

FINAL REMAND RESULTS OF THIRD
REDETERMINATION PURSUANT TO REMAND

I. SUMMARY

The Department of Commerce (“Department”) has prepared these final results of redetermination (“Final Redetermination”) pursuant to the decision and remand order of the U.S. Court of International Trade (“Court”) issued on July 22, 2011, *Taian Ziyang Food Company, Ltd., et al. v. United States*, Slip Op. 11-88, Consol. Court No. 05-00399 (July 22, 2011) (“*Taian Ziyang IIP*”). For this final redetermination, the Department has applied, under protest, the price quotes on the record of the underlying review as surrogates to value both cardboard cartons and plastic jars and lids. Additionally, the Department revised the calculation of the labor rate, pursuant to its new labor rate methodology as outlined in *Labor Methodologies*¹. As a result, for this final redetermination, the margin for Zhengzhou Harmoni Spice Co., Ltd. (“Harmoni”); Jinan Yipin Corporation, Ltd. (“Jinan Yipin”); Linshu Dading Private Agricultural Products Co., Ltd. (“Linshu Dading”); and Sunny Import & Export Co., Ltd. (“Sunny”) is 0.00 percent (collectively “Respondents”).

BACKGROUND

In response to *Taian Ziyang Food Co. v. United States*, 637 F.Supp.2d 1104 (CIT 2009) (“*Taian Ziyang IP*”), in the second remand results filed on March 12, 2010, the Department revised its treatment of respondent’s irrigation expenses, leased land, ocean freight, and labor. See *Taian Ziyang Food Company, Ltd. v. United States*, 637 F. Supp. 2d 1093 (Ct. Int’l Trade 2009), and *Final Results of Redetermination Pursuant to Court Remand* (March 12, 2010)

¹ See *Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092 (June 21, 2011) (“*Labor Methodologies*”).

(“*Taian Ziyang II Redetermination*”). However, the Department maintained its valuation of garlic seed, cardboard cartons, and plastic jars and lids, consistent with its determination in the *Fresh Garlic From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 70 FR 34082 (June 13, 2005), and unchanged in the *Notice of Amended Final Results of Antidumping Duty Administrative Review: Garlic from the People’s Republic of China*, 70 FR 56639 (September 28, 2005)(“*Final Results*”). Respondents continued to contest the Department’s treatment of cardboard cartons, plastic jars and lids, and labor expenses. Additionally, the Department later requested a voluntary remand to calculate respondent’s surrogate labor wage rate pursuant to the Court of Appeals for the Federal Circuit’s (“CAFC”) decision in *Dorbest Ltd. v. United States*, 604 F.3d 1363, 1372-73 (Fed. Cir. 2010) (“*Dorbest*”). In *Taian Ziyang III*, the Court sustained the Department’s valuation of garlic seed, and revised valuation of irrigation costs, land lease costs, and ocean freight costs; however, it remanded the valuation of labor expenses, cardboard cartons, and plastic jars and lids.

In *Taian Ziyang III*, the Court disagreed with the Department’s findings, which questioned the veracity and representative nature of the price quotes for both cardboard boxes and plastic jars and lids.² The Court found that the Department did not provide any record evidence or analytical support to bolster its use of import statistics over the price quotes, and deemed the Department to have been unresponsive to the criticisms in *Taian Ziyang II*, when comparing the import statistics to the price quotes.³ The Court disagreed with the Department’s finding that the Indian import statistics were the best available information and found that record evidence demonstrated that the Indian import statistics were overly broad and included non-

² Slip Op. 11-88 at 37-66, 72-77.

³ See, e.g., *id.* at 42, 48, 65, 72-73.

comparable merchandise, which served to overstate the calculation results.⁴ Furthermore, the Court explained that the Department had not sufficiently articulated its reticence to use the price quotes, but rather broadly dismissed them without adequate explanation as less preferable to import statistics.⁵

Based on the record information, the Court remanded the valuation of cardboard boxes and jars and lids to the Department for further action consistent with the Court’s analysis. The Court also held that on remand “Commerce shall reopen the record to evidence concerning the domestic price quotes and Indian import statistics (as well as alternative sets of data, if any, that may be appropriate).”⁶ The Court further ordered the Department to allow the plaintiffs to submit further evidence and to respond to any information placed on the record and to comment on the agency’s draft remand results.⁷ On November 28, 2011, the Department released for comment the draft remand redetermination (“Draft Redetermination”). Parties were given until December 12, 2011 to submit comments on the Draft Redetermination, but the Department did not receive any comments from any of the parties.

