

Dorbest Limited v. United States  
Consol. Court No. 05-00003, Slip Op. 10-79 (CIT July 21, 2010).

FINAL RESULTS OF REDETERMINATION  
PURSUANT TO REMAND

**A. SUMMARY**

The Department of Commerce (“Department”) has prepared these final results of redetermination pursuant to the decision of the Court of Appeals for the Federal Circuit (“CAFC” or “Federal Circuit”) in *Dorbest Ltd. v. United States*, 604 F.3d 1363 (Fed. Cir. 2010) (“*Dorbest IV*”), and the remand order of the U.S. Court of International Trade (“CIT” or “Court”) on July 21, 2010, *Dorbest Limited v. United States*, Consol. Court No. 05-00003 (“*Remand Order*”).

The Federal Circuit’s opinion and CIT’s remand order concern the *Final Determination of Sales at Less Than Fair Value: Wooden Bedroom Furniture From the People’s Republic of China*, 69 FR 67313 (November 17, 2004), and accompanying Issues and Decision Memorandum (“IDM”), *as amended by, Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Wooden Bedroom Furniture From the People’s Republic of China*, 70 FR 329 (January 4, 2005) (collectively “*Final Determination*”).

This Court’s remand order follows *Dorbest IV* in which the Federal Circuit affirmed, in part, and vacated, in part, three prior decisions of the CIT. *See Dorbest Ltd. v. United States*, 462 F. Supp. 2d 1262 (CIT 2006) (“*Dorbest I*”); *Dorbest Ltd. v. United States*, 547 F. Supp. 2d 1321 (CIT 2008) ruling (“*Dorbest II*”); *Dorbest Ltd. v. United States*, 602 F. Supp. 2d 1287 (CIT 2009) (“*Dorbest III*”). As a result of *Dorbest IV*, the following two issues were remanded to the Department for further administrative proceedings: 1) calculation of the labor wage rate for Rui Feng Woodwork Co., Ltd., Rui Feng Lumber Development Co., Ltd. and Dorbest Limited

(collectively “Dorbest”); and 2) the selection of surrogate companies to derive the financial ratios. In accordance with *Dorbest IV* and the *Remand Order*, the Department has recalculated the labor wage rate using a method wholly in compliance with section 773(c)(3) of the Tariff Act of 1930, as amended (“the Act”), and has revised its selection of the surrogate companies to include the four smallest companies in the calculation of the surrogate financial ratios.

As a result of this remand, we have incorporated the recalculated wage rate and the recalculated surrogate financial ratios (which now include the four smallest surrogate companies) into Dorbest’s margin.

### **Background**

In order to calculate a new wage rate in compliance with the CAFC’s remand directive that labor must be valued using data from countries that are both economically comparable to the People’s Republic of China (“PRC”) and significant producers of comparable merchandise, the Department found it necessary to seek new factual information. Specifically, the Department needed to place additional wage data on the record in order to determine which countries are both economically comparable and significant producers of comparable merchandise.

On August 11, 2010, the Department notified the parties to the remand proceeding that in response to *Dorbest IV*, it would be revising its calculation of the labor wage rate applied to Dorbest in its redetermination on remand.<sup>1</sup> In this notification, the Department added the aforementioned new factual information (*i.e.*, the necessary wage data) to the record for the calculation of the wage rate, and invited parties to comment on the new data and to submit new factual information, with regard to the narrow issue of the recalculation of the labor wage rate.<sup>2</sup>

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<sup>1</sup> See the Department’s Memorandum to the File, through Erin Begnal, Program Manager, AD/CVD Operations, Office 8, from Brendan Quinn, International Trade Analyst, AD/CVD Operations, Office 8, entitled, “Request for Comment Regarding Wage Rate Data,” dated August 11, 2010 (“Wage Rate Memo”).

<sup>2</sup> See *Id.*

On August 16, 2010, Dorbest provided comments on the wage rate data released by the Department.<sup>3</sup> On August 16, 2010, American Furniture Manufacturers Committee for Legal Trade and Vaughan-Bassett Furniture Company, Inc. (“Petitioners” or “AFMC”) provided wage rate comments.<sup>4</sup> On August 18, 2010, Dorbest submitted rebuttal comments to Petitioners’ Wage Rate Comments.<sup>5</sup> Also on August 18, 2010, Petitioners submitted rebuttal comments to Dorbest’s Wage Rate Comments.<sup>6</sup>

On October 13, 2010, we released our Draft Results of Redetermination Pursuant to Remand (“Draft Redetermination”) to interested parties, which included our initial findings with regard to the recalculation of the wage rate and the recalculation of the surrogate financial ratios pursuant to the Remand Order.<sup>7</sup> The Department invited interested parties to submit comments on the Draft Redetermination no later than October 19, 2010. On October 15, 2010, AFMC requested a one-week extension, until October 26, 2010. On that same day, the Department granted AFMC’s extension request, in part, allowing all interested parties until October 22, 2010, to submit comments.<sup>8</sup> On October 22, 2010, Dorbest provided comments on the Draft Redetermination for these Final Results of Redetermination.<sup>9</sup> Also on October 22, 2010,

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<sup>3</sup> See Letter from Dorbest entitled, “Wooden Bedroom Furniture from the People’s Republic of China: Comments of Dorbest On Wage Rate Data,” dated August 16, 2010 (“Dorbest Wage Rate Comments”).

<sup>4</sup> See Letter from Petitioners entitled, “Wooden Bedroom Furniture from the People’s Republic of China: Petitioners’ Comments Concerning Wage Data Placed On The Record On August 11, 2010,” dated August 16, 2010 (“Petitioners’ Wage Rate Comments”).

<sup>5</sup> See Letter from Dorbest entitled, “Wooden Bedroom Furniture from the People’s Republic of China: Rebuttal Comments of Dorbest On Wage Rate Data Comments of AFMC,” dated August 18, 2010 (“Dorbest Rebuttal Comments”).

<sup>6</sup> See Letter from Petitioners entitled, “Wooden Bedroom Furniture from the People’s Republic of China: Petitioners’ Rebuttal Comments Concerning Wage Data Placed On The Record On August 11, 2010,” dated August 18, 2010 (“Petitioners’ Rebuttal Comments”).

<sup>7</sup> See Draft Redetermination, at Attachment 1.

<sup>8</sup> See the Department’s Letter to Petitioners, entitled, “Wooden Bedroom Furniture from the People’s Republic of China: Extension of Time for Submission of Comments Regarding Draft Redetermination in *Dorbest Limited v. United States* (Court of Int’l Trade No. 05-00003),” dated October 15, 2010.

<sup>9</sup> See Letter from Dorbest entitled, “Wooden Bedroom Furniture from the People’s Republic of China: Comments of Dorbest On Draft Remand Retermination,” dated October 22, 2010 (“Dorbest Post-Draft Comments”).

Petitioners provided comments on the Draft Redetermination for these Final Results of Redetermination.<sup>10</sup>

The Department's response to parties' initial wage rate comments (i.e., those submitted prior to issuance of the Draft Redetermination) are included in the Department's Draft Redetermination, which is attached to these Final Results of Redetermination, at Attachment 1. The Department's responses to parties' post-Draft Redetermination comments are set forth below.

## **B. REMANDED ISSUES**

### **Surrogate Financial Ratios**

#### ***Background***

In *Dorbest I*, the Court disapproved of the Department's inclusion of financial statement data from the smallest four surrogate companies - Fusion Design Private Ltd. ("Fusion"), DnD's Fine Furniture Pvt., Ltd. ("DnD"), Nizamuddin Furniture Private Ltd. ("Nizamuddin"), and Swaran Furniture Ltd. ("Swaran") - used to calculate the surrogate financial ratios, stating concerns that a firm's size could cause distortion in the calculation of the surrogate financial ratios.<sup>11</sup> On remand, the Department was instructed to either eliminate the four smallest companies from the analysis or to explain their inclusion in light of the Court's concerns.<sup>12</sup> In its first remand that addressed this issue, the Department did not exclude the four surrogate companies, explaining that it did not find the evidence supported a sufficient relationship between company size and financial ratios to warrant their exclusion.<sup>13</sup> In *Dorbest II*, the Court

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<sup>10</sup> See Letter from Petitioners entitled, "Wooden Bedroom Furniture From The People's Republic Of China: Petitioners' Comments Concerning Draft Results Of Redetermination Pursuant To Remand In *Dorbest Limited v. United States* (Ct. Int'l Trade 05-0003)," dated October 22, 2010 ("Petitioners' Post-Draft Comments").

<sup>11</sup> See *Dorbest I*, 462 F. Supp. 2d at 1305-1307.

<sup>12</sup> See *Id.* at 1307.

<sup>13</sup> See *Final Results of Redetermination Pursuant to Court Remand*, at 66-70 and 73-79, Court No. 05-00003 (May 25, 2007) ("*Remand I*").

found the Department's conclusion in *Remand I* to be unsupported by substantial evidence, and remanded the selection of the surrogate companies back to the Department for further proceedings.<sup>14</sup> In *Final Results of Redetermination Pursuant to Court Remand*, Court No. 05-00003, July 15, 2008 ("*Remand II*"), the Department excluded the four smallest companies (*i.e.*, Fusion Design, DnD, Nizamuddin and Swaran) from the financial ratio calculations, but stated its respectful disagreement with the Court's finding that their exclusion was appropriate in light of the record evidence.<sup>15</sup>

Additionally, in *Dorbest II*, the CIT addressed an issue raised by AFMC concerning the treatment of interest income. In its court challenge, AFMC argued that the Department erred in the original investigation when it offset selling, general and administrative ("SG&A") expenses with interest income for two of the surrogate companies – DnD and Raghbir Interiors Pvt. Ltd ("*Raghbir*"). In *Dorbest II*, the CIT instructed the Department to further explain its factual determinations regarding its treatment of short-term interest expenses for these two companies.<sup>16</sup> In *Remand II*, the Department re-examined Raghbir's financial statement, and provided further explanation of its decision to offset the full amount of interest income appearing in Raghbir's financial statement.<sup>17</sup> However, because DnD's financial statement was excluded from the financial ratio calculations in *Remand II*, no similar analysis or explanation was completed as to DnD.

