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**OFFICE OF AD ENFORCEMENT  
SEPARATE-RATE APPLICATION AND  
REQUIRED SUPPORTING DOCUMENTATION<sup>1</sup>**

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**REQUESTER(S):** { insert name of applicant }

**REPRESENTATION:** { insert name of counsel and law firm }

**CASE:** [Subject Merchandise] from the PRC Case #

**PERIOD OF INVESTIGATION:** 0/00-0/00

**DATE OF INITIATION:** 0/00

**DEADLINE FOR SUBMISSION OF APPLICATION  
AND SUPPORTING DOCUMENTATION:** 0/00

The Department assigns separate rates in non-market economy (“NME”) cases only if the applicant can demonstrate an absence of both *de jure* and *de facto* governmental control over its export activities in accordance with the separate-rates test criteria. In determining whether companies should receive separate rates, we focus our attention on the exporter rather than the manufacturer, as our concern is the valuation of dumping margins. See Notice of Final Determination of Sales at Less Than Fair Value: Manganese Metal from the People’s Republic of China, 60 FR 56045 (November 6, 1995). Consequently, in this proceeding, the Department will limit its consideration of separate-rate applications to firms that exported the subject merchandise to the United States during the period of investigation (“POI”). To be considered for separate-rate treatment, an applying firm must have made an export of subject merchandise to the United States during the POI.

To establish whether a company’s export activities are sufficiently independent of the government to be entitled to a separate rate, the Department analyzes each exporting entity 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 (May 6, 1991) (“Sparklers”), and later expanded upon in Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People’s Republic of China, 59 FR 22585 (May 2, 1994) (“Silicon Carbide”). Under this analysis, exporters in non-market economies are accorded separate, company-specific margins if they can provide sufficient proof of an absence of

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<sup>1</sup>The final version of the application will include an attached appendix defining all the terms used in the application, including terms like “producer” and “exporter” that have become issues in previous investigations.

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government control, both in law and in fact, with respect to exports. Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: 1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; 2) any legislative enactments decentralizing control of companies; or 3) any other formal measures by the central and/or local government decentralizing control of companies. See Sparklers, 56 FR at 20588.

Our analysis of absence of *de facto* government control over exports is based on the following four factors: 1) whether each exporter sets its own export prices independent of the government and without the approval of a government authority; 2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding disposition of profits or financing of losses; 3) whether each exporter has the authority to negotiate and sign contracts and other agreements; and 4) whether each exporter has autonomy from the government regarding the selection of management. See Silicon Carbide, 59 FR at 22586-87.

Following the test outlined above, this form is an application for separate-rate treatment. Only firms that have not been selected as mandatory respondents to be investigated by the Department should complete this form. Mandatory respondents will have the opportunity to demonstrate their eligibility for a separate rate in the context of the questionnaire response process.

- Applicants must individually complete and submit this form with all the required supporting documentation by sixty calendar days after the date of initiation of this investigation, which appears in the heading of this application.
- The Department will not consider incomplete applications, as an incomplete application will be considered *prima facie* evidence of non-cooperation given the public notice of the initiation and application system in the *Federal Register*.
- If the Department named your firm in the initiation notice, your firm must also respond to the Department's Quantity and Value ("Q&V") questionnaire to receive consideration for a separate rate.
- Firms owned wholly by entities located in market-economy countries, **provided that the ultimate owners are also located in market-economy countries**, need only fill out the certifications and provide supporting documentation for the fields in the application that are marked with the asterisk, "\*".<sup>2</sup> These marked fields pertain to the firm's eligibility for a separate rate by having

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<sup>2</sup>This includes firms that are wholly owned by Hong Kong or Taiwanese entities.

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**sold** subject merchandise during the POI and support the firm's claim that it is in fact wholly owned by a market-economy entity. This information is also necessary for administration once a separate rate has been issued.