I. SURROGATE VALUES FOR CARDBOARD BOXES AND PLASTIC JARS AND LIDS

The Court found that Commerce had chosen “*admittedly distorted* Indian import statistics over *potentially ‘perfect’* price quotes.”⁸ While the Department disagrees with this conclusion, the Department is cognizant of the Court’s admonition that the Department is not likely to “get another bite of the apple on this issue.”⁹ Accordingly, rather than reopen the record, the

⁴ *Id.* at 48-59, 74-75.

⁵ *Id.* at 37-66, and 66-77.

⁶ *Id.* at 66; *see also id.* at 77.

⁷ *Id.* at 66, 77.

⁸ *Id.* at 56 with respect to cardboard boxes; *see also id.* at 76-77 with respect to plastic jars and lids.

⁹ *See* Slip Op. 11-88 at 66; *see also id.* at 77.

Department has determined, under protest,¹⁰ to use the price quote surrogate values provided on the record by the plaintiffs during the underlying proceeding for this final remand redetermination. Using these price quotes, the surrogate value for cardboard boxes is 44.20 rupees per kilogram (“Rs/kg”) and the surrogate value used for plastic jars and lids is 179.14 Rs/kg.¹¹

II. SURROGATE VALUE FOR LABOR

Background

Previously, due to the variability in wage rates among economically comparable market economies, the Department included wage data from as many countries as possible that were also economically comparable to the non-market economy (“NME”) and significant producers of comparable merchandise, within the meaning of section 773(c)(4) of the Tariff Act of 1930, as amended (the “Act”). Following the CAFC’s decision in *Dorbest*, the Department attempted to balance its desire for multiple data points with the statutory requirements that factors of production (“FOP”) data be from countries that are both economically comparable and significant producers. *See* sections 773(c)(4)(A) and (B) of the Act. While the amount of available data was more constrained following *Dorbest*, the Department determined that the industry-specific interim methodology still provided the best available wage rate because it allowed for multiple data points, and adhered to the constraints set forth in the statute. Under this methodology, the Department considered countries that exported comparable merchandise to be “significant producers.” However, in *Shandong Rongxin Import & Export Co., Ltd. v. United States*, Slip Op. 11-45 (April 21, 2011) (“*Shandong Rongxin*”) at 17-19, the Court found the

¹⁰ *See Viraj Group, Ltd. v. United States*, 343 F.3d 1371 (Fed. Cir. 2003).

¹¹ *See* November 28, 2011, Memoranda to the File; From Bobby Wong, International Trade Analyst; through Wendy Frankel, Director; Regarding Taian Ziyang Food Company, Ltd., et al. v. United States, slip Op. 11-88, analysis memoranda for 1) Zhengzhou Harmoni Spice Co., Ltd.; 2) Jinan Yipin Corporation, Ltd.; 3) Linshu Dading Private Agricultural Products Co., Ltd.; and 4) Sunny Import & Export Co., Ltd.

Department's sole reliance on exports alone to define "significant producers" was unsupported by substantial evidence.

The Department has carefully considered the "significant producer" prong of section 773(c)(4)(B) of the Act, in light of the Court's decision in *Shandong Rongxin* and concluded that this decision imposed an even further restriction on the "significant producer" definition. Upon our careful examination of our options, we found that any alternative definition for "significant producer" that would also be compliant with the Court's decision would unduly restrict the number of countries from which the Department could source wage data. We, therefore, find that the basket for an average wage calculation would be so limited that there would be little, if any, benefit from relying on averaged wage rate data from multiple countries for purpose of minimizing the variability in wages across countries. Therefore, in light of both the CAFC's decision in *Dorbest*, and the Court's recent decision in *Shandong Rongxin*, we find that relying on multiple countries to calculate the wage rate is no longer the best approach for calculating the labor value. Therefore, we have altered our labor methodology to rely on labor cost data from the primary surrogate country in a given proceeding. *See Labor Methodologies*.

Accordingly, the Department finds that using the industry-specific labor cost data from the surrogate country in this proceeding is the best approach for valuing the labor input. It is fully consistent with how the Department values all other FOPs, and results in the use of a uniform basis for FOP valuation—a single surrogate country.

A. Data Relied Upon In This Remand Proceeding

In the underlying proceeding of this final remand redetermination, the Department selected India as the surrogate country, because it was identified by Import Administration's office of Policy as being at a comparable level of economic development to the People's

Republic of China (“PRC”) pursuant to section 773(c)(4) of the Act, is a significant producer of comparable merchandise, and has publicly available and reliable data. Therefore, for this remand redetermination, the Department will use industry-specific labor cost data from India that was available during the conduct of the underlying administrative review to calculate the surrogate labor rate.

