

Separate Rate

In proceedings involving non-market-economy (NME) countries, the Department begins with a presumption that all companies within the country are subject to government control and thus should be assigned a single antidumping rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to its exports. In this review, Yisheng has requested a separate company-specific rate.

To establish whether a company is sufficiently independent in its export activities from government control to be entitled to a separate, company-specific rate, the Department analyzes the exporting entity in an NME country 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, 20589 (May 6, 1991) (*Sparklers*), and amplified by the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585, 22586–22587 (May 2, 1994) (*Silicon Carbide*).

The Department's separate-rate test is unconcerned, 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).

Yisheng provided separate-rate information in its responses to our original and supplemental questionnaires. Accordingly, we performed a separate-rates analysis to determine whether this producer/exporter is independent from government control (see *Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China*, 61 FR 56570 (April 30, 1996)).

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.

Yisheng has 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 "Administrative Regulations of the People's Republic of China Governing the Registration of Legal Corporations." The Department has analyzed such PRC laws and found that they establish an absence of *de jure* control. See, e.g., *Preliminary Results of New Shipper Review: Certain Preserved Mushrooms From the People's Republic of China*, 66 FR 30695, 30696 (June 7, 2001). We have no information on the record of this review that would cause us to reconsider this determination.

2. Absence of *De Facto* Control

Typically, the Department considers four factors in evaluating whether a 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 its 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. See *Silicon Carbide*, 59 FR at 22587.

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 22586–22587. 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 which would preclude the Department from assigning separate rates.

According to Yisheng, it is a privately owned company. It has asserted the following: (1) There is no government participation in setting export prices; (2)

its sales manager and authorized employees have the authority to bind sales contracts; (3) it does not have to notify any government authorities of its management selection; (4) there are no restrictions on the use of its export revenue; and (5) it is responsible for financing its own losses. Yisheng's questionnaire responses do not suggest that pricing is coordinated among exporters. Furthermore, our analysis of the responses reveals no other information indicating the existence of government control. Consequently, we preliminarily determine that Yisheng has met the criteria for the application of a separate rate.

Use of Adverse Facts Available

The Department issued an antidumping duty questionnaire to Yisheng on December 31, 2002. The Department granted a number of extensions to Yisheng to file its response to the questionnaire and, in total, extended the deadline from February 7, 2003, to April 1, 2003. The Department received Yisheng's response to the Department's original questionnaire on April 1, 2003. The Department rejected Yisheng's factors-of-production response entirely because the Department found it to be inadequate and internally inconsistent. On June 2, 2003, the Department sent Yisheng a supplemental questionnaire requesting a new factors-of-production submission and clarification on other parts of its response. On June 20, 2003, the Department received Yisheng's response to the supplemental questionnaire but its submission did not include a factors-of-production response. Yisheng stated that it omitted factors-of-production information because it did not own a photocopying machine, its sole printer was a 20-year old dot-matrix printer, no one at the company spoke English, and the data had to be obtained from third parties.

On August 13, 2003, in response to a telephone call from Yisheng's counsel stating that Yisheng would file its factors-of-production response soon, the Department informed Yisheng's counsel that it would reject such a response because it would be untimely filed. On August 18, 2003, 59 days past the June 20, 2003, deadline, Yisheng submitted a factors-of-production response. The Department rejected this submission for the following reasons: (1) it was untimely filed, (2) Yisheng did not demonstrate that it acted to the best of its ability in providing the requested information, and (3) the information could not be used without undue difficulties. See Letter from Laurie Parkhill to Yisheng, dated September 3,