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BY HAND DELIVERY

The Honorable Joseph A. Spetrini
Acting Assistant Secretary for Import Administration
U.S. Department of Commerce
Central Records Unit, Room 1870
U.S. Department of Commerce
Pennsylvania Avenue and 14th Street, N.W.
Washington, DC 20230

PUBLIC DOCUMENT

Re: Comments Regarding Expected Non-Market Economy Wages: Calculation Methodology – 70 Fed. Reg. 37661 (June 30, 2005)

Dear Mr. Spetrini:

I. INTRODUCTION

The Committee to Support U.S. Trade Laws ("CSUSTL") submits these comments in response to the Department's June 30, 2005 notice concerning its methodology for calculating expected non-market economy ("NME") wages.[1]

When the Department adopted its longstanding methodology for calculating NME wage rates, it recognized that the most accurate, predictable, and fair calculation methodology was to undertake a two step process on an annual basis: first, to estimate the statistical relationship

[1] Expected Non-Market Economy Wages: Request for Comment on Calculation Methodology, 70 Fed. Reg. 37,761 (Dep't Commerce June 30, 2005) ("Request For Wage Rate Comments").

between Gross National Income ("GNI") per capita and wage rates using an ordinary least squares regression model and, second, to use that statistical relationship in the calculation of hourly wage rates for specific NME countries.[2]

The first step of the Department's methodology, i.e., calculating the statistical relationship between GNI per capita and wage rates, is to apply an ordinary least squares ("OLS") regression analysis to reliable data from a consistent set of countries. There is no reason for the Department to change this longstanding, consistent approach to calculating wage rates.[3] While the Department may opt to provide additional disclosure on its website at the time it publishes its yearly wage rate calculations, the Department's past practice represents an exercise of discretion that clearly is in accord with the statute. Moreover, the second step of the Department's wage rage calculation methodology, the application of the statistical relationship to the GNI data for particular NMEs, also is appropriate for calculating wage rates.

Importantly, however, while the Department's methodology leads to the estimation of hourly wage rates for NME countries, it does not take other labor costs into account for purposes of estimating an accurate surrogate labor factor. Thus, the Department should adjust its

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[2] Request For Wage Rate Comments, 70 Fed. Reg. at 37762.

[3] The courts give "considerable weight" to longstanding and consistent administrative practices. Zenith Radio Corp. v. United States, 437 U.S. 443, 449 (1978) ("This longstanding and consistent administrative interpretation is entitled to considerable weight."); United States v. National Ass'n of Sec. Dealers, Inc., 422 U.S. 694, 719 (1975) ("This consistent and longstanding interpretation by the agency charged with administration of the Act, while not controlling, is entitled to considerable weight."); Timken Co. v. United States, 354 F.3d 1334, 1344 (Fed. Cir. 2004) (refusing to overturn the Department's zeroing practice "in light of the fact that Commerce's 'longstanding and consistent administrative interpretation is entitled to considerable weight.'") (quoting Zenith Radio, 437 U.S. at 449).

methodology to ensure that all labor costs are properly reflected in the surrogate values applied in investigations and reviews.

II. THE DEPARTMENT'S CONSISTENT, LONGSTANDING REGRESSION ANALYSIS METHODOLOGY IS CONSISTENT WITH THE STATUTE

A. The Department Properly Exercised Its Discretion To Adopt A Regression Analysis Methodology After Extensive Review And Comment

Section 773(c)(1) of the Tariff Act of 1930 ("the Act") (19 U.S.C. § 1677b(c)(1)) provides that in calculating normal value in a nonmarket economy ("NME") country,

> the valuation of the factors of production shall be based on the best available information regarding the values of such factors in a market economy country or countries considered to be appropriate by the administering authority.[4]

The Act further states in subsection (c)(3) that

> the factors of production utilized in producing merchandise include, but are not limited to -- (A) hours of labor required, (B) quantities of raw materials employed, (C) amounts of energy and other utilities consumed, and (D) representative capital cost, including depreciation.[5]

In subsection (c)(4), the Act provides as follows:

> The administering authority, in valuing the factors of production . . . shall utilize, to the extent possible, the 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 a nonmarket economy country, and (B) significant producers of comparable merchandise.[6]

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[4] 19 U.S.C. § 1677b(c)(1) (emphasis added).

[5] 19 U.S.C. § 1677b(c)(3) (emphasis added).

[6] 19 U.S.C. § 1677b(c)(4) (emphasis added).

Thus, while the Act instructs the Department to use the best available information from market economy countries in valuing factors of production, Congress gave the Department substantial discretion to define the factors of production and to select the appropriate methodology for valuing those factors of production.

