extent of government control that would preclude, or lack thereof permit, a separate rate, especially with regard to the *de facto* factors 3 and 4 (as noted in *Advanced Tech I*).”<sup>40</sup> Thus, the Court instructed the Department to clarify the meaning of “degree,” “control,” “separate,” “autonomy,” and “independent” in the context of the separate rate policy.<sup>41</sup> The Court rejected the Department’s conclusion that “there is *no* degree of ‘control’ or influence whatsoever” and instructed the Department to provide a “reasonable explanation and analysis of ‘controls over the decision-making process on export-related investment . . . at firm level, as requested in *Advanced Tech I*.”<sup>42</sup>

Further, in its remand order, in addition to requiring the Department to address the foregoing concerns, the Court specifically ordered the Department to “reasonably answer, or state the reasons for irrelevancy” the Court’s questions about (1) the Interim Regulations as they relate to the centralization of government and in comparison to the traditional *de facto* factors of the separate rate test; (2) the involvement of AT&M personnel in the Chinese Communist Party; and (3) the implicit influence of certain board members or management over one another.<sup>43</sup> In the confidential remand order accompanying its slip opinion (“Confidential Remand Order”), the

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<sup>38</sup> *See id.* (emphasis in original).

<sup>39</sup> *See id.* (emphasis in original).

<sup>40</sup> *See* Slip Op. at 28.

<sup>41</sup> *See id.*

<sup>42</sup> *See id.* (emphasis in original).

<sup>43</sup> *See* Confidential Remand Order at 2.

Court also specifically instructed the Department to “provide more clarity on the key terms relied upon such as . . . ‘government control,’” and the other key terms identified throughout its opinion.<sup>44</sup>

### **The Department’s Analysis of the Separate Rate Test and Explanations Requested by the Court’s Order**

In response to the Court’s instruction that the Department “provide more clarity on the key terms relied upon such as . . . ‘government control,’” and the other key terms identified throughout its opinion including: “control,” “degree,” “separate,” “autonomy,” “independent,” and “setting” (of prices), the Department finds that these terms are best understood in the overall context of our underlying NME and separate rate practices. The Department uses these terms as they have been applied in practice throughout the history of the separate rate test and applies them relative to its examination of the individual questions and factors that arise from a given factual record. By their nature, these terms must be analyzed within the context of the totality of the evidence in each given case.

We recognize that there are inconsistencies in PRC law regarding government control, but the Department starts its separate rate analysis with the presumption of government control. The Department presumes that all companies within the NME country are subject to governmental control and should be assigned a single antidumping duty rate unless an exporter demonstrates the absence of both *de jure* and *de facto* governmental control over its export activities.<sup>45</sup> If an NME entity demonstrates this independence with respect to its export activities, it is eligible for a rate that is separate from the NME-wide rate. The Department’s separate rate test is not concerned, in general, with macroeconomic border-type controls (*e.g.*,

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<sup>44</sup> *See id.*

<sup>45</sup> *See, e.g., Final Determination of Sales at Less Than Fair Value: Bicycles from the People’s Republic of China*, 61 FR 19026, 19027 (April 30, 1996).

export licenses, quotas, and minimum export prices). Rather, the test focuses on controls over the decision-making process on export-related investment, pricing, and output decisions at the individual firm level.<sup>46</sup>

Historically, economic reforms in the PRC first targeted the export sector (including granting enterprises autonomy in export pricing). Thus, the presumption of government control over export pricing is now a rebuttable one, despite the PRC's continued status as an NME country. Accordingly, even when the evidence demonstrates an absence of *de jure* control over export activities, the Department always undertakes a *de facto* control analysis as well. The Department typically analyzes the following four factors to determine whether there is an absence of *de facto* government control of export functions: (1) whether the export prices are set by or are subject to the approval of a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. Moreover, as a general matter, the Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control which would preclude the Department from assigning a separate rate. As explained above, upon the closer examination directed by the Court we have found the AT&M Entity fails the separate rate test with respect to the *de facto* criterion regarding autonomy in selecting management.

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<sup>46</sup> See, e.g., *Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from Ukraine*, 62 FR 61754, 61757 (November 19, 1997); and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 61276, 61279 (November 17, 1997).