In *Dorbest III*, the CIT affirmed both the Department's redetermination in *Remand II* as to the selection of the surrogate financial companies, and as to its treatment of interest income.<sup>18</sup>

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<sup>14</sup> See *Dorbest II*, 547 F. Supp.2d at 1343-1344.

<sup>15</sup> See *Remand II* at 19.

<sup>16</sup> See *Dorbest II*, 547 F. Supp. 2d at 1347-1448.

<sup>17</sup> See *Remand II* at 25-28.

<sup>18</sup> See *Dorbest III*, 602 F. Supp. 2d at 1291-1292.

In *Dorbest IV*, finding that the use of the four surrogate companies in question was reasonable. the Federal Circuit reversed the Court's holding in *Dorbest III*.<sup>19</sup>

### *Analysis*

In accordance with the Federal Circuit's decision *Dorbest IV* and this Court's *Remand Order*, and for the reasons set forth in *Remand I* and *Remand II*, the Department has now included the financial statements of Fusion, DnD, Nizamuddin, and Swaran in the surrogate financial ratio calculations.<sup>20</sup>

Furthermore, because DnD's financial statement is now being included in the financial ratio calculations, it is necessary to revisit the CIT's instructions in *Dorbest II* and explain the reasoning regarding the short-term interest income offsets, specifically as applied to DnD's financial statement.

The Department's practice is to allow an offset to SG&A and interest expenses with short-term interest income earned on investments of working capital accounts (*e.g.*, current assets).<sup>21</sup> Short-term interest-bearing assets are current assets with a life of one year or less. The Department does not, however, offset interest expense with interest income earned on long-term investments because long-term interest income does not relate to current operations.<sup>22</sup> Because the Department is regularly faced with record evidence (*i.e.*, surrogate financial statements) in non-market economy cases that do not allow for a detailed analysis of the assets that generated

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<sup>19</sup> See *Dorbest IV*, 604 F.3d at 1373-1375.

<sup>20</sup> See the Department's Memorandum to the File, through Erin Begnal, Program Manager, AD/CVD Operations, Office 8, entitled, "Analysis Memorandum for the Draft Results of Redetermination Pursuant to Court Remand in the Antidumping Duty Investigation of Wooden Bedroom Furniture from the People's Republic of China: Rui Feng Woodwork Co., Ltd. ("Rui Feng Dongguan"), Rui Feng Lumber Development Co., Ltd. ("Rui Feng Shenzhen"), and their parent company Dorbest Limited (collectively "Dorbest")," dated October 08, 2010 ("Dorbest Draft Remand Analysis Memo").

<sup>21</sup> See, *e.g.*, *Gulf States Tube Division of Quanex Corp. v. United States*, 981 F.Supp. 630, 651 (CIT 1997); *Polyethylene Retail Carrier Bags from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Partial Rescission of Review*, 73 FR 14216 (March 17, 2008) and accompanying Issues and Decision Memorandum ("IDM") at Comment 1.

<sup>22</sup> See *Notice of Final Results of Antidumping Duty Administrative Review: Silicon Metal from Brazil*, 71 FR 7517 (February 13, 2006) and accompanying IDM at Comment 4.

the interest income, and the Department does not have the ability to go behind financial statements, the Department has established a reasonable practice of examining the full set of financial statements in an effort to identify the specific portion of interest income generated from current assets (*i.e.*, short-term interest income).<sup>23</sup> Where the Department is able to discern this information from the financial statements, the Department will grant an offset to SG&A for that portion of the interest income generated from current assets. As we explain below, in this instance, our examination of DnD's balance sheet revealed that all of the interest bearing assets for this company were short-term in nature (*i.e.*, current assets).

We have re-examined DnD's financial statement and found that all of DnD's interest-bearing assets are listed under "Current Assets."<sup>24</sup> "Current assets" are defined as "assets of a short-term nature that are readily convertible to cash."<sup>25</sup> Also, in examining DnD's balance sheet, we found that it did not have any long-term interest-bearing assets (*e.g.*, loans, bonds, certificate of deposits with a maturity of more than a year, etc.). In previous cases, the Department has determined that when a company has interest income and no interest-bearing

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<sup>23</sup> See *e.g.*, *Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485 (July 15, 2008) and accompanying Issues and Decision Memorandum at 18B, *See also Bulk Aspirin from the People's Republic of China; Final Results of Antidumping Duty Review*, 68 FR 6710 (February 10, 2003) and accompanying Issues and Decision Memorandum at Comment 5 (stating that we offset interest expense with short-term interest revenue where we could discern the short-term nature of the interest revenue from the financial statements); *Notice of Final Determination of Sales at Less Than Fair Value; Honey from the People's Republic of China*, 66 FR 50608 (October 4, 2001) and accompanying Issues and Decision Memorandum at Comment 3 (stating that we did not offset interest expense because the financial statements did not provide sufficient data for us to identify short-term interest revenue), *Third Administrative Review of Frozen Warmwater Shrimp From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 46565 (September 10, 2009) and accompanying IDM at Comment 4.a.

<sup>24</sup> See DnD's Financial Statement at Attachment II.

<sup>25</sup> See Merriam-Webster On-line Dictionary ([www.merriam-webster.com](http://www.merriam-webster.com), accessed September 20, 2010). Further, Barron's Dictionary of Accounting Terms, Joel G. Siegel and Jae K. Shim, 1987, at 110, defines a current asset as an "item having a life of one year or less."

long-term assets, the interest income is considered to be short-term in nature.<sup>26</sup> In the instant case, after re-examining DnD's balance sheet, we have concluded that all of the interest-bearing assets are for line items (*i.e.*, sundry debtors, cash & bank balances) which are found under "Current Assets." Thus, any interest income earned is considered short-term interest income. Since DnD does not have any interest-bearing long-term assets that would generate interest income, we conclude that all of the interest income was generated from the short-term assets and, thus, allowed the full amount as an offset to interest expense when calculating DnD's SG&A ratio in the instant redetermination.<sup>27</sup>

## **Wage Rate**

### ***Background***

During the investigation, the Department calculated a surrogate wage value in accordance with the regression-based methodology set forth in section 351.408(c)(3) of the Department's regulations.<sup>28</sup> In its court challenge, Dorbest argued, *inter alia*, that the Department's regulation was invalid because it prescribes a methodology for valuing labor that is inconsistent with the statutory requirement to derive the prices or costs of the factors of production from market

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<sup>26</sup> See *Polyethylene Retail Carrier Bags from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Partial Rescission of Review*, 73 FR 14216 (March 17, 2008), and accompanying IDM at Comment 1, stating, "We examined the financial statements of Simthabh, Kuloday, and Sangeeta and determined that, while all three companies received interest income, none of their respective balance sheets contained interest-bearing long-term assets." See also, *Folding Metal Tables and Chairs from the People's Republic of China: Final Results of Antidumping Duty Administrative Review* 72 FR 71355 (December 17, 2007), and accompanying IDM at Comment 2, stating, "We examined Infiniti's balance sheet and determined that none of its accounts contained interest-bearing long-term assets . . . Further, we determined that all of the interest bearing assets recorded in Infiniti's balance sheet are recorded in the line item 'Loans and Advances' within the category of 'Current Assets, Loans & Advances.'"

<sup>27</sup> See Dorbest Draft Remand Analysis Memo at Attachment III.

<sup>28</sup> Prior to the commencement of briefing in this litigation, the Department requested, and this court granted a voluntary remand to correct certain clerical errors that occurred with the calculation of the labor wage rate during the underlying investigation. On August 1, 2005, the Department issued an initial *Final Results of Redetermination Pursuant to Court Remand Orders*, Court Nos. 05-00003 ("*Labor Remand*"), pursuant to the CIT's remand order in *Dorbest Limited v. United States*, Court No. 05-00003 (June 1, 2005) ("*Labor Remand Order*"). The clerical errors addressed in the *Labor Remand* are not at issue in this redetermination.



economy countries that are both economically comparable to the non market economy country and significant producers of the subject merchandise. *See* Section 773(c)(4) of the Act.

The CIT rejected Dorbest’s facial challenge to the Department’s labor regulation in *Dorbest I*.<sup>29</sup> The CIT, however, did remand the application of the Department’s wage methodology.<sup>30</sup> Specifically, the Department was directed to justify why its labor value constitutes the best available information.<sup>31</sup> In *Remand I*, the Department provided additional explanation and justification of the wage methodology applied to Dorbest pursuant to the Department’s labor regulation. In *Dorbest II*, this Court affirmed the Department’s labor valuation employed for Dorbest.<sup>32</sup>

On appeal, the CAFC held that the Department’s “regression-based method for calculating wage rates, as stipulated by 19 C.F.R. § 351.408(c)(3), uses data not permitted by the statutory requirements laid out in section 773 of the Act (*i.e.* 19 U.S.C. § 1677b(c)).”<sup>33</sup> Specifically, the CAFC interpreted section 773(c) of the Act to require the use of data from market economy countries that are both economically comparable to the NME at issue and significant producers of the subject merchandise, unless such data are unavailable. Because the Department’s methodology pursuant to its regulation employs data from economically dissimilar countries and from countries that do not produce comparable merchandise, the CAFC invalidated the Department’s labor regulation (19 C.F.R. § 351.408(c)(3)). Following *Dorbest IV*, the CIT remanded the *Final Determination* with instructions that the labor wage value be recalculated in accordance with the decision in *Dorbest IV*.<sup>34</sup> The Department was further instructed to explain

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<sup>29</sup> *See Dorbest I*, 462 F. Supp. 2d at 1292.

<sup>30</sup> *See Dorbest I*, 462 F. Supp. 2d at 1298-99 and Order.

<sup>31</sup> *See Dorbest I*, 462 F. Supp. 2d at 1298-99 and Order.

<sup>32</sup> *See Dorbest II*, at 547 F.Supp. 2d at 1324-1331 and Order.

<sup>33</sup> *See Dorbest IV*, 604 F. 3d at 1372.

<sup>34</sup> *See Remand Order* at 5.

how its final redetermination on remand complies with the CAFC's interpretation of section 773(c) of the Act in *Dorbest IV*.

