

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*).

Shanghai Xiuwei and Sichuan Dubao provided separate-rate information in their responses to our original and supplemental questionnaires. Accordingly, we performed a separate-rates analysis to determine whether this exporter and producer/exporter are 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)).

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. See *Sparklers*, 56 FR 20588, 20589.

Shanghai Xiuwei and Sichuan Dubao have 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" (May 12, 1994) and the "Administrative Regulations of the People's Republic of China Governing the Registration of Legal Corporations" (June 3, 1998). 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). At verification, we found that Shanghai Xiuwei's and Sichuan Dubao's business licenses and "Certificate of Approval—For Enterprises with Foreign Trade Rights in the People's Republic of China" were granted in accordance with these laws. Moreover, the results of verification support the information provided regarding these PRC laws. See Shanghai Xiuwei Verification Report at 9–10 and Sichuan Dubao Verification Report at 10–11. Therefore, we preliminarily determine that there is an absence of *de jure* control over Shanghai Xiuwei's and Sichuan Dubao's export activities.

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* 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* 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.

Shanghai Xiuwei and Sichuan Dubao have both asserted the following: (1) They are privately-owned companies; (2) there is no government participation in their setting of export prices; (3) their chief executive officers and authorized employees have the authority to bind sales contracts; (4) they do not have to notify any government authorities of their management selection; (5) there are no restrictions on the use of their export revenue; and (6) they are responsible for financing their own losses. Shanghai Xiuwei's and Sichuan Dubao's questionnaire responses do not suggest that pricing is coordinated among exporters. Furthermore, our analysis of the responses during verification reveal no other information indicating the existence of government control. See Shanghai Xiuwei Verification Report at 10–11 and Sichuan Dubao Verification Report at 11–13. Consequently, because evidence on the record indicates an absence of government control, both in law and in fact, over Shanghai Xiuwei's and Sichuan Dubao's export activities, we preliminarily determine that Shanghai Xiuwei and Sichuan Dubao have both met the criteria for the application of a separate rate.

Normal Value Comparisons

To determine whether the respondent's sale of the subject

merchandise to the United States was made at a price below normal value, we compared their United States price to normal value, as described in the "United States Price" and "Normal Value" sections of this notice.

United States Price

For both Shanghai Xiuwei and Sichuan Dubao, we based the United States price on export price ("EP") in accordance with section 772(a) of the Act, because the first sale to an unaffiliated purchaser was made prior to importation, and constructed export price ("CEP") was not otherwise warranted by the facts on the record. We calculated EP based on the packed price from the exporter to the first unaffiliated customer in the United States. For Sichuan Dubao, we deducted foreign inland freight from the starting price (gross unit price), in accordance with section 772(c) of the Act. For Shanghai Xiuwei, we deducted foreign inland freight and brokerage and handling expenses incurred in the PRC from the starting price.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine normal value ("NV") using a factors-of-production methodology if (1) the merchandise is exported from an NME country, and (2) available information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act.

In every case conducted by the Department involving the PRC, the PRC has been treated as an NME country. Pursuant to section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. Shanghai Xiuwei and Sichuan Dubao did not contest such treatment in this review. Accordingly, we have applied surrogate values to the factors of production to determine NV. See the Factor Valuation Memorandum for the Preliminary Results of the Antidumping Duty New Shipper Review of Honey from the People's Republic of China, dated November 26, 2003 ("Factor Valuation Memo"). A public version of this memorandum is on file in the CRU located in room B-099 of the Main Commerce Building.

We calculated NV based on factors of production in accordance with section 773(c)(4) of the Act and § 351.408(c) of our regulations. Consistent with the original investigation of this order, we determine that India (1) is comparable to the PRC in level of economic