

sufficiently address the three prongs of the Department's MOI test (*see below*), and that, as a consequence, we were unable to conclude that the experiences of the firms making the claim are representative of the industry. Copies of this letter were also provided to Haier, Skyworth, and the PRC government. On September 16, 2003, Changhong, Haier, Philips, TCL, and XOCECO responded to the petitioners' August 22, 2003, comments on the MOI issue, but they did not address the Department's concerns.

On October 31, 2003, Changhong submitted a request regarding its MOI claim, stating that before making its final determination in this case, the Department should identify the specific MOI information required from the PRC CTV producers.

In order to consider a MOI claim, the Department requires information on each of the three prongs of the MOI test regarding the situation and experience of the PRC CTV industry as a whole. Specifically, the MOI test requires that: (1) There be virtually no government involvement in production or prices for the industry; (2) the industry is marked by private or collective ownership that behaves in a manner consistent with market considerations; and (3) producers pay market-determined prices for all major inputs, and for all but an insignificant proportion of minor inputs. Even in those cases where the number of investigated firms is limited by the Department, a MOI allegation must cover all (or virtually all) of the producers in the industry in question. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Synthetic Indigo From the People's Republic of China*, 64 FR 69723, 69725 (Dec. 14, 1999). *See also 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, 41353 (Aug. 1, 1997).

As a threshold matter, we note that the respondents have not provided information for the record that covers virtually all of the producers of the industry. Rather, the respondents provided certain data related to companies which appear to be export-oriented without demonstrating that this data applies equally to other CTV producers within the PRC. Because the MOI allegation made in this case has not provided an adequate basis for considering the three factors of the Department's MOI test, we are unable to consider the MOI request.

Separate Rates

In an NME proceeding, the Department presumes that all companies within the country are subject to governmental control and should be assigned a single antidumping duty rate unless the respondent demonstrates the absence of both *de jure* and *de facto* governmental control over its export activities. *See Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China*, 61 FR 19026, 19027–28 (Apr. 30, 1996) (*Bicycles*). Changhong, Konka, TCL, XOCECO, and the cooperative non-selected exporters named in the "Suspension of Liquidation" section below have provided the requested company-specific separate rates information and have indicated that there is no element of government ownership or control over their export operations. We have considered whether the mandatory respondents are eligible for a separate rate as discussed below.

The Department's separate rate test 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 Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From Ukraine*, 62 FR 61754, 61758–60 (Nov. 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 (Nov. 17, 1997); and *Notice of Preliminary Determination of Sales at Less than Fair Value: Honey from the People's Republic of China*, 60 FR 14725, 14727 (Mar. 20, 1995).

To establish whether a firm is sufficiently independent from government control to be entitled to a separate rate, the Department analyzes each exporting entity 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, 20589 (May 6, 1991), as modified by *Notice of 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 the

respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities. *See Silicon Carbide and Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995) (*Furfuryl Alcohol*).

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.

The mandatory respondents have placed on the record a number of documents to demonstrate absence of *de jure* control, including the "Law of the People's Republic of China on Industrial Enterprises Owned By the Whole People."

In prior cases, the Department has analyzed these laws and found that they establish 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, 29573 (June 5, 1995);³ *Notice of Final Determination of Sales at Less Than Fair Value: Manganese Metal From the People's Republic of China*, 60 FR 56045, 56046 (Nov. 6, 1995). We have no new information in this proceeding which would cause us to reconsider this determination.

According to the mandatory respondents, CTV exports are not affected by export licensing provisions or export quotas. These respondents claim to have autonomy in setting the contract prices for sales of CTVs through independent price negotiations with their foreign customers without interference from the PRC government. Based on the assertions of the respondents, we preliminarily determine that there is an absence of *de jure* government control over the pricing and marketing decisions of the respondents with respect to their CTV export sales.

³ This was unchanged in the final determination. *See, Notice of Final 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 54472, 54474 (Oct. 24, 1995).