The Court of International Trade recently held that the "statute does not direct Commerce to use a specific method in its valuation of labor."[7] Where no specific methodology is required by a statute, the agency's interpretations "are given controlling weight unless they are arbitrary, capricious, or manifestly contrary to the statute."[8] Thus, the Department may interpret and implement the statute in its role as the administering authority, so long as it acts "rationally."[9]

The Department published proposed regulations in 1996 establishing a new methodology for valuing labor wages that had developed, to that point, on an ad hoc basis through administrative practice.[10] Specifically, the Department proposed the adoption of a regression-based analysis to replace the existing practices, which had resulted in inconsistent and

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[7] Luoyang Bearing Corp. v. United States, 347 F. Supp. 2d 1326, 1346 (Ct. Int'l Trade 2004).

[8] Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 844 (1984).

[9] Koyo Seiko Co. v. United States, 36 F.3d 1565, 1570 (Fed. Cir. 1994).

[10] Antidumping Duties; Countervailing Duties: Notice of Proposed Rulemaking and Request for Public Comments, 61 Fed. Reg. 7308, 7343-46 (Dep't Commerce Feb. 27, 1996) ("The Department never issued regulations implementing the 1988 amendment. Instead, the Department developed its NME methodology through administrative practice. Now, with the benefit of seven years' experience in administering the NME provision, the Department believes it is appropriate to codify the rules the Department intends to apply. Certain of these rules, contained in §351.408, restate the practice the Department has developed over the past seven years, while other rules constitute changes that the Department believes to be improvements over current practice.").

unpredictable results.[11] After carefully considering comments on whether a regression-based analysis was appropriate, the Department published the following final regulation:

> For labor, the Secretary will use regression-based wage rates reflective of the observed relationship between wages and national income in market economy countries. The Secretary will calculate the wage rate to be applied in nonmarket economy proceedings each year. The calculation will be based on current data, and will be made available to the public.[12]

The Department's 1996 request for comments concerning the proposed regulations recognized that its then-existing practice -- i.e., using labor data collected from only one selected surrogate country -- resulted in wage rate variations and unpredictable margin calculations:

> Practitioners and academicians commenting on the application of the antidumping law to NMEs (and, in particular, the use of economically comparable countries as surrogates) have tended to equate comparable per capita GDPs with comparable wages. The Department has examined this proposition based on recent data of the type the Department uses in its proceedings, and has concluded that while per capita GDP and wages are positively correlated, there is great variation in the wage rates of the market economy countries the Department treats as being economically comparable. As a practical matter, this means that the result of an NME case can vary widely depending on which of the economically comparable countries is selected as the surrogate.[13]

[11] Antidumping Duties; Countervailing Duties: Notice of Proposed Rulemaking and Request for Public Comments, 61 Fed. Reg. at 7308.

[12] 19 C.F.R. § 351.408(c)(3).

[13] Antidumping Duties; Countervailing Duties: Notice of Proposed Rulemaking and Request for Public Comments, 61 Fed. Reg. at 7345.

Therefore, the Department announced that "{t}o enhance predictability, the average wage to be applied in any NME proceeding will be calculated by the Department each year, based on the most recently available data, and will be available to any interested party."[14]

After its review of comments, the Department stated in the Preamble to its final regulations that use of a regression-based wage rate would "significantly enhance{} the accuracy, fairness, and predictability of {the Department's} calculations in NME cases."[15] The Department observed that labor data were uniquely situated, because unlike every other factor of production, "it is only for labor that {the Department has} a relatively consistent and complete database covering many countries."[16]

Certain respondents in Wooden Bedroom Furniture from China[17] ("Furniture Respondents") have argued that the final rule is inconsistent with the statute because it permits data to be used from countries that are not economically comparable with NME countries like China. The Department's methodology does not, however, take a wage rate from one or more non-comparable countries to use as a surrogate value for NME countries. Instead, all the methodology does is take data from a sufficiently large number of countries to estimate a

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[14] As discussed below, the Department stated that "the Department will calculate the wage rate to be applied by using an ordinary least squares regression relating the wage rates and per capita GDP of approximately 45 market economy countries." Id.

[15] Antidumping Duties; Countervailing Duties: Final Rule, 62 Fed. Reg. 27296, 27367 (Dep't Commerce May 19, 1997).

[16] Id.

[17] Notice of Final Determination of Sales at Less Than Fair Value: Wooden Bedroom Furniture from the People's Republic of China, 69 Fed. Reg. 67313 (Nov. 17. 2004), as amended, 70 Fed. Reg. 329 (Jan. 4, 2005) ("Amended Final Determination") (currently under review by the Court of International Trade).

statistical relationship between GNI per capita and wage rates in order to calculate a surrogate value wage rate. The statute contains no suggestion that data from non-economically comparable countries cannot be used for this limited purpose.

