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**OFFICE OF AD ENFORCEMENT  
SEPARATE-RATE APPLICATION AND  
REQUIRED SUPPORTING DOCUMENTATION**

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

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

**CASE:** Fresh Garlic from the People's Republic of China ("PRC") A-570-831

**PERIOD OF REVIEW:** November 1, 2005 - October 31, 2006

**DEADLINE FOR SUBMISSION OF APPLICATION  
AND SUPPORTING DOCUMENTATION:** **March 26, 2007**

**OFFICIALS IN CHARGE:**

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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. 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 NME firms that exported subject merchandise to the United States during the period of review (“POR”).<sup>1</sup> To be considered for separate-rate treatment, an applying NME firm must have exported subject merchandise to the United States during the POR in a commercial transaction.

To establish whether a company’s export activities are sufficiently independent of the government to be eligible for separate rate status, 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 government control, both in law and in fact, with respect to export activities. 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; and 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 typically 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 and is intended for firms not selected as mandatory respondents by the Department, but which nonetheless seek a separate rate. Firms that the Department selects to be mandatory respondents will be required to respond to the Department’s antidumping questionnaire. Because NME firms will have the opportunity to respond to the separate rates application immediately upon initiation of the review and before the Department selects mandatory respondents, it is possible that an

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<sup>1</sup> For purposes of this document, the term “subject merchandise” refers to the merchandise described in the petition of the investigation. This shorthand term is not intended to make any conclusions as to the definition of the final scope of the order.

entity the Department selects to be a mandatory respondent will have already submitted an application for a separate rate. In such cases, the firm may refer to its already submitted separate rate application for the section of the questionnaire that deals with separate rates.

- Applicants must individually complete and submit this form with all the required supporting documentation by sixty calendar days after the date of the Quantity and Value (“Q&V”) questionnaire of this review. The deadline appears on the coversheet of this application, and applies equally to NME-owned and wholly market-economy owned firms for completing the applicable provisions of the application and for submitting the required supporting documentation.
- The Department will not consider applications that remain incomplete by the deadline date established above. **The Department will, however, notify firms whose applications are incomplete or otherwise deficient, if those applications are filed within thirty calendar days after the date of the Q&V questionnaire, giving such firms an opportunity to resubmit a corrected application.**
- NME firms owned wholly by entities located in market-economy countries, provided that the ultimate owners are also located in market-economy countries (“wholly market-economy owned firms”), need only fill out the certifications and provide supporting documentation for the fields in the application that are marked with an asterisk, “\*”. These marked fields pertain to the firm’s eligibility for separate rates consideration based on having sold subject merchandise to the United States during the POR 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.
- There are two sets of requirements for reporting any affiliations with other firms involved in the production or sale of the subject merchandise, one for wholly market-economy owned firms and another for NME-owned firms.
- Wholly market-economy owned firms are required to report *all* of their affiliations with other firms involved in the production or sale of the subject merchandise.
- Firms that are not owned wholly by market-economy entities, however, must only identify any affiliates that exported subject merchandise to the United States during the period of review and any U.S. affiliates involved in the sale of the subject merchandise.
- Each applicant seeking separate rate status must submit a separate and complete individual application regardless of any common ownership or affiliation between firms and regardless of foreign ownership.
- The name that is provided to the Department in the application must be the name that appears on the exporter’s business license/registration documents. All shipments to the

United States declared to U.S. Customs and Border Protection must identify the exporter by its legal business name, and this name must match the name that appears on the exporter's business/registration documents. If your firm is assigned separate rate status, your firm will only be able to ship under your separate rate under names that are included on your business license/registration documents.

