Final Results of Redetermination Pursuant to
Camau Frozen Seafood Processing Import Export Corporation, et al., v. United States
880 F. Supp. 2d 1348 (Ct. Int'l Trade 2012)
(November 15, 2012)

I. SUMMARY

The U.S. Department of Commerce ("Department") has prepared these final results of redetermination pursuant to the remand order of the U.S. Court of International Trade ("CIT" or "Court") in *Camau Frozen Seafood Processing Import Export Corporation, et al., v. United States*, 880 F. Supp. 2d 1348 (CIT 2012) ("Remand Order").

In the final results of the fifth administrative review of certain frozen warmwater shrimp from the Socialist Republic of Vietnam ("Vietnam"), the Department relied upon its *New Labor Methodology*[1] and valued labor with data from the primary surrogate country, Bangladesh.[2]

On November 15, 2012, the CIT remanded the *Final Results* to the Department to reconsider its decision to value labor solely on the basis of data from Bangladesh. Specifically, the Court held that the Department's decision to value labor based solely on data from Bangladesh, although reasonable on its face, was not supported by substantial evidence. The Court held that the Department did not reconsider its prior findings, made when the Department relied upon a prior wage-rate methodology, that wage rates strongly correlate to *per capita* gross national income ("GNI") and, therefore, require special consideration. Additionally, the Court stated that the facts on the record of the case seemed to highlight the very concerns about valuing labor on the basis of a single country that the Department had repeatedly raised when supporting its prior wage-rate methodology. Thus, the Court found that, by accounting for neither its prior

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[1] *See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing The Factor of Production: Labor*, 76 FR 36092 (June 21, 2011) ("*New Labor Methodology*").
[2] *See Certain Frozen Warmwater Srimp from the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 56158 (September 12, 2011) and accompanying Issues and Decision Memorandum at Comment 2I ("*Final Results*").

finding of a correlation between wage rates and GNI nor the disparity in both wage rates and GNIs of the proposed surrogate countries, the Department's use of the Bangladeshi data to value labor was not supported by substantial evidence.[3] In light of this, the Court ordered that the Department either reconsider whether it is reasonable to value labor using only data from the primary surrogate country or provide further explanation for its decision.[4]

On March 4, 2013, the Department provided a draft redetermination to the parties in which it reconsidered its labor methodology and continued to determine that labor should be valued using data from the primary surrogate country, Bangladesh. On March 11, 2013, the parties provided comments. In response to these comments and as described below, the Department continues to determine that labor should be valued using data from the primary surrogate country, Bangladesh.

II. ANALYSIS

A. The Act and the Department's General Factors of Production Methodology

Section 773(c)(1)(B) of the Tariff Act of 1930, as amended ("the Act") directs the Department, in determining a company's normal value ("NV") within a non-market economy ("NME"), to select surrogate factors of production ("FOP") using the "best available information" on the administrative record. In selecting the best available information, Congress provided the Department with guidance in section 773(c)(4) of the Act. Section 773(c)(4) states that "to the extent possible," the Department must utilize "prices or costs of factors of production in one or more market economy countries that are: (A) at a level of economic development comparable to that of the non-market economy country, and (B) significant producers of comparable merchandise."

[3] *See* Remand Order, 880 F.Supp.2d at 1360-61.
[4] *See id.*, at 1361.

The Department employs a four-step process in selecting the most appropriate market-economy country for calculating NV. This four-step process consists of: (1) compiling a list of countries that are at a level of economic development comparable to the country being investigated[5]; (2) ascertaining which of those cited countries produce comparable merchandise; (3) determining from the resulting list of countries, which, if any, of the countries are *significant* producers of the comparable merchandise; and (4) evaluating the quality, *e.g.*, the reliability and availability, of the data from those countries.[6] In this review, the Department selected Bangladesh as the primary surrogate country. That determination is not at issue in this remand.