In any event, the statute does not proscribe the use of surrogate values from countries that are not at comparable levels of development. It only requires that the Department utilize economically comparable data "to the extent possible."[18] The preamble to the final rule concludes with the recognition that "by combining data from more than one country, the regression-based approach will yield a more accurate result."[19] It is not possible to have a statistically valid regression analysis based only on one or a handful of countries. A regression analysis requires the use of sufficient data from many market economy countries.

B. The Department's NME Wage Rate Regulation Requires Use Of A Regression Analysis

The Department's final regulation, published in 1997, requires the use of a regression-based wage rate when the Department values labor in an NME country. The objective of the regulation was to promote a level of "accuracy, fairness, and predictability" that had not previously existed in the Department's calculations.[20] Any comments suggesting that the Department simply use the wage rate from the surrogate county selected in each investigation or administrative review must, therefore, be rejected. For purposes of selecting the wage rate, it does not matter which country is selected as the surrogate country for valuing other factors of

[18] Section 773(c)(4) of the Act (19 U.S.C. § 1677b(c)(4)).

[19] Antidumping Duties; Countervailing Duties: Final Rule, 62 Fed. Reg. at 27367.

[20] Antidumping Duties; Countervailing Duties: Final Rule, 62 Fed. Reg. at 27367.

production. The Department's regulation requires the use of a regression analysis to establish the wage rate.

Likewise, the Department must reject any argument that the wage rate calculations should be based on a simple average of data from a group of selected countries. Again, the Department's regulation prohibits the Department from calculating a simple average of wage rates.

C. The Department's Regression Analysis Methodology Is Reasonable

In June 1997, the Department began conducting its annual regression analysis using the calculation methodology explained in the Request For Wage Rate Comments. It has consistently applied this methodology to calculate expected wage rates for 1995 and 1997-2003, resulting in the reporting of dependable wage rates that follow a general, and expected, trend of gradual increases over time.[21] Moreover, the use of a consistent methodology has avoided the reporting in any year of grossly aberrational NME labor rates.

As the Department intended when it promulgated the regulation, use of a consistent methodology has resulted in accurate, fair, and predictable wage rate calculations. The regulation also decreases the administrative burden on the Department and the expenses to the parties to antidumping proceedings by directing the Department to use an annual regression calculation to estimate wage rates for application in all the NME antidumping proceedings before the Department.

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[21] See Expected Wages Of Selected Non-Market Economy Countries, available at http://ia.ita.doc.gov/wages/index.html. No expected rage rate is published for 1996.

The Department's wage rate regression uses a consistent dataset of market economy countries. The Department explains that the country dataset upon which it based its sample 2003 wage rate calculations include "wage rate data for 56 countries."[22] The number of countries included in the country dataset has been relatively stable since 1997, when the Department first published its regression-based labor wage rates.[23] Moroever, the fact that the Department intended to use a consistent series of countries for its wage rate calculations was announced at the same time the Department initially proposed using a regression analysis methodology.[24]

Despite the consistent, longstanding nature of the Department's methodology, the Furniture Respondents have argued that an additional 22 countries should be added to the 56 countries currently making up the market economy dataset for purposes of the Department's

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[22] Draft Results, at 5; Expected Non-Market Economy Wages: Request For Comment On Calculation Methodology, 70 Fed. Reg. 37761, 37762 (Dep't Commerce June 30, 2005).

[23] At Exhibit A-4 of their July 13, 2005 Comments, the Furniture Respondents provide a "History of Countries Relied On By Department Of Commerce For NME Wage Rate Regressions," which demonstrates the relative stability of the data series used by the Department. See Joint Comments of Dorbest Limited and Lacquer Craft Manufacturing Company Limited on Draft Redetermination According to Remand: Wooden Bedroom Furniture from the People's Republic of China (July 13, 2005) ("Joint Comments of Furniture Respondents")

[24] The Department stated:

> Specifically, the Department will calculate the wage rate to be applied by using an ordinary least squares regression relating the wage rates and per capita GDP of approximately 45 market economy countries. The data used and the results of the regression will be available from the Department upon request.

Antidumping Duties; Countervailing Duties: Notice of Proposed Rulemaking and Request for Public Comments, 61 Fed. Reg. at 7345. While it is clear that by the time the Department implemented the wage-based regression analysis methodology it had added countries to the country data series (approximated at 45 for the proposed rules), the Department has always been clear about the fact that a relatively consistent country data series would be used in its yearly calculations.

2003 wage rate calculation.[25] They additionally claim that only after including these additional 22 countries, and then excluding from the market economy country dataset all but the "low " and "lower-middle" income countries (as defined by the World Bank) will the Department's methodology be in accordance with both the dumping statute and statistical principles. The Furniture Respondents fail, however, to provide any legal basis for altering the Department's dataset.

