

policy to assign all exporters of merchandise subject to investigation in an NME country this single rate, unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. The five companies that have submitted Section A responses have provided the requested company-specific separate rates information and have stated that, for each company, there is no element of government ownership or control. All five companies have requested a separate company-specific rate.¹

JMC reported that it is a Sino-U.S. equity joint venture between Jinan Malleable Iron Corporation and South Hudson Inc., established under Chinese law as a limited liability corporation. JMC is privately owned by individual shareholders and controlled by a board of directors. JMC states that it does not have any relationship with the central, provincial, or local governments in the PRC. JMC further states that there are no government controls on the export activities of JMC.

SLK reported that it is wholly-owned by LDR, a U.S. company, and controlled by its managers and owners. SLK stated that they have no relationship with any other producers or exporters of subject merchandise, and that there are no government controls on the export activities of SLK. SLK further states that they it is not owned or controlled by a provincial or local government. Because SLK is wholly foreign-owned, a separate rate analysis is not necessary.

Pannext reported that it is a subsidiary of Pantex Computer Inc. (PCI), a company incorporated in Texas, United States and is controlled by its two-person board of directors, one of whom is the owner of PCI, and the other is the general manager of Pannext. Pannext stated that all exports of the subject merchandise were produced by Pannext. Pannext claimed that Pannext and its affiliates have no corporate relationship with any level of the PRC government. Because Pannext is wholly foreign-owned, a separate rate analysis is not necessary.

Chengde reported that it is an employee-owned enterprise. Chengde further states that Chengde is under the direct control of its general manager who makes all business decisions, and that Chengde is independent of any national, provincial, or local government, including ministries or offices of those governments with

respect to exports of the subject merchandise to the United States.

SCE reported that SCE operates in a market economy and operates beyond the jurisdiction of the NME government of the PRC. SCE states that it has no relationship with national, provincial and local governments, and that there are no controls on the export activities of SCE.

Based on these claims, we considered whether each respondent is eligible for a separate rate. The Department's separate rate test to determine whether the exporters are independent from government control 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, 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).

To establish whether a firm is sufficiently independent from government control of its export activities 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) 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, 22586–87 (May 2, 1994) (*Silicon Carbide*). Under the separate rates criteria, the Department assigns separate rates in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities. See *id.*

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. JMC, SLK, Pannext, SCE, and Chengde have 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 "Company Law of the People's Republic of China." 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 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, 29573 (June 5, 1995). We have no information in this proceeding that would cause us to reconsider this determination. Therefore, based on the foregoing, we have preliminarily found an absence of *de jure* control for JMC, SLK, Pannext, SCE, and Chengde.

2. 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 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 disposition of profits or financing of losses. 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* 59 FR at 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 that would preclude the Department from assigning separate rates.

All respondents asserted the following: (1) they establish their own export prices; (2) they negotiate contracts without guidance from any governmental entities or organizations; (3) they make their own personnel decisions; and (4) they retain the proceeds of their export sales, using

¹ As noted above, Myland is not eligible for a separate rate because the Department has rejected its Section A response in accordance with 19 C.F.R. 351.302(d)