The relevant period of review (“POR”) is November 1, 2002, to October 31, 2003. The Department conducted its administrative review of this period between November 1, 2003, and September 3, 2005 and relied on the available 2005 International Labour Organization (“ILO”) publication, which, due to the two-year lag between the current and reporting year reported 2003 labor cost data. Accordingly, for this remand redetermination, the Department is relying on the reported 2003 ILO data because these were the most contemporaneous data that were available at the time the Department conducted the underlying review.

In order to calculate a new labor rate in conformity with the labor methodology set forth in *Labor Methodologies*, we are using labor cost data from the surrogate country, India, reported in the ILO Chapter 6A data. As stated above, the Department selected India as the surrogate country in this proceeding based upon the finding that India was both economically comparable to the PRC and a significant producer of comparable merchandise. Accordingly, the Department is placing additional industry specific labor cost data on the record in order to determine the surrogate labor rate derived from Indian labor cost data. *See* Draft Redetermination at Attachment I.

B. Re-Valuation of the Labor Rate

We converted the hourly labor cost data, which was denominated in Indian Rupees, to U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect

on the dates of the U.S. sales as certified by the Federal Reserve Bank.¹² *See* Draft Redetermination at Attachment I. Specifically, the Department has relied on the industry-specific Indian data that includes “Processing and preserving of fruit and vegetables” {provided under Sub-Classification 15 “Manufacture of food products and beverages” of the International Standard Industrial Classification of all Economic Activities (“ISIC”) Revision 3 standard}. *See* Draft Redetermination at Attachment II.

Based on the foregoing methodology, the revised labor rate applied to Taian Ziyang in this remand redetermination is \$0.51 per hour. *See* Draft Redetermination at Attachment I.

C. Surrogate Financial Ratios

As stated above, the Department has used Indian ILO data reported under Chapter 6A “Labor Cost in Manufacturing” of the Yearbook of Labor Statistics to calculate the surrogate value for labor. Unlike Chapter 5B, which the Department used to calculate the regression-based wage rate, Chapter 6A reflects all costs related to labor, including wages, benefits, housing, training, *etc.*, whereas Chapter 5B reflected only direct compensation and bonuses. In using Chapter 6A (as in Chapter 5B) it is the Department’s practice to adjust, when possible, the calculated surrogate overhead (“OH”) and selling, general and administrative (“SG&A”) ratios to reflect all applicable indirect labor costs itemized in the company’s financial statement.¹³ While the Department’s ability to identify and adjust for indirect labor costs depends on the information available on the record of the specific proceeding, the Department accounts for direct and indirect labor costs when it is able to make the necessary adjustments.¹⁴ However, in relying on

¹² *See Labor Methodologies*, 76 FR at 36094.

¹³ *See Folding Metal Tables and Chairs from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 71 FR 2905 (January 18, 2006) and accompanying Issues and Decision Memorandum, at Comment 1.

¹⁴ *Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716, 61721 (October 19, 2006) (“*Antidumping Methodologies Notice*”).

Chapter 5B, the Department was concerned that, because many surrogate financial statements do not itemize labor-related expenses consistently, certain expenses may be under-counted in instances where labor related expenses of the surrogate financial statements do not coincide with the labor expenses identified in Chapter 5B. While the Department was sometimes able to make the necessary adjustments to direct and indirect labor costs, there were instances in which the lack of data precludes the Department from doing so. For this reason, the Department has changed its methodology to now use of Chapter 6A data, on the rebuttable presumption that Chapter 6A better accounts for all direct and indirect labor costs. Therefore, as discussed below, the Department will adjust the surrogate financial ratios when the available record information—in the form of itemized indirect labor costs—demonstrates that labor costs are overstated under the Department’s new labor rate calculation methodology without such an adjustment to the surrogate financial ratios.¹⁵

The Department’s previous surrogate wage rate methodologies (including the interim and regression methodology applied in the instant underlying administrative review) used ILO Chapter 5B “wages and earnings.” The ILO defines Chapter 5B data to include two types of compensation: (1) direct wages and salaries (“wages”), as well as (2) earnings data, which includes wages plus bonuses and gratuities (“earnings”).

