

verification procedures, including on-site inspection of the manufacturer's facilities and examination of relevant sales and financial records. Our verification results are outlined in the verification report for each company (see April 16, 2003, verification reports for Hengtai and Xumingyuan for further discussion).

Separate Rates

In proceedings involving non-market-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 (i.e., a PRC-wide rate).

Hengtai claims that it is a limited liability company in the PRC, and Xumingyuan claims that it is a joint venture between a PRC and a foreign company. Thus, for these respondents, a separate rates analysis is necessary to determine whether the exporters are independent from government control (see *Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China* ("Bicycles") 61 FR 56570 (April 30, 1996)).

To establish whether a firm is sufficiently independent in its export activities from government control to be entitled to a separate rate, the Department utilizes a test arising from 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"), and amplified in 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 the separate-rates criteria, the Department assigns separate rates in NME cases only if the respondent can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

1. De Jure Control

Hengtai and Xumingyuan have placed on the administrative record documents to demonstrate absence of *de jure* control, including the PRC's Enterprise Legal Person Registration Administrative Regulations promulgated on June 13, 1988, and the 1994 "Foreign Trade Law of the People's Republic of China."

As in prior cases, we have analyzed these laws and have found them to establish sufficiently an absence of *de jure* control of joint ventures between PRC and foreign companies and limited liability companies in the PRC. 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 proceeding which would cause us to reconsider this determination with regard to Hengtai and Xumingyuan.

2. 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 the 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 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 and Furfuryl Alcohol*).

Hengtai and Xumingyuan each 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 to obtain loans. Additionally, each of these companies' questionnaire responses indicates that its pricing during the POR does not suggest coordination among exporters.

For Hengtai and Xumingyuan, the Department found no evidence at verification of government involvement in their business operations. Specifically, Department officials examined sales documents that showed

that each of these respondents negotiated its contracts and set its own sales prices with its customers. In addition, the Department reviewed sales documentation, bank statements and accounting documentation that demonstrated that each of these respondents received payment from its U.S. customers via bank wire transfer, which was deposited into its own bank account without government intervention. Finally, the Department examined internal company memoranda such as appointment notices, which demonstrated that each of these companies selected its own management. See pages four through eight of the Department's verification report for Hengtai, and pages five through seven of the Department's verification report for Xumingyuan. This information, taken in its entirety, supports a finding that there is a *de facto* absence of governmental control of each of these companies' export functions.

Consequently, we have determined that Hengtai and Xumingyuan have each met the criteria for the application of separate rates based on our verification findings.

Fair Value Comparisons

To determine whether sales of the subject merchandise by Hengtai and Xumingyuan to the United States were made at prices below normal value ("NV"), we compared each company's export prices to NV, as described in the "Export Price" and "Normal Value" sections of this notice, below.

Export Price

For both respondents, we used export price methodology in accordance with section 772(a) of the Tariff Act of 1930, as amended ("the Act") because the subject merchandise was first sold prior to importation by the exporter outside the United States directly to an unaffiliated purchaser in the United States, and constructed export price was not otherwise indicated.

For both respondents, we calculated export price based on packed, FOB foreign port prices 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 and foreign brokerage and handling charges in the PRC, in accordance with section 772(c) of the Act. Because foreign inland freight and foreign brokerage and handling fees were provided by PRC service providers or paid for in renminbi, we based those charges on surrogate rates from India (see "Surrogate Country" section below for