B. The Department's Regression-Based Labor Methodology

During the time the Department used its regression-based labor methodology, the Department normally valued all FOP, except for labor, from a single market economy country.[7] This is because, in the past, the Department found that by its nature, labor differed from other FOP. Specifically, labor was found to vary largely from country to country, and was highly influenced by socio-economic factors that gave rise to a great variety of national labor frameworks, having little to do with the size and strength of the economy.[8] Over the years, the Department concluded that, despite the differences in labor policies between individual

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[5] In determining whether a country is at a level of economic development comparable to the NME under section 773(c)(2)(B) of the Act, the Department places primary emphasis on per capita GNI as the measure of economic comparability. The Department notes that 19 CFR 351.408(b) specifies that the Department "places primary emphasis on per capita {Gross Domestic Product ("GDP")}." However, it is Departmental practice to use "per capita GNI, rather than per capita GDP, because while the two measures are very similar, per capita GNI is reported across almost all countries by an authoritative source (the World Bank), and because the Department believes that the per capita GNI represents the single best measure of a country's level of total income and thus level of economic development." *See Antidumping Methodologies in Proceedings Involving Non-Market Economy Countries: Surrogate Country Selection and Separate Rates*, 72 FR 13246 (March 21, 2007) at footnote 2.

[6] *See* Import Administration Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process at 2 (March 1, 2004) available at *http://ia.ita.doc.gov/policy/bull04-1.html* ("Policy Bulletin").

[7] *See* 19 CFR 351.408(c)(2).

[8] See *Zhengzhou Harmoni Spice Co., Ltd., Jinan Yipin Corporation Ltd., Jining Trans-High Trading Co., Ltd., Jinxiang Shanyang Freezing Storage Co., Ltd., Linshu Dading Private AgriculturalProducts Co., Ltd., Shanghai LJ International Trading Co., Ltd., and Sunny Import and Export Ltd. v. United States*, Slip Op. 09-39 (CIT 2009), Final Results of Redetermination Pursuant to Court Remand, at 19 ("*Garlic Redetermination*").

countries, there was both a strong positive relationship between wage rates and GNI, as well as a large variation in the individual wage rates of comparable market economies.[9] In general, as the GNI increased, so too did hourly wage rates. This lead the Department to presume that any reasonable analysis used to derive a wage rate should look to potential surrogate countries' GNI as a relevant factor.[10]

In light of the strong positive relationship between wage rates and GNI and the large variation in the individual wage rates of comparable market economies, the Department determined that pursuant to section 773(c)(1) of the Act, it must attempt to address these factors in deriving the "best available" information for selecting a surrogate wage rate value for the subject NME. Accordingly, the Department implemented a regression-based methodology that took both of these factors into consideration. In 1997, the Department issued a regulation that indicated the "regression-based wage rates reflective of the observed relationship between wages and national income in market economy countries" would be used to value the labor FOP.[11]

In 2008, the CIT in *Allied Pacific* found that the regression-based methodology used to value labor was not in accordance with the antidumping law.[12] The Court found that "the legislative history of the provision confirms the importance Congress attached to use of data on prices or costs from countries satisfying both criteria," under section 773(c)(4) of the Act, which the regression-based methodology did not fulfill.[13] The Court also found that 19 CFR 351.408(c)(3) paid "no heed to the second criterion of {section 773(c)(4) of the Act} which is investigation-

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[9] *See id.*, at 20.
[10] *See id.*
[11] *See Antidumping Duties; Countervailing Duties: Final Rule*, 62 FR 27296 (May 19, 1997) at 19 CFR 351.408(c)(3).
[12] *See Allied Pacific Dalian Co. v. United States*, 587 F. Supp. 2d 1330 (CIT 2008)("*Allied Pacific*").
[13] *See Allied Pacific* at 1355.

specific, and does not permit the Secretary to determine the best available labor cost information with respect to the particular investigation being investigated."[14]

Subsequently, in *Dorbest IV*,[15] the Court of Appeals for the Federal Circuit ("CAFC") invalidated the regulation under which the regression-based methodology was conducted to value labor.[16] The CAFC found that "Congress intended to require use of data from economically comparable countries except in situations where such data were not available or were irretrievably tainted by some statistical flaw."[17] The CAFC invalidated the regulation because the regression-based methodology used data from both countries that produce comparable merchandise and countries that do not without any "finding that proper data was unavailable or otherwise unusable."[18]

