

cases. In accordance with section 771(18)(C)(i) of the Tariff Act of 1930, as amended ("the Act"), any determination that a foreign country is an NME shall remain in effect until revoked by the Department. None of the parties to this proceeding have contested such treatment in this review. Moreover, parties to this proceeding have not argued that the PRC AJC industry is a market-oriented industry.

Therefore, we are treating the PRC as an NME country within the meaning of section 773(c) of the Act. We allow companies in NME countries to receive separate antidumping duty rates for purposes of assessment and cash deposits when those companies can demonstrate an absence of government control, both in law and in fact, with respect to export activities.

To establish whether a company operating in an NME country is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in 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*"), as amplified by 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 respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

Absence of *De Jure* Control

Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: 1) an absence of restrictive stipulations associated with the 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.

Golden Tide has placed two documents on the record to demonstrate absence of *de jure* government control, "Foreign Trade Law of the People's Republic of China" ("Foreign Trade Law") and the "Administrative Regulations of the People's Republic of China Governing the Registration of Legal Corporations" ("Administrative Regulations"). The Foreign Trade Law grants autonomy to foreign trade operators in management decisions and establishes accountability for their own profits and losses. In prior cases, the

Department has analyzed the Foreign Trade Law 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 and Postponement of Final Determination: Certain Partial-Extension Steel Drawer Slides with Rollers from the People's Republic of China, 60 FR 29571 (June 5, 1995); Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People's Republic of China, 63 FR 72255 (December 31, 1998) ("*Mushrooms*"). We have no new information in this segment of the proceeding which would cause us to reconsider this determination.

The Administrative Regulations safeguard social and economic order, as well as establishing an administrative system for the registration of corporations. The Department has reviewed the Administrative Regulations and concluded that they show an absence of *de jure* control by requiring companies to bear civil liabilities independently, thereby decentralizing control of companies.

According to the respondent, 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 respondent.

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 finds the following facts about the respondent: (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; (4) it retains the proceeds from export sales and uses profits according to its business needs without any restrictions; (5) it 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 this company. Consequently, we preliminarily determine that Golden Tide has met the criteria for the application of a separate rate.

Fair Value Comparisons

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

Export Price

For the sale made by Golden Tide during the POR we used export price, in accordance with section 772(a) of the Act, because the subject merchandise was sold to unaffiliated purchasers in the United States prior to importation into the United States and because the constructed export price methodology was not warranted by other circumstances.

We calculated export price based on Golden Tide's selling price to an unaffiliated purchaser. In accordance with section 772(c) of the Act, we deducted from this price amounts for foreign inland freight from plant to warehouse and from warehouse to port, foreign brokerage and handling, U.S. customs broker fees, international freight, U.S. inland freight from port to warehouse, U.S. warehousing expense, and U.S. customs duty. We valued the deductions for foreign inland freight, international freight, and brokerage and