

by the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585, 22586–22587 (May 2, 1994) (*Silicon Carbide*).

The Department's separate-rate test is unconcerned, 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. The test focuses, rather, on controls over the investment, pricing, and output decision-making process at the individual firm level. See, e.g., *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); and *Honey from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value*, 60 FR 14725, 14726 (March 20, 1995).

Hongda provided separate-rate information in its responses to our original and supplemental questionnaires. Accordingly, we performed a separate-rates analysis to determine whether this producer/exporter is independent from government control (see *Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China*, 61 FR 56570 (April 30, 1996)).

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.

Hongda has placed on the record a number of documents to demonstrate absence of *de jure* control, including the "Foreign Trade Law of the People's Republic of China" and the "Administrative Regulations of the People's Republic of China Governing the Registration of Legal Corporations." The Department has analyzed such PRC laws and found that they establish an absence of *de jure* control. See, e.g., *Preliminary Results of New Shipper Review: Certain Preserved Mushrooms From the People's Republic of China*, 66 FR 30695, 30696 (June 7, 2001). We

have no information in this proceeding that would cause us to reconsider this determination.

2. Absence of *De Facto* Control

Typically the Department 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* at 22587.

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* at 22586–22587. 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.

According to Hongda, it is a privately owned company. It has asserted the following: (1) There is no government participation in setting export prices; (2) its sales manager and authorized employees have the authority to bind sales contracts; (3) it does not have to notify any government authorities of its management selection; (4) there are no restrictions on the use of its export revenue; and (5) it is responsible for financing its own losses. Hongda's questionnaire responses do not suggest that pricing is coordinated among exporters. Furthermore, our analysis of the responses reveals no other information indicating the existence of government control. Consequently, we preliminarily determine that Hongda has met the criteria for the application of a separate rate.

Use of Adverse Facts Available

In its August 5, 2002, response to our original questionnaire, Hongda reported sales of merchandise for which it both produced and exported the garlic and it reported sales of merchandise for which it had purchased the fresh garlic from Kima, its supplier, and exported the merchandise to the United States. In a supplemental questionnaire that we

issued on August 27, 2002, we asked Hongda to provide additional information about Kima, including a certification from Kima stating that it had not exported subject merchandise to the United States during the period of the less-than-fair-value investigation. Hongda complied with these requests in its September 5, 2002, response to the questionnaire. On September 17, 2002, Hongda then confirmed that Kima was its only supplier (besides itself) of subject merchandise during the POR.

In a supplemental questionnaire that we issued on November 14, 2002, we asked Hongda to provide a detailed description of Kima's business activities and its relationship to Hongda. In addition, we asked Hongda to provide a detailed narrative describing Hongda's purchase of garlic from Kima including information specifically relating to Kima's factors of production. In previous submissions, Hongda had already reported its own factors of production. With respect to Kima's production of subject merchandise, Hongda had claimed certain factors should not be used because they were not "relevant" for the Kima/Hongda transactions. In its earlier responses, Hongda had also provided a new factor of production to reflect per-unit amounts purchased from Kima and had stated generally that it had used indirect labor for merchandise purchased from Kima, although it had offered no details pertaining to the nature of this labor (i.e., processing or packing). Thus, in light of numerous questions surrounding Kima and the factors of production covering the garlic Kima supplied Hongda, the Department requested, in a November 14, 2002, supplemental questionnaire, that Hongda provide answers to very specific questions pertaining to Kima and its merchandise.

We asked Hongda that its factors information account for all stages beginning with the harvesting of the garlic at the farm and ending with possession of the garlic by Hongda. We asked further that Hongda specify the precise condition the degree of processing and packaging of the garlic at the time that it took possession of the garlic. We also asked Hongda to revise the narrative portions of its section D response to the questionnaire in order to reflect all processing that Hongda performed on the garlic it obtained from Kima. Finally, we asked Hongda to clarify all activities reflected in the factor amount it reported for indirect labor.

In its December 2, 2002, response to the supplemental questionnaire, Hongda identified Kima as a company that