C. Interim Wage-Rate Methodology

As a consequence of the CAFC's ruling in *Dorbest IV*, the Department found that it could no longer rely on the regression-based wage-rate methodology described in its regulations. Based on this, the Department, beginning in July 2010, applied an interim wage-rate methodology that derived a surrogate wage rate from countries that were both economically comparable and significant producers of merchandise comparable to the merchandise subject to the antidumping duty proceeding.[19] The Department's interim wage-rate methodology utilized a simple-average industry-specific wage rate calculated with data reported in Chapter 5B of the International Labor Organization's ("ILO's") Yearbook of Labour Statistics. Under this interim methodology, the Department calculated an hourly wage rate by averaging industry-specific earnings and/or

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[14] *See id.* at 1358.
[15] *See Dorbest Ltd. v. United States*, 604 F.3d 1363 (Fed. Cir. 2010) ("*Dorbest IV*").
[16] *See Dorbest IV* at 1363.
[17] *See Dorbest IV* at 1371-2.
[18] *See id.* at 1372.
[19] *See 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 Issues and Decision Memorandum at Comment 13.

wages in countries that are economically comparable and are significant producers of subject merchandise, pursuant to section 773(c)(4) of the Act.[20]

In implementing the interim wage-rate methodology, the Department calculated a simple-average wage rate because the Department believed that it was better to average more data rather than to use the data from the primary surrogate country due to its past practice of finding variation in wage rates among economically comparable market economy ("ME") countries. However, in the course of implementing this methodology in different proceedings and following the CIT's decision in *Shandong*, which further narrowed the universe of countries available to the Department for averaging,[21] the Department found that, in identifying the countries that fulfilled the statutory requirements for section 773(c)(4) of the Act, the pool of data could be extremely limited. Specifically, in some cases, the Department found that the calculation could be limited to two to three countries.[22] This resulted in there being little if any benefit to averaging wages from multiple countries to address the variation in wage rates of multiple countries.

D. Single Country Wage-Rate Methodology

In light of the extreme data constraints the Department faced when implementing the interim wage-rate methodology, the Department determined that it would value labor solely based on data from the primary surrogate country.[23] The Department explained that industry-specific wage data from the primary surrogate country was the best available information because it is

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[20] *See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production; Request for Comment*, 76 FR 9544, 9546 (February 18, 2011).
[21] *See Shandong Rongxin Imp. & Exp. Co. v. United States*, 774 F. Supp. 2d 1307, 1314-16 (CIT 2011) ("*Shandong*").
[22] *See e.g., Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Administrative Review*, 76 FR 56158 (September 12, 2011) and accompanying Issues and Decision Memorandum at Comment 2I.
[23] *See New Labor Methodology*, 76 FR at 36093.

consistent with how the Department values all other FOP, and it results in the use of a uniform basis for FOP valuation – the use of data from a primary surrogate country.[24]

The Court held that the Department's reasons for abandoning its prior wage rate policy are reasonable, and that the new labor methodology is reasonable on its face.[25] However, the Court found that the Department failed to account for its prior finding of a correlation between wage rates and GNI that supported treating labor differently from other FOP, and the disparity in the two wage rates and GNIs of the proposed surrogate countries in this case, *i.e.*, Bangladesh and the Philippines.[26]

Regarding the relationship between wage rates and GNI, as explained above, when developing the regression-based methodology, the Department determined that, despite the differences in labor policies between individual countries, there was both a strong positive relationship between wage rates and GNI, as well as a large variation in the individual wage rates of comparable market economies. We find that, in light of the *Dorbest IV* and *Shandong* decisions, an averaging methodology with limited data points that cannot adequately account for the existence of the correlation between wage rates and GNI and the variation among wage rates of economically comparable economies is inferior to relying upon the primary surrogate country to determine the labor surrogate value. The CIT has upheld the Department's general preference for deriving surrogate data from a single country because this limits the amount of distortion introduced into the Department's calculations.[27] As the CIT pointed out in *Peer Bearing*, "the preference for use of data from a single country could support a choice of data as the best available information where the other available data 'upon a fair comparison, are otherwise seen