- All documents submitted in response to a specific question must pertain to the same sale. If volumes or values do not exactly match from one document to the next, the applicant must provide a clear narrative explanation as to why they do not and what the appropriate links are among the documents. The applicant must also provide and explain additional documentation necessary to corroborate its explanation in this regard. For example, if an invoice shows a sales value of \$10,000, but the payment amount is \$15,000, the applicant must explain the difference and provide documentary support for the explanation.
- **All** documents submitted with the application must be, to the extent possible, direct unaltered photocopies of the original documents (*i.e.*, no copies of copies, and the documents must not be altered in any way, including tracing). All documents submitted with the application must be legible to the maximum extent possible. In case the direct photocopy is not legible, or if submitting a direct photocopy is not possible, you must supply the most legible unaltered photocopy available. Firms that are not able to submit completely legible copies of all the documents required in the application, or are unable to submit a required document, must complete the additional certification in Appendix B and include an explanation of why the submission of completely legible documents is not possible. In addition, you must provide supplemental information explaining the contents of any documents that are not fully legible. Illegible or altered documents cannot be considered evidence of the points for which they are required if not accompanied by the requisite certifications and explanations in Appendix B.
- All documents generated in a language other than English must be translated into English. The original language document must also be included with all translations. If all documentation is not complete or if documents are not fully translated, the Department will consider these documents missing for purposes of the separate rate analysis.
- Label all documents submitted in response to the application with sequential page numbers, so the Department may refer to each document by its respective page number.

The application is divided into five sections. Section I 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 II identifies the firm that is applying for separate rate status and demonstrates that this firm is eligible for a separate rate by confirming that it exported or sold subject merchandise to the United States during the period of review. Section III 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 IV attests to *de facto* independence, *i.e.*, that this *de jure* independence also exists in practice. Section V deals with filing requirements and gives applicants an opportunity to request business proprietary treatment for information that they submit. Appendix A provides an sample chart of corporate affiliations that firms may wish to reference. Appendix B contains an additional certification that firms that are unable to submit completely legible copies of all the documents required in the application must complete.

Firms completing the application are certifying that they qualify for separate rate status. The Department only accepts applications that are completed in full (except for wholly market-economy owned enterprises<sup>2</sup>) and submitted with all the required supporting documentation filed timely and in proper form. Sections II, III, and IV require supporting documentation, and the fields in these sections that require supporting documentation are identified in the application and list specifically the documents that the Department accepts for each certification. As noted above, all supporting documentation pertaining to a U.S. sale must pertain to the same sale and be legible to the maximum extent possible. Moreover, the information contained in these documents must be consistent. If there are any discrepancies between information contained in a series of documents pertaining to the same sale, all such discrepancies must be clearly identified and explained. This is necessary to substantiate the claim for separate rates eligibility. Submission of alternate documents in lieu of documents that are not available and/or clarification of documents that are not completely legible may be acceptable, depending on the facts of each individual case, but may result in the Department's issuance of additional supplemental questions and the conduct of an on-site verification to establish the integrity, reliability, relevance and suitability of the alternative documentation for separate-rate purposes. All firms that do not provide completely legible photocopies of all of the documents that are required in the application must make the additional certification in Appendix B and include an explanation of why the submission of completely legible photocopies of all the documents required in the application is not possible.

Since firms have clear notice of what is required to document a separate-rate claim, incomplete applications will be rejected without supplementary questionnaires, although early filers will have an opportunity to remedy their applications.<sup>3</sup> Firms will be notified by the time of the preliminary determination if their applications are rejected, and will be provided with a listing of the deficient aspects of their applications. Completing the application and submitting the supporting documentation does not guarantee receipt of separate rate status. 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

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<sup>2</sup>Please note that all wholly market-economy owned enterprises are required to complete only the asterisked fields.

<sup>3</sup>The Department will notify firms that have submitted deficient applications of their deficiencies if those applications are filed within 30 days of publication of the initiation notice of the investigation. These firms will have an additional period after receipt of the Department's notification to remedy the deficiencies in their applications.

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 retains the right to require additional information concerning the representations made in your firm's application. All information submitted and representations made by applicants are subject to verification. If the Department selects your firm for an on-site verification, the Department will provide your firm with additional instructions at a time preceding the verification.

## **SECTION I**

### **Certifications**

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

\*1.<sup>5</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)

\*2. I, (name), of (law or other firm), counsel or 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.

## **SECTION II**

### **Administration**

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

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

<sup>5</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. Wholly market-economy owned firms need not respond to non-asterisked fields.

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\*2. Is the applicant identified by any other names, as a legal matter in the home market, in third countries, or in the United States (*i.e.*, does the company use trade names)?<sup>6</sup>

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

(If yes, then list any and all other names here, when and under what circumstances they are used, and confirm whether the business license/registration documents submitted with this application and covering the POR include 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 review.
  