The proposal to add 22 countries to the dataset, just like any other comments that may be made suggesting expansion of the country dataset, would contravene the Department's consistent, longstanding methodology. If the list of countries used in the regression calculations were to change dramatically in any one year, then that year's wage rate data would no longer be comparable to the wage rates in other years (resulting in a loss of predictability, dependability, and resultant fairness to the parties appearing before the Department). Moreover, if the Department began altering its country dataset, interested parties would have an incentive to make results-oriented comments concerning the addition or deletion of countries from the country dataset. The yearly calculation that currently amounts to a routine, straight forward administrative task would become the subject of contentious litigation, which would strain the resources of the Department and the parties and would yield unpredictable results. The Department intended to avoid such case-specific, results-oriented outcomes when it first proposed using a regression analysis to calculate NME wage rates:

[25] See Joint Rebuttal Comments of Dorbest Limited and Lacquer Craft Manufacturing Company Limited on Draft Redetermination According to Remand: Wooden Bedroom Furniture from the People's Republic of China, at 4-5 (July 18, 2005) ("Joint Rebuttal Comments of Furniture Respondents").

> To enhance predictability, the average wage to be applied in any NME proceeding will be calculated by the Department each year, based on the most recently available data, and will be available to any interested party. This method of computing the wage rate should reduce the workload on the Department and the parties, because it eliminates the need to develop specific wage rate information for each case.[26]

The Department has selected the countries that make up its country dataset in order to use, to the extent possible, consistent and reliable data in its annual regression analyses. As the Department states, "its practice is to eliminate aberrational values."[27] The mere fact that data may be available from the ILO Yearbook of Labour Statistics that meet the five parameters set forth by the Department in its Request For Wage Rate Comments[28] does not mean that the data are reliable. This point becomes evident upon review of the available data for the 22 countries that the Furniture Respondents suggest should be added to the 2003 country data set. For example:

- Several of the recommended countries (e.g., Iran, Kuwait) have economies that are based almost entirely on the oil industry, meaning that distortions could be caused by this heavy concentration in one industry.

- Iran's economy is primarily controlled by the state.

- Fiji suffered from political instability during the late 1990s and early 2000s, including a coup in 2000.[29] The ILO data reported are for 1999.

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[26] Antidumping Duties; Countervailing Duties: Notice of Proposed Rulemaking and Request for Public Comments, 61 Fed. Reg. at 7345.

[27] Request For Wage Rate Comments, 70 Fed. Reg. at 37,762.

[28] See 70 Fed. Reg. at 37,762.

[29] http://www.economist.com/research/backgrounders/

- Cambodia reported the exact same wage rate (243,000 riels per month) for 1996, 1998, and 2001. This suggests that the data reported to the ILO are not reliable.

Notably, while the Furniture Respondents suggested that 22 countries be added to the 2003 dataset, they separately suggested that the Department add 29 countries to the 2002 dataset.[30] Thus, the Furniture Respondents acknowledge that 24 percent of the countries they asked the Department to include in its 2002 wage rate calculations are technically unreliable for purposes of the 2003 wage rate calculations. Other fundamental data issues also exist for these countries. For example:

- Data for the West Bank and Gaza are reported as "net earnings," making it unclear whether these data are comparable to the wage data reported for other countries in the Department's country dataset. The data for the West Bank and Gaza also are for persons aged 15 years and over, and the inclusion of younger workers does not appear to be comparable with the other countries in the dataset. Moreover, the wage data reported from ILO are from 2002, during which Palestine was in the midst of the second *intifada*. As a consequence, Palestine was subject to imposition of Israeli border closing policies, which, according to the U.S. Central Intelligence Agency:

  > disrupted labor and commodity market relationships. In 2001, and even more severely in 2002, Israeli military measures in Palestine Authority areas resulted in the destruction of much capital plant, the disruption of administrative structure, and widespread business closures.[31]

- Saudi Arabia is an oil-dominated economy, much like Kuwait and Iran, mentioned above.

- Rwanda has been unstable for over a decade, and from 1996 to 2003 was engaged in a long and costly border war with Congo. The conditions for collecting reliable wage rate data are simply not present in Rwanda.

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[30] Compare Joint Comments of Furniture Respondents to Joint Rebuttal Comments of Furniture Respondents. The Furniture Respondents' principal reason for excluding these seven countries from their 2003 analysis appears to be based on technical data issues, such as a lack of 2003 Consumer Price Index information.

[31] http://www.cia.gov/cia/publications/factbook/geos/we.html

These examples highlight the fact that wage rate data for many of the countries not included in the Department's existing market economy dataset are potentially flawed and are likely to distort the results of any analysis in which they are used.