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[24] *See id.*
[25] *See* Remand Order, 880 F.Supp.2d at 1358.
[26] *See id.* at 1358-60.
[27] *See Clearon Corporation and Occidental Chemical Corp. v. United States*, Slip Op. 13-22 (CIT 2013) at 13 ("*Clearon*").

to be fairly equal.'"[28] Thus, in light of the *Dorbest IV* and *Shandong* decisions, and considering the Department's finding that the pool of data under the interim methodology was so limited that there would be little if any benefit of averaging wages from multiple countries, we find that it is beneficial to rely on labor costs from a single surrogate country because sourcing data from a single country better reflects the trade-off between labor costs and other factors' costs, including capital, based on their relative prices. The primary surrogate wage-rate methodology enables the Department to capture the complete interrelationship of factor costs that a producer in the primary surrogate country faces.

Regarding the disparity, identified by the Court, in the wage rates and GNIs of the proposed surrogate countries in this case, *i.e.*, Bangladesh and the Philippines, the Department finds that because the wage rates are not reported on the same basis, the Department cannot determine whether and to what extent any actual variance exists between the same types of wages in these countries. Specifically, the Philippine labor data represents wages for the more generic food and beverage processing industry,[29] whereas the Bangladeshi labor data are wages specific to the shrimp processing industry.[30] Because the two wage rates are based upon two different industrial categories, we do not find that a comparison between the two values represents evidence of a disparity among wage rates of economically comparable economies. Rather, on the record of this proceeding, there are no other comparable industry-specific wage-rate data that are from an economically comparable country that is a significant producer of subject merchandise.

Therefore, the Department continues to find that the labor data from the primary surrogate country, Bangladesh, is the best available information for valuing labor for this remand. This

[28] *See Peer Bearing Co-Changshan v. United States*, 804 F.Supp 2d 1337, 1353 (CIT 2011) ("*Peer Bearing*").
[29] *See* Domestic Producers' Additional Factors Submission (March 24, 2011) at Attachment 3.
[30] *See* Respondents' Factors Submission, (November 3, 2010) at Exhibit SV-7.

labor data is from an economically comparable country that is a significant producer of comparable merchandise, Bangladesh, pursuant to section 773(c)(4) of the Act. The Department finds that the Bangladeshi and Philippine data cannot be compared on the same basis, and thus do not demonstrate a variation in comparable factor prices across potential surrogate countries. Finally, the Department finds that, in light of the *Dorbest IV*, *Shandong*, and *Clearon* decisions, an averaging methodology with limited data points that cannot adequately account for the relationship between labor values and GNI and the variation among wage rates of economically comparable countries is inferior to relying upon the primary surrogate country to determine the labor surrogate value.

III. Interested Parties' Comments

A. Single Country Wage Rate Methodology

AHSTAC's[31] *Comments*

- In the preceding review, the Department declined to use the Bangladeshi Bureau of Statistics ("BBS") data because relying on wage rate data from a single country would be unreliable and arbitrary. In fact, the Department stated that it would not use data from the primary surrogate country because "{l}abor is different."[32]
- The CIT and the CAFC have upheld the Department's ability to value labor using data from multiple countries. Specifically, in *Dorbest IV* and *Shandong*, the courts either facilitated the continued lawful use of data from multiple countries to value labor or expressly affirmed the Department's ability to do so.[33]

[31] *Ad Hoc Shrimp Trade Action Committee* ("AHSTAC").
[32] *See* Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam (2009-2010): AHSTAC's Comments on the Draft Results of Redetermination Pursuant to Court Remand (March 11, 2013) at 3 and footnote 10.
[33] *See Dorbest IV* at 1372; *Shandong* at 1314-16.

