

considered whether Qingdao Red Star is eligible for a separate rate as discussed below.

The Department's separate-rates test is not concerned, in general, with macroeconomic/border-type controls (e.g., export licenses, quotas, and minimum export prices), particularly if these controls are imposed to prevent dumping. Rather, the test focuses on controls over the export-related investment, pricing, and output decision-making process at the individual firm level. See *Notice of 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).

To establish whether a firm is sufficiently independent from government control to be entitled to a separate rate, the Department analyzes each exporting entity under a test arising out of the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991), as modified in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585, 22587 (May 2, 1994) (*Silicon Carbide*). Under this test, the Department assigns separate rates in NME cases only if an exporter can demonstrate the absence of both *de jure* and *de facto* governmental control over its export activities. See *Silicon Carbide* and the *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).

#### A. Absence of De Jure Control

The Department 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) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies.

Qingdao Red Star has placed on the record a number of documents to demonstrate the absence of *de jure* control, including its business license, and the "Company Law of the People's Republic of China" of December 29, 1993. Other than limiting Qingdao Red Star's operations to the activities

referenced in the license, we noted no restrictive stipulations associated with the license. In addition, in previous cases, the Department has analyzed the "Company Law of the People's Republic of China" and found that it establishes an absence of *de jure* control. See, e.g., *Notice of Final 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 54472, 54474 (October 24, 1995). We have no information in this proceeding which would cause us to reconsider this determination. Therefore, based on the foregoing, we have preliminarily found an absence of *de jure* control.

#### B. Absence of De Facto Control

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 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.

With regard to the issue of *de facto* control, Qingdao Red Star has reported the following: (1) There is no government participation in setting export prices; (2) its managers have the authority to bind sales contracts; (3) the government does not participate in the selection of Qingdao Red Star's management, and (4) there are no restrictions on the use of its export revenues or the disposition of its profits, and it is responsible for financing its own losses. Additionally, Qingdao Red Star's questionnaire responses do not suggest that pricing is coordinated among exporters. Furthermore, our analysis of Qingdao Red Star's questionnaire responses reveals no other information indicating governmental control of export activities. Therefore, based on the information provided, we preliminarily determine that there is an absence of *de facto* government control over Qingdao Red Star's export functions, and that Qingdao Red Star has met the criteria for the application of separate rates.

#### The PRC-Wide Rate

Although the Department provided BOFT and all PRC exporters of the

subject merchandise, including Qingdao Red Star, with the opportunity to respond to its questionnaire, only Qingdao Red Star submitted responses thereto. Our review of U.S. import statistics reveals that there are other PRC companies, in addition to Qingdao Red Star, that exported barium carbonate to the United States during the POI. Because these exporters did not submit a response to the Department's questionnaire, and thus did not demonstrate their entitlement to a separate rate, we have implemented the Department's rebuttable presumption that these exporters constitute a single enterprise under common control by the PRC government, and we are applying adverse facts available to determine the single antidumping duty rate, the PRC-wide rate, applicable to all other PRC exporters comprising this single enterprise. See, e.g., *Final Determination of Sales at Less Than Fair Value: Synthetic Indigo from the People's Republic of China*, 65 FR 25706, 25707 (May 3, 2000).

#### Use of Facts Otherwise Available

Section 776(a)(2) of the Act provides that, if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form or manner requested, significantly impedes a proceeding under the antidumping statute, or provides information which cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act, facts otherwise available in reaching the applicable determination. As explained above, with the exception of the exporter, Qingdao Red Star, and its manufacturer, Guizhou Red Star Development Co., Ltd. (Guizhou Red Star), no other Chinese manufacturer or exporter of the subject merchandise responded to the Department's request for information. Therefore, the curative provisions of section 782 of the Act are not applicable because there is no information on the record of this investigation on which the Department can determine separate rates for these manufacturers and exporters. Accordingly, the Department is applying the PRC-wide rate to all PRC exporters of the subject merchandise except for Qingdao Red Star. The Department cannot determine a separate rate for these companies because this information is within the sole possession of the parties at issue and cannot be obtained otherwise. No other Chinese manufacturer or exporter of the subject merchandise responded to the Department's request for information. For this reason, we are unable to