D. The Department Should Reject Comments Aimed At Manipulating Data Sources To Generate Arbitrarily Low Wage Rates

1. The Department should not expand its dataset to include additional countries

The Department's regression methodology, using its consistent market economy dataset of 56 countries, yields an adjusted R square of 0.92. In contrast, the use of a dataset made up of what the Furniture Respondents identify as "all available countries" (i.e., 74 country observations) yields an adjusted R square of 0.83.[32] Moreover, the GNI coefficient estimated in both models is virtually identical (0.00052 for the Department and 0.00051 for the Furniture Respondents).[33] Thus, the main difference in wage rate estimates between the two models is the estimate of the y-intercept (0.41046 for the Department and 0.22248 for the Furniture Respondents). It should be noted, however, that the y-intercept estimated using the Furniture Respondents' regression methodology is statistically less significant than the y-intercept estimated using the Department's regression methodology. Given the difference in this statistical significance, as well as the comparison of the R-square statistics, it is apparent that the

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[32] Joint Rebuttal Comments of Furniture Respondents, at Exhibit 3. Petitioners recognize that the R-square statistic is not the sole determinant of the accuracy or usefulness of a regression analysis. In this case, however, because the alternative models are the same but for the dataset used, the R-square statistic provides a useful indicator as to their relative explanatory power.

[33] Id.

Department's methodology is more appropriate than the methodology proposed by the Furniture Respondents.

2. The Department should not perform its wage rate calculations only using data from low-income and lower-middle income countries

The Furniture Respondents have proposed to apply a regression analysis only to data from the "lower" ("LI") and "lower-middle-income" ("LMI") countries within the World Bank data.[34] While this methodology was suggested in the furniture case as a means of calculating wage rates for China, commentators may also argue that it should apply to other NME countries.[35] The Department should reject such manipulation of data sets to reduce the labor wage rate. It would be patently distortive to include all countries with lower national incomes than the subject country while excluding countries with higher national incomes.

The distortion is clear from an examination of the regression statistics presented with respect to China by Furniture Respondents at Exhibit 4 to their Joint Rebuttal Comments. Restricting the set to only the LI and LMI countries yields less reliable results than the Department's existing methodology. Using the Department's consistent dataset of 56 countries yields an adjusted R square of 0.92, while using only the LI and LMI countries (26 observations)

[34] Joint Comments of Furniture Respondents, at 11.

[35] According to the World Bank's Country Groups presented at Exhibit 7 to the Joint Comments of Furniture Respondents, the Department's NME countries fall into three categories: Lower-Income (Kyrgyz Republic, Moldova, Tajikistan, Uzbekistan, and Vietnam), Lower-Middle-Income (Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, China, Romania, Turkmenistan, and Ukraine), and Upper-Middle Income (Estonia, Lithuania, and the Russian Federation).

yields an adjusted R square of only 0.55.[36] By this measure, a methodology restricted to the use of LI and LMI countries has little more than half the explanatory power of the Department's methodology. Thus, by restricting the dataset, the Department would generate less accurate and less predictable results than by using its current approach. In fact, the 26 observations in this dataset are below the minimum number of 30 required for the assumption of normal distribution of the population (and, therefore, the error terms in the regression).[37] Thus, any results derived from data restricted to LI and LMI countries are likely to be biased.

3. The Department should not perform its wage rate calculations only using data from a handful of economically comparable countries

The Furniture Respondents have suggested that the Department restrict its regression dataset to the five countries designated as economically comparable to China: India, Indonesia, Pakistan, Sri Lanka, and the Philippines.[38] As acknowledged by the Furniture Respondents when they made the suggestion, however, the failure to use a sufficiently large country dataset would undermine the statistical validity of the resultant data.[39]

In fact, the regression output prepared by the Furniture Respondents in their Joint Rebuttal Comments demonstrates that the results of a regression analysis become unreliable

[36] The Department's R square was provided in the Request for Wage Rate Comments, 70 Fed. Reg. at 37763. Petitioners recognize that R square statistic is not the sole determinant of a regression analysis' accuracy or usefulness, but in this case, since the alternative models are the same but for the dataset used, it provides a useful indicator as to their relative explanatory power.

[37] See David R. Anderson, Dennis J. Sweeney, & Thomas A. Williams, Essentials of Statistics for Business and Economics, at 263-65 (2d Ed. 2000); Jeffrey M. Woodridge, Introductory Econometrics, at 113-16 & 712 (2000).

[38] See Joint Comments of Furniture Respondents, at 10-11.

[39] See Joint Comments of Furniture Respondents, at 11 n. 4 ("It is questionable whether a regression analysis that includes only 5 datapoints yields statistically meaningful estimates.").

when based only on data from a limited number of countries designated as economically comparable. When a regression is run using only the five countries that the Furniture Respondents identified as being economically comparable to China, the adjusted R Square is a mere 0.368, and neither the GNI coefficient nor the y-intercept is statistically significant.[40] As a consequence, no meaningful conclusions can be drawn from these results.

E. The Department Should Not Use A GLS Regression

The Furniture Respondents have suggested that the Department should use a Generalized Least Squares ("GLS") regression rather than the Ordinary Least Squares ("OLS") regression that the Department has consistently used since 1997 and that it announced would be used in 1996 when seeking comments on the draft regulations.[41] Their suggestion should be rejected.