- The *New Labor Methodology* directly contradicts the previous and longstanding agency findings that there is a great variation in the wage rates of the market-economy countries that the Department treats as being economically comparable.[34]
- The draft remand provides no detailed explanation for why prior factual findings are no longer persuasive such that the Department may implement a policy that completely disregards the original justification for using data from multiple countries.
- The draft remand improperly relies on the precedent regarding FOP unrelated to labor for the proposition that labor should be valued using data from a single country. This position is untenable without the Department first articulating why prior factual findings regarding labor and wage rate variability are no longer germane.

Camau et al. 's[35] *Comments*

- Fully support the results of the draft remand.

Department's Position: The Department disagrees with AHSTAC that the Department should average wage rates to value labor for this remand, and that the Department has not addressed sufficiently our prior findings regarding labor. Under the regression-based wage rate methodology, we found that while there was a strong positive relationship between wages and GNI, there was also variation in the wage rates of observed comparable ME countries. In prior cases involving the labor issue, the Department observed that there are many socioeconomic, political, and institutional factors, such as labor laws and policies unrelated to the size or strength of an economy, that cause significant variations in wage levels even among countries with similar levels of economic development.[36] This is why the Department previously treated labor

[34] *See Antidumping Duties: Countervailing Duties*, 61 FR 7308, 7345 (February 27, 1996).
[35] Camau Frozen Seafood Processing Import Export Corporation, Minh Phat Seafood Co., Ltd., Minh Phu Seafood Corporation, Minh Qui Seafood Co., Ltd., and Viet I-Mei Frozen Foods Co., Ltd. (collectively "Camau et al.").
[36] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of*

differently from other FOP. The regression-based methodology was designed to smooth out this variability and to generate a wage rate reflective of the relevant NME, based on its GNI, as if it were a ME. In so doing, the regression-based methodology also enhanced the fairness and predictability of the way in which the Department determined the value for labor across all cases.[37]

Following the decision in *Dorbest IV*, which struck down the regression-based methodology, the Department developed an interim methodology, which the Department also developed with the intent of creating another predictable way to value labor. This methodology differed from the regression-based method in significant respects, eliminating all non-economically comparable countries from the dataset and determining labor wage rates as specific to the industry at issue as possible. However, in implementing the interim methodology, the Department found that the original intent of providing a predictable methodology, particularly across cases, was fundamentally undermined. For example, under the interim labor methodology, the universe of averaged labor data was no longer constant, as it had been under the regression model, changing across products and segments of a proceeding. The selected wage rate became dependent on multiple factual issues to be resolved in each case, *e.g.*, the threshold amount for significant production of a given product, the range of GNIs considered economically comparable, and the types of labor data to include in an average. Finally, following the *Shandong* decision, which challenged the Department's threshold for determining significant production, the Department found that the interim methodology became even less predictable. Under the interim methodology, as impacted by *Shandong*, the Department was

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China: Final Determination of Sales at Less Than Fair Value, and Affirmative Final Determination of Critical Circumstances, in Part, 77 FR 63791 (October 17, 2012) and accompanying Issues and Decision Memorandum at Comment 5.

[37] *See Antidumping Duties; Countervailing Duties: Final Rule*, 62 FR 27296, 27367 (May 19, 1997).

required to define many parameters to screen for the possible universe of labor sources subject to the facts of each case and comments by the interested parties.[38] Without the explicit guidance of statutory language or regulation, changes in one case, as a result of new data and parties' arguments, could require wholesale reconsideration and possible changes across other NME proceedings, where the statutory deadlines permitted. As with any issue, the Department found that under the interim methodology, parties submitted voluminous comments on each methodological step necessary to implement this methodology (*i.e.*, economic comparability, significant producer, labor data source and type, *etc.*).[39] Because the Department was still attempting to implement a predictable methodology that could be applied across NME cases (similar to, but not to the extent of, the regression methodology), this methodology became difficult to administer and the anticipated predictability across cases was not achieved.

