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MEMORANDUM TO: The File

THROUGH: Aleksandras Nakutis AN
Program Manager, Office I
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FROM: Hermes Pinilla HP
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Antidumping and Countervailing Duty Operations

RE: Less-Than-Fair-Value Investigation of Active Anode Material from The People's Republic of China

SUBJECT: Separate Rate Analysis Memorandum for BTR New Material Group Sales Co., Ltd., and BTR New Material Group Co., Ltd.

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I. Summary

For the reasons detailed below, the U.S. Department of Commerce (Commerce) preliminarily determines that of BTR New Material Group Sales Co., Ltd., and BTR New Material Group Co., Ltd. (collectively, BTR) are not eligible for a separate rate because of *de facto* government control over its export activities.

II. Legal Framework

Commerce considers the People's Republic of China (China) to be a non-market economy (NME).[1] In accordance with section 771(18)(C)(i) of the Tariff Act of 1930, as amended (the Act), a determination that a country is an NME shall remain in effect until revoked by the administering authority. Further, no party has submitted a request to reconsider China's NME

[1] *See Antidumping Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 82 FR 50858, 50861 (November 2, 2017) (citing Memorandum, "Aluminum Foil from the People's Republic of China: China's Status as a Non-Market Economy," dated October 26, 2017), unchanged in *Certain Aluminum Foil from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 83 FR 9282 (March 5, 2018).

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status as part of this investigation. Therefore, we continue to treat China as an NME for purposes of this preliminary determination.

In proceedings involving NME countries, Commerce begins with the rebuttable presumption that all companies within the NME country are subject to government control and, thus, should be assessed a single antidumping duty (AD) rate.[2] In the *Initiation Notice*, Commerce notified parties of the application process by which exporters may obtain separate-rate status in NME proceedings.[3] It is Commerce's policy to assign all exporters of merchandise under investigation that are in an NME country a single weighted-average dumping margin unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports.[4] To establish that a company is independent of government control and, therefore, entitled to a separate rate, Commerce analyzes each exporting entity in an NME under the test established in *Sparklers*,[5] as further developed in *Silicon Carbide*.[6] Together, these tests require a respondent to demonstrate an absence of both *de jure* and *de facto* government control with respect to exports.[7] The consequences of failing to do so mean the exporter will be assigned the single rate given to the NME-wide entity.[8] If, however, Commerce determines that a company is wholly foreign-owned, then analysis of the *de jure* and *de facto* criteria are not necessary to determine whether it is independent from government control and, therefore, eligible for a separate rate.

Under the separate rates test, Commerce considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) legislative

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[2] *See Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products from the People's Republic of China*, 71 FR 53079, 53082 (September 8, 2006); *see also 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, 29307 (May 22, 2006).

[3] *See Initiation Notice*.

[4] *See, e.g.*, *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, and Affirmative Final Determination of Critical Circumstances, in Part*, 77 FR 63791, 63793 (October 17, 2012) and accompanying Issues and Decision Memorandum (IDM).

[5] *See Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588, 20589 (May 6, 1991) (*Sparklers*) ("We have determined that exporters in nonmarket economy countries are entitled to separate, company-specific margins when they can demonstrate an absence of central government control, both in law and in fact, with respect to export activities.").

[6] *See Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of Chinas*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*).

[7] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, and Rescission of New Shipper Review*; 2014-2015, 82 FR 4844 (January 17, 2017), and accompanying IDM at Comment 3.

[8] The U.S. Court of Appeals for the Federal Circuit has upheld the application of the "NME presumption," in *Sigma Corp. v. United States*, 117 F.3d 1401, 1405-06 (Fed. Cir. 1997). In setting forth its NME policy, "Commerce made clear the consequences to an exporter of not rebutting the presumption of state control and establishing its independence: the exporter would be assigned the single rate given to the NME entity. Shortly thereafter, the U.S. Court of International Trade acknowledged and sustained Commerce's NME policy." *See Transcom Inc. v. United States*, 294 F.3d 1371, 1381-82 (Fed. Cir. 2002) (citation omitted).

enactments decentralizing control over export activities of the companies; and (3) other formal measures by the government decentralizing control over export activities of companies.[9]

Further, Commerce typically considers four factors in evaluating whether a respondent is subject to *de facto* government control of its 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 the disposition of profits or financing of losses.[10]