The Furniture Respondents have provided no legal basis for challenging the Department's longstanding and consistent approach of using of an OLS regression methodology. Their application of the GLS regression methodology results in essentially the same GNI coefficient that results under the OLS regression methodology. CSUSTL recognizes that the t-statistics and p-values calculated for the estimators arguably may be influenced by the presence of heteroscedasticity. Nevertheless, the t-statistic and the p-value for the coefficients estimated by using a GLS regression are highly consistent with those generated by the Department using its OLS regression, which suggests that the results presented by the Department are statistically

[40] See Joint Rebuttal Comments of Furniture Respondents, at Exhibit 1.

[41] Antidumping Duties; Countervailing Duties: Notice of Proposed Rulemaking and Request for Public Comments, 61 Fed. Reg. at 7345 ("Specifically, the Department will calculate the wage rate to be applied by using an ordinary least squares regression relating the wage rates and per capita GDP of approximately 45 market economy countries.").

robust, with or without the presence of heteroscedasticity. As a practical matter, therefore, no benefit is gained by switching to a different methodology.

Moreover, the GLS methodology, based on the same set of countries, results in similar estimates of the y-intercept. It should be noted, however, that the y-intercept estimated using a GLS regression methodology is statistically less significant than the y-intercept estimated using the Department's OLS regression methodology. Thus, the Department's methodology is more appropriate than the use of a GLS-based methodology.

F. **The Department Properly Relies On GNI Data To Calculate Estimated NME Wage Rates**

The Furniture Respondents have suggested that it is improper to apply an NME country's per capita GNI against the statistical relationship between GNI per capita and wage rates established annually through the Department's regression analysis. They have alleged that GNI data concerning an NME country cannot be relied upon due to the impact that that the NME Government's intervention in the market may have on the GNI reported by the World Bank.

The Department's valuation of factors of production "shall be based on the best available information."[42] The Department does just that when it relies on the GNI data for each NME country. These data are downloaded from the World Development Indicators of the World Bank.[43] They are gathered, analyzed, and reported by an independent, third-party, international organization. They are commonly used on a macroeconomic scale by governments and private institutions for a variety of purposes, including the evaluation of an NME's particular economic

[42] Section 773(c)(1) of the Act (19 U.S.C. § 1677b(c)(1)).

[43] Request for Wage Rate Comments, 70 Fed. Reg. at 37762.

conditions and the relationship of workers' incomes in each NME to those of workers in other countries of the world. Thus, the data are reliable. In addition, the data represent the most accurate indicator of per capita income available for applying the regression wage rate methodology required by the Department's regulations.

III. THE DEPARTMENT'S SURROGATE LABOR VALUATION MUST CAPTURE ALL ELEMENTS OF COST INCURRED BY NME PRODUCERS

A. The Department Must Capture All Labor Costs In Establishing The Labor Rate And Its Financial Ratios

While the Department's longstanding methodology for calculating wage rates is methodologically sound, the Department should take steps to ensure that the ultimate calculation of a surrogate labor rate includes all labor costs not already reflected in the wage rate. The Department's review of its NME wage rate calculation methodology provides an excellent opportunity for the Department to ensure that the most accurate surrogate labor costs are used in its dumping calculations.

The Act identifies "hours of labor" as one of the factors of production that are to be valued when calculating normal value for an NME country.[44] Moreover, the Department's regulations provide that the Department will "use" regression-based wage rates in its calculations of the surrogate valuation for labor.[45] The regulations, however, do not require the Department to calculate a surrogate value for "labor" based only on wages. To the contrary, they merely establish that the Department "will calculate the wage rate to be applied in nonmarket economy

[44] See Section 773(c)(1) & (3) (19 U.S.C. §§ 1677b(c)(1) & (3))

[45] 19 C.F.R. §351.408(c)(3).

proceedings each year."[46] Other labor costs must be included with the wage rate to accurately value labor in accordance with the statute.

The Department's wage rate regression analysis uses the ILO data from Chapter 5B of the Yearbook of Labour Statistics. Thus, it only incorporates the wages/earnings as received by employees.[47] Because wages comprise only a portion of total labor costs, the Department has recognized in administrative reviews that simply multiplying the reported labor hours by the estimated NME wage rate can create a surrogate labor value that neither fully incorporates labor costs nor fully corresponds to the total labor costs in the surrogate financial statements. This reality was recently affirmed by the Court of International Trade:

> As a preliminary matter, the Court finds that Commerce's decision to add employer welfare and provident fund expenses to the NV calculation of the surrogate SG&A expenses was a justifiable change of methodology as long as such change in position was reasonably supported by the record.
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> . . .
>
> In the case at bar, Commerce used the wage rates reported in Chapter 5 of the 1999 YLS, which were made available to the public by means of the Import Administration's website, to value the PRC labor costs. See Timken's App. at Tab 15 p. 15 (referring to the Issues & Decision Mem.) The data in Chapter 5 provides the most comprehensive wage rates since such figures include "overtime, bonuses and gratuities, holiday pay, incentive pay, pay for piecework, and cost-of-living allowances." Id. However, in this particular review, Commerce was also presented with specific and undisputed evidence that demonstrated that additional expenses were incurred by employers in the PRC. *See id.* at Tab 15

[46] Id.