In light of the difficulties that arose in implementing the interim wage rate methodology, the Department began developing a different methodology. With factors other than labor, it has been the Department's policy to value all FOP by utilizing data from the primary surrogate country and to consider alternative sources only when a suitable value from the primary surrogate country does not exist on the record. This is because, as the Court noted in *Clearon*, "deriving the surrogate data from one surrogate country limits the amount of distortion introduced into its calculations because a domestic producer would be more likely to purchase a product available in India {the primary surrogate in that proceeding}."[40] Although the *Clearon* decision invoked this reasoning primarily for non-labor inputs, the Department finds that this line

[38] *See Ad Hoc Shrimp Trade Action Committee vs. United States*, 882 F. Supp. 2d 1366 (CIT 2012).
[39] *See Frontseating Valves from the People's Republic of China: Final Results of the 2008-2010 Antidumping Duty Administrative Review of the Antidumping Duty Order*, 76 FR 70706 (November 15, 2011) and accompanying Issues and Decision Memorandum at Comment 8; *Folding Metal Tables and Chairs From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review, and Revocation of the Order in Part*, 76 FR 66036 (October 25, 2011) and accompanying Issues and Decision Memorandum at Comment 1cii.
[40] *See Clearon* at 8.

of reasoning is equally true for labor as well. For example, producers in Bangladesh do not have access to the labor inputs in the Philippines. Thus, producers in Bangladesh make decisions regarding their factor utilizations, including labor, based on their relative price structure in-country, not the price of factors across countries. When the Department relies on factor prices outside the primary surrogate country, this relationship no longer exists. Therefore, the new single country wage rate methodology allows the Department to better capture this relationship between factors.

Based on the above discussion, the Department finds that the new single country wage rate methodology is the best available information on the record for valuing labor and thus continue to value labor using the Bangladeshi BBS data, which is from the primary surrogate country, Bangladesh. We acknowledge that, in the past, the Department treated labor differently from other FOP because of the variation in wage rates among economically comparable countries and the existence of a correlation between labor values and GNI. However, we find that, for the reasons explained above, in light of the *Dorbest IV*, *Shandong*, and *Clearon* decisions, and given the lack of predictability and difficulty administering the interim wage-rate methodology, the benefits of relying upon the primary surrogate country to determine the labor surrogate value outweigh the benefits of attempting to adjust for any variation with a limited data set. Given that the averaging methodology is difficult to administer, and continues to result in variability in a way that the regression method did not, relying on the primary surrogate country for labor is a more sound and accurate methodology, consistent with the practice for determining surrogate values for other FOP.

B. Selection of Bangladeshi Wage Rate

AHSTAC's Comments

- The draft remand improperly attempts to address the record evidence by contending that the BBS and the Philippine ILO data cannot be compared on the same basis. However, there is no justification provided as to why industry-wide data cannot be compared with a subset of shrimp-specific data.
- The Department is obligated to explain why these values would be expected to differ from one another due to lack of comparability.
- The draft results claim that the two datasets cannot be compared because the Bangladeshi data represent only earnings data and the Philippine data are from Chapter 6A reported by the ILO. It is disingenuous for the Department to embrace ILO Chapter 6A data as the best source for valuing labor while using the Bangladeshi data based on a claimed lack of comparability.
- The Department's decision to select the Bangladeshi data as the best available information due to industry-specificity is arbitrary and unreliable considering this same information was found to be unreliable in the previous review.
- The draft remand also ignored the Court's instructions to examine the GNI of proposed surrogate countries. This is important considering the Department's practice of ignoring GNI differential, which has recently been invalidated by the CIT, and under the new labor policy the primary surrogate country's GNI drives the wage rate.[41]
- Although surrogate selection is not the subject of the remand, the draft remand does not follow the CIT's instruction to "address the disparity in the GNI of potential surrogate

[41] *See Ad Hoc Shrimp Trade Action Comm. v. United States*, 882 F. Supp. 2D 1366 (CIT 2012).

countries on the record in this case."[42]

- The draft remand only focuses on the Bangladeshi BBS data and Philippines ILO data and ignores additional labor values on the record from additional countries that are from the Department's preferred ILO Chapter 6A labor source. In light of the Department's preference for using ILO Chapter 6A data, the Department must explain why it is declining to use these data for valuing labor.
- The draft remand fails to address the record evidence that shows there is a benefit to averaging multiple countries to calculate a wage rate. There are four data points on the record that would allow the Department to calculate an average wage rate of $1.24, instead of a single wage rate of $0.21 using the Bangladeshi BBS data.
- Finally, the Department's prior policy was that more data was better than less data and there was no requirement of a minimum number of countries. The draft remand fails to explain how it is feasible that using less data is now better than more data for purposes of valuing labor.