- b. It has, under its own name(s), made a shipment of merchandise that was entered for consumption in the United States or sold the merchandise during the period of this review to an unaffiliated third-country customer for export to the United States (there must be either a sale or entry during the period of review to proceed with the separate-rate request).

\*4. Firms must, to the maximum extent possible, provide a direct legible photocopy (not a copy of a copy) of all of the following original documents for the first sale by invoice date of subject merchandise to an unaffiliated customer in the United States during the POR for a commercial transaction.<sup>7</sup> These documents must not be altered in any way. If your firm's first sale by invoice date during the period of review was a sample sale, a sale of non-commercial quantities, or a sale to an affiliated party, identify this sale and provide documentation on another sale.<sup>8</sup> If providing documentation on another sale during the period of review, attach an explanation of

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<sup>6</sup> Trade names are other names under which the company does business. It does not include product brand names or the names of any other entities in the applicant's "group," affiliated or otherwise. If your firm is assigned separate rate status, your firm will only be able to ship under your separate rate under names that are included on your business license/registration documents.

<sup>7</sup> If you are not able to supply completely legible photocopies of any documents requested in the application, you must attach an explanation of why submission of completely legible photocopies is not possible.

<sup>8</sup> If your firm has *only* made sample shipments or sales or sales of non-commercial quantities during the period of investigation, your firm is ineligible to apply for a separate rate at this time. If your firm has *only* made sales to affiliated parties during the period of investigation, you must provide evidence of the first sale to an *unaffiliated* U.S. customer to qualify for a separate rate.

why providing documentation for the first sale during the period of review was not possible. If you are not able to supply completely legible photocopies of any documents required below, you must supply the most legible photocopies available, complete the additional certification in Appendix B, and include an explanation in it of why submission of all the photocopies in completely legible form is not possible.

1. The U.S. Customs 7501 Entry Summary or the U.S. FDA Release Form.<sup>9</sup>  
For the U.S. Customs 7501 Entry Summary and the U.S. FDA Release Form only, if the exporter is unable to obtain the relevant U.S. Customs 7501 Entry Summary or U.S. FDA Release Form, the exporter must explain why it is unable to submit these documents and provide documentation that it has attempted to obtain these documents from its customers.
2. The bill of lading.
3. The commercial invoice.
4. The packing list.
5. Documentation demonstrating receipt of payment.

All the documents above must pertain to the same sale (normally, the first sale by invoice date during the POR, unless one of the conditions discussed above applies). In addition to providing these documents, you must provide a narrative explanation of how the documents relate to one another and what the specific links are among the documents. If volumes or values do not exactly match from one document to the next, the applicant must provide in this narrative a clear explanation of any apparent discrepancies among the documents. The applicant must also provide and explain additional documentation necessary to corroborate its explanation in this regard. For example, if the invoice and payment amount do not match, the applicant must explain the difference and provide documentary support for this explanation.

\*5. Does the applicant have any knowledge that merchandise it sold was resold to the United States through market-economy third-country exporters in U.S. dollars?<sup>10</sup>

Yes  
 No

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\*6. Provide the full name and contact information (including address, telephone, fax, and e-mail address) of each of the applicant's producers of subject merchandise whose merchandise the

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<sup>9</sup>If the merchandise was entered into the United States informally using Customs Form 368 or 368A because the value of the entry was USD \$2000 or less, provide a copy of Customs Form 368 or 368A.

<sup>10</sup>The Department considers China, Vietnam, Ukraine, Belarus, Moldova, Azerbaijan, Georgia, Armenia, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan to be non-market economies.



applicant sold or exported to the United States during the POR<sup>11</sup>:

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\*7. Are the producers and/or suppliers, listed under question 6 above, identified by any other names as a legal matter in the home market, in third countries, or in the United States (*i.e.*, do the companies use trade names)?<sup>12</sup>

Yes

No

(If yes, then list any and all other names here, and provide a copy of the business licenses/registration documents showing that the suppliers use these alternative names and the dates in which these names were in effect)

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

### **SECTION III**

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

Please check the boxes below if you can certify that the statements below are accurate

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 an official government business license/registration documents valid during the period of review and is submitting with the application original-language and translated copies of any business licenses in effect during the POR, the most current business license, and original-language and translated unaltered photocopies of any and all additional business licenses/registration documents or amendments thereto issued to the applicant and in effect during the POR. If you are not able to supply completely legible photocopies of any documents required below, you must supply the most legible photocopies available, complete the additional certification in Appendix B, and include an explanation in it of why submission of all the photocopies in completely legible form

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<sup>11</sup> If your firm is assigned separate rate status, the rate will *only* apply to merchandise exported by your firm and supplied by the producers identified here.

