

PRC cases, the Department has analyzed the Industrial Enterprises Law and found that this law establishes mechanisms for private control of companies, which indicates an absence of de jure control. *See Pure Magnesium From the People's Republic of China: Final Results of New Shipper Review*, 63 FR 3085, 3086 (January 21, 1998).

According to the respondents, AJC exports are not affected by quota allocations or export license requirements. The Department has examined the record in this case and does not find any evidence that AJC exports are affected by quota allocations or export license requirements. By contrast, the evidence on the record demonstrates that the producers/exporters have the autonomy to set the price at whatever level they wish through independent price negotiations with their foreign customers and without government interference.

Accordingly, we preliminarily determine that there is an absence of de jure government control over export pricing and marketing decisions of the respondents.

Absence of De Facto Control

De facto absence of government control over exports is based on four factors: (1) Whether each exporter sets its own export prices independently of the government and without the approval of a government authority; (2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) whether each exporter has the authority to negotiate and sign contracts and other agreements; (4) whether each exporter has autonomy from the government regarding the selection of management (*See Silicon Carbide*, 59 FR at 22587; *Sparklers*, 56 FR at 20589).

As stated in previous cases, there is 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 72255). 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 has reviewed the record in this case and notes that each respondent: (1) Establishes its own export prices; (2) negotiates contracts without guidance from any governmental entities or organizations; (3) makes its own personnel decisions; (4) retains the proceeds from export

sales and uses profits according to its business needs without any restrictions; and (5) does not coordinate or consult with other exporters regarding pricing decisions.

The information on the record supports a preliminary finding that there is an absence of de facto governmental control of the export functions of these companies. Consequently, we preliminarily determine that all responding exporters have met the criteria for the application of separate rates.

Changsha did not submit a response to the Department's antidumping duty questionnaire, including the separate rates section. We therefore preliminarily determine that Changsha did not establish its entitlement to a separate rate in this review and, therefore, is presumed to be part of the PRC NME entity and, as such, is subject to the PRC country-wide rate. *See the "Use of Facts Otherwise Available" section, below.*

PRC-Wide Rate and Use of Facts Otherwise Available

As noted above, Changsha is appropriately considered part of the PRC-wide entity. This entity did not respond to the Department's questionnaire. Section 776(a)(2) of the Act provides that if an interested party or any other person: (A) Withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the Department shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.

Because the PRC entity did not respond to the Department's questionnaire, we find that, in accordance with sections 776(a)(2)(A) and (C) of the Act, the use of total facts available is appropriate (*See, e.g., Final Results of Antidumping Duty Administrative Review for Two Manufacturers/Exporters: Certain Preserved Mushrooms from the People's Republic of China*, 65 FR 50183, 50184 (August 17, 2000) (for a more detailed discussion, *See Preliminary Results of Antidumping Duty Administrative Review for Two Manufacturers/Exporters: Certain Preserved Mushrooms from the People's Republic of China*, 65 FR 40609, 40611 (June 30, 2000)); *Notice of Final Determination of*

Sales at Less Than Fair Value: Persulfates from the People's Republic of China, 62 FR 27222, 27224 (May 19, 1997); and *Certain Grain-Oriented Electrical Steel from Italy: Final Results of Antidumping Duty Administrative Review*, 62 FR 2655 (January 17, 1997) (for a more detailed discussion, *See Preliminary Results of Antidumping Duty Administrative Review: Certain Grain-Oriented Electrical Steel from Italy*, 61 FR 36551, 36552 (July 4, 1996))). Because the PRC entity provided no information, sections 782(d) and (e) are not relevant to our analysis.

Section 776(b) of the Act provides that, if the Department finds that an interested party "has failed to cooperate by not acting to the best of its ability to comply with a request for information," the Department may use information that is adverse to the interests of the party as facts otherwise available. Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated full." *See Statement of Administrative Action ("SAA") accompanying the URAA*, H.Doc. No. 103-316, at 870 (1994).

Section 776(b) of the Act authorizes the Department to use as adverse facts available information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record. Under section 782(c) of the Act, a respondent has a responsibility not only to notify the Department if it is unable to provide requested information, but also to provide a "full explanation and suggested alternative forms." On August 2, 2002, the Department transmitted its questionnaire to Changsha via priority mail. We confirmed with the delivery company that this transmission was received and signed for by Changsha personnel on August 6, 2002. Changsha did not submit a response to our questionnaire by the deadline established for such submissions. On December 2, 2002, the Department faxed and sent a letter by priority mail to Changsha asking whether the company had received the August 2, 2002, questionnaire, and whether it had, in fact, decided not to comply with our requests for information. The Department received no responses from Changsha personnel to either the letter or the facsimile. Therefore, we determine that the PRC entity failed to cooperate to the best of its ability, making the use of an adverse inference appropriate.

In this proceeding, in accordance with Department practice (*See, e.g.,*