

that it is reasonable to accept CFP's withdrawal of its request for review.

Separate Rates Determination

In proceedings involving nonmarket economy (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. It is the Department's policy to assign all exporters of merchandise subject to investigation in a NME country this single rate, unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. Shandong and CalCedar-Tianjin provided the separate rates information requested by the Department and reported that their export activities are not subject to government control.

We examined the separate rates information provided by Shandong and CalCedar-Tianjin in order to determine whether the companies are eligible for a separate rate. The Department's separate rates test, which is used to determine whether an exporter is independent from government control, does not consider, in general, macroeconomic/border-type controls, e.g., export licenses, quotas, and minimum export prices, particularly if these controls are imposed to prevent dumping. The test focuses, rather, on controls over the investment, pricing, and output decision-making process at the individual firm level. See *Certain Cut-to-Length Carbon Steel Plate from Ukraine: Final Determination of Sales at Less Than Fair Value*, 62 FR 61754, 61757 (November 19, 1997); *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 of its export activities so as to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise 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) (*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*). In accordance with the separate rates criteria, the Department assigns separate rates in NME cases only if the respondents can demonstrate the

absence of both de jure and de facto governmental control over export activities.

1. 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. See *Sparklers*, 56 FR at 20508 (May 6, 1991).

Shandong and CalCedar-Tianjin reported that the merchandise under review was not subject to restrictive stipulations associated with their export licenses (e.g., pencils were not on any government list of products subject to export restrictions or subject to special export licensing requirements). Shandong and CalCedar-Tianjin submitted copies of their business licenses in their questionnaire responses. We found no inconsistencies with their statements regarding the absence of restrictive stipulations associated with their business licenses. Furthermore, Shandong and CalCedar-Tianjin submitted copies of PRC legislation demonstrating the statutory authority for establishing the *de jure* absence of government control over the companies. Thus, we believe that the evidence on the record supports a preliminary finding of absence of *de jure* governmental control based on: (1) an absence of restrictive stipulations associated with the business licenses of CalCedar-Tianjin and Shandong; and (2) the applicable legislative enactments decentralizing control of PRC companies.

2. Absence of De Facto Control

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 are subject to, the approval of a governmental 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. See *Silicon Carbide*, 59 FR at 22586-87 (May 2, 1994); 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).

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*, 56 FR at 22587 (May 2, 1994). 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.

Shandong and CalCedar-Tianjin reported that they determine prices for sales of the subject merchandise based on market principles, the cost of the merchandise, and profit. Moreover, Shandong and CalCedar-Tianjin stated that they negotiated the price directly with their customers. Also, Shandong and CalCedar-Tianjin claimed that their prices are not subject to review or guidance from any governmental organization. In addition, the record indicates that Shandong and CalCedar-Tianjin have the authority to negotiate and sign contracts and other agreements. Further, Shandong and CalCedar-Tianjin claimed that their negotiations are not subject to review or guidance from any governmental organization. Finally, there is no evidence on the record to suggest that there is any governmental involvement in the negotiation of their contracts.

Furthermore, Shandong and CalCedar-Tianjin reported that they have autonomy in making decisions regarding the selection of management. Shandong and CalCedar-Tianjin indicated that their selection of management is not subject to review or guidance from any governmental organization and there is no evidence on the record to suggest that there is any governmental involvement in the selection of the management of Shandong and CalCedar-Tianjin.

Finally, Shandong reported that it retains the proceeds of its export sales, and its management determines how to use profits. CalCedar-Tianjin stated that it operates in accordance with market principles and calculates profits and losses in a normal commercial manner. There is no evidence on the record with respect to Shandong or CalCedar-Tianjin to suggest that there is any governmental involvement in decisions regarding disposition of profits or financing of losses.

Therefore, we find that the evidence on the record supports a preliminary finding of absence of *de facto*