- If your firm has any affiliates that also exported subject merchandise to the United States during the period of investigation, you must identify them in the application *and* they must submit their own application for separate rates treatment.
- Wholly foreign-owned firms are required to report *all* of their affiliations with other firms involved in the production or sale of the subject merchandise. The same deadline of sixty calendar days after the initiation of the investigation, as provided above, applies to wholly foreign-owned firms completing the applicable provisions of the application and for submitting the required supporting documentation.
- All other firms must fill out the application individually and in its entirety to receive consideration for a separate rate. Even if an enterprise group meets the Department's criteria for collapsing (19 CFR 351.401(f)), each exporter within the enterprise group must submit an individual application to be eligible for a separate rate.

The application is divided into six sections. Section 1 contains the required certifications that an officer of the company must make to the Department, indicating that the information provided in the application is correct. Section 2 identifies the firm that is applying for a separate rate and demonstrates that this firm is eligible for a separate rate by confirming that it exported subject merchandise to the United States during the period of investigation. Section 3 certifies that the firm meets the *de jure* requirements, *i.e.*, that there are no legal barriers to a firm's independent control over its export activities at either the national or any sub-national level. Section 4 attests to *de facto* independence, *i.e.*, that this *de jure* independence detailed in the third section also exists in practice. Section 5 deals with filing requirements and gives applicants an opportunity to request business proprietary treatment for information that they submit. The addendum at the end of the application asks applicants to submit to the Department information that they have already supplied to other U.S. government agencies such as U.S. Customs and Border Protection. Should you receive notification that your company has received a separate rate, you will be required to provide the information requested in the addendum to the Department no later than 30 days prior to the Preliminary Determination. Should you wish, you may also submit your response to the addendum with your application for a separate rate.

Firms completing the application are certifying that they qualify for a separate rate. The Department only accepts applications that are completed in full (except for wholly foreign-owned enterprises) and submitted with all the required supporting documentation filed timely and in proper form. **Sections 2, 3, and 4 require supporting documentation**, and the fields in these sections that require supporting

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documentation are identified in the application and list specifically the documents that the Department accepts for each certification. Submission of alternate documents may be acceptable, depending on the facts of the case, but may result in the Department's issuance of additional supplemental questions and verification to establish the integrity, reliability, relevance and suitability of the alternative documentation for separate-rate purposes. **Since firms have clear notice of what is required to document a separate rates claim, however, firms submitting incomplete applications will be rejected for separate rates status without supplementary questionnaires.**

Completing the application and submitting the supporting documentation does not guarantee receipt of separate rate. The Department will review each completed application. If the Department finds that the certifications are not supported by the attached documents or are incomplete, the applicant will not have demonstrated to the Department that it qualifies for a separate rate. If the applicant does not provide the required documentation in the appropriately required form or is unable or unwilling to make the requested certifications, the applicant will not have demonstrated its eligibility for a separate rate. The Department will issue questionnaires for the purpose of clarifying fully responsive answers, if necessary. The Department may verify applicants **deemed to meet the standards for a separate rate**. If it selects your firm for verification, the Department will provide your firm with additional instructions at a time preceding the verification.

**SECTION I****Certifications**

\*1<sup>3</sup>.

(To be signed by the company official at the applying firm officially responsible for presentation to the the Department of Commerce.<sup>4</sup>)

I, (name and title), currently employed by (person), certify that (1) I have read the attached submission, and (2) the information contained in this submission is, to the best of my knowledge, complete and accurate.

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(For the person's legal counsel or other representative)

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<sup>3</sup>Note again that the asterisked fields are to be completed by *all* firms, including those wholly foreign-owned by entities located in market economy countries.

<sup>4</sup>This may be the applying firm's legal representative.

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\*2. I, (name), of (law or other firm), counsel of representative to (person), certify that (1) I have read the attached submission and (2) based on the information made available to me by (person), I have no reason to believe that this submission contains any material misrepresentation or omission of fact.