### ***Analysis***

In response to *Dorbest IV* and this Court's *Remand Order*, the Department has revised its valuation of the labor value applied to Dorbest's reported labor input in the *Final Determination*, in accordance with the CAFC's interpretation of section 773(c) of the Act. To value labor, the Department has not relied on the regression-based methodology set forth in 19 C.F.R. § 351.408(c)(3). Instead, as we explain fully below, for this remand redetermination, the Department calculated an hourly wage rate for labor by averaging industry-specific earnings and/or wages in countries that are economically comparable to the PRC and significant producers of comparable merchandise.

#### **Re-Valuation of the Labor Wage Rate**

To achieve a labor value that is both responsive to the CAFC's directives in *Dorbest IV* and based on the best available information for this remand redetermination, we have relied on labor data from several countries that we have determined to be both economically comparable to the PRC, and significant producers of comparable merchandise.

Although the Department is no longer using a regression method to value labor, we continue to find reliance on labor data from multiple countries, as opposed to labor data from a single country, constitutes the best available information for valuing the labor input. While data from a single surrogate country can reliably be used to value most other factors of production ("FOPs"), wage data from a single surrogate is not the best method for valuing the labor input due to the variability that exists between wages and Gross National Income ("GNI"). While

there is a strong worldwide relationship between wage rates and GNI, we continue to find that too much variation exists among the wage rates of comparable market economies.

For example, when examining the relevant wage data on the record, even for countries that are relatively comparable in terms of GNI for purposes of factor valuation (*e.g.*, countries with GNIs between USD 410 and USD 1,020, as explained in the paragraph below), the wage rate spans from USD 0.12 to USD 1.08.<sup>35</sup> Additionally, in 2002 although both India and Pakistan had GNIs below USD 500 per capita, and both could be considered economically comparable to the PRC, India's observed labor rate is USD 0.12, as compared to Pakistan's observed wage rate of USD 0.39 – over three times that of India.<sup>36</sup> There are many socio-economic, political and institutional factors, such as labor laws and policies unrelated to the size or strength of an economy, that cause significant variances in wage levels between countries. For this reason, and because labor is not traded internationally, the variability in labor rates among countries that are otherwise economically comparable, as a general rule, does not characterize other production inputs or impact other factor prices. The Department thus finds that reliance on wage data from a single country is not preferable. For these reasons, the Department maintains its longstanding position that, even when not employing a regression methodology, more data are still better than less data for purposes of valuing labor. Accordingly, in order to minimize the effects of the variability that exists between wage data of comparable countries, the Department has employed a methodology that relies on as large a number of countries as possible that also meet the statutory criteria of economic comparability and significant producer.

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<sup>35</sup> See Wage Rate Memo at Attachment 1.

<sup>36</sup> See *Id.*

In order to determine the economically comparable surrogate countries from which to calculate a surrogate wage rate, the Department looked to the Surrogate Country Memo.<sup>37</sup> Early in the initial investigation, the Department selected five countries for consideration as the primary surrogate country for this investigation. To determine which countries were at comparable levels of economic development to the PRC, the Department placed primary emphasis on GNI.<sup>38</sup> The Department relies on GNI to generate its initial list of countries considered to be economically comparable to the PRC. In the initial investigation, the list of potential surrogate countries found to be economically comparable to the PRC included India, the Philippines, Indonesia, Sri Lanka, and Pakistan. From the list of countries contained in the Surrogate Country Memo, the Department used the country with the highest GNI (*i.e.*, the Philippines) and the lowest GNI (*i.e.*, Pakistan) as “bookends” for economic comparability.<sup>39</sup> Then, using 2002 GNI figures as reported in World Bank’s 2004 *World Development Report* (“*WDR*”) available at the time of the initial investigation, the Department identified all countries with per capita GNIs that fell between the “bookends.” This resulted in 24 countries, ranging from Pakistan (with USD 410 GNI) to the Philippines (with USD 1,020 GNI), that the Department considers economically comparable to the PRC.

Regarding the “significant producer” prong of the statute, starting with the list of economically comparable countries, the Department identified all countries which had exports of comparable merchandise (defined as exports under HTS 9403.50 and HTS 7009.92, the HTS codes identified in the scope of this order)<sup>40</sup> between 2001 and 2003.<sup>41</sup> In this case, we have

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<sup>37</sup> See the Department’s Memorandum from Ron Lorentzen to Robert Bolling entitled, “Request for a List of Surrogate Countries,” dated January 16, 2004 (“Surrogate Country Memorandum”).

<sup>38</sup> See 19 C.F.R. 351.408(b).

<sup>39</sup> For the 2002 GNI figures as reported in the 2004 *WDR*, see Wage Rate Memo at Attachment 1.

<sup>40</sup> See 70 FR at 329, 333.

<sup>41</sup> The export data is obtained from the Global Trade Atlas (“GTA”). See Wage Rate Memo at Attachment 1.

defined a “significant producer” as a country that exported comparable merchandise between 2001 through 2003. After screening for countries that had exports of comparable merchandise, we determine that 13 of the 24 countries designated as economically comparable to the PRC are also significant producers.

Accordingly, for purposes of valuing wages in this remand redetermination, the Department determines the following 13 countries to be both economically comparable to the PRC, and significant producers of comparable merchandise: Cameroon, Cote d'Ivoire, Guinea, Guyana, Honduras, India, Indonesia, Lesotho, Mongolia, Pakistan, Papua New Guinea, Philippines, and Sri Lanka.<sup>42</sup>

The Department then identified which of these 13 countries, determined to be both economically comparable to the PRC and significant producers of comparable merchandise, also reported the necessary wage data. In doing so, the Department has continued to rely upon International Labor Organization (“ILO”) Chapter 5B data “earnings,” if available and “wages” if not.<sup>43</sup> We used the most recent data that would have been available at the time of investigation (*i.e.*, 1997-2002), and adjusted to the 2003 period of investigation (“POI”) using the relevant Consumer Price Index (“CPI”).<sup>44</sup> Of the 13 countries that the Department has determined are

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<sup>42</sup> *See Id.*

<sup>43</sup> The Department maintains its current preference for “earnings” over “wages” data under Chapter 5B. However, under the previous practice, the Department was typically able to obtain data from somewhere between 50-60+ countries. Given that the current basket now includes fewer countries, the Department found that our long-standing preference for a robust basket outweighs our exclusive preference for “earnings” data. Thus, if earnings data is unavailable from the base year (2002) or the previous five years (1997-2001) for certain countries that are economically comparable and significant producers of comparable merchandise, the Department will use “wage” data, if available, from the base year or previous five years. The hierarchy for data suitability described in the 2006 *Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716, (October 19, 2006) (“*Antidumping Methodologies*”) still applies for selecting among multiple data points within the “earnings” or “wage” data. This allows the Department to maintain consistency as much as possible across the basket.

<sup>44</sup> Under the Department’s regression analysis, the Department limited the years of data it would analyze to a two-year period. *See Antidumping Methodologies*, 71 FR at 61720. However, because the overall number of countries being considered in the regression methodology was much larger than the list of countries now being considered in the Department’s calculations, the pool of wage rates from which we could draw from two years-

both economically comparable and significant producers of comparable merchandise, 7 countries, *i.e.*, Cameroon, Cote d'Ivoire, Guinea, Honduras, Lesotho, Guyana, and Papua New Guinea were omitted from the wage rate valuation because there were no earnings or wage data available. The remaining countries reported either earnings or wage rate data to the ILO within the prescribed six-year period.<sup>45</sup>

Based on the selection methodology set forth above, the following six countries reported reliable wage data for purposes of this remand determination: India, Indonesia, the Philippines, Mongolia, Pakistan, and Sri Lanka. In response to parties' comments early in this remand proceeding, the Department has determined it appropriate to rely on industry-specific wage data reported within Chapter 5B of the ILO's *Yearbook of Labour Statistics* for this remand redetermination.

The ILO industry-specific data is reported according to the International Standard Industrial Classification of all Economic Activities ("ISIC") code, which is maintained by the United Nations Statistical Division and is periodically updated. These updates are referred to as "Revisions." The ILO, an organization under the auspices of the United Nations, utilizes this classification for reporting purposes. Currently, wage and earnings data are available from the ILO under the following revisions: ISIC-Rev.2, ISIC-Rev.3, and most recently, ISIC-Rev.4.<sup>46</sup>

The ISIC code establishes a two-digit breakout for each manufacturing category, and also often

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worth of data was still significantly larger than the pool from which we may now draw using five years worth of data (in addition to the base year). The Department believes it is acceptable to review ILO data up to five years prior to the base year as necessary (as we have previously), albeit adjusted using the CPI. *See Expected Non-Market Economy Wages: Request for Comment on Calculation Methodology*, 70 FR 37761, 37762 (June 30, 2005). In this manner, the Department will be able to capture the maximum amount of countries that are significant producers of comparable merchandise, including those countries that choose not to report their data on an annual basis. *See also Wage Rate Memo at Attachment 1 for the CPI data used in the instant case.*

<sup>45</sup> *See International Labour Organization's Yearbook of Labour Statistics.*

<sup>46</sup> We note, however, that ISIC-Rev. 4 reporting began in 2008 and, thus, was not available at the time of the initial investigation. As such, ISIC-Rev. 3 was the most recent reporting standard available at the time of the initial investigation.

provides a three- or four-digit sub-category for each two-digit category. Depending on the country, data may be reported at either the two-, three- or four-digit subcategory.

Accordingly, in this remand redetermination, we turned to the industry definitions contained in each ISIC revision to find the two-digit Sub-Classification most specific to the production of wooden bedroom furniture. The Department identified the two-digit series most specific to wooden bedroom furniture as Sub-Classification 33, which is described as “Manufacture of Wood and Wood Products, Including Furniture,”<sup>47</sup> within the ISIC-Revision 2 standard.