The ILO defines Chapter 5B earnings data as including:

Remuneration in cash and in kind paid to employees, as a rule at regular intervals, for time worked or work done together with remuneration for time not worked, such as for annual vacation, other paid leave or holidays. Earnings exclude employers’ contributions in respect of their employees paid to social security and pension schemes and also the benefits received by employees under these schemes. Earnings also exclude severance and termination pay.¹⁶

¹⁵ See *Labor Methodologies*, 76 FR at 36094.

¹⁶ See <http://laborsta.ilo.org/applv8/data/c5e.html> (emphasis added).

Previously, where warranted, individually identifiable labor costs in the surrogate financial statements, which were not included in wages or earnings in direct labor, were categorized as OH or SG&A expenses for purposes of the Department's calculation of surrogate financial ratios.¹⁷

In contrast, the ILO defines Chapter 6A data to include:

“The cost incurred by the employer in the employment of labor. The statistical concept of labor cost comprises remuneration for work performed, payments in respect of time paid for but not worked, bonuses and gratuities, the cost of food, drink and other payments in kind, cost of workers’ housing borne by employers, employers’ social security expenditures, cost to the employer for vocational training, welfare services and miscellaneous items, such as transport of workers, work clothes and recruitment, together with taxes regarded as labor cost...”

“...compensation of employees comprising {sic} all payments of producers of wages and salaries to their employees, in kind as well as in cash, and of contributions in respect of their employees to social security and to private pension, casualty insurance, life insurance and similar schemes...”¹⁸

In order to ensure that Chapter 6A labor costs, included in the ILO defined “Labor cost” are accounted for only once in the calculation of normal value, it is best to adjust, where possible, the surrogate financial ratios employed by the Department to value OH expenses, SG&A expenses, and profit.¹⁹ Accordingly, we will categorize all individually identifiable direct labor costs included in the ILO's definition Chapter 6A “Labor cost” as direct labor in the

¹⁷ See *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) (“OTR Tires”) and accompanying Issues and Decision Memorandum, at Comment 18.G; see also, *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 47191 (September 15, 2009) and accompanying Issues and Decision Memorandum, at Comment 10. See also Memorandum to the File, through Catherine Bertrand, Program Manager, AD/CVD Operations, Office 9, from Blaine Wiltse, International Trade Analyst, AD/CVD Operations, Office 9, re: First Antidumping Duty Administrative Review of Certain Activated Carbon from the People's Republic of China: Surrogate Values for the Preliminary Results, dated April 30, 2009, at 13-14 and Attachment 10.

¹⁸ See Chapter 6A of the ILO Yearbook of Labour Statistics, found at <http://laborsta.ilo.org/applv8/data/c6e.html>.

¹⁹ See *Antidumping Methodologies Notice*; see also *OTR Tires* at Comment 18.G.

surrogate financial ratio calculations. Such adjustments to the surrogate financial ratios are fact-specific in nature and subject to available information on the record.²⁰

In the *Final Results*, we used the 2003/2004 Perry Agro Industrial, Ltd. (“Perry Agro”), 2003/2004 Dhunseri Tea & Industries Ltd. (“Dhunseri Tea”), 2002/2003 The Moran Tea Company Ltd. (“03 Moran Tea”), and 2003/2004 The Moran Tea Company Ltd. (“04 Moran Tea”), financial statements to derive the surrogate financial ratios applied in the calculation of normal value.²¹ However, because there is no indication of over counting of the labor costs in the allocation of the Perry Agro, Dhunseri Tea, 03 Moran Tea, or 04 Moran Tea financial statements used in the underlying administrative review, in conjunction with the current revised surrogate labor rate calculation, the Department has not made any adjustments to the financial statement allocation.

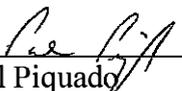
For this Final Redetermination, the Department continues to apply the ratios calculated for the *Final Results*.

²⁰ *See id.*

²¹ *See* December 1, 2003, Memorandum to the File, from Edythe Artman, International Trade Analyst; through Mark Ross, Program Manager and Laurie Parkhill, Director; regarding Fresh Garlic from the People’s Republic of China; Administrative Review and New Shipper Reviews for the Period 11/1/01-10/31/02; subject: Factors Valuations for the Preliminary Results of the Administrative Review and New Shipper Reviews.

FINAL RESULTS OF REDETERMINATION

The Department has applied as surrogate values, price quotes for cardboard boxes and plastic jars and lids to calculate normal value. Additionally, pursuant to the Department's *Labor Methodologies*, and our discussion above, we have revised the surrogate labor rate for the Respondents using ILO Chapter 6A labor data, and revised the respondents' final margins as indicated in the Summary above.



Paul Piquado
Assistant Secretary
for Import Administration

1/17/2012

Date