In response to the Court’s remand order to “reasonably answer, or state the reasons for irrelevancy” of the Court’s questions about the Interim Regulations, upon reconsideration we find that the Interim Regulations enact a measure of control at the central government level but the law is largely neutral, *i.e.*, not determinative, with respect to its application in the separate rates context. The Interim Regulations do not focus specifically or directly on decision-making regarding exports, such that decisions about export functions can no longer be made at the firm level. The Interim Regulations are not *per se* indicative of recentralization except to the extent that they allow for more oversight of non-centralized decision-making. The “line” (or difference) between analyzing the *de jure* control SASAC *may* exercise via the Interim Regulations over a company’s board, management, and actual operation and analyzing the *de facto* factors of autonomy from central, region, local government and control over the company’s management, proceeds from export sales, and disposition of profits and losses (*see* Confidential Remand Order at 2), is a matter of potential versus applied control. In both analyses, the central question for any given company is whether the control is applied (and not just potential), regardless of the mechanism. In fact, examining whether SASAC has exercised control over a company *via* the Interim Regulations in its role as an investor in fact parallels an analysis of the *de facto* criteria regarding a respondent’s autonomy from central, regional, local government in selecting management, and whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.

In response to the Court’s questions about whether board members or management were members of the Chinese Communist Party or held their positions due to Central Organization Department input or influence, and the Court’s questions about who is the “*de facto* head” of AT&M or what implicit influence certain board members have over one another, because we

have determined that the AT&M Entity fails to meet the *de facto* criterion of autonomy in selecting management, we do not need to reach these issues in our separate rates analysis.

## **II. Surrogate Value for the 30 CrMo Steel Plate Used to Make Sawblade Cores**

### **a. Background**

In the *First Remand Redetermination*, the Department agreed with AT&M that the evidence on the record supports the finding that the AT&M Entity only used 30 CrMo steel plate in widths greater than 600 millimeters in the production of sawblade cores, and that the SV of the 30CrMo steel input should only be calculated using Indian Harmonized Tariff Schedule categories 7225.40.20 and 7225.40.30, which correspond to steel plate of widths of 600mm or more.

### **b. Analysis**

This issue is now moot because, as discussed above, the Department finds that the AT&M Entity is not eligible for a separate rate, and thus would thus not receive a calculated margin, of which the SV for 30 CrMo steel plate is but a constituent element.

## **Conclusion**

Based on the above analysis, the Department has determined that the AT&M Entity is not entitled to a separate rate based on the *de facto* criterion regarding the autonomy to select its management independent from government oversight or control. Therefore, we find the AT&M Entity to be part of the PRC-wide entity. Further, because the AT&M Entity is not receiving a separate calculated antidumping margin, the surrogate valuation issue regarding the 30 CrMo steel plate input is rendered moot.

### **III. Comments from Interested Parties**

The Department released its draft results of redetermination pursuant to remand order on April 2, 2013. Interested parties submitted comments on April 9, 2013.

#### **a. De Jure Considerations**

##### **AT&M Entity's Comments**

While agreeing with the Department's finding with regard to the absence of *de jure* control of the AT&M Entity, the AT&M Entity finds the explanation confusing. The AT&M Entity requests that the Department clarify that it has met its burden of proof with regard to the law and regulations, and that *de jure* control is "not dispositive" only because the Department also must analyze the *de facto* side of the test.

##### **Petitioner's Comments**

Petitioner contends that the laws on the record demonstrate a recentralization of government authority over the economy, such that the record does not support a finding of *de jure* independence for the AT&M Entity. Furthermore, Petitioner disagrees with our finding that the "potential" for *de jure* control is insufficient for denial of a separate rate, arguing that the separate rate test is concerned with potential government manipulation of the flow of subject merchandise. The potential for such manipulation could be adduced through actual past acts of control, or through other evidence showing that, while the government has not acted to control an entity in the past, it maintains the means to do so, as a matter of law or as a matter of fact (or both).

**Department's Position:** Petitioner's contention that the SASAC law represents a recentralization of government control fails to recognize that we in fact start with a presumption of control in NME proceedings. The presumption of government control is the reason



the Department has a separate-rates practice for NME countries and considers *de jure* criteria as part of determining whether an individual company may qualify for a separate rate, and one of our criteria for examining the absence of *de jure* control is record evidence of legislative enactments decentralizing control of companies.

As described above, we noted that the *de jure* factors are not overridingly indicative of the absence of government control in the typical case (including this one), but rather they demonstrate a legal ability on the part of the exporter to control its own commercial decision-making. This merits an additional analysis of the record evidence to ensure that there is an absence of *de facto* government control. While AT&M would like us to expressly affirm that it has met its burden of proof and shown an absence of *de jure* control, the key element in our analysis, in accordance with the Court's opinion, centers on the effect the SASAC law may, or may not, have on the respondent as supported by the record evidence.

Pursuant to our examination of the Court's opinion and remand order, we found that the SASAC law creates the potential for control, as opposed to definitively establishing either the absence of *de jure* government control or complete independence over export activities. Recognizing that the *de jure* evidence in this case did not clearly settle the issue of *de jure* control, we further scrutinized the record evidence to see if it substantiates an absence of *de facto* control.