<sup>12</sup> Trade names are other names under which the company does business. It does not include product brand names or the names of any other entities in the applicant's "group," affiliated or otherwise.

is not possible.<sup>13</sup>

2b. Indicate the full name and contact information (address, telephone, fax, and e-mail address) of the business license/registration documents authority which issued your business license/registration documents and the expiration date of your business license/registration documents.

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2c. Provide the month, day, and year on which the business license authority last renewed your business license/registration documents.

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\*2d. Indicate from the following choices the ownership structure under which your company has registered itself with the official government 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 that apply to your firm:

domestic-foreign equity joint venture

domestic-foreign contractual joint venture

wholly foreign-owned enterprise

other

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

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<sup>13</sup> Note that if the Department determines that your firm is eligible for separate rate status, the separate rate will only apply to the firm as named in your business license/registration documents and not to any alternative or trade names that are not included in your business license/registration documents. It is the Department's understanding that a valid business license/registration documents with a clearly defined period of validity issued by the appropriate licensing authority is required for all business activity. An applicant submitting a business license without an expiration date must provide an explanation in order for the Department to consider its application.

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 and the dates in which it was in effect.

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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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3c. By checking the box, the applicant certifies that it is submitting with the application an original-language and translated copy of its export certificate of approval which was valid during the period of review.<sup>14</sup>

4. In order to conduct export activities, is the applicant required by any national, provincial, or local government law or regulation to possess additional certificates or other documents related to the legal status and/or operation of its business beyond those discussed above?<sup>15</sup>

Yes

No

If yes, identify the certificates below, and submit original-language 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

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<sup>14</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>15</sup> The Department is interested only in government 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.

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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6. Are there any sub-national (provincial, local) government 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 government law with the application:

#### **SECTION IV**

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

##### **A. Ownership**

\*1. Indicate the names and contact information (full business address, telephone, fax, e-mail address) of the legal entities which are the intermediate and ultimate owners of your company (also indicate the percent ownership of your company by each entity).<sup>16</sup> In addition, identify any individuals who own more than 10% of your company.

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\*2. Applicants must provide the following documentation for the first level of ownership identified in your response to question 1 above.

1. capital verification report
2. consolidated financial statements
3. share transfer agreement
4. articles of incorporation/articles of association
5. export certificate of approval

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<sup>16</sup>Note to firms applying as wholly market-economy owned entities: document whether the ultimate owners of your company are located in market-economy countries and, if so, indicate which market-economy countries.

If you are not able to submit legible, unaltered photocopies of each of these documents, you must provide the most legible unaltered copies of the documents available, complete the additional certification in Appendix B, and provide a narrative description of why you are not able to provide legible photocopies all of the above documents.

## **B. Price Negotiation**

Please check the boxes below to make the following certifications.

3. The applicant certifies that its export prices are not set by, subject to the approval of, or in any way controlled by a government entity at any level (national, provincial, local).<sup>17</sup>
4. The applicant certifies that it has independent authority to negotiate and sign export contracts and other agreements (conducts independent price negotiation).<sup>18</sup>
5. The Applicant must provide documentation supporting its certification that the applicant conducts independent price negotiation (in question 4 above) and which it is submitting with the application.<sup>19</sup> Examples include the following types of documentation:
  1. faxes/e-mail correspondence between applicant and unaffiliated U.S. customer
  2. purchase order from unaffiliated U.S. customer
  3. order confirmation
  4. logs of negotiations conducted over the telephone with an unaffiliated U.S. customer.

If you do not have any documentation to support your certification that your firm conducts independent price negotiation, you may submit an affidavit as an alternative. This affidavit testifying to independent price negotiation must signed and dated by an *unaffiliated* U.S. customer, including the unaffiliated U.S. customer's contact information.

## **C. Selection of Management**

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<sup>17</sup>This includes, but is not limited to, the presence of government officials at any meeting where export and pricing decisions are discussed.

