

the current review that calls into question the reliability or the relevance of the information contained in the petition. We thus find that the information is reliable; therefore, we have applied, as adverse facts available, the PRC-wide rate from prior administrative reviews of this order and have satisfied the corroboration requirements under section 776(c) of the Act. See *Persulfates from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 66 FR 18439, 18441 (April 9, 2001) (employing a petition rate used as adverse facts available in a previous segment as the adverse facts available in the current review). We have determined that this rate has probative value and, therefore, is an appropriate rate to be applied in this review to exports of subject merchandise by Beijing Concord as facts otherwise available.

Separate Rates

In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty deposit rate (*i.e.*, a PRC-wide rate).

Of the 12 respondents that submitted questionnaire responses, three of the PRC companies (*i.e.*, Hongfa, Meita, and Winhere) are wholly foreign-owned. Thus, for these three companies, because we have no evidence indicating that they are under the control of the PRC government, a separate rates analysis is not necessary to determine whether they are independent from government control (*see Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate from the People's Republic of China*, 64 FR 71104, 71105 (December 20, 1999); *Preliminary Results of First New Shipper Review and First Antidumping Duty Administrative Review: Certain Preserved Mushrooms from the People's Republic of China*, 65 FR 66703, 66705 (November 7, 2000); and *Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China ("Bicycles")* 61 FR 19026 (April 30, 1996)).

The remaining nine respondents (*i.e.*, Golden Harvest, Haimeng, Hongda, ZLAP, CNIM, GREN, Huanri General, LABEC and Shanxi Fengkun) are either joint ventures between PRC and foreign companies, collectively-owned enterprises and/or limited liability companies in the PRC. Thus, for these nine respondents, a separate rates analysis is necessary to determine whether the exporters are independent

from government control (see *Bicycles* at 61 FR 56570). To establish whether a firm is sufficiently independent in its export activities from government control to be entitled to a separate rate, the Department utilizes a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) ("Sparklers"), and amplified in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) ("Silicon Carbide"). Under the separate-rates criteria, the Department assigns separate rates in NME cases only if the respondent can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

1. De Jure Control

CNIM, Golden Harvest, GREN, Haimeng, Hongda, Huanri General, LABEC, Shanxi Fengkun, and ZLAP have each placed on the administrative record documents to demonstrate absence of *de jure* control, including the "The Enterprise Legal Person Registration Administrative Regulations," promulgated on June 3, 1988; the 1990 "Regulation Governing Rural Collectively-Owned Enterprises of PRC;" and the 1994 "Foreign Trade Law of the People's Republic of China."

As in prior cases, we have analyzed these laws and have found them to establish sufficiently an absence of *de jure* control of collectively-owned enterprises, joint ventures between PRC and foreign companies, and/or limited liability companies. *See, e.g., Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China ("Furfuryl Alcohol")* 60 FR 22544 (May 8, 1995), and *Preliminary Determination of Sales at Less Than Fair Value: Certain Partial-Extension Steel Drawer Slides with Rollers from the People's Republic of China*, 60 FR 29571 (June 5, 1995). We have no new information in this proceeding which would cause us to reconsider this determination with regard to CNIM, Golden Harvest, GREN, Haimeng, Huanri General, Hongda, LABEC, Shanxi Fengkun, and ZLAP.

2. De Facto Control

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. *See Silicon Carbide and Furfuryl Alcohol*. Therefore, the Department has determined that an analysis of *de facto* control is critical in

determining whether the respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) whether the export prices are set by, or subject to the approval of, a governmental authority; (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 (*see Silicon Carbide and Furfuryl Alcohol*).

CNIM, Golden Harvest, GREN, Haimeng, Hongda, Huanri General, LABEC, Shanxi Fengkun, and ZLAP have each asserted the following: (1) it establishes its own export prices; (2) it negotiates contracts without guidance from any governmental entities or organizations; (3) it makes its own personnel decisions; and (4) it retains the proceeds of its export sales, uses profits according to its business needs, and has the authority to sell its assets and to obtain loans. Additionally, each of these companies' questionnaire responses indicates that its pricing during the POR does not suggest coordination among exporters.

In this segment of the proceeding, the Department selected three of the 12 respondents for verification, namely Golden Harvest, GREN, and Shanxi Fengkun. The Department did not select the other nine respondents (*i.e.*, CNIM, Haimeng, Hongda, Hongfa, Huanri General, LABEC, Meita, Winhere, and ZLAP) for verification.

For Golden Harvest, GREN, and Shanxi Fengkun, the Department found no evidence at verification of government involvement in any of these companies' business operations. Specifically, Department officials examined sales documents that showed that each of these three respondents negotiated its contracts and set its own sales prices with its customers. In addition, the Department reviewed sales payments, bank statements and accounting documentation that demonstrated that each of these three respondents received payment from its U.S. customers via bank wire transfer, which was deposited into its own bank account without government intervention. Finally, the Department