

suggesting that this determination should be changed. Accordingly, the Department has determined that NME treatment is appropriate in this review. See section 771(18)(c)(i) of the Act. In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, therefore, should be assigned a single antidumping duty deposit rate (*i.e.*, a PRC-wide rate).

To establish whether a company operating in an NME is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in 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*), as amplified by 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 this test, companies operating in an NME are entitled to separate, company-specific margins when they can demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to export activities (*Sparklers*, 56 FR 20589). In this review, the sole respondent is a Hong Kong/PRC joint-venture company and, thus, a separate rates analysis is necessary to determine whether its export activities are independent from government control.

1. Absence of De Jure Control

Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: (1) An absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies (*id.*).

The respondent has placed on the record a number of documents to demonstrate absence of *de jure* control, including the "General Principles of the Civil Law of the People's Republic of China" and the "PRC's Enterprise Legal Person Registration Administrative Regulations."

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 review which would cause us to reconsider this determination with regard to Liyang.

2. Absence of 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 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 a 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 its 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. See *Silicon Carbide and Furfuryl Alcohol*.

Liyang 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 obtain loans. Furthermore, our analysis of Liyang's questionnaire responses reveals no other information indicating government control. This information supports a preliminary finding that there is an absence of *de facto* governmental control of Liyang's export functions. Consequently, we preliminarily determine that Liyang has met the criteria for the application of a separate rate.

Fair Value Comparisons

To determine whether sales of the subject merchandise by Liyang to the United States were made at prices below normal value, we compared the export price to the normal value, as described in the "Export Price" and "Normal Value" sections of this notice, below.

Export Price

We used export price methodology in accordance with section 772(a) of the Act, because the subject merchandise was sold prior to importation by the exporter outside the United States directly to unaffiliated purchasers in the United States and constructed export price methodology was not otherwise indicated.

We calculated export price based on the packed, CIF price to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for foreign inland freight, foreign brokerage and handling, international freight, and marine insurance, in accordance with section 772(c) of the Act. Because these movement services were provided by NME service providers or paid for in an NME currency, we based these expenses on surrogate values from India. To value foreign inland trucking charges, we used a November 1999 average truck freight value based on price quotes from Indian trucking companies obtained in the less-than-fair-value (LTFV) investigation of Bulk Aspirin from the PRC. For rail freight costs, we used 1999–2000 rates published in the July 2001 *Reserve Bank of India Bulletin*. Foreign brokerage and handling expenses were based on November 1999 price quotes from Indian freight forwarders used in the LTFV investigation of Synthetic Indigo from the PRC. Ocean freight was based on publicly available shipping rates between Shanghai, PRC and a U.S. east coast port obtained from the market-economy shipping company Maersk Sealand. For marine insurance, we used public information that was used in the 2000–2001 administrative review of the antidumping duty order on tapered roller bearings and parts thereof, finished and unfinished, from the People's Republic of China. A more detailed discussion of the valuation methodology for these expenses is described in *Preliminary Results Valuation Memorandum*, Memorandum to the File dated March 3, 2003 (*Valuation Memo*).