As a result of litigation challenging Commerce's separate rate determinations in the diamond sawblades from China proceedings, Commerce continues to evaluate its practice with regards to analyzing separate rates and evaluating NME companies' *de facto* independence from government control.[11] In particular, we note that in litigation involving the diamond sawblades proceedings, the U.S. Court of International Trade found Commerce's existing separate rates analysis deficient in the circumstances of that case, in which a government-controlled entity had significant ownership in the respondent exporter.[12] We have concluded that where a government entity holds a majority equity ownership share, either directly or indirectly, in the respondent exporter, the majority ownership holding in and of itself means that the government exercises, or has the potential to exercise, control over the company's operations generally, which may

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[9] *See Sparklers*, 56 FR at 20589; *see also*, Memorandum, "Decision Memorandum for the Preliminary Affirmative Determination in the Investigation of Sales at Less Than Fair Value of Active Anode Material from the People's Republic of China," dated concurrently with this memorandum at 6-9.

[10] *See Silicon Carbide*, 59 FR at 22586-89. *See also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995); *see also*, Memorandum, "Decision Memorandum for the Preliminary Affirmative Determination in the Investigation of Sales at Less Than Fair Value of Active Anode Material from the People's Republic of China," dated concurrently with this memorandum at 6-9.

[11] *See* Final Results of Redetermination Pursuant to Remand Order for Diamond Sawblades and Parts Thereof from the People's Republic of China (May 6, 2013), pursuant to *Advanced Technology & Materials Co. v. United States*, 885 F. Supp. 2d 1343 (CIT 2012) (*Advanced Technology I*), affirmed in *Advanced Technology & Materials Co. v. United States*, 938 F. Supp. 2d 1342 (CIT 2013). This remand redetermination is on the Enforcement and Compliance website at http://enforcement.trade.gov/remands/12-147.pdf. *See also 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), and accompanying Preliminary Decision Memorandum (PDM) at 7, unchanged in *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), and accompanying IDM at Comment 1.

[12] *See, e.g.*, *Advanced Technology I*, 885 F. Supp. 2d at 1349 (CIT 2012) ("The court remains concerned that Commerce has failed to consider important aspects of the problem and offered explanations that run counter to the evidence before it."); *id.* at 1351 ("Further substantial evidence of record does not support the inference that SASAC's {State-owned Assets Supervision and Administration Commission} 'management' of its 'state-owned assets' is restricted to the kind of passive-investor *de jure* 'separation' that Commerce concludes.") (footnotes omitted); *id.* at 1355 ("The point here is that 'governmental 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,' including terms, financing and inputs into finished product for export."); *id*. at 1357 ("AT&M *itself* identifies its 'controlling shareholder' as CISRI {owned by SASAC} in its financial statements and the power to veto nomination does not equilibrate the power of control over nomination.") (footnotes omitted).

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include control over, for example, the selection of management, a key factor in determining whether a company has sufficient independence in its export activities to merit a separate rate.[13] Consistent with normal business practices, we would expect any majority shareholder, including a government, to have the ability to control, and an interest in controlling, the operations of the company, including the selection of management and the profitability of the company. Accordingly, we have considered the level of government ownership where necessary.

III. Analysis

a. Absence of *De Jure* Control

Commerce preliminarily determines that BTR has demonstrated an absence of *de jure* government control based on the following: (1) an absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) the existence of applicable legislative enactments decentralizing control over export activities of companies; and (3) the implementation of formal measures by the government decentralizing control over export activities of companies.[14]

b. Absence of *De Facto* Control

Commerce preliminarily determines that BTR has not demonstrated an absence of *de facto* government control due to the government's ability to control and influence export functions. Specifically, as noted below, we preliminarily determine that BTR's management and ownership are affiliated with the GOC and BTR's export functions are subject to *de facto* government control.

Management

BTR's chairman, [ ], is affiliated with the Government of China (GOC) through his membership in the Chinese People's Political Consultative Conference (CPPCC),[15] and he is also

[13] *See Multilayered Wood Flooring from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, Final Determination of No Shipments, and Partial Rescission; 2015-2016*, 83 FR 35461 (July 26, 2018), and accompanying IDM at Comment 2; *see also Hydrofluorocarbon Blends and Components Thereof from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances* 81 FR 42314 (June 29, 2016), and accompanying IDM at Comment 8; *Certain Corrosion-Resistant Steel Products from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 81 FR 75 (January 4, 2016), and accompanying PDM at 15; unchanged in *Certain Corrosion-Resistant Steel Products from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, and Final Affirmative Critical Circumstances Determination, in Part*, 81 FR 35316 (June 2, 2016); *1,1,1,2 Tetrafluoroethane (R-134a) from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances, in Part*, 82 FR 12192 (March 1, 2017), and accompanying IDM at Comment 1; and *Truck and Bus Tires from the People's Republic of China: Final Affirmative Determinations of Sales at less Than Fair Value and Critical Circumstances*, 82 FR 8599 (January 27, 2017), and accompanying IDM at Comment 2.