<sup>18</sup>The authority to conduct independent price negotiation refers to the ability of an NME exporter to set its own export prices independently of the government at any level (national, provincial, local) and without the approval of any government entity.

<sup>19</sup>Applicants must 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, does not keep phone logs of meetings conducted over the phone, and therefore has no records of price negotiation, you are required to attach 1) a certification that there are no records of price negotiation, and 2) an affidavit signed and dated by the unaffiliated 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.

6. By checking the box, the applicant certifies that it has autonomy from all levels of the government (national, provincial, local) and from any government entities in making decisions regarding the selection of management.

7. The applicant must provide specific documentation that evidence independence in the selection of management which support its certification in question 6 above. Examples might include the following:

- appointment letters
- director meeting minutes
- company-issued resolutions/notifications (besides appointment letters)

8. Provide the name of each manager and board member in the applicant's company who held a management position during the period of review and the date (month, day, year) that each of the managers 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) for the three years prior to working at your company if they have been working at your company for less than three years.

9. Have any of the applying firm's managers or board members worked for the government, at any level (national, provincial, local), or any government entities, 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 applying firm have to submit any of its candidates for managerial positions within the firm for approval to any government entity at any level (national, provincial, local)?

Yes

No

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

#### **D. Disposition of Profits**

11. By checking the box, 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 review, then describe the process by which the applicant's profits were distributed. Specifically, indicate the sections in the company's 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 review other than for tax or government-provided goods or services?

Yes

No

(If yes, describe these disbursements, the specific government accounts, 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 review, the applicant certifies it will provide the following information:

- o Name and address of the bank
- o Bank account number
- 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 financial statements covering all months of the POR as well as any other information which support the applicant's response to question 13 above.<sup>20</sup>

**E. Affiliation**

All firms must respond to question 16. In addition, firms applying under NME ownership must respond to question 17, and firms that are applying for separate rate status under the status of 100% foreign ownership must respond to question 18.

Section 771(33) of the Tariff Act of 1930, as amended, defines affiliates as:

- A. Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and linked descendants
- B. Any officer and director of an organization and such organization
- C. Partners
- D. Employer and Employee
- E. 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

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<sup>20</sup> If financial statements covering the POR are not available at the time this application is submitted, please indicate when these would be submitted and provide the Department with monthly financial statements if available.

- F. Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person
- G. Any person who controls any 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.

\*16. Explain whether your firm made shipments or sales to unaffiliated parties, affiliated parties or both, during the period of review, as defined by Section 771(33) of the Tariff Act of 1930. If your firm *only* made sales to affiliated parties during the period of review, you must provide evidence of the first sale to the first unaffiliated party to qualify for a separate rate.

shipments or sales to affiliated parties only

shipments or sales to unaffiliated parties only

shipments or sales to both affiliated and unaffiliated parties

17. As defined by Section 771(33) of the Tariff Act of 1930, as amended, does the applicant have *any affiliates that are located in the United States, or that exported merchandise to the United States* which would fall under the description of merchandise covered by the scope of the proceeding?

Yes

No

If the applying firm is affiliated with any other exporters of merchandise described in the petition of the review pursuant to this definition of affiliation, then the firm must list the full names and contact information (business address, telephone, fax, e-mail address) of the affiliates below. In addition, it would be useful if you would provide a chart demonstrating the ownership and affiliation structure of all of your affiliates that are involved in the production or sale of subject merchandise. For an example of how you might design this chart, see Appendix A.

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\*18. As defined by Section 771(33) of the Tariff Act of 1930, as amended, does the applicant have *any 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?

Yes

No



If the applying firm is affiliated with any other producers or exporters of merchandise described in the petition of the review pursuant to this definition of affiliation, then list the full names and contact information (business address, telephone, fax, e-mail address) of the affiliates below. In addition, it would be useful if you would provide a chart demonstrating the ownership and affiliation structure of all of your affiliates that are involved in the production or sale of subject merchandise. For an example of how you might design this chart, see Appendix A.

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## **SECTION V**

### **Instructions for Filing the Application**

1. File your application in Washington, D.C., at the address listed on the coversheet of the application.
2. Proprietary versions of the application must be submitted by the day specified on the coversheet of the application. The public version of the application may be filed one business day after the proprietary version. As per section 351.204(c)(2) of the Department's regulations, you will also have one day after submission of the proprietary version to correct any errors in the bracketing. If you make any changes, you will be required to resubmit the entire application.
3. File the original and six copies of the proprietary version. However, if you file an electronic copy of the proprietary version in either Word Perfect or Microsoft Word format, you need file only the original version and four copies. In case of any difference between the paper response and the content of the electronic media, the paper response is the controlling version.

