

determine whether this 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)).

As stated above in the "Background" section, Kunshan and High Hope did not respond to the Department's antidumping questionnaire. Rather, as noted above, these companies informed the Department that they would not be participating in this proceeding. Moreover, the Department did not receive any type of response from Henan, although we issued it a supplemental request for information as noted in the "Background" section above. Because none of these three companies responded to our request for information regarding separate rates, we preliminarily determine that these companies do not merit separate rates. See, e.g., *Natural Bristle Paint Brushes and Brush Heads from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 61 FR 57389 (November 6, 1996). Consequently, consistent with the statement in our notice of initiation, we find that, because these companies do not qualify for separate rates, they are deemed to be part of the PRC-entity. See *Administrative Review Initiation*. See also "The PRC-wide Rate and Use of Facts Otherwise Available" section below.

#### *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.

Zhejiang has 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" (April 13, 1998) (*Enterprises Owned by the Whole People*), the "Company Law of the People's Republic of China" (December 29, 1993) (*Company Law*), "Foreign Trade Law of the People's Republic of China" (May 12, 1994) (*Foreign Trade Law*), and the "Administrative Regulations of the People's Republic of China Governing the Registration of Legal Corporations" (June 3, 1998) (*Legal Corporations Regulations*). See Exhibit 2 of Zhejiang's April 4, 2003,

submission. In particular, we found that the PRC law, *Enterprises Owned by the Whole People*, grants enterprises owned by all the people status of a legal person which allows for autonomy in management and provides full responsibility over their profits and losses. Chapter III of this law outlines the rights and responsibilities of business enterprises owned by the whole people. Under Article 27 of this chapter, enterprises are granted the right to negotiate and sign contracts with foreign parties, and allowed to withdraw and use their portion of foreign exchange earnings. Zhejiang states that the *Company Law* governs the establishment of limited liability companies, and provides that such a company shall operate independently and be responsible for its own profits and losses. See page 6 of Zhejiang's April 4, 2003, submission. We reviewed Article 11 of Chapter II of the *Foreign Trade Law*, which states that "foreign trade dealers shall enjoy full autonomy in their business operation and be responsible for their own profits and losses in accordance with the law." Moreover, in other proceedings, the Department has analyzed such PRC laws and found that they establish an absence of *de jure* control. See, e.g., *Pure Magnesium from the People's Republic of China: Final Results of New Shipper Review*, 63 FR 3085, 3086 (January 21, 1998) and *Preliminary Results of New Shipper Review: Certain Preserved Mushrooms From the People's Republic of China*, 66 FR 30695, 30696 (June 7, 2001).

Zhejiang submitted a copy of its business license in Exhibit 4 of its Section A questionnaire response, dated April 4, 2003. This license was issued by the Zhejiang Province Industrial and Commercial Administration Bureau. Zhejiang explains that its business license is necessary to register the company. Zhejiang affirms that its business operations are limited to the scope of the license, and that the license may be revoked if the company engages in illegal activities or if the company is found to have insufficient capital. At verification, we found that Zhejiang's business license and "Certificate of Approval: For Enterprises with Foreign Trade Rights in the People's Republic of China" were granted in accordance with the above-reference PRC laws. Moreover, the results of verification support the information provided regarding these PRC laws. See Zhejiang Verification Report at 4–5.

Therefore, consistent with our final determination in the less-than-fair-value investigation (LTFV), we preliminarily determine that there is an absence of *de*

*jure* control over Zhejiang'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.

Zhejiang has asserted the following: (1) it is a publicly-owned company that is independent from government control; (2) it sets prices through direct negotiations with U.S. customers, and such prices consider the company's total costs, including acquisition costs as well as movement expenses, overhead expenses and profit; (3) there is no government participation in its setting of export prices; (4) its Manager of the Bee Products Departments and authorized employees have the authority to bind sales contracts; (5) it does not have to notify any government authorities of its management selection; (6) there are no restrictions on the use of its export revenue and that its President decides how profits will be used; (7) it is responsible for financing its own losses; and (8) it is not required to sell any portion of foreign currency earned to the government.<sup>4</sup> Our analysis of the responses during verification reveals no other information indicating the existence of government control. See Zhejiang Verification Report at 6. Consequently, because evidence on the

<sup>4</sup> Zhejiang's questionnaire responses do not suggest that pricing is coordinated among exporters. Zhejiang states that its President is elected by the employees of the company, and in turn, the President selects the other management of the company. See Zhejiang's April 4, 2003, submission.