

gathered by the a itself. Accordingly, we determine that the Fay Candle's rate is appropriate to be used in this administrative review as AFA in accordance with sections 776(b) and (c) of the Act.

Cooperative Companies That Merit Separate Rates

Two PRC producers/exporters, Shandong, Jiaye and Shanghai charming, responded to the Department's Q&V letter, as well as the Department's Section A questionnaire (which includes eligibility for a separate rate), but were not selected as mandatory respondents. Based on our analysis, these two companies have demonstrated their eligibility for a separate rate (*see* "Separate Rates" section below). Accordingly, for these two companies, we have calculated a weighted-average margin based on the rates calculated for those producers/exporters that were selected as mandatory respondents, excluding any rates that are zero, *de minimis*, or based entirely on AFA. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Freshwater Crawfish Tail Meat From the People's Republic of China*, 62 FR 41347, 41350 (August 1, 1997).

Companies That Claimed No Shipments

With respect to five PRC producers/exporters who responded to the Department's A&V letter claiming that they had no shipments during the POR, the Department is preliminary rescinding this review, in part, with respect to the four producers/exporters for which the Department was able to confirm their claim, as follows: Dalian Hanbo, Premier Candle, ZHS, and Zen Continental (*see* "Preliminary Partial Rescission of Administrative Review" section above). The fifth producer/exporter, Li & Fung, will receive the AFA rate (*see* "Application of Facts Available" section above).

Verification

As provided in section 782(i) of the Act, we intend to verify all company information relied upon in making our final results.

Separate Rates

Fay Candle, Qingdao, Kingking, Shandong Jiaye, and Shanghai Charming have all requested a separate, company-specific rate.⁵ It is the

Department's policy to assign all exporters of the merchandise subject to review in non-market economy (NME) countries a single rate, unless an exporter 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 eligible for a separate rate, the Department analyzes each exporting entity under the test established in *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991), as amplified by *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994). 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 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. *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; and (4) whether each exporter has autonomy from the government regarding the selection of management.

De Jure Control

With respect to the absence of *de jure* government control over the export activities of the companies reviewed and those how applied for a separate rate, evidence on the record indicates that Fay Candle's, Qingdao Kingking's, Dhandong Jiaye's, and Shanghai Charming's export activities are not controlled by the government. Fay Candle, Qingdao Kingking, Shandong Jiaye, and Shanghai Charming submitted evidence of their legal right to set prices independently of all government oversight. We find no evidence of *de jure* government control

restricting Fay Candle's, Qingdao Kingking's, Shandong Jiaye's or Shanghai Charming's exportation of candles.

The following laws, which have been placed on the record of this review, indicate a lack of *de jure* government control over privately-owned companies, such as Shandong Jiaye or Shanghai Charming, and that control over these enterprises rests with the enterprises themselves. Qingdao Kingking, Fay Candle, Shandong Jiaye, and Shanghai Charming submitted the following laws: the Foreign Trade Law of the People's Republic of China, promulgated on May 12, 1994, at the Seventh session of the Standing Committee of the Eighth National People's Congress and effective on July 1, 1994, the Administrative Regulations of the People's Republic of China Governing the Registration of Legal Corporations, issued on June 3, 1988, by the State Council of the PRC, the Law of the People's Republic of China on Chinese-Foreign Cooperative Joint Ventures, promulgated on April 13, 1998, by Order No. 4 of the President of the People's Republic of China and effective from April 13, 1998. In addition, Qingdao Kingking and Shandong Jiaye submitted the Sino Foreign Equity Joint Venture Law, promulgated on July 1, 1979, by the Fifth National People's Congress. Qingdao Kingking also submitted the Company Law of the People's Republic of China, promulgated on December 29, 1993, at the Fifth Session of the Standing Committee of the Eighth National People's Congress and effective on July 1, 1994. The legislation placed on the record of this review provides that to qualify as legal persons, companies must have the "ability to bear civil liability independently" and the right to control and manage their businesses. These regulations also state that, as an independent legal entity, a company is responsible for its own profits and losses. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Manganese Metal from the People's Republic of China*, 60 FR 56045 (November 6, 1995) (*Manganese Metal*). Therefore, we preliminarily determine that there is an absence of *de jure* government control over export activity with respect to these companies.

De Facto Control

With respect to the absence of *de facto* government control over the export activities of the companies reviewed and those who applied for a separate rate, evidence on the record indicates that the government has no

⁵ Although Smartcord, a mandatory respondent, submitted a response to section A of the questionnaire, it did not respond to the remainder of the Department's questionnaire. As a mandatory respondent, Smartcord was required to provide complete questionnaire responses. Therefore, as

detailed in the "Application of Adverse Facts Available" section above, adverse facts available have been assigned to Smartcord. As a result, Smartcord will not receive a separate rate for these preliminary results.