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**SECTION II**

**Administration**

\*1. The full name and contact information (including address, telephone, fax, and e-mail address) of the exporter applying for a separate rate:

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\*2. Is the applicant identified by any other names, either as a legal matter or informally in the conduct of business in the home market, in third countries, or in the United States (*i.e.*, does the company use trade names)?<sup>5</sup>

\_\_\_ Yes

\_\_\_ No

(If yes, then list **any and all other names here, and provide documentation that your company uses these alternative names**)

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\*3. The applicant certifies the accuracy of and can document the following statements:  
(check any of the following that apply)

- a. It has exported, or has sold for export, subject merchandise to the United States during the period of investigation.
  - b. It has made a shipment of merchandise that was entered for consumption in the United States or sold the subject merchandise to an unaffiliated customer during the period of this
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<sup>5</sup> Trade names are other names under which the company does business, or alternative spellings. It does not include product brand names or the names of any other entities in the applicant's "group," affiliated or otherwise.

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segment under its own name (there must be either a sale or entry during the period of investigation to proceed with the separate-rate request).

\*4. Identify the document(s) which support your certification to question 3 above that you are submitting with the application. **Firms must provide the following documents for their first and last sales to the United States during the period of investigation, or, if providing documentation on other sales during the period of investigation, an explanation on why providing documentation for the first and last sales during the period of investigation was not possible. Applicants must submit their U.S. Customs 7501 Entry Summary or the U.S. FDA Release Form. If the exporter is unable to obtain their U.S. Customs 7501 Entry Summary or U.S. FDA Release Form, exporters must demonstrate that they have attempted to obtain these documents from their customers..**

- Customs 7501 Entry Summary
- U.S. FDA Release Form (where applicable)
- bill of lading for sale
- PRC customs declaration form for sale
- value-added tax application/refund for sale (where applicable)
- sales contract
- sales invoice
- packing list
- payment receipt
- other

If “other”, please describe: \_\_\_\_\_

\*5. Does the applicant have any knowledge that merchandise it sold was resold to the United States through market-economy third-country exporters<sup>6</sup> in U.S. dollars?

- \_\_\_ Yes  
\_\_\_ No

**Questions 6, 7, and 8 below, in red, will only be included in the application if the Department decides to assign combination or “chain” rates to all respondents in NME cases. If the Department introduces combination rates, all separate rates the Department assigns will *only* apply to the combinations including the firms identified below.**

**\*6. The full name and contact information (including address, telephone, fax, and e-mail address) of each supplier of subject merchandise shipped to the United States during the POI to the firm applying for a separate rate treatment are as follows:**

\_\_\_\_\_

<sup>6</sup>The Department considers China, Vietnam, Ukraine, Belarus, Moldova, Azerbaijan, Georgia, Armenia, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan to be non-market economies.

\*7. Are the suppliers listed under question 6 above identified by any other names, either as a legal matter or informally in the conduct of business in the home market, in third-countries, or in the United States (*i.e.*, do the companies use trade names)?<sup>7</sup>

\_\_\_ Yes

\_\_\_ No

(If yes, then list any and all other names here, and provide documentation that the suppliers use these alternative names)

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\*8. Indicate whether, to the best of your knowledge, whether the suppliers identified under question 6 above directly exported subject merchandise to the United States during the period of investigation.

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### **SECTION III**

#### ***De Jure Control***

1.  The applicant certifies that there are no government laws or regulations, at either national and sub-national (*e.g.*, provincial, local) levels of government, that control the applicant's export activities.
  - 2a.  The applicant possesses a PRC business license valid during the period of investigation and is submitting an original and translated copy thereof with the application, as well as original and translated copies of any and all additional business licenses or amendments thereto issued to the applicant and in effect during the POI.
  - 2b. Indicate the full name and contact information (address, telephone, fax, and e-mail address) of the business license authority which issued your business license.
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2c. Provide the month, day, and year on which the business license authority last renewed your

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<sup>7</sup> Trade names are other names under which the company does business. It does not include any affiliates.

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business license.

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2d.  The applicant certifies that it is submitting with the application an original and translated copy of its business license<sup>8</sup>.

\*2e. Indicate from the following choices the ownership structure under which your company has registered itself with the PRC business license issuing authority.