Of the six remaining countries, neither Mongolia nor Sri Lanka reported industry-specific data to the ILO. Accordingly, these two countries are not included in our wage rate calculation. Of the remaining four countries, one (the Philippines) reported data under the ISIC-Revision 3 Sub-Classification 36 standard (described as “Manufacture of Furniture; Manufacturing NEC”), and three (India, Indonesia, and Pakistan) reported data under the ISIC-Revision 2 Sub-Classification 33 standard

For the instant case, we have selected wage/earnings data from the countries reporting under ISIC-Revision 2 Sub-Classification 33 to calculate the surrogate labor rate for the following reasons. First, we find that the two-digit description under ISIC-Revision 2 Sub-Classification 33 (“Manufacture of Wood and Wood Products, Including Furniture”) to be more specific and a better match for the wooden bedroom furniture industry than the applicable ISIC-Revision 3, Sub-Classification 36 two-digit description (“Manufacture of Furniture; Manufacturing NEC”), since the ISIC-Revision-2 does not contain the broad catch-all category of “manufacturing NEC,” or merchandise “not elsewhere classified,” in its description.

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<sup>47</sup> See <http://unstats.un.org/unsd/cr/registry/regct.asp?Lg=1> for a description of the industries reported in each ISIC revision sub-category. See also, Dorbest Draft Remand Analysis Memo at Attachment V.

Moreover, we find ISIC-Revision 2 preferable because it allows for data from three countries within a single revision, which we find more representative, and therefore, more accurate.<sup>48</sup>

We found that Pakistan reported industry-specific data under Sub-Classification 33 of the ISIC-Revision 2 standard, but did not report data at any of the three-digit Sub-Classifications of that category. Indonesia reported industry-specific data at both the two-digit level (*i.e.*, Sub-Classification 33) and three-digit level (for both Sub-Classification 331, described as “Manufacture of wood and wood and cork products, except furniture,” and 332, described as “Manufacture of furniture and fixtures, except primarily of metal.” India, which did not report any data at the two-digit Sub-Classification 33 level, reported wage data for both Sub-Classifications 331 and 332 at the three-digit level. For the instant case we find that ISIC-Revision 2 Sub-Classification 332 (“Manufacture of furniture and fixtures, except primarily of metal”) is more specific to the wooden bedroom furniture industry than Sub-Classification 331, and have determined to use ILO wage/earnings data reported by India and Indonesia under Sub-Classification 332 because they reported data at that level of specificity. Because Pakistan did not report data at that level of specificity, we used the Pakistani data reported at the two-digit Sub-Classification level.

Accordingly, of the six countries determined to be both economically comparable to the PRC and significant producers of comparable merchandise for these Final Results of Redetermination, the Department has calculated the wage rate using a simple average of the best available data provided to the ILO by Pakistan under Sub-Classification 33 and by India and Indonesia under Sub-Classification 332.

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<sup>48</sup> Only one country (the Philippines) reported data under ISIC Revision 3. Sub-Classification 36. For further explanation of the Department’s reasoning for using the ISIC-Revision 2 standard, *see Draft Remand*.



Based on the foregoing methodology, the revised wage rate to be applied to Dorbest in this remand redetermination is 0.23 USD/hour.<sup>49</sup> This revised wage rate is derived from comparable economies that are also significant producers of the comparable merchandise, consistent with the CAFC's ruling in *Dorbest IV* and the statutory requirements of section 773(c) of the Act.

***Data Relied Upon In This Remand Proceeding***

Although the Department has had to add new information to the record in order to carry out the CAFC's remand directives, the Department finds that it is appropriate to only rely on wage rate data that would have been available to the Department during the time it conducted the initial investigation.<sup>50</sup> The relevant POI covers April 1, 2003, through September 30, 2003. The Department conducted its original investigation of this period between December 17, 2003, and November 17, 2004. Accordingly, in this remand determination, we have relied on GNI and ILO data that was published and available in 2004. Due to the reporting practices of our data sources, there is normally a two-year interval between the year for which data is reported and the current year. In other words, 2002 GNI and wage data became available when the Department conducted its investigation in 2004, whereas 2003 wage data, while contemporaneous with the POI, was not available until 2005. Accordingly, for this remand redetermination, the Department is relying on 2002 GNI and ILO data because these data were available at the time the Department conducted the investigation. Further, we have not relied upon any dataset submitted to the record containing underlying data that would not have been available during the initial investigation, either in our wage rate calculation or for corroborative purposes.

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<sup>49</sup> See Dorbest Draft Remand Analysis Memo at Attachment IV.

<sup>50</sup> See *Dorbest I*, 462 F. Supp. 2d at 1299-1300.

## Summary and Analysis of Litigants' Post-Draft Redetermination Wage Rate Comments

### *Wage Data Relied Upon In the Remand Proceeding*

Petitioners point out that in the Draft Redetermination the Department used 2002 GNI data, as published in the 2004 *World Development Report* (“WDR”) as a basis for determining the economically comparable “bookends,” as well as ILO wage data for the years 1997-2002. Petitioners argue that the Department should instead use 2002 GNI data - as currently updated and available - for the purposes of determining the “bookends,” as well as currently available 2003 ILO wage data for the wage calculation, which were submitted in their August 16, 2010, wage rate comments at Exhibits 1 and 3, respectively.<sup>51</sup>

Petitioners argue that, because the Department acknowledged that the information on the existing record was insufficient when it re-opened the record to calculate a wage rate pursuant to *Dorbest IV*, the Department cannot then exclude or ignore relevant and reliable facts that have been submitted onto the re-opened record.<sup>52</sup> Furthermore, Petitioners contest the Department’s position that the re-opened record is restricted to data that only were available during the investigation. Petitioners argue that the Department has a legal obligation to consider evidence that concerns the time period subject to investigation.<sup>53</sup> In this regard, Petitioners argue that the Department misinterpreted the Court’s decision in *Dorbest I* in its decision not to consider information that was unavailable at the time of its original determination. As such, Petitioners

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<sup>51</sup> See Petitioners’ Post-Draft Comments at 3-5.

<sup>52</sup> See Petitioners’ Post-Draft Comments at 6, wherein Petitioners note that the Department may re-open the administrative record to comply with a remand order unless expressly barred from doing so by the court’s order (citing to *NTN Bearing Corp. of America v. U.S.*, 132 F.Supp.2d 1102, 1108-1108 (CIT 2001); *Laclede Stee Co. v. United States*, 19 CIT 1076, 1078 (1995); and *Elkton Sparkler Co. v. United States Department of Commerce*, 17 CIT 344, 346 (1993)); and further, that, although an agency has discretion to decide the subject matter of the evidence to be introduced onto the re-opened record, the agency cannot exclude or ignore this evidence once submitted (citing to *Atlas Copco, Inc. v. Environmental Protection Agency*, 642 F.2d 458, 467 (D.C. Cir. 1979).

<sup>53</sup> See Petitioners’ Post-Draft Comments at 7, citing to, e.g., *Port of Seattle v. FERC*, 499 F.3d 1016, 1034-35 (9<sup>th</sup> Cir. 2007) (“*Seattle v. FERC*”); *Borlem S.A.-Empredimentos Industriais v. United States*, 913 F.2d 933 (Fed Cir. 1990) (“*Borlem*”); *Williams v. Sullivan*, 905 F.2d 214, 216 (8<sup>th</sup> Cir. 1990) (“*Williams v. Sullivan*”); and *Union Camp Corp. v. United States*, 53 F. Supp. 2d 1310, 1324 (CIT 1999) (“*Union Camp*”).

contend that the Department must fully consider all information submitted to the record, and has a duty to provide an explanation if certain new evidence is not relied upon.<sup>54</sup>

Petitioners argue that, because the 2003 ILO data are contemporaneous with the time period at issue (and, thus, do not require an inflator) they represent the best available information for use in the recalculation of the labor surrogate value in the instant redetermination.<sup>55</sup>

Moreover, Petitioners point out that in its Draft Redetermination, the Department employed a dataset that was currently updated, and not available at the time of the initial proceeding.

Specifically, they note that, in the new methodology, significant producers are identified using a current download of 2001-2003 export data, which are based on data as available to the Global Trade Atlas (“GTA”) in 2009. Additionally, Petitioners point out that the data source for the current download of 1997-2002 ILO data that the Department relied upon for the wage rate calculation for the Draft Redetermination is also updated continuously by the ILO, and thus does not represent the actual data available during the time the original investigation was conducted.<sup>56</sup>

As such, because some portions of the data employed in the Draft Redetermination already employ current data that was unavailable at the time of the original decision, Petitioners argue

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<sup>54</sup> See Petitioners’ Post-Draft Comments at 8-9, citing to *Mistick PBT v. Chao*, 440 F. 3d 503, 512 (D.C. Cir. 2006); *Lorion v. U.S. Nuclear Regulatory Commission*, 785 F.2d 1038, 1042 (D.C. Cir 1986); *Anderson v. United States Secretary of Agriculture*, 429 F.Supp.2d 1352, 1355 (CIT 2006); *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 488, 71 S.Ct. 456, 95 L.Ed. 456 (1951); *Seattle v. FERC* at 1034, and *Union Camp*, 32 CIT 64.

<sup>55</sup> See Petitioners Post-Draft Comments at 10-12, wherein Petitioners note that under 19 U.S.C. 1677b(c)(1) the Department is directed to use the “best available” information regarding factors valuation, also citing to *Olympia Indus., Inc. v. United States*, 7 F. Supp. 2d 997, 1000-1001 (CIT 1998); *Accord Luoyang Bearing Factory v. United States*, 240 F.Supp. 2d 1268, 1289-90 (CIT 2002); and *Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1191 (Fed. Cir. 1990) (“*Rhone Poulenc*”). Further, Petitioners cite to both *Rhone Poulenc* at 1190 and *Notice of Final Determination Of Sales At Less Than Fair Value: Lawn and Garden Steel Fence Posts From The People’s Republic Of China*, 68 FR 20373 (April 25, 2003) and accompanying IDM at Comment 3, stating that the Department is required to obtain and consider the most recent information in its determination of what is best information and that the Department’s practice is to evaluate whether data are the “best available information” based on both contemporaneity of the data with the period of investigation and the quality of the data, respectively.