[14] *See* BTR's Letter, BTR's Section A Response Separate Rate Application," dated April 28, 2025, at 12 (BTRSAQR); *see also*, BTR's Letter, "Separate Rate Applications," dated February 24, 2025, at 7-11.

[15] *See* BTR's Letter, "BTR's Section A Supplemental Questionnaire Response," dated June 2, 2025, at 2 (BTRASQR II).

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Chairman and active member of the Party Secretary of the Chinese Communist Party (CCP) within BTR.[16] The record indicates that BTR's Article of Association instructs [

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As such, contrary to BTR's assertion, we find that [ ].[18] Therefore, we find that given [ ] role within BTR (as Chairman), CCP and CPPCC, BTR's Article of Association does not demonstrate BTR's independence from GOC control as suggested by BTR.

In addition, the record indicates that, [ ], and collectively, including [ ], represent approximately [ ] percent of BTR's management team within the company.[19]

Lastly, in 2024, the U.S. Department of Energy determined that BTR is a "Foreign Entity of Concern" and is either "owned by, controlled by, or subject to the jurisdiction or direction of {the GOC}." Thus, consistent with *Vanillin from China, 2025*[20] it is reasonable to presume that BTR is not independent from GOC control because shareholders, board members, and other senior managers are members of the CCP or affiliated with the GOC.

Ownership

The record indicates that, although BTR is a publicly listed company and the GOC does not own a majority of shares, its majority shareholders, China Baoan Group Holdings Limited and China Baoan Group Co., Ltd. (China Baoan Group), hold 66.86 percent of BTR's shares.[21] In addition, the record indicates that [ ].[22] Furthermore, Mr. Chen

[16] *See* Petitioner's Letter, "Deficiency Comments on BTR's Section A Supplemental Questionnaire Response," dated June 23, 2025, at 2 and Exhibit I (Petitioner BTR Deficiency Comments II).
[17] *See* BTRASQR II, at Exhibit SA-10.
[18] *Id*.
[19] *See* BTRSAQR at Exhibit 17; *see also*, Petitioner BTR Deficiency Comments II, at Exhibit 1, and Petitioner's Letter, "Deficiency Comments on BTR's Section A Questionnaire Response," dated May 5, 2025, at Exhibits 1-2 (Petitioner BTR Deficiency Comments I).
[20] *See Vanillin from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 90 FR 24093 (June 6, 2025) (*Vanillin from China, 2025*) and accompanying IDM at Comment 4.
[21] *See* BTRASQR II, at xx.
[22] *See* Petitioner BTR Deficiency Comments II, at 13, and Exhibit 1.

Zhengli, who is Chairman President of the China Baoan Group is also a CCP member since 1985 and is a member of the Standing Committee of the National Committee of the National Committee of the CPPCC.[23] Moreover, Mr. Chen Taiquan, who is the Executive Vice Chairman and Executive President of the 10th Board of Directors of the China Baoan Group, is also a GOC official in the role of Special Inspector of the Shenzhen People's Procuratorate and a member of the Shenzhen Municipal People's Congress Standing Committee.[24] Lastly, Mr. He Dehua, who is the Executive Director and Chief Operating Officer of the China Baoan Group is also member of the CCP.[25]

As such, the record indicates that the president, vice president, and executive director and chief operating officer are CCP members and the China Baoan Group maintains a CCP Party Committee similar to that of BTR. Thus, we preliminarily find that BTR's parent company, the China Baoan Group, is controlled by CCP officials and maintains the most voting shares of BTR.

Thus, for these reasons, we find that the China Baoan Group is also *de facto* controlled by the CCP. Accordingly, based on the above analysis, we preliminarily determine that BTR has not rebutted the presumption of *de facto* government control and is, therefore, not eligible to receive a separate rate in this investigation.

[23] *Id* at 13; *see also,* Petitioner BTR Deficiency Comments I, at Exhibit 3.
[24] *Id*.
[25] *Id*.

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Attachments

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