- owned by all of the people
- collective
- limited liability
- proprietorship
- partnership
- joint-stock limited company
- other

If "other", please describe: \_\_\_\_\_

Select from the following choices any applicable secondary forms of registration related to foreign-invested enterprises:

- Sino-foreign equity joint venture
- Sino-foreign contractual joint venture
- wholly foreign-owned enterprise
- other

If "other", please describe: \_\_\_\_\_

3a. Indicate the full name and contact information (address, telephone, fax, e-mail address) of the business license authority which issued your export certificate of approval.

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3b. Provide the month, day, and year on which the business license authority issued your export certificate of approval.

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<sup>8</sup> It is the Department's understanding that a valid business license with a clearly defined period of validity issued by the appropriate licensing authority is required for all export activity. An applicant submitting a business license without an expiration date must provide an explanation in order for the Department to consider its application.



3c.  The applicant certifies that it is submitting with the application an original and translated copy of its export certificate of approval which was valid during the period of investigation<sup>9</sup>.

4. In order to conduct export activities, is the applicant required by any national, provincial, or local PRC law or regulation to possess additional certificates or other documents from PRC authorities beyond those discussed above<sup>10</sup>?

\_\_\_ Yes

\_\_\_ No

If yes, identify the certificates below, and submit original and translated copies thereof with the application:

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5. Check the box next to the following PRC government laws and legislative enactments that apply to the applicant firm:

- Company Law of the PRC, effective as of July 1, 1994
- Foreign Trade Law of the PRC, effective 1994
- Administrative Regulations of the PRC Governing the Registration of Legal Corporations
- PRC's Enterprise Legal Person Registration Administrative Regulations of June 13, 1988
- Law of the PRC on Chinese-Foreign Cooperative Joint Ventures
- Regulation Governing Rural Collectively-Owned Enterprises of the PRC of 1990
- Law of the PRC on Industrial Enterprises Owned by the Whole People, adopted on April 13, 1988 ("The Industrial Enterprises Law")
- Regulations for Transformation of Operational Mechanisms of State-Owned Industrial Enterprises of 1992 ("Business Operation Provisions")
- The Organic Law on Village Communities in the PRC ("Village Committee Law")
- Other

If "other", identify below any additional specific national PRC laws and/or legislative enactments which relate to the export functions of the applying company:

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<sup>9</sup> It is the Department's understanding that an export certificate of approval issued by the appropriate licensing authorities is required for all export activity. Therefore, the Department will not consider a separate rate for any applicant not providing such a certificate.

<sup>10</sup> The Department is interested only in PRC laws or regulations which restrict or limit exports rather than regulations which regulate purely domestic operations (*i.e.*, environmental or labor regulations). If you are unsure of the possible relevance of a given law, please contact the Department immediately.

6. Are there any sub-national (provincial, local) PRC laws affecting the applicant's export operations?

\_\_\_ Yes

\_\_\_ No

If yes, identify the laws and submit original and translated copies of each provincial or local PRC law with the application:

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## **SECTION IV**

### ***De Facto Control***

#### **A. Ownership**

\*1. Indicate the names and contact information (full business address, telephone, fax, e-mail address) of the entities which **are the ultimate owners** of your company<sup>11</sup>:

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\*2. Identify the document(s) which support your response to question 1 above that you are submitting with the application.

- capital verification report
- consolidated financial statements
- share transfer agreement
- articles of incorporation/articles of association
- export certificate of approval
- joint venture agreement
- other

If "other," please describe: \_\_\_\_\_

#### **B. Price Negotiation**

3.  The applicant certifies that its export prices are not set by, or subject to the approval of, a governmental authority.

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<sup>11</sup>Note to firms applying as wholly foreign-owned entities: document that the ultimate owners of your company are located in market-economy countries.