[47] As noted infra, the ILO tracks total labor costs to employers, namely all wages and benefits in Chapter 6 of the Yearbook of Labour Statistics.

> p. 16. *Commerce, therefore, added provident and welfare fund expenses to its valuation of labor specifically because these two types of expenses are not expressly included in Chapter 5 data.* See id. Commerce added such expenses in order to calculate the costs that the PRC producer would incur if its factory were located in the surrogate country, India as accurately as possible. See id. Tab 4. Since the relevant statute does not direct Commerce to use a specific method in its valuation of labor, see 19 U.S.C. § 1677b(c)(3), and given the evidence provided to Commerce by Timken, the Court upholds Commerce's valuation of labor. Commerce properly collected new evidence, analyzed it and reasonably determined that the provident and welfare fund expenses must be added to the SG & A ratio in order to accurately value labor.[48]

CSUSTL agrees with the general principle that the ILO Chapter 5 wage rate data do not account for all labor costs, meaning that if only the wage rate is used to calculate a surrogate labor value, then that surrogate value is incomplete. Additional points concerning the labor data, however, are worth consideration by the Department:

First, not only do the ILO Yearbook's Chapter 5 data exclude provident and welfare fund costs, they also exclude other indirect labor costs for certain countries that comprise employee earnings.

- Second, in order to account for all factor costs, the Department should ensure that the labor factors of production pertain to all wage and salary employees involved indirectly or directly in the production of the subject merchandise (including all factory labor).

- Third, if the surrogate companies' financial statements indicate that a certain labor cost has been incurred in a market economy country, that cost should be applied to the NME respondent regardless of whether the respondent reports that cost.

[48] Luoyang Bearing Corp., 347 F.Supp.2d at 1345-46 (emphasis added).

In establishing the cost of labor for NME production, therefore, the Department must account for all normal labor costs incurred in market economies and establish parity between its calculated labor rate and the separate (but related) SG&A ratio that also incorporates labor costs. In doing so, the Department should ensure that it has captured all labor costs (e.g., all wages, salaries, employee benefits, employee training costs) either in its hourly wage cost valuation or its financial ratios.

B. The Department Should Capture Labor Cost Data From Chapter 6 Of The ILO Yearbook

As referenced above, the Act requires that the Department assign a surrogate value to labor. The Department's current wage rate calculation methodology establishes a wage rate to which additional labor costs must be added in order to accurately value labor. The use of Chapter 6 data from the ILO's 2004 Yearbook of Labour Statistics[49] in the Department's regression analysis, however, would obviate the necessity to adjust for the labor costs not reflected in the Chapter 5 wage/earnings data. Chapter 6 of the of the Yearbook provides the total cost of labor, which is defined as follows:

> For the purposes of labour cost statistics, labour cost is the cost incurred by the employer in the employment of labour. The statistical concept of labour 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 labour cost.

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[49] International Labor Organization, 2004 Yearbook of Labour Statistics ("Yearbook").

Thus, the Chapter 6 data reflect the cost of the wage earner to his employer.

The NME factor valuation seeks to establish the product costs that a non-market producer would have incurred if that producer were located in a market economy. While the Chapter 6 data result in the valuation of one hour's labor cost to an NME producer, the Chapter 5 data only provide the expected earnings for a laborer. The use of Chapter 6 data, therefore, would provide the very labor cost at issue for surrogate valuation purposes without the need to conduct additional data adjustments to include labor costs not captured by the wage rate.

C. Alternatively, The Department Should At Least Capture "Earnings" Data From Chapter 5 Of The ILO Yearbook

While use of Chapter 6 data ensures that all labor units are included in the surrogate labor value for specific NME countries, at a minimum the Department should capture "earnings" data from Chapter 5 of the ILO Yearbook. The introduction to Chapter 5 defines workers' earnings to include:

> Direct wages and salaries, remuneration for time not worked (excluding severance and termination pay), bonuses and gratuities and housing and family allowances paid by the employer directly to this employee.[50]

The Yearbook also notes that the reported data in Chapter 5 are not universally comprised of total employee earnings:

> The statistics of wages presented in tables 5A and 5B, are, in general, average earnings per worker, or, in some cases, average wage rates.[51]

[50] Yearbook, at 871.