File the original and three copies of the public version of your narrative response and attachments.

4. Submit the required certification of accuracy. Providers of information and the person(s) submitting it, if different (*e.g.*, a legal representative), must certify that they have read the submission and that the information submitted is accurate and complete. The Department cannot accept questionnaire responses that do not contain the certification statements.
5. Provide the required certificate of service with each proprietary version and public version submitted to the Department.
6. Request proprietary treatment for information submitted that you do not wish to be made publicly available. As a general rule, the Department places all correspondence and submissions received in the course of an antidumping proceeding in a public reading file.

However, information deemed to be proprietary information will not be made available to the public.<sup>21</sup>

If you wish to make a request for proprietary treatment for particular information, refer to sections 351.304, 351.305, and 351.306 of the Department's regulations. Submit the request for proprietary treatment with the submission of the proprietary version of the questionnaire response accompanied by:

- (1) a non-proprietary (public) version of your response that is in sufficient detail to permit a reasonable understanding of the information submitted in confidence, and/or
- (2) an itemization of particular information that you believe you are unable to summarize. State the reasons why you cannot summarize each piece of information.<sup>22</sup>

Responses, or portions thereof, that are not adequately summarized may be returned to you and not used.

7. Submit the statements required regarding limited release of proprietary information under the provisions of an administrative protective order (“APO”). U.S. law permits limited disclosure to representatives of parties (*e.g.*, legal counsel) of certain business proprietary information, including electronic business proprietary information, under an APO. (Note that data received under an APO cannot be shared with others who are not covered by the APO.) Under the provisions governing APO disclosure, you must submit either:
  - (1) a statement agreeing to permit the release under APO of information submitted by you in confidence during the course of the proceeding, or
  - (2) a statement itemizing those portions of the information which you believe should not be released under APO, together with arguments supporting your objections to that release.<sup>23</sup> As per section 351.304(b)(2)(i) of the Department’s regulations, you must provide a clear and compelling need not to disclose the information under APO

We are required by our regulations to reject, at the time of filing, submissions of business

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<sup>21</sup>Supplier names will not be considered proprietary information where the Department has excluded the exporter from the antidumping duty order. Exclusions of non-producing exporters will be granted only to exporter-supplier combinations.

<sup>22</sup>Generally, numerical data are adequately summarized if grouped or presented in terms of indices or figures ranged within then percent of the actual figure. If a particular portion of the data is voluminous, use ranged figures for at least one percent of the voluminous portion.

<sup>23</sup>The Department will not disclose proprietary customer names under APO during an antidumping investigation until either an order is published or the investigation is suspended. To insure that proprietary customer names are properly treated in this case, place double brackets (“[[ ]]”) around all proprietary customer names in your submissions to the Department during the course of this investigation.