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4.  The applicant certifies that it has authority to negotiate and sign export contracts and other agreements (conducts independent price negotiation<sup>12</sup>):
5. Identify the specific document(s) providing evidence of price negotiation which support your certification in question 4 above and which you are submitting with the application<sup>13</sup>. Examples include the following types of documentation:
- faxes/e-mail correspondence between respondent and U.S. customer
  - purchase order from U.S. customer
  - order confirmation
  - affidavit testifying to independent price negotiation signed by an *unaffiliated* U.S. customer
  - other

If "other", please describe: \_\_\_\_\_

**C. Selection of Management**

6.  The applicant certifies that it has autonomy from all levels of the government in making decisions regarding the selection of management.
7. Identify the specific document(s) providing evidence of independence in the selection of management which support your certification in question 6 above which you are submitting with the application. Examples might include the following:
- appointment letters
  - director meeting minutes
  - company-issued resolutions/notifications (besides appointment letters)
  - other

If "other", please describe: \_\_\_\_\_

8. Provide the month, day, year on which each of your managers during the period of investigation obtained his or her position at your company. Also provide the names of each manager and his or her employment (i.e., position, name of company) prior to working at your company if they have been

\_\_\_\_\_

<sup>12</sup>The authority to conduct independent price negotiation refers to the ability of an exporter to set its own export prices independently of the government and without the approval of a government authority.

<sup>13</sup>Applicants should provide documents showing price negotiation, not documents merely confirming that a sale will take place at a given price. If your firm conducts its price negotiation by phone and therefore has no records of price negotiation, consider attaching an affidavit signed by the U.S. customer attesting that it conducts independent price negotiation with the applying firm. Affidavits must provide adequate information to link the applicant to the party signing the affidavit.

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working at your company for less than three years.

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9. Have any of the applying firm's managers worked for the government in the past three years?

\_\_\_ Yes

\_\_\_ No

(If yes, briefly describe the government involvement of the manager in question in supporting documentation.)

10. Does the firm have to submit its slate of candidates for managerial positions for approval to any level of government?

\_\_\_ Yes

\_\_\_ No

(If yes, you certify that you are filing a document with the application containing an explanation)

**D. Disposition of Profits**

11.  The applicant certifies that it retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses.

12. If the applicant realized a profit during the period of investigation, then describe the process by which the applicant's profits were distributed. Specifically, indicate the sections in your books and records where such profits were accounted.

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13. Did the applicant make any disbursements to government accounts during the period of investigation other than for tax or government-provided goods or services?

\_\_\_ Yes

\_\_\_ No

(If yes, describe these disbursements and file a document or documents with the Department illustrating these disbursements.)

14.  For each bank account held by the applicant during the period of investigation the applicant certifies it will provide the following information:

- o Name and address of the bank
- o Bank account number

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- o Month/Year in which the account was opened
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15.  The applicant certifies that it is submitting with the application year-end bank statements and financial statement covering all months of the POI as well as any other information which support the applicant's response to question 13 above.

**E. Affiliation**

All firms must respond to question 16, but only firms that are applying for a separate rate under the status of 100% foreign ownership must respond to question 17.

\*16. Pursuant to Section 771(33) of the Tariff Act of 1930, as amended, does the applicant have any of the following affiliates that **exported merchandise to the United States** which would fall under the description of merchandise covered by the scope of the proceeding?

- Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and linked descendants
- Any officer and director of an organization and such organization
- Partners
- Employer and Employee
- Any person directly or indirectly owning, controlling, or holding with power to vote, five percent or more of the outstanding voting stock or shares or any organization and such organization
- Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person
- Any person who controls any other person and such other person

For the purposes of affiliation, the Department will consider a person to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person.

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If the applying firm is affiliated with any other exporters pursuant to this definition, then list the full names and contact information (business address, telephone, fax, e-mail address) of the affiliates below. **Note that for your firm to be eligible for a separate rate, these affiliates *must* submit their own application for separate-rate treatment.**

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\*17. Pursuant to Section 771(33) of the Tariff Act of 1930, as amended, does the applicant have any of the following affiliates involved in the production or sale of merchandise in the home market, third-country markets, or the United States which would fall under the description of merchandise covered by the scope of the proceeding?

- Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and linked descendants
- Any officer and director of an organization and such organization
- Partners
- Employer and Employee
- Any person directly or indirectly owning, controlling, or holding with power to vote, five percent or more of the outstanding voting stock or shares or any organization and such organization
- Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person
- Any person who controls any other person and such other person

For the purposes of affiliation, the Department will consider a person to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person.