#### **b. *De Facto* Considerations**

##### **AT&M Entity's Comments**

The AT&M Entity questions the Department's analysis with respect to the *de facto* criteria on several fronts and also contends that the Department should make clear whether new factual findings are under protest or not, whether the Department agrees with them, or whether

these points are simply conceded for this remand redetermination. The AT&M Entity points out that AT&M itself is not a respondent or a producer, but rather only a holding company, and that the “AT&M Entity” is a fiction created for convenience, but does not mean its constituent companies act as one unit in selling subject merchandise.

Furthermore, the AT&M Entity argues that the Department’s finding of *de facto* absence of independence is flawed and based solely on the corporate structure of the companies, the appointment of the officers of the companies, and the voting rights of the companies. The AT&M Entity contends that even if CISRI chose the top managers for AT&M, it is unclear how this translated down to export decisions at the firm level.

The AT&M Entity states that the Department’s draft results of redetermination did not adequately address: 1) why CISRI is treated as the equivalent of the PRC government; 2) how, if CISRI is equivalent to the PRC government, it influences exports as the exporter’s shareholder’s shareholder; 3) how BGY’s shareholder is involved in export decisions; and 4) what new standard, if any, is being applied. Additionally, the AT&M Entity also states that the Department’s finding that only a shareholder owning 10 percent or more of AT&M can nominate directors is based on a mistranslation. The AT&M Entity notes that the actual Chinese text explains that individuals with fewer shares can join together to form a 10 percent voting group to nominate directors, and that it articulated this same point in its comments on the Department’s *First Remand Redetermination*. Moreover, the AT&M Entity notes that the Department has accepted the correct translation in subsequent administrative reviews.

The AT&M Entity contends that the Department, in its draft results of redetermination, only stated that the facts it observed relating to the selection of management “may constitute evidence” of control, but has not stated that they “do” constitute evidence of control, and it

provided no link between the appointment of personnel and the setting of export prices. Along the same lines, the AT&M Entity argues that the draft results of redetermination provided no link between BGY and AT&M management with SASAC, but instead only with CISRI. While the Department states that the separate rate test focuses on “whether control is applied (and not just potential),” the AT&M Entity contends that the draft results of redetermination did not convey how such control is applied here, arguing that the Department did not analyze the effects of purported control on the parts of the AT&M Entity involved in the production and sale of diamond sawblades (BGY and Yichang HXF), so the impact of government ownership among the various levels of the AT&M Entity was not addressed. Lastly, the AT&M Entity argues that the Department failed to explain if government share ownership means the government is *per se* setting prices.

### **Petitioner’s Comments**

Petitioner argues that the Department correctly found that the AT&M Entity lacks *de facto* independence from the government with respect to the selection of management and agrees with the fact pattern observed by the Department to reach this conclusion. Petitioner further contends that, given the fungible nature of money and the record evidence, it respectfully disagrees with our conclusion that the degree of interrelated finances would not be sufficient, on its own, to support denial of a separate rate.

**Department’s Position:** As explained in the above section entitled “*De Jure* Considerations”, recognizing that the *de jure* evidence in this case did not clearly settle the issue of *de jure* control, we further scrutinized the record evidence to see if it substantiated an absence of *de facto* control. Unlike the *First Remand Redetermination* and the *Final Determination*, for the purposes of this remand and in accordance with the Court’s opinion, we treated CISRI’s

shareholdings as ownership by the PRC government because CISRI itself is 100-percent SASAC-owned.<sup>47</sup> With this approach, and given the specific set of facts present in this case, the record shows that, *via* its 100-percent SASAC-owned CISRI asset, the PRC government exerted influence over the selection of management of the collapsed entity whose export pricing we examined for the analysis of dumping. Since AT&M did not choose its own management autonomously from the state, we have determined that it was not entitled to a separate rate according to one of the four explicit *de facto* criteria within the separate rate test.

Notwithstanding the distinction between the focus of the separate rate test and the analysis that goes into a collapsing decision, once collapsed, the collapsed entity is treated as a single unit, including for separate rate purposes.<sup>48</sup> The AT&M Entity has never challenged our collapsing determination and therefore cannot now assert that the Department must apply the *de facto* separate rates criteria separately to each of its constituent entities. Nevertheless, the Collapsing Memorandum clearly outlined how the factual record of the underlying investigation supported collapsing the relevant companies into a single AT&M Entity for antidumping purposes.