<sup>56</sup> Petitioners compare the 1997-2002 ILO wage data on the record with a similar dataset provided at Attachment III of the June 2005 *Labor Remand*, which demonstrates that many data points in the ILO dataset have been updated since the initial investigation. See Petitioners Post-Draft Comments at 13.

that there is no basis for the Department to reject contemporaneous 2003 ILO wage/earnings data.<sup>57</sup>

Consistent with the reasoning forwarded in support of using 2003 ILO data, Petitioners argue that when identifying the list of economically comparable countries under the new methodology, the Department should use updated or current 2002 GNI data available from the World Bank, rather than the data as reported in the 2004 *WDR* publication.<sup>58</sup>

**Department's Position:** We disagree with Petitioners and determine not to rely on information that did not exist at the time the Department made its original determination. Accordingly, for this remand redetermination, we have limited the data relied upon to that which would have been available during the time the Department conducted its investigation, *i.e.*, between December 17, 2003 through November 17, 2004.

The Department normally limits its reexamination on remand to the original administrative record. In this instance, the Department needed to seek additional data in order to arrive at a labor value that is both compliant with the CAFC's directive, and constitutes the best available information. Parties were free to both submit additional data, and to provide comment on the newly submitted data.

In deciding which information to rely on in its final decision, the Department must balance the interest of conducting efficient, and expeditious administrative proceedings against an equally compelling interest in conducting accurate fact finding.<sup>59</sup> If parties felt free to continually add new information that became available years after our original determination, there would be no end or finality to the administrative process. We are further concerned that permitting later-discovered evidence sets an undesirable precedent by which complaining parties

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<sup>57</sup> See *Id.* at 10-13.

<sup>58</sup> See *Id.* at 14.

<sup>59</sup> *Union Camp Corporation v. United States*, 53 F. Supp.2d 1310, 1328 (CIT 1999).

could benefit unfairly from later-discovered information.<sup>60</sup> As recognized in *Vermont Yankee*, administrative consideration of evidence creates an inevitable gap between the time the record is closed and the time the administrative decision is promulgated, as well as the time the decision is then judicially reviewed. If complaining litigants are able to demand reconsideration “because some new circumstance has arisen, some new trend has been observed, or some new fact discovered, there would be little hope the administrative process could ever be consummated in an order that would not be subject to reopening.”<sup>61</sup>

After weighing the above considerations, we find that limiting the data relied upon in this remand redetermination to that which would have been available at the time of our original decision best satisfies the competing interests of administrative finality, fairness and accuracy. This decision is further consistent with this Court’s finding in *Dorbest I*, where this Court defined “available” to mean “available during the investigation.”<sup>62</sup>

Accordingly, for this remand redetermination we have relied on 2002 GNI data and 2002 ILO wage data because these data became available in 2004. In doing so, the Department acknowledges that the available data sources for labor are updated continually. As a result, GNI and ILO data extracted in 2010 would not represent an exact replica of the data actually available in 2004. For GNI data, in order to rely on data available at the time of the investigation to the extent practicable, the Department relied on data contained in the 2004 *WDR* publication, as opposed to extracting new, current data, because the 2004 *WDR* publication represents data as

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<sup>60</sup> *Union Camp Corporation v. United States*, 53 F. Supp.2d 1310, 1326 (CIT 1999).

<sup>61</sup> *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Counsel*, 435 U.S. 519, 554-555 (S. Ct. 1978), citing *ICC v. Jersey City*, 322 U.S. 503, 514 (1944).

<sup>62</sup> *Dorbest I*, 462 F. Supp. 2d 1262, 1299-1300, citing *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Counsel*, 435 U.S. 519, 555 (S. Ct. 1978); see also *Daido Corporation v. United States*, 869 F. Supp. 967, 973 (CIT 1994) (The court declined to re-open the record during judicial review to allow evidence that did not exist at the time of the final determination).

close to the time of the original determination as possible. We find this preferable to the “current” data, which was recently extracted by Petitioners. Current 2002 ILO wage data needed to be extracted for purposes of this remand redetermination because no similar publication exists for ILO data, and the Department had not extracted these data prior to its conduct of this remand redetermination. Finally, the Department relied on a current download of 2001-2003 export data to determine which countries were significant producers. The Department had not extracted these data prior to this remand redetermination, and 2001-2003 export data is what would have been available at the time of our original determination. The Department’s objective was to only rely upon data available at the time of the original proceeding, and these data meet that objective to the extent possible. Because these datasets best represent the data available at the time of our original determination, we find them to be the “best available” information for purposes of this remand redetermination.

We disagree with Petitioners that a decision to re-open the administrative record for a very limited purpose creates a legal obligation to rely on any and all submitted data, including that which did not exist at the time of our initial determination. The Department’s determination to only rely on and incorporate data that were available at the time of the original determination is one that falls squarely within the Department’s discretion. It is a well-established principle of administrative law that an agency is afforded broad discretion to fashion its own administrative procedures, including the authority to enforce time limits concerning the submission of data.<sup>63</sup> In addressing whether newly discovered evidence should be considered, the CIT has found that,

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<sup>63</sup> *Union Camp Corporation v. United States*, 53 F. Supp.2d 1310, 1326 (CIT 1999) (The court granted the Department discretion to decide the appropriateness of considering extra-record evidence on remand).

“{s}uch a weighing of the competing policy interests involves choices of administrative procedure which Commerce . . . is uniquely qualified to make.”<sup>64</sup>

We further do not agree that the CAFC’s decision in *Borlem* is applicable in this instance. The decision in *Borlem* turned on the fact that the final injury determination that the CIT directed the Commission to reconsider was based on an incorrect less than fair value determination by Commerce.<sup>65</sup> The Commission was ordered to consider that as a result of subsequent judicial review, Commerce determined that two exporters were dumping instead of one. We do not agree with Petitioners’ assessment that the wage data available at the time of our original determination equates to the same “material” or “inaccurate” fact that led to the Federal Circuit’s decision in *Borlem*. The CAFC later distinguished the mistake of fact that formed the basis for its decision in *Borlem*, and newly discovered evidence.<sup>66</sup> In that instance, the Federal Circuit did not agree that the interests of finality of agency decisions are best served by allowing the continual submissions of new circumstances, new trends or new facts.<sup>67</sup> The nature of wage data is that they are continually updated such that the advent of more recent data will always be forthcoming. Wage data from 2002 were the best available data at the time the Department made its original determination. We do not agree that either data from 2003 or current 2002 GNI data renders that which was available at the time a “mistake of fact.” Furthermore, we do not find that allowing litigants the opportunity to submit continual updates of these data best serves the interests of administrative finality.

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<sup>64</sup> *Union Camp Corporation v. United States*, 53 F. Supp.2d 1310, 1328 (CIT 1999)

<sup>65</sup> *Borlem S.A. v. United States*, 913 F.3d 933 (Fed. Cir. 1990).

<sup>66</sup> *Co-Steel Raritan, Inc. v. United States*, 357 F.3d 1294, 1316 (Fed. Cir. 2004).

<sup>67</sup> *Co-Steel Raritan, Inc. v. United States*, 357 F.3d 1294, 1316 (Fed. Cir. 2004).

### *Use of Indian Wage Data for Labor Surrogate Value*

In its October 22, 2010, submission, Dorbest reiterates its disagreement that the variation in wages among countries considered economically comparable to China requires the Department to use multiple countries' wage data, citing to both the Dorbest Wage Rate Comments and Dorbest Rebuttal Comments. Rather, Dorbest argues that the presence of country-specific factors affecting wage rates should weigh in favor of valuing labor within the primary surrogate country, and against injecting country-specific factors from outside the primary surrogate. Finally, Dorbest argues that relying on wage data from outside the primary surrogate country creates a "mismatch" between the labor component of normal value and the labor component of the denominators of the financial ratio calculations.

**Department's Position:** While Dorbest argues that the Department should only use wage data from the primary surrogate country, for the reasons set forth above, and in our Draft Redetermination, the Department continues to find that wage data from a single surrogate is not the best method for valuing the labor input due to the variability that exists between wages and GNI. We continue to find that too much variation exists among the wage rates of comparable market economies to use wage data from a single country, as discussed above in the "Re-Valuation of the Labor Wage Rate" section.

We also disagree with Dorbest's argument that using wage data from countries other than India creates a "mismatch" between the labor component of normal value and the labor component of the denominator of the surrogate financial ratios. Implicit in Dorbest's assertion regarding the mismatch between normal value and the financial ratios is the assumption that the labor costs of the Indian surrogate companies correlate to the Indian wage rate reported in the ILO data. However, there is no evidence that supports this assumption.



In NME cases, it is generally not possible for the Department to dissect the financial statements of a surrogate company as if the surrogate company were the respondent under review in the proceeding, because the Department does not seek information from or verify the information from the surrogate company.<sup>68</sup> Therefore, in calculating surrogate overhead and SG&A ratios, it is the Department's practice to accept data from the surrogate producer's financial statements *in toto*, rather than performing a line-by-line analysis of the types of expenses included in each category.<sup>69</sup> Because we cannot determine how each surrogate financial company determines its labor costs, there is no basis upon which to conclude that the surrogate labor rate calculated by the Department would inform the labor costs reported by the surrogate financial companies, or vice versa. Therefore, we will not make adjustments to the financial ratio calculations, as doing so may introduce unintended distortions into the data rather than achieving greater accuracy.<sup>70</sup> Furthermore, as the CIT confirmed in *Timken*, it is within the Department's authority use India as a primary surrogate country and select values from other countries without making adjustments to Indian surrogate financial ratios.<sup>71</sup>

### ***Use of Industry-Specific Wage Data***

Petitioners reiterate their prior position that country-wide ILO wage/earnings data are the most appropriate data available on the record to value a surrogate labor rate. Petitioners first note that the use of industry-specific data in this case would result in a dataset comprised of

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<sup>68</sup> See *Id.*

<sup>69</sup> See *Rhodia, Inc. v. United States*, 240 F. Supp. 2d 1247, 1250-1251 (CIT 2002); see also *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China*, 69 FR 20594 (April 16, 2004) and accompanying IDM at Comment 15.

<sup>70</sup> See *Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China*, 72 FR 60632 (October 25, 2007) and accompanying IDM at Comment 4; *Certain Frozen Warmwater Shrimp From the People's Republic of China: Notice of Final Results and Rescission, in Part, of 2004/2006 Antidumping Duty Administrative and New Shipper Reviews*, 72 FR 52049 (September 12, 2007) and accompanying IDM at Comment 2 (stating that because the Department cannot adjust the line items of the financial statements of any given surrogate company, we must accept the information from the financial statement on an "as-is" basis in calculating the financial ratios).

