

1 Consistent with Department practice, if a deadline falls on a weekend, federal holiday, or any other day when the

Department is closed, the Department will accept the response on the next business day. See Notice of Clarification: Application of

“Next Business Day” rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, as amended, 70 FR 24533

(May 10, 2005).

OFFICE OF AD ENFORCEMENT

SEPARATE-RATE APPLICATION AND

REQUIRED SUPPORTING DOCUMENTATION

REQUESTER(S): {insert name of applicant}

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

CASE: Carbon and Certain Alloy Steel Wire Rod from the People’s

Republic of China (“PRC”) A-570-902

PERIOD OF INVESTIGATION: April 1, 2005 - September 30, 2005

PUBLICATION DATE OF INITIATION: December 6, 2005

DEADLINE FOR SUBMISSION OF APPLICATION

AND SUPPORTING DOCUMENTATION: February 4, 2006

OFFICIAL IN CHARGE:

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International Trade Administration

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The Department assigns separate rates in non-market economy (“NME”) cases only if the applicant

2For 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.

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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 investigation (“POI”).<sup>2</sup> To be considered for separate-rate treatment, an applying NME firm must have exported subject merchandise to the United States during the POI 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 investigation and before the Department selects mandatory respondents, it is possible that an 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.

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. Applicants must individually complete and submit this form with all the required supporting documentation by sixty calendar days after the date of publication of the initiation notice of this investigation. 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 publication of the initiation notice, giving such firms an opportunity to resubmit a corrected application. Thirty calendar days after the publication of the initiation notice is January 4, 2006.

. In addition to responding to this application, your firm must also respond to the Department's Q&V questionnaire provided in the initiation notice and available on our website ([www.ia.ita.doc.gov](http://www.ia.ita.doc.gov)) to receive consideration for a separate rate. This ensures that the Department has the necessary information to appropriately select mandatory respondents.

. NME firms owned wholly by entities located in market-economy countries, provided that the ultimate owners are also located in market-economy countries ("wholly marketeconomy 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 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.

. There are two sets of requirements for reporting any affiliations<sup>3</sup> 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 investigation 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

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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