

HIED is "owned by all the people." It is the parent company of China Hunan International Economic Development Corporation, Zhuhai Corporation (Zhuhai) and China Hunan International Economic Development Ming Hua Trading Corporation (Ming Hua). Both Zhuhai and Ming Hua reportedly exported subject merchandise during the POI. Although Zhuhai and Ming Hua have been identified individually as being "owned by all the people," HIED states that it consolidates the financial statements of these companies into its own financial statements. Additionally, the higher level management of both companies are assigned and approved by HIED.

GWIEC is an exporter of subject merchandise. The corporate structure provided by GWIEC identifies the company as a "subsidiary" of a larger holding company. This holding company (the first tier-holding company) is in turn a "subsidiary" of another company (the second-tier holding company) which reportedly received its initial capital from a government ministry. GWIEC and the first-tier holding company have been identified as being "owned by all the people." The submissions do not state whether the second-tier holding company is "owned by all the people."

CMIECHN and "Hunan Nonferrous Metals Import & Export Associated Co. (CNIECHN) exported the subject merchandise during the POI. Although each is individually "owned by all the people" and has its own business license, CMIECHN and CNIECHN reportedly share the same high level management, business address, and accounting department.

Minmetals is the exporter of subject merchandise and was identified in its response as being "owned by all the people." The president and vice president of Minmetals hold these same positions at another company which is reportedly a separate business entity and which is not involved in the manufacture or sale of subject merchandise.

CEIEC is the exporter of subject merchandise and is reportedly "owned by all people." This company claims to have three subsidiaries which are not involved in the manufacture or sale of subject merchandise.

In the Final Determination of Sales at Less than Fair Value: Silicon Carbide from the PRC (Silicon Carbide) (59 FR 22585, May 2, 1994), the Department stated that "ownership of a company by all the people does not require the application of a single rate." Accordingly, these companies are eligible for consideration for a separate

rate under our criteria. However, as discussed below, the business structures of the respondent companies, as well as the manner in which they have requested separate rates, raises certain issues concerning which company should be considered the recipient of the separate rate.

To establish whether a firm is 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 PRC (Sparklers) (56 FR 20588, May 6, 1991) and amplified in Silicon Carbide. Under the separate rates criteria, the Department assigns separate rates only where respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

1. Absence of De Jure Control

The respondents submitted a number of documents to demonstrate the absence of *de jure* control of their business activities by the PRC central government. The documents include the following:

- *Law of the People's Republic of China on Industrial Enterprises Owned by the Whole People* (April 13, 1988) This law granted autonomy to state-owned enterprises by separating ownership and control (Article 2). It also granted enterprises the right to set prices and the right to decide what type of commodity to produce (Article 22-26).

- *Excerpts from PRC's States Council Decree: Provisions on Changing the System of Business Operation for States Owned Enterprises* (December 31, 1992) This decree superseded the April 13, 1988 law and codified existing practice. It also gave state-owned enterprises the right to establish "production, management, and operation[al] policies;" the right to set prices, sell products, purchase production inputs, make investment decisions, and dispose of profits and assets. These rights apply specifically to an enterprise's import and export activities (Provision 12).

- *Order from MOFERT, No. 4, 1992 and Temporary Provision for Administration of Export Commodities (Export Provisions)* (December 21, 1992) The *Export Provisions* indicate those products subject to direct government control. Electrolytic manganese metal does not appear on the *Export Provisions* list and hence, the subject merchandise under investigation is not subject to export constraints. We note that the *Emergent Notice on Changes in Issuing Authority for Export Licenses Regarding Public Bidding Quota for*

Certain Commodities (MOFTEC #140) (Effective April 1994) cancelled previous export licenses for certain commodities. Manganese metal was not among these commodities.

Consistent with *Silicon Carbide* and subsequent PRC determinations, we determine that the existence of the laws cited to above demonstrates that the respondent companies are not subject to *de jure* central government control with respect to export sales and pricing decisions. In addition to the above laws and regulations, respondents provided the following documents.

- *PRC's Enterprise Legal Person Registration Administrative Regulations* (June 13, 1988) This regulation sets forth the procedure for registering enterprises as legal persons.

- *Law of the People's Republic of China on Enterprise Bankruptcy* (December 2, 1986) This law sets forth bankruptcy procedures for state-owned enterprises.

- *GATT Document Concerning Transparency of China's Foreign Trade Regime* (February 12, 1992) This document listed the PRC central government's response to questions by a GATT committee regarding the PRC's foreign trade regime.

We note that there is some evidence that the provisions of the above-cited laws and regulations have not been implemented uniformly among different sectors and/or jurisdictions within the PRC (see "PRC Government Findings on Enterprise Autonomy," in Foreign Broadcast Information Service-China-93-133 (July 14, 1993)). As such, the Department has determined that a *de facto* analysis is necessary to determine whether HIED, GWIEC, CMIECHN/CNIECHN, Minmetals, and CEIEC are subject to central government control over export sales and pricing decisions.

2. Absence of De Facto Control

The Department typically considers four factors when evaluating whether a respondent is subject to *de facto* government 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 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*).

Normally, to determine whether a respondent is entitled to a separate rate,