<sup>71</sup> See *Timken Co. v. United States*, 59 F. Supp. 2d 1371, 1375 (CIT 1999) ("*Timken*").

wage/earning data from only three countries, which contravenes the Department's long standing practice of using a large and robust basket of countries.<sup>72</sup> Petitioners point out that the Department has only opted to use industry-specific data in a single other determination published at the time of the deadline for comments in the instant case, and in that determination data were available from a larger number (*e.g.*, eight) of countries.<sup>73</sup>

Petitioners contend that the use of industry-specific data is contrary to the plain meaning of section 773(c)(4) of the Act, which only requires that the Department value factors of production from market economies that are economically comparable and significant producers. Furthermore, Petitioners argue that the use of industry-specific data in this proceeding also runs counter to the Department's established practice to use an overall-average of labor rates.<sup>74</sup> Petitioners then reassert their position laid out in their initial comments summarized and addressed in the Draft Redetermination, that the assumption that certain ISIC sub-classifications represent the best available information is flawed, since there is no evidence regarding how actual industry-specific information is combined and weighted with non-industry-specific information also contained in the sub-classification.<sup>75</sup>

Petitioners argue in the alternative, that to the extent the Department relies on industry-specific data, it should not exclude country-wide data from countries that do not report such industry-specific data. Petitioners assert that each of the 14 countries identified as both

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<sup>72</sup> See Petitioners' Post-Draft Comments at 22, citing to note 34 of that submission. Petitioners' arguments regarding the contradictory nature of the Department's stated preference for a large basket and the methodology used in this redetermination are summarized in the "Expanding the List of Economically Comparable Countries" section, below.

<sup>73</sup> See Petitioners' Post-Draft Comments at 23, citing to *Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 75 FR 64259, 64264-65 (October 19, 2010).

<sup>74</sup> See *Id.* at 24. Petitioners cite to, *e.g.*, *Certain Woven Electric Blankets From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 38459 (July 2, 2010), and accompanying IDM at Comment 13, noting that, in both the regression analysis and post-*Dorbest IV* wage rate methodologies to this point, the Department has used country-wide data.

<sup>75</sup> See Petitioners' Post-Draft Comments at 24-25.

economically comparable and significant producers should be included in the wage calculation, so long as appropriate country-wide or industry-specific data are available. Petitioners argue that instead of excluding countries that do not report on an industry-specific basis, the Department could implement a filtering methodology, similar to the “tiebreaking methodology” used to select the most appropriate dataset as established in *Antidumping Methodologies* and described in the “Re-Valuation of the Labor Wage Rate” section of the Draft Redetermination. According to Petitioners, this “filter but not exclude” methodology would allow the best available ILO dataset to be selected from each remaining country based on a hierarchy of data preferences (*e.g.*, industry-specific as the first preference), without excluding any economically comparable/significant producer countries that report appropriate country-wide or industry-specific data. Petitioners contend that this approach would be consistent with the Department’s preference for data from a large and robust basket of countries.<sup>76</sup>

Furthermore, if using industry-specific data, Petitioners argue that the Department should not reject data reported pursuant to a newer version of the ISIC codes. Petitioners contend that the exclusion of industry-specific data from certain countries reporting under one ISIC revision in favor of industry-specific data from countries reporting under another ISIC revision again runs counter to the Department’s stated intention of maintaining a robust basket of countries. Petitioners reiterate their previous argument that it is inappropriate to assume, based on the information available, that the data reported under a three-digit ISIC Revision 2 Sub-Classification, is actually more specific to the product at issue than those reporting under a two-digit ISIC Revision 3 Sub-classification, when the explanatory notes for each demonstrate that non-subject merchandise is reported therein. Petitioners again suggest that the best available dataset for each country could be selected based on a hierarchy of data preference (with most

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<sup>76</sup> See *Id.* at 26-28.

specific ISIC Sub-Classification and Revision selected as the first parameters), but that the Department should not exclude contemporaneous industry-specific data from a country simply because it has been reported under an ISIC Revision or Sub-Classification that differs from the Revision or Sub-Classification deemed to be the most preferential. As such, they request that appropriate industry-specific data from all available ISIC Revisions be used for the purposes of the wage rate calculation, should the Department determine to use industry-specific information.<sup>77</sup>

**Department's Position:** Consistent with our position in the Draft Redetermination, we disagree with Petitioners, and have relied on industry-specific data to calculate the wage rate in this Remand Redetermination. We continue to find that the use of a country-wide wage rate, when data more specific to the production of subject merchandise is available within that very data, would run counter to the Department's long-standing practice of valuing factors of production using the most specific data.

Though we have considered and are mindful of Petitioners' concerns regarding the potential ambiguity and inconsistency of a smaller dataset, we find that, with respect to the data before us, this argument is based on speculation regarding the makeup of the datasets in question, and Petitioners have not provided evidence that would support a finding that industry-specific data, in this instance, are unsuitable for use in valuing the wage rate. Furthermore, the use of industry-specific data comports with the Department's longstanding preference to value factors of production with as much specificity as possible. While we are cognizant of Petitioners' concerns that the use of industry-specific data might compromise our stated preference to maintain a large basket of country wage data, we find that in this instance our obligation to select the best available information, as required by statute, coupled with the

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<sup>77</sup> See *Id.* at 28-29.

Department's preference to select the most specific data on the record to value factors of production, outweighs our preference for a larger basket of data. We do not agree that, because the statute does not explicitly require the use of industry-specific data, it follows that we are obligated to use only country-wide data. In fact, the statute is silent with respect to this issue and does not mandate a reliance on a broad set of data, as Petitioners suggest. On the contrary, in following the CAFC's directive in *Dorbest IV*, the Department maintains considerable discretion to determine what constitutes the "best available information" for the revised wage methodology.

Moreover, due to concerns that the industry definitions may lack consistency between different ISIC revisions, the Department finds that averaging wage rates within the same ISIC revision, as opposed to mixing revisions, constitutes the best available information for this remand. The Department finds that averaging wage rates that were reported under the same revision standard provides specificity to the industry being examined, but also ensures some degree of consistency across multiple labor data points being averaged.

Because an industry-specific dataset relevant to this proceeding exists within the Department's preferred ILO source, and because we find that, absent evidence to the contrary, the more narrow industry-specific data would be *at least* more specific to the subject merchandise than country-wide data, we find industry-specific data from a single ISIC revision to be the best available information to calculate a surrogate wage rate for the instant remand redetermination, in accordance with section 773(c)(1) of the Act. Accordingly, for these Final Results of Redetermination, the Department has only used industry-specific wage data from a single revision.

### *Use of Consumer Price Index (“CPI”) Inflator*

In its October 22, 2010, submission, Dorbest reiterates its disagreement that the record supports use of the CPI to inflate wage data, but offers no further argument with regard to this issue.

**Department’s Position:** Though Dorbest reiterates its disagreement with the Department’s decision on this issue, Dorbest submitted no further argument or evidence to support its contention in its post-draft comments. For the reasons fully set forth in our Draft Redetermination, we continue to find that CPI data represent the best available information to inflate the wage data, and have continued to inflate wage data using CPI for these Final Results of Redetermination on Remand.<sup>78</sup>

### *Expanding the List of Economically Comparable Countries*

Petitioners state that the Department has properly recognized that there is a strong worldwide relationship between wage rates and GNI, and that this is not inconsistent with the CAFC’s ruling in *Dorbest IV*.<sup>79</sup> Petitioners contend that the Department’s methodology of selecting economically comparable countries (*i.e.*, where the Department selected a band of economically comparable countries based on the highest and lowest GNIs of the countries listed in the Surrogate Country Memorandum), relies exclusively on low-GNI countries, relative to the PRC. Petitioners argue that the Department instead should expand the economically-comparable dataset to be equally inclusive of countries with GNIs above and below the GNI of the PRC.<sup>80</sup>

Petitioners point out that the Department has a consistent and long-standing practice of maintaining a large and robust basket of countries from which to calculate wage rate, indicating that more data are better than less data, and that the Department has retained this preference in

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<sup>78</sup> See *Draft Redetermination*, at pp. 24-25.

<sup>79</sup> See Petitioners’ Post-Draft Comments at 14-15.

<sup>80</sup> See *Id.* at 15.

each of its post-*Dorbest IV* cases.<sup>81</sup> Petitioners note, however, that although the Department restates this preference for the instant redetermination, the revised methodology set forth in the Draft Redetermination results in a basket of only three countries. Petitioners assert that relying on a basket of just three countries represents a departure from prior practice that must be explained.<sup>82</sup>

Petitioners further contest the Department's finding in the Draft Redetermination that it is too late in the proceeding to challenge the suitability of the list of economically comparable countries contained in the Surrogate Country Memo. Petitioners argue that until this juncture, there was no reason to challenge the reasonableness of this list of potential surrogate countries. Petitioners note that until this point, the list was only used for purposes of valuing FOPs other than labor pursuant to 19 C.F.R. 351.209(c)(2). Petitioners contend that only with the advent of the "bookending" methodology as a result of *Dorbest IV*, did parties have any reason for challenging the suitability of this list. Moreover, Petitioners note that the list was admittedly "non-exhaustive." Accordingly, Petitioners argue that they are properly contesting the list at their first available opportunity.<sup>83</sup>

Petitioners note that, in *WBF 4*, the Department defended the reasonability of this economically comparable bookend methodology by noting that the Department's potential surrogate country selection process is based on absolute, as opposed to relative, GNI.<sup>84</sup>

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<sup>81</sup> See *Id.* at 16-17. Petitioners cite to *Antidumping Methodologies* 71 FR at 61716, 61720, wherein the Department establishes this preference in its previous regression methodology, and to numerous post-*Dorbest IV* determinations where the Department has repeated this preference, citing to, e.g., *Fresh Garlic From the People's Republic of China: Final Results of New Shipper Review*, 75 FR 61130 (October 4, 2010) ("*Fresh Garlic*") and accompanying IDM at Comment 5.