[51] Id. (emphasis added).

Those average wage rates are only comprised of "... basic wages, cost of-living allowances and other guaranteed and regularly paid allowances, but exclude overtime payments, bonuses and gratuities, family allowances, and other social security payments made by employers."[52] In addition "*ex gratia* payments in kind, supplemental to normal wage rates, are also excluded."[53]

While substantially all of the country data in Chapter 5B report average employee earnings, limited exceptions exist in which average wage rate data (i.e., data not including overtime, bonuses, family allowances, and social security payments made by employers) are included in Chapter 5B. In order to establish consistency within the dataset, all observations in the sample population should represent the same fundamental economic value, i.e., earnings. The Department should ensure this consistency by restricting the country dataset to include only those countries whose labor statistics report average employee earnings. In other words, the dataset would exclude those countries whose labor statistics report only average wage rates.[54]

The Department's current methodology works to achieve to maximize uniformity in terms of (1) sex, (2) sub-classification, (3) worker coverage, (4) type of data, and (5) source of data before eliminating clearly aberrational values.[55] The use of an additional data parameter, the elimination of wage-only data, would provide true comparability among the data population.

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[52] Id. (emphasis added).

[53] Id.

[54] Making such a change would have little or no effect on the statistical validity of the Department's regression analysis. Only three countries that were used in conducting the regression analysis for purposes of the 2003 wage rate calculations appear to have reported only average wage rates (as opposed to average employee earnings).

[55] Request for Comments, 70 Fed. Reg. at 37762.

D. Surrogate Labor Values Should Include All Labor Costs Arising Under Market Conditions

If the Department does not use Chapter 6 data to value labor, it must account for labor costs not included in the Chapter 5 average earnings, e.g., provident and welfare fund expenses, by excluding such costs from the MLE denominator and including them in SG&A expenses when calculating the surrogate company financial ratios.[56] CSUSTL notes that Luoyang Bearing raises the implication that the Department would only move the surrogate market companies' benefit costs of labor into SG&A if evidence was presented that the NME producer incurred such labor costs. That logic, however, is at odds with the very premise of surrogate valuation.

The question should not be whether evidence has been found that such costs were incurred under non-market conditions, but rather, *whether such costs normally comprise a component of total labor costs under market conditions*. A non-market producer may not evidence such expenses precisely because of its NME status, not the fundamental realities of the industry in question. An absence of many labor benefits should be expected for NME companies, as the lack of free labor means severely diminished collective bargaining rights which normally establish health benefits, bonuses, personal leave, workman's compensation, overtime pay, cash for earned leave, welfare funds, pension plans, etc. Thus, as long as costs of labor not incorporated in the Chapter 5 wage/earnings calculation are evidenced by the *surrogate*

[56] The welfare expenses incurred by the employer are not included in the average earnings data for chapter 5 wage statistics. Thus, the costs identified in line-items such as provident fund expenses, staff and labour welfare, and ESI (Employees' State Insurance) expenses should in all cases be excluded from the MLE denominator and included in the SG&A numerator. See Statistics on Employment and Labour Cost in Census Sector, Labour Bureau Government of India, at: http://labourbureau.nic.in/ASI%20Cen%202K%202K1%20Chap%201.html.

company financial statements, they should be included in the SG&A numerator, not the MLE denominator, in the calculation of surrogate financial ratios.

E. <u>The Department Should Revise Its NME Questionnaire To Collect Additional Data On Labor</u>

The Department should require NME respondents to provide additional record evidence to ensure that all direct and indirect labor hours incurred to produce the subject merchandise have been reported. The Department also should require NME respondents to report all other labor hours to ensure labor components properly have been accounted for in the labor factor of production or in the financial ratios. This can be done by adding the following questions to the standard NME questionnaire:

> ***Please report the hours for all employees involved (directly or indirectly) with (1) the production of subject merchandise during the POI/POR and (2) the sales, distribution, and other general and administrative functions for the subject merchandise during the POI/POR. The reported hours should be for all employees (<u>i.e.</u>, hourly and salaried employees).***
>
> ***Please provide a worksheet reconciling your direct and indirect POI/POR labor hours (and associated labor expenses) related to the production of subject merchandise to the total direct and indirect labor expenses reported in your financial statements.***
>
> ***Please provide a worksheet demonstrating how you allocated total SG&A labor hours for all products to SG&A labor for subject merchandise during the POI/POR.***

IV. <u>CONCLUSION</u>

CSUSTL appreciates the opportunity to provide these comments to the Department. For the reasons discussed above, the Department should continue to apply its longstanding, consistent OLS regression methodology. The Department should also take steps to ensure that actual labor costs not reflected in the expected NME wage rates are captured in its dumping calculations.

Please contact the undersigned with any questions that may arise concerning this submission.

Respectfully submitted,

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