Camau et al.'s Comments

- Fully support the results of the draft remand.

Department's Position: The Department disagrees with AHSTAC that the Bangladeshi BBS data should not be used for valuing the respondents' labor input. The Court held that the Department's new single country labor methodology was reasonable, though the Court identified certain problems with the record of this administrative review.[43] Specifically, the Court found that, when comparing the Bangladeshi labor data to the Philippine labor data, "the record suggests that choosing one country to value labor may introduce either overstated or understated

[42] *See* Remand Order at 1360.
[43] *See* Remand Order at 1360.

labor rates" because of the "disparity between the wage rates of the two countries."[44] However, in reconsidering this issue on remand, the Department finds that the difference in the wage rates is not based on an "apples-to-apples" comparison. Although AHSTAC argues that the Bangladeshi BBS data and the Philippine data are similar, the Department disagrees. Specifically, the Philippine data represent the more generic food and beverage processing industry, whereas the Bangladeshi BBS data are specific to the shrimp processing industry. These two categories represent two different levels of aggregation. Therefore, the Department finds that the Philippine data and the Bangladeshi BBS data are not properly comparable. That is, because the two categories represent different labor information, any difference between the two does not necessarily demonstrate a variation between labor in the two markets.

Contrary to AHSTAC's suggestion, the Court did not order the Department to compare all labor values on the record. Rather, the Court focused upon Bangladesh and the Philippines because those were the only two countries that satisfied all of the Department's criteria for use as surrogate countries.[45] The Court's finding that the Department's explanation was not supported by the record evidence was based upon the comparison of the GNIs of Bangladesh and the Philippines and its finding that the "disparity in GNI is reflected in a disparity between the wage rates of the two countries."[46] However, in examining the source of the wage data, the Department finds that the Bangladesh data are not comparable with the other countries' labor data because none of the other data is reported at the same level of aggregation as the Bangladeshi data.

This lack of comparability does not mean, as AHSTAC argues, that the Department is being disingenuous. As the Department explained in the *Final Results*, although Bangladesh does not report labor data to the ILO, the Bangladeshi data on the record are specific to the

[44] *See id.*
[45] *See id.* at n. 12.
[46] *See id.* at 1360.

shrimp processing industry.[47] Thus, the Department determined that the Bangladeshi data were an appropriate substitute for the ILO data in light of the fact that there was no Chapter 6A ILO data available for Bangladesh, and no party challenges the Department's use of the Bangladeshi data on that basis. The Department is simply explaining that the Bangladeshi labor data are not comparable to the Philippine data for purposes of attributing significant difference in values because the two are not reported at the same level of aggregation, and thus, do not represent the same labor information.

AHSTAC is also incorrect when it states that the Department selected the Bangladeshi data due to industry specificity. The Department did not select the Bangladeshi data because they were more specific than the other labor rates on the record. Rather, the Department selected the Bangladeshi labor data based upon its preference under the *New Labor Methodology* for using the labor data from the primary surrogate country, and the fact that the Bangladeshi data was found to be best available information for the labor value in that country.

Additionally, regarding AHSTAC's argument on the fourth administrative review where we declined to use the Bangladeshi BBS data, the Department did not find in that review that the Bangladeshi data were aberrational. Rather, the Department decided to not rely solely on the Bangladeshi BBS data because we were not implementing a single country wage rate in that review.[48] However, as we have explained, in *New Labor Methodology,* we have changed our methodology and have determined that relying on industry-specific wages from the primary surrogate country is the best approach for valuing the labor input in NME antidumping duty

[47] *See Final Results* and accompanying Issues and Decision Memorandum at Comment 2I.
[48] *See Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 75 FR 47771 (August 9, 2010) and accompanying Issues and Decision Memorandum at Comment 9.