If the applying firm is affiliated with any other producer or exporters pursuant to this definition, then list the full names and contact information (business address, telephone, fax, e-mail address) of the affiliates below:

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**SECTION V**

**Filing Requirements**

- \*1. In accordance with Section 351.304(b)(1) of the Department's regulations, identify the information for which your company claims business proprietary treatment by enclosing the information within single brackets, *i.e.*, [ ].
- \*2. In accordance with Section 351.304(b)(1) of the Department's regulations, provide an explanation of why each item of bracketed information is entitled to business proprietary treatment. If the Department does not agree any given piece of information is entitled to business proprietary treatment and you refuse to agree it should be treated as public, the Department cannot grant you a separate rate as the due process rights of other interested parties would not have been observed.

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- \*3. In accordance with Section 351.304(b)(1) of the Department's regulations, indicate whether you agree to permit disclosure under an administrative protective order of the information for which you request business proprietary treatment. Otherwise, demonstrate that there is a clear and compelling need to withhold the information from disclosure under an administrative protective order. If you do not agree to release and the Department does not agree with your explanation as to a clear and compelling need to withhold the information, the Department cannot grant you a separate rate as the due process rights of other interested parties would not have been observed.
  
- \*4. In accordance with Section 351.304(b)(2) of the Department's regulations, if you claim that there is a clear and compelling need to withhold certain information from disclosure under an administrative protective order, identify in your request that information within double brackets and also include a full explanation of the reasons for the claim.

**ADDENDUM**

Should you receive notification that the Department has determined to grant your company a separate rate, you will be required to provide the information requested below to the Department within 30 days of its Preliminary Determination. Should you wish, you may submit your response to this addendum with your application for a separate rate.

Please fill out the following fields, which are taken from the International Trade Data System database. Your firm or your broker should already have provided the information requested below to other U.S. government agencies (for example, U.S. Customs and Border Protection). This section is intended to ensure that the information your firm provides to the Department of Commerce in this application matches that which you have provided to other U.S. government agencies. For some fields your firm may have provided more than one response. Not all of the fields may be applicable but, if this is the case, please confirm this with your broker and provide an explanation. If the country of export is not the PRC, please explain.

1. Country of Export: The country from which the imported merchandise was shipped.
  
2. Exporter Identifier: The number which uniquely identifies the party responsible for the export shipment in accordance with the terms of delivery, terms of sales contract or other agreed-to terms, and the meeting of statutory and regulatory requirements in the transaction.
  
3. Exporter Party Name: The party name responsible for the export shipment in accordance with the terms of delivery, terms of sales contract or other agreed-to terms, and the meeting of

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statutory and regulatory requirements.

4. FDA Firm Identifier and Code (if applicable): The firm identifier and relationship code.
5. FDA Producer/Manufacturer or Provider of Service (if applicable): The party responsible for the manufacture, growth, production, canning, and/or assembly of the commodity, or the provider of services.
6. FDA Seller/Vendor: Name and address of the party which actually offer the goods for sale and/or contracts for the sale of the merchandise.
7. Importer Identifier: The number which uniquely identifies the party responsible for the import shipment, the payment of related duties, taxes, or fees, and the meeting of all import statutory and regulatory requirements in the transaction.
8. Importer Party Name<sup>14</sup>: The party name responsible for the import shipment, the payment of related duties, taxes, or fees, and the meeting of all import statutory and regulatory requirements in the transaction.
9. Producer/Manufacturer Identifier: The number which uniquely identifies the party responsible for the manufacture, growth, production, canning, and/or assembly of the commodity, or the provider of services in the transaction.
10. Producer/Manufacturer Party Name: The party name responsible for the manufacture, growth, production, canning, and/or assembly of the commodity, or the provider of services.
11. Purchaser/Buyer Identifier: The identifier of the party who contracts for the purchase of commodity or service.

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<sup>14</sup>If the customer is different from the importer, list customer as well.



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12. Purchaser/Buyer Party Name: The party name who contracts for the purchase of commodity or service.
  
13. Tariff Classification Number: The harmonized tariff number required for classification of the merchandise.