Moreover, as noted above, the appointment of company officers and senior managers directly relates to one of the explicit *de facto* criteria and each of the *de facto* prongs must be satisfied for a company to get a separate rate. Proceeding on the presumption that CISRI's

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<sup>47</sup> However, we respectfully disagree with the Court in its rejection of our *First Remand Redetermination* regarding the full effects of the SASAC Interim Regulations (and the weight it should be given) in the broader *de jure* and *de facto* analysis, especially with respect to control over export activities, that comprises the Department's separate rate test and the impact of ownership here, and are conducting the remand under protest. In the *First Remand Redetermination*, we provided a detailed analysis of how our original decision in the *Final Determination* was correct and supported by record evidence, and we maintain that those determinations were appropriate. We have re-analyzed the record evidence pursuant to the text of the Court's opinion and remand order, treating CISRI's shareholding in other companies as if it were ownership by the PRC government due to the fact that CISRI itself is 100-percent SASAC-owned, and then analyzing the downstream effects of this ownership as it relates to separate rate eligibility.

<sup>48</sup> The holding company, by virtue of the facts underlying the collapsing decision, controls the exporting companies, and thus the exporting companies' pricing decisions.

shareholdings of AT&M should be considered PRC government shareholdings, the factual record shows that, upon re-analysis, the AT&M Entity fails to overcome the presumption of state control. As to the AT&M Entity's argument about the 10-percent ownership threshold for nominating directors, the record contains no evidence of any such group of shareholders joining to nominate a board candidate. Moreover, at the time the board of directors for the POI was elected, CISRI held a majority share of AT&M. Of key importance, and as previously noted, the record also shows that CISRI placed four of its senior officials, including its own director, on AT&M's board, and that these officials actively selected the management of AT&M, regardless of whether any other board members may or may not have been nominated by other shareholders.

Regarding the issue of interrelated finances between AT&M and CISRI raised by the Court and commented on by Petitioner, we continue to hold the same position as that expressed in the draft results of redetermination. The record holds little evidence as to how interrelated finances between AT&M and CISRI influenced export functions. While what evidence there is on the record regarding the interrelated finances supports denying the AT&M Entity a separate rate, this alone would not be sufficient for such a determination, and accordingly the Department is not relying on it here.

### **c. Other Considerations Regarding Separate Rates**

#### **AT&M Entity's Comments**

The AT&M Entity argues that even if it is not eligible for a separate rate because it is government controlled, it would not be legally permissible to assign it the PRC-wide rate in this case because it has fully cooperated with the Department. The AT&M Entity maintains that a rate based on adverse facts available ("AFA") would thus be inappropriate. The AT&M Entity

instead claims that it is entitled to have its own rate designated as the “PRC government rate” (*i.e.*, the zero margin calculated for the AT&M Entity), as it claims there is no evidence that any other PRC companies involved in the production and export of the subject merchandise are government-controlled. Lastly, the AT&M Entity argues that regardless of any of the above points, developments in the PRC economy demonstrate that PRC firms operate independently, so the presumption of state control of businesses, and hence the need for a separate rate test, no longer applies.

**Department’s Position:** Regarding the applicability of an antidumping margin based on AFA, in the underlying investigation, 13 PRC companies did not respond to the quantity and value questionnaire and thus were also considered as part of the PRC-wide entity.<sup>49</sup> Thus, the failure of those elements of the PRC-wide entity to provide information requested and necessary in this investigation resulted in our conclusion that the PRC-wide entity failed to cooperate, and a rate based on AFA is appropriate for the PRC-wide entity. As to the AT&M Entity’s second argument, we note that in the underlying investigation, no party challenged our factual finding with respect to the presumption of state control. There is no basis to change the presumption that the PRC is an NME country based on the record. Additionally, because the PRC is still an NME country, an issue that was also not contested in the underlying proceeding, this further indicates that there is no basis on which to change this presumption.

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<sup>49</sup> See *Final Determination*, 71 FR at 29308; see also *Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Preliminary Partial Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People’s Republic of China*, 70 FR 77121, 77125-77128 (December 29, 2005).

**d. Surrogate Value for 30CrMo Steel**

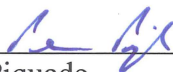
**Petitioner's Comments**

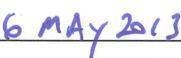
Petitioner agrees with the Department's draft results of redetermination that it is no longer necessary to consider issues relating to this input, as the AT&M Entity is no longer entitled to a separate margin calculation.

**Department's Position:** We agree with Petitioner and continue to find that this issue is now moot because we are not calculating a separate antidumping duty rate for the AT&M Entity.

**IV. Conclusion**

We have determined to deny a separate rate to the AT&M Entity based upon its failure to satisfy a *de facto* prong of the separate rate test regarding autonomy in selecting its management. The AT&M Entity therefore failed to overcome the presumption of state control. We reached this conclusion upon first determining that the *de jure* elements were not dispositive with respect to the case record, and then finding for purposes of this remand that 100-percent SASAC ownership introduces the potential for control over export activities, entailing an examination of CISRI's downstream managerial interrelationships with the companies it held, using the *de facto* criteria.

  
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Paul Piquado  
Assistant Secretary  
for Import Administration

  
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Date