proceedings.[49]

C. Bangladeshi BBS Data are Aberrational

AHSTAC's Comments

- The Bangladeshi BBS data are aberrational and cannot comprise the best information available on the record to value labor.
- The Bangladeshi BBS data contrasts sharply with every other relevant data point on the record: (1) the Philippines ($2.24, ILO Chapter 6A); (2) the Philippines ($1.91, ILO Chapter 5B); (3) Nicaragua ($1.02, Chapter 6A); (4) Guyana ($0.82, ILO Chapter 6A); (5) India ($0.70, ILO Chapter 6A); and (6) Indonesia ($0.41, ILO Chapter 5B).
- The Bangladeshi BBS data are not fairly equal when compared to the other wage rates on the record even though the draft remand acknowledged it is the Department's preference to not use data from a single country when that data are aberrational.
- The draft remand made no effort to address AHSTAC's demonstration that the Bangladeshi BBS data are aberrational.
- To avoid using aberrational data, the Department can either: (1) select a different surrogate country to value the labor factor of production; (2) average the four ILO Chapter 6A data points on the record; (3) average the data from the primary surrogate country with the four ILO Chapter 6A data points on the record; or (4) average the data from the primary surrogate country with the two ILO Chapter 5B data points to achieve data comparability.

Camau et al.'s Comments

- Fully support the results of the draft remand.

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[49] *See New Labor Methodology* at 36093.

Department's Position: The Department disagrees with AHSTAC's argument that the Bangladeshi BBS data are aberrational. AHSTAC has not provided any data or other evidence to show that the Bangladeshi wage rate is aberrational beyond pointing to the different wage rate values from different countries. However, just because there are differences between proposed FOP from different countries does not mean that one of those values is an aberration. As the CIT has pointed out, an interested party must introduce evidence in support of any claim that the value is aberrational or distortive.[50] Indeed, the Court has held that a party cannot "prove distortion simply by pointing to contrasting figures – with no supporting rationale or analysis whatsoever. . . ."[51] By simply stating that the Bangladeshi BBS data is different than the other wage rates of other countries on the record, AHSTAC has not demonstrated with any record evidence that the differences in value are market driven or an aberration. AHSTAC has not pointed to any flaw in the official Bangladeshi BBS data, which is an official government of Bangladesh statistic, or in the way in which the data were reported. Accordingly, the Department finds that there is no record evidence to show that the Bangladeshi BBS data are aberrational.

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[50] *See Trust Chem. Co. v. United States*, 791 F. Supp. 2d 1257, 1264-65 (Ct. Int'l Trade 2011).

[51] *United States Steel Corp. v. United States*, 712 F. Supp. 2d 1330, 1342 (Ct. Int'l Trade 2010) (citing *U.S. Ass'n of Imps. of Textiles & Apparel v. United States*, 413 F.3d 1344, 1353 (Fed. Cir. 2005) (dismissing party's argument where party failed to "support its assertion . . . with any reasoning, evidence, or precedent"); *Consol. Int'l Automotive v. United States*, 16 CIT 1062, 1066, 809 F. Supp. 125, 130 (1992) (rejecting party's argument where party failed to "support its objection to [the agency's] choice other than by conjecture . . .")).

Moreover, even if the different values between Bangladesh and other labor values alone could indicate an aberration, the Department notes that there is a spectrum of wage rates on the record ranging from $0.21 to $2.00, from varying sources. However, the fact that Bangladesh is the lowest of these does not mean it is an inherently aberrational rate. Regardless, as explained above, the Bangladeshi data are not comparable to the other labor data on the record because it represents a different category of labor costs. Accordingly, for all of the above reasons, the Department finds that the Bangladeshi BBS data are not considered to be aberrational.

Final Remand Redetermination

Pursuant to the Court's order and based on the analysis of the data available on the record, the Department finds that data from the primary surrogate country, Bangladesh, are the best available information on the record to value the labor input.

Paul Piquado
Assistant Secretary
for Import Administration

12 APRIL 2017
Date