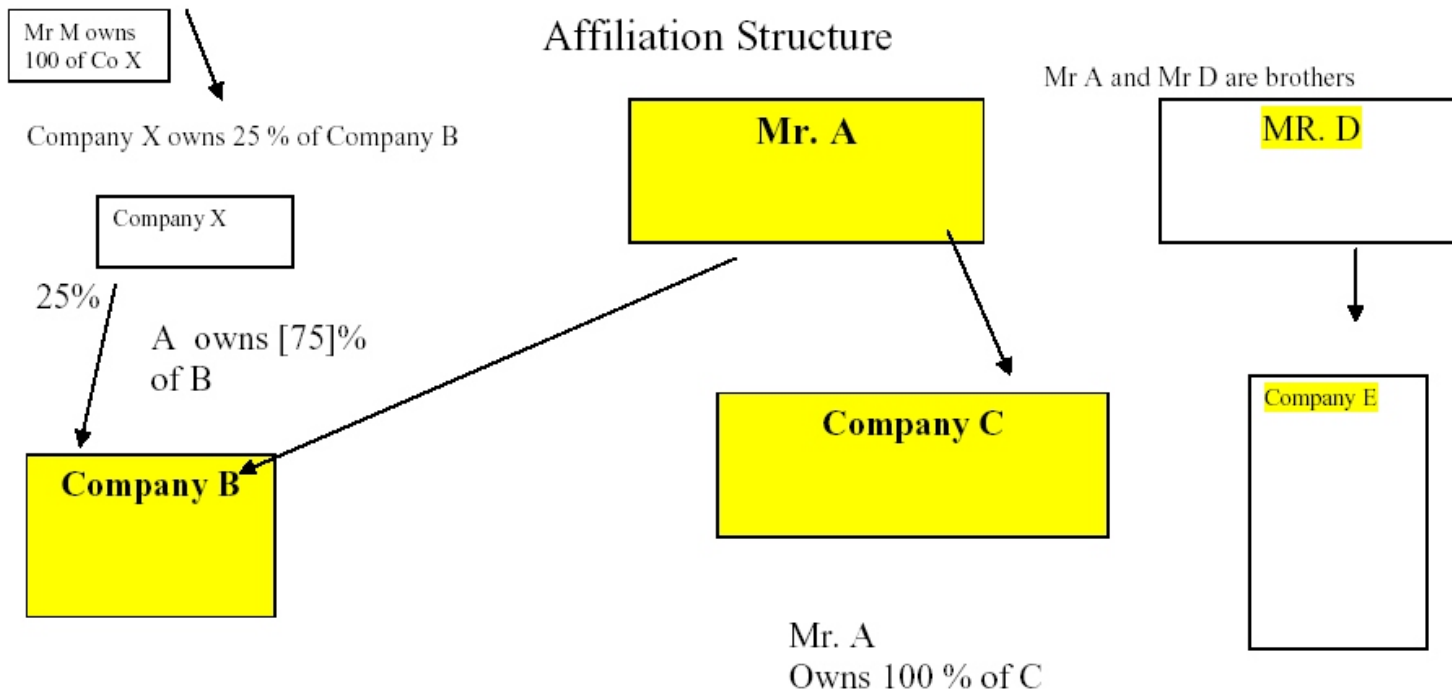
proprietary information that do not contain one of these statements. You must state in the upper right-hand corner of the cover letter accompanying your questionnaire response whether you agree or object to release of the submitted information under APO. (See section 351.304 of our regulations for specific instructions.)<sup>24</sup>

8. Place brackets (“[ ]”) around information for which you request business proprietary treatment. Place double brackets (“[[ ]]”) around information for which you request proprietary treatment and which you do not agree to release under APO.
9. Provide to all parties whose representatives have been granted APO access (as listed in the cover letter to the questionnaire or as listed on the most recent APO and public service lists posted on the Department’s website at: <http://ia.ita.doc.gov/apo/apo-svc-lists.html>.) a complete copy of the submission, proprietary and public versions, except for that information which you do not agree to release under APO. If you exclude information because you do not agree to release it under APO, submit with your response to the Department a certificate of service and a copy of the APO version of the document containing the information that you agree may be released under APO. For parties that do not have access to information under APO, you are required to provide a public version only.

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<sup>24</sup>If you do not agree to release under APO all or part of the proprietary information, but we determine that the information should be released, you will have the opportunity to withdraw the information (see section 351.304(d) of our regulations). However, any information which you withdraw will be taken out of the official record and will not be used in our determination.

APPENDIX A



## APPENDIX B

Appendix B must be completed by all firms for whom it is not possible to submit completely legible unaltered photocopies of all of the supporting documentation required in the application. This appendix applies both to firms that are not able to submit all the required supporting documentation, and to those who are not able to submit completely legible photocopies thereof. To complete this section, you must make the certification below and provide an explanation of why the submission of completely legible copies of all of the required supporting documentation is not possible.

I, \_\_\_\_\_ certify that I am not able to submit completely legible photocopies of the following documents \_\_\_\_\_ that are requested in the fields \_\_\_\_\_. I certify that I have made the maximum effort to obtain and submit the most complete and legible photocopies possible, and that I am submitting with the application the most legible photocopies of the documents possible. This reasons I cannot supply completely legible photocopies of all the required are (supply an explanation for each document that is missing or not completely legible):

I have therefore, in place of these photocopies, provided the following documents to reflect or explain what is contained in the documents that are missing or not completely legible:

\_\_\_\_\_  
(name)