

Scope of Investigation

The merchandise covered by this investigation is ground, pulverized or refined brown artificial corundum, also known as refined brown aluminum oxide or brown fused alumina, in grit size of 3/8 inch or less. Excluded from the scope of the investigation is crude artificial corundum in which particles with a diameter greater than 3/8 inch constitute at least 50 percent of the total weight of the entire batch. The scope includes brown artificial corundum in which particles with a diameter greater than 3/8 inch constitute less than 50 percent of the total weight of the batch. The merchandise under investigation is currently classifiable under subheading 2818.10.20.00 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Nonmarket Economy Country Status

The Department has treated the PRC as an NME country in all past antidumping investigations. *See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People's Republic of China*, 63 FR 72255, 72256 (December 31, 1998) (*Mushrooms*). A designation as an NME remains in effect until it is revoked by the Department. *See* section 771(18)(C) of the Act.

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs us to base normal value (NV) on the NME producer's factors of production, valued in a comparable market economy that is a significant producer of comparable merchandise. The sources of individual factor prices are discussed under the "Normal Value" section of the notice, below.

No party in this investigation has requested a revocation of the PRC's NME status. We have, therefore, preliminarily continued to treat the PRC as an NME.

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. Jinyu is a joint venture between a PRC entity and a Singapore trading company. As the Singapore company owns a minority interest in the joint venture, a separate-rates analysis is necessary to determine

whether Jinyu is independent from government control and is eligible for a separate rate.

The Department's separate rate 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. 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, 61758 (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, 14727 (March 20, 1995).

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, 20589 (May 6, 1991), as modified by *Notice of 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 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. *See Silicon Carbide and Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR 22544 (May 8, 1995) (*Furfuryl Alcohol*).

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 e.g., Silicon Carbide and Furfuryl Alcohol*.

Jinyu has placed on the record the following document to demonstrate absence of *de jure* control: "Law of the People's Republic of China on Sino-foreign Equity Joint Ventures."

In prior cases, the Department has analyzed this law and other, similar laws, and found that they establish an absence of *de jure* control. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Partial-Extension Steel Drawer Slides With Rollers From the People's Republic of China*, 60 FR 29571, 29573 (June 5, 1995);¹ *Notice of Final Determination of Sales at Less Than Fair Value: Manganese Metal From the People's Republic of China*, 60 FR 56045, 56046 (November 6, 1995). We have no new information in this proceeding which would cause us to reconsider this determination.

According to Jinyu, RBAO exports are not affected by export licensing provisions or export quotas. Jinyu claims to have autonomy in setting the contract prices for sales of RBAO through independent price negotiations with its foreign customers without interference from the PRC government. Based on the assertions of Jinyu, we preliminarily determine that there is an absence of *de jure* government control over the pricing and marketing decisions of Jinyu with respect to its RBAO export sales.

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 Mushrooms*, 63 FR at 72257. 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 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

¹ This determination was unchanged in the final determination. *See 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).