<sup>82</sup> Petitioners cite to *Save Domestic Oil, Inc. v. United States*, 357 F.3d 1278, 1283-84 (Fed. Cir. 2004), stating that if Commerce has a routine practice for addressing like situations, it must either apply that practice or provide a reasonable explanation as to why it departs therefrom. See *Id.* at 17.

<sup>83</sup> See *Id.* at 18-19.

<sup>84</sup> Petitioners cite to *Wooden Bedroom Furniture from the People's Republic of China: Final Results and Final Rescission in Part*, 75 FR 50992 (August 18, 2010), and accompanying Issues and Decision Memorandum at

Petitioners point out that, the selection of potential surrogate countries in the instant case was not based on absolute GNI. Thus, the practice cited in support of the use of potential surrogates as bookends for economic comparability in *WBF 4* was not followed in the instant case. As such, Petitioners suggest that the Office of Policy Memo is not appropriate for use in this proceeding.<sup>85</sup>

Accordingly, Petitioners reiterate their position that the Department should expand the list of economically comparable countries upwards, such that a new high bookend is set based on either a relative or absolute difference from the current low bookend.

In the alternative, should the Department not expand the list, Petitioners argue that the Department should adjust the wage/earnings data used in the labor calculation to account for the varying levels of GNI per capita between the countries used and the PRC by first calculating a per dollar of GNI wage rate for each country, averaging the result, and then multiplying the average by the GNI of the PRC.<sup>86</sup>

In its Post-Draft Comments at 2, Dorbest notes its disagreement that the Department has sufficiently established that there is a general relationship between wages and GNI on the record of this case.

**Department's Position:** We disagree with Petitioners, and find the GNI bookend methodology that relies on the original list of countries in the Surrogate Country Memo to be reasonable and consistent with the statute.

In *Dorbest IV*, the Department was instructed, *inter alia*, to base its wage value on countries that are economically comparable to the PRC. While the Department's regulations at 19 C.F.R. 351.408(b) instruct the Department to consider *per capita* income when determining economic comparability, neither the statute nor the Department's regulations define the term

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Comment 34 ("*WBF 4*"). *See Id.* at 19.

<sup>85</sup> *See Id.* at 19-20.

<sup>86</sup> *See Id.* at 20-21.



“economic comparability.” As such, the Department does not have a set range within which a country’s GNI *per capita* could be considered economically comparable. When selecting the primary surrogate country at the outset of each proceeding, the Department compiles a surrogate country list, which is a non-exhaustive list of countries determined to be economically comparable to the country being investigated. All of the countries contained in the surrogate country list have already been determined to be economically comparable to the PRC. For this Remand Redetermination, the Department used the surrogate country list to form the initial basket of countries for the selection of wage data. This is consistent with the new interim methodology applied in recent cases that the Department has developed in response to *Dorbest IV*.<sup>87</sup>

Petitioners are correct that the Department has historically preferred as large a dataset as possible for purposes of valuing labor. However, the Federal Circuit’s invalidation of the regression method and explicit directive to rely only on data from countries that are economically comparable to the NME in question, will necessarily result in a truncated dataset. We find that the initial list of potential surrogate countries provides a reasonable starting point for finding a sufficient amount of wage data from countries that are both economically comparable to the PRC, and significant producers of comparable merchandise. Furthermore, we do not find it necessary to revisit or expand the list of economically comparable countries in order to comply with the CAFC’s remand directives, given that we were able to obtain wage data from a sufficient number of economically comparable countries.

The Department is further not persuaded by Petitioners’ argument that the range of economically comparable countries is unfair because it is not “centered” or balanced around the GNI of the PRC. As noted above, although the Department places primary emphasis on GNI

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<sup>87</sup> See, e.g., *Fresh Garlic*, 75 FR 61130, at Comment 5; *WBF 4* at Comment 34.

when compiling its list of potential surrogate countries, it does not set a fixed threshold or range for when countries must be considered economically comparable. Rather, we find that an excessive focus on the exact ranking of each country would only create an illusion of precision, and distort the correct purpose of using per capita GNI as the primary indicator, which is to give a general sense of the level of economic development of the country in question.<sup>88</sup> In any case, there is no statutory requirement that the Department must select the most comparable economy.<sup>89</sup> For these reasons, it is unreasonable to expect that the Department can or should always ensure that the upper range and lower range of economically comparable countries are precisely equivalent or balanced since the underlying data, not to mention data availability constraints, do not always allow for such mathematical precision.

Moreover, Petitioners' argument that the Department has only selected countries with GNIs lower than that of the PRC as "bookends" is incorrect, as they are based on Petitioners' presumption of updated 2002 GNI data that was unavailable at the time of the original investigation. Using the 2004 WDR publication available at the time of the investigation, the surrogate country list included the Philippines, which had a GNI higher than the PRC.

Accordingly, the Department's selection of this range of economically comparable countries, using absolute GNIs, is reasonable and consistent with the requirements of section 773(c)(4)(A) of the Act that the Department use market economy countries that are "at a level of economic development comparable to that of the {NME} country."<sup>90</sup>

With regard to Petitioners' argument that the selection of potential surrogate countries in the instant case was not based on absolute GNI, we find that Petitioners have misinterpreted the

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<sup>88</sup> See *Fujian v. United States*, 638 F. Supp. 2d 1325, 1348-1349 (CIT 2009).

<sup>89</sup> See *Dorbest I*, 462 F. Supp. at 1275, citing *Tehnoimportexport v. United States*, 766 F. Supp. 1169, 1175 (CIT 1991).

<sup>90</sup> See *WBF 4* and accompanying IDM at Comment 34.

Department's meaning of "absolute." The Department's selection of economically comparable countries in the surrogate country list is based on absolute GNI in that countries selected as economically comparable span a range of absolute GNIs that fall in and around that of China's GNI. As noted above, the selection is not intended to be relative to the PRC such that the countries with GNI at the upper and lower end of the Surrogate Country List are precisely "centered" around the GNI of the PRC in absolute GNI terms.

We also decline to use Petitioners' suggested alternative method of calculating the labor rate by accounting for varying levels of GNI to account for the fact that the three countries included in the labor rate have lower GNIs than that of the PRC. The Department has followed the directive set forth in *Dorbest IV*, by calculating a wage rate using data from countries that are economically comparable to the PRC and that are significant producers of comparable merchandise. Nothing in *Dorbest IV*, the statute, or the Department's regulations require that the Department rely on data from the most economically comparable countries,<sup>91</sup> or that factor valuation methodologies be devised to account for countries with lower GNIs than that of the PRC. Accordingly, we find that industry-specific ILO data, as reported by economically comparable countries that are significant producers of comparable merchandise are the best available information for valuing labor in this remand redetermination.

We also disagree with *Dorbest* that a global relationship between wages and GNI has not been established. The regression analysis that the Department has performed nearly every year since 1997 – the most recent in 2009 – demonstrates on average, as GNI's increase, so do hourly

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<sup>91</sup> See *Dorbest I*, 462 F. Supp. at 1275, citing *Tehnoimportexport v. United States*, 766 F. Supp. 1169, 1175 (CIT 1991).

wage rates.<sup>92</sup> While *Dorbest IV* invalidated the Department's former method of valuing labor because it included data from countries that were not first determined to meet the statutory criteria, the opinion does not call into question the inherent relationship that exists between wage rates and GNI. Given this relationship, it is reasonable to look to GNI as a relevant factor in determining economic comparability for deriving the labor value.

For reasons set forth above, and in our Draft Remand Redetermination, we do not find it necessary to expand the list of countries relied upon.

### **Exclusion of ILO Data from India**

Petitioners reiterate their arguments made prior to the Draft Redetermination, regarding the unsuitability of ILO wage data from India because the data are based on a survey of a small subset of the lowest paid Indian workers. Specifically, Petitioners assert that: a) ILO and Indian Labor Bureau websites both describe the source of the ILO data as a survey of workers earning less than 1,600 rupees per month; b) the explanatory note for the data, as reported by the ILO, states that variations in the data might be due to a variation in the aforementioned wage threshold, as demonstrated by the fact that the reported labor rate nearly tripled between 2005 and 2006 when the wage threshold was increased from 1,600 Rs. to 6,500 Rs. in November 2005; and c) the description accompanying an identical survey in the *Pocket Book of Labor Statistics* ("PLBS") states, unequivocally, that the reported wage data was obtained from workers making less than 1,600 Rs. per month.<sup>93</sup>

Petitioners dispute the Department's conclusion that the 1,600 Rs. threshold represents a guideline rather than a hard cap. Petitioners note that this survey was established by the Payment

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<sup>92</sup> See Attachment III for printouts of the Department's expected wage rate regression analysis, also available at <http://ia.ita.doc.gov/wages/index.html>; see also *Final Results of Redetermination Pursuant to Court Remand, Dorbest v. United States*, at Annex II, Court No. 05-00003, (May 25, 2007). (*Dorbest Remand I*),

<sup>93</sup> See Petitioners' Post-Draft Comments at 30-31.

of Wages Act of 1936 and Factories Act of 1948 and, thus, this cap was established by Indian law. Petitioners argue that there is no record evidence which suggests that a restraint on a statutorily mandated survey is a mere guideline. Petitioners argue that the inconsistency in the 2 out of 10 data points might be a reporting error, noting that the Department routinely attributes wage data that falls outside of the expected range to be “inaccurate, possibly due to reporting error.”<sup>94</sup> Petitioners further suggest that this discrepancy might also be explained by the reporting of “fully loaded” earnings data, wherein a survey of workers making a wage near the 1,600 Rs. cap could total to an amount greater than the cap when all additional earnings considerations were tabulated and, thus, the existence of these two data points might not be inconsistent with the existence of a real wage threshold. Petitioners reiterate that the reported Indian ILO labor rate nearly tripled between 2005 and 2006 when the threshold was increased, supporting their assertion that this is a real, not suggested, reporting threshold.<sup>95</sup>

Petitioners then assert that, regardless of whether the 1,600 Rs. threshold is a “hard cap” or “guideline,” evidence on the record demonstrates that the Indian ILO wage data are unrepresentative and highly distortive. As such, they argue, it is not appropriate for the Department to rely upon a data source that it knows to be distortive “merely because it cannot quantify the extent of the distortion... {nor should the burden} fall upon Petitioners to prove the extent of such distortion.”<sup>96</sup>

Petitioners then reiterate their arguments, as summarized in the Draft Redetermination, regarding the suitability of the *Annual Survey of Industries* (“*ASI*”) data to corroborate their claim that Indian ILO data should be excluded from the wage calculation, again pointing out that

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<sup>94</sup> See Petitioners Post-Draft Comments at 32, citing to, e.g., *Seamless Refined Copper Pipe and Tube From the People’s Republic of China*, 75 FR 60725 (October 1, 2010) and accompanying IDM at Comment 1.

<sup>95</sup> See *Id.* at 32-34.

<sup>96</sup> See *Id.* at 34-35.

this contemporaneous survey: a) contains no wage cap; b) covers a far greater number of workers when compared to the Indian Labour Bureau's ("ILB") *PLBS* survey; c) reports country-wide average wages nearly four times higher than the ILO/*PLBS* survey. In addition, Petitioners note that a comparative analysis of the FY 2002 and FY 2003 country-wide average wage rate listed in a "Trends" section of the FY 2003 *ASI* survey on record shows that the FY 2002 country-wide average (non-contemporaneous, but corresponding to the 2002 ILO data on record) was nearly four times higher than the country-wide ILO rate for that year. Furthermore, Petitioners point out that the *ASI* also reports industry-specific data, according to National Wages Classifications ("NIC") reporting guidelines, wherein furniture industry-specific wage data for FY 2003 are also shown to be four times higher than the corresponding Indian FY 2003 ILO wage data reported under ISIC Rev. 2 Sub-Classification 332.<sup>97</sup>

According to Petitioners, the Department explicitly ignored the aforementioned evidence in the Draft Redetermination. For the reasons set out in Part I.A of Petitioners' Post-Draft Comments, as summarized in the "Wage Data Relied Upon In the Remand Proceeding" section above, Petitioners claim that the Department was incorrect in determining that: a) because the *ASI* survey was published in 2006, it was not available during the initial POI and, thus cannot be considered for use in the instant proceeding; and b) that a FY 2003 survey was not appropriate to corroborate arguments as to the suitability of the use of the 2002 ILO data in question. As such, Petitioners argue that the conclusions drawn from the *ASI* data must be considered and, as a result, the ILO Indian data should be rejected. Alternatively, should the Department continue to include Indian data in the wage rate analysis, Petitioners contend that this *ASI* data (whether country-wide or NIC industry-specific) is the most appropriate source on this record for the Indian wage rate.

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<sup>97</sup> See *Id.* at 35-37

**Department's Position:** With respect to Petitioners' arguments regarding India and the ILO survey methodology, as laid out in the Draft Redetermination, we continue to find that there is insufficient evidence on the record to undermine the validity of the Indian wage rate.

First, we disagree that the evidence supports Petitioners' contention that the existence of two data points above the alleged wage cap might be attributable to either a reporting error, as this conclusion is speculative and unsupported by record evidence. Furthermore, we disagree with Petitioners' assertion that, alternatively, these two data points might be the result of reporting "fully loaded" earnings data inclusive of a wage near the alleged cap, since the description of the Indian ILO survey methodology in question clearly states that the reported data points are inclusive of total earnings figures.<sup>98</sup> The ILO defines "earnings" as wages, gratuities, and bonuses, but "earnings" do not include benefits, as Petitioners suggest. Therefore, we disagree with Petitioners' contention that these two data points are the result of "fully loaded" earnings data which also include the cash value of benefits. Further, as stated in the Draft Redetermination, there is no evidence on the record to suggest that this ILO survey would exclude a significant portion of workers in India's manufacturing sector. Accordingly, we continue to find that the actual wage data does not support the alleged cap, and we have concluded based upon the record evidence the ILO wage data point for India is not distorted and we will continue to use it in our calculations for this remand redetermination.

As with their initial arguments forwarded on this issue for the Draft Redetermination, Petitioners continue to cite to the aforementioned ASI survey, which is based on 2003 wage data and published in June 2006, as a corroborative tool to demonstrate that the ILO values are not representative of actual Indian wages (and as an alternative to value industry-specific Indian

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<sup>98</sup> See the ILO Establishment Survey narrative, available at <http://laborsta.ilo.org/applv8/data/SSM2/E/IN2.html>, also included in Petitioners' Wage Rate Comments at Exhibit 6.

wages) for these Final Results of Redetermination. However, set forth out in our Draft Redetermination, as well as in the “Data Relied Upon In the Remand Proceeding” and “Wage Data Relied Upon In the Remand Proceeding” sections above, because this data would not have been available at the time of our *Final Determination*, we do not find the ASI survey to be appropriate either for surrogate valuation or corroborative benchmarking. Furthermore, even if this survey was available at the time of the initial investigation, because the ASI data on record represents FY 2003 wages, it would not be a suitable corroborative tool for the industry-specific FY 2002 ILO data in question.<sup>99</sup> Thus, consistent with the Department’s data practice explained elsewhere in these Final Results of Redetermination, we have not relied on the submitted ASI study in our conduct of this remand redetermination.<sup>100</sup>

### **Adjustments to Surrogate Financial Ratios Based on the New Wage Rate**

#### **Calculation**

Petitioners argue that because the new wage rate calculation differs significantly from the prior regression methodology, and also now includes wage data when earnings data are unavailable, the Department should revise its financial ratio calculations to capture all costs associated with this methodological change in the margin calculation. Petitioners note that “earnings” are defined as all remuneration (as wage, salary, allowances or otherwise) expressed in terms of money, and do not include costs that are not part of the terms of employment, the value of any amenities or service excluded from wage computation, or pension contributions

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<sup>99</sup> Although Petitioners note that the 2003 ASI report included at Exhibit 12 of their August 16, 2010, submission contains a “Trends” column which shows a FY 2002 country-wide wage rate as a comparison to the subject FY 2003 data, no source data is available for this total figure and, furthermore, this 2002 data is a country-wide line-item total that does not correspond to the industry-specific ILO data at issue.

<sup>100</sup> Further, we note our disagreement with Petitioners’ contention that the Department has explicitly ignored the ASI survey and that we have failed our obligation to consider this evidence. The Department has accepted this survey onto the record of this remand and has, indeed, taken the survey under consideration. However, upon careful consideration, we have found that the use of this survey, in the manner preferred by Petitioners, is not appropriate in the instant proceeding, based on the reasons laid out above.



paid by the employer. As such, Petitioners contend that certain line item costs included in each financial statement of the seven companies used to derive Dorbest's surrogate financial ratios (*i.e.*, contributions to provident and other funds, welfare expenses, workers compensation insurance, ESI and EPF Contributions, and medical expenses) should be reclassified from labor costs to manufacturing overhead to fix the inconsistency between the wage rate and the labor costs in the denominator of the financial ratios.

**Department's Position:** We disagree with Petitioners that because the new wage rate calculation differs from the regression methodology, and now includes both wage data and earnings data, the Department should revise its financial ratios. The Department notes that the ILO defines "earnings" under Chapter 5B of its *Yearbook of Labour Statistics* as being inclusive of "wages," bonuses and gratuities.,. Thus, we find that neither "wages" nor "earnings" include the types of expenses (such as welfare expenses and contributions to provident funds) that Petitioners request be reclassified from labor to manufacturing overhead. Under the previous methodology, used at the time of the underlying investigation, the Department also used "earnings" that are not inclusive of these expenses. Therefore, whether the Department uses earnings or wages, neither of which includes the expenses addressed by Petitioners, does not compel changing the treatment of these expenses in the surrogate financial ratios, as at the time of the investigation, the Department's practice was to include these expenses as part of the materials, labor, and energy ("MLE") denominator. *See Final Determination* at Comment 3 ("We have reclassified certain labor-related expenses such as bonuses, pension expenses, and workers' compensation insurance as labor and included these amounts in the MLE denominator for purposes of calculating the surrogate financial ratios.")

## **Excise Duties**

Dorbest notes its ongoing disagreement with the Department's inclusion of excise duty expenses as an income item in its surrogate profit calculation. However, Dorbest recognizes that the scope of this remand is limited to the labor wage rate and the selection of the surrogate financial statements. Dorbest further acknowledges that this issue of excise duties was decided in this litigation, and has not been remanded. Dorbest agrees that the Department should not address issues falling outside the scope of the remand order.

**Department Position:** With respect to Dorbest's comment, we agree that the treatment of excise duties in the surrogate financial ratios was decided by the CAFC in *Dorbest IV*. This issue is not before the Department on remand and we have made no changes to our treatment of excise duties in the surrogate financial ratio calculations.

## **FINAL RESULTS OF REDETERMINATION**

Pursuant to the *Dorbest IV* ruling and *Dorbest Remand Order*, we have revised the wage rate calculation methodology to comply with the CAFC's interpretation of section 773 of the Act, and have recalculated the surrogate financial ratios using financial statements from all seven surrogate companies. Accordingly, Dorbest's final margin has been revised to 1.87 percent, which includes a recalculation of the wage rate and a recalculation of the surrogate financial ratios. We note that Dorbest's margin is now *de minimis* and, as a result, merchandise exported by Dorbest Limited, produced either by Rui Feng Woodwork (Dongguan) Co., Ltd. or produced by Rui Feng Lumber Development (Shenzhen) Co., Ltd., is excluded from the Order. Consistent with the Department's practice to exclude any rates that are zero, *de minimis*, or based entirely on AFA in the calculation of the separate rate,<sup>101</sup> we have not included Dorbest's *de minimis*

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<sup>101</sup> See, e.g., *Preliminary Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China*, 71

margin in the calculation of the separate rate. Accordingly, the margin for the separate rate companies is now 7.71 percent.

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Ronald K. Lorentzen  
Deputy Assistant Secretary  
for Import Administration

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Date

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FR 77373, 77377 (December 26, 2006), unchanged in *Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China*, 72 FR 19690 (April 19, 2007).

## **Attachment I**

(Draft Redetermination)

## **Attachment II**

(DnD Financial Statement)

## **Attachment III**

(Printouts of Regression Analysis)