

Frontseating Service Valves from the People's Republic of China  
*Zhejiang DunAn Hetian Metal Co., Ltd. v. United States*  
Slip Op. 11-120, Court No. 09-00217 (CIT Sept. 28, 2011)  
Public Version of Business Proprietary Document

FINAL RESULTS OF REDETERMINATION PURSUANT TO COURT REMAND

SUMMARY

The 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"), issued on September 28, 2011, in *Zhejiang DunAn Hetian Metal Co., Ltd v. United States* ("*Zhejiang III*"). The Court's remand order concerns *Frontseating Service Valves from the People's Republic of China: Final Determination of Sales at Less than Fair Value and Final Negative Determination of Critical Circumstances*, 74 FR 10886 (March 13, 2009) and accompanying Issues and Decision Memorandum "*Final Determination*"). The Court's remand order follows a prior proceeding in which the Court of Appeals for the Federal Circuit ("CAFC") held that the Department is only permitted to apply partial adverse facts available ("AFA") to information which was missing from the record, namely, the quantity of certain models of frontseating service valves ("FSVs") sold in December 2007.<sup>2</sup> The CAFC also held that the calculation of a surrogate labor rate using a regression analysis is contrary to the statute and the CAFC's holding in *Dorbest Ltd v. United States*, 604 F.3d 1363, 1372 (Fed. Cir. 2010) ("*Dorbest*,).<sup>3</sup> On November 29, 2011, the Department released the draft redetermination of remand and invited interested parties to comment. The Department received no comments on

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<sup>1</sup> Slip Op. 11-120, Court No. 09-00217 (Sept. 28, 2011).

<sup>2</sup> *Zhejiang Dunan Hetian Metal Co., Ltd. v. United States*, 652 F.3d 1333, 1348 (Fed. Cir. 2010) ("*Zhejiang IF*").

<sup>3</sup> *Zhejiang II*, 652 F.3d at 1349.

the draft redetermination. Thus, we have made no changes to the calculations made in the draft redetermination.<sup>4</sup>

## **BACKGROUND**

On March 13, 2009, the Department published the *Final Determination*, which was challenged by respondent Zhejiang DunAn Hetian Metal Co., Ltd. ("DunAn") at the Court of International Trade. DunAn challenged, among other issues, the Department's application of partial AFA and its use of a regression-based analysis to calculate a surrogate labor rate. On April 19, 2010, the Court of International Trade ("CIT") issued its decision, in which it affirmed the *Final Determination* in all respects.<sup>5</sup> Shortly thereafter, the CAFC issued its decision in *Dorbest*, in which it held that the Department's method for calculating a surrogate labor rate using a regression-based analysis is contrary to law.<sup>6</sup>

DunAn appealed the CIT's decision in *Zhejiang I* to the CAFC. On June 22, 2011, the CAFC issued its decision, in which it vacated and remanded the CIT's decision, concerning: (1) the Department's application of partial AFA to sales of certain FSVs in December 2007; and (2) its calculation of the surrogate labor rate.<sup>7</sup> First, the CAFC held that the sale price of each model of FSV was determined by prior agreement, and that the price of sales of FSVs in December 2007 was on the record, but that the quantity of certain FSVs sold in December 2007 was not on the record. Citing *Gerber Food (Yunnan) Co. v. United States*, 387 F. Supp. 2d 1270 (CIT 2005), the Court held that the Department can use AFA only to fill gaps in the record.<sup>8</sup> The Court then reasoned that since the gap in the record was the quantity of FSVs sold in December

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<sup>4</sup> See *Zhejiang DunAn Hetian Metal Co., Ltd. v. United*, Slip Op. 11-120, Court No. 09-00217, Draft Results of Redetermination Pursuant to Court Remand (November 29, 2011) and Dunan Analysis Memorandum for the Draft Results of Redetermination ("Draft Results Analysis Memo").

<sup>5</sup> *Zhejiang Dunan HeNan Metal Co., Ltd. v. United States*, 707 F. Supp. 2d 1355 (Ct. Int'l Trade 2010).

<sup>6</sup> *Dorbest*, 604 F.3d at 1372.

<sup>7</sup> *Zhejiang II*, 652 F.3d at 1348-49. The Government requested a voluntary remand to recalculate the surrogate labor rate in accordance with *Dorbest*.

<sup>8</sup> See *Zhejiang II*, 652 F.3d at 1348.

2007, and not the transaction-specific dumping margin, the use of a transaction-specific dumping margin was improper.<sup>9</sup> Thus, the CAFC held that the Department could only use partial AFA in selecting the quantity of the December 2007 sales of certain FSVs in its calculation of the dumping margin.<sup>10</sup>

Concerning the surrogate labor rate, the CAFC remanded to the CIT the Department's use of a regression-based analysis to calculate a surrogate labor rate, and to value labor in accordance with *Dorbest*.<sup>11</sup>

On September 28, 2011, the CIT issued its remand order, in which it remanded to the Department for action consistent with *Zhejiang II*.<sup>12</sup>

#### *Application of Partial AFA*

In December 2008, the Department conducted verification of DunAn Precision, DunAn's U.S. affiliate. See "Verification of the U.S. sales questionnaire responses of Zhejiang DunAn Precision Industries Co., Ltd., Zhejiang DunAn Hetian Metal Co., Ltd., and their U.S. subsidiary DunAn Precision, Inc. in the Antidumping Investigation of Frontseating Service Valves ("FSVs") from the People's Republic of China," dated Jan. 15, 2009 ("DunAn Precision Verification Report"). Prior to verification, the Department requested that DunAn Precision reconcile the quantity and value ("Q&V") of subject merchandise, reported to Commerce, with its books and records. See "Frontseating Service Valves from the People's Republic of China: Verification Agenda," dated October 30, 2008, at 8.

At verification, the Department attempted to conduct a completeness test of DunAn's reported sales and quantity by reviewing the worksheets DunAn prepared to show that the

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<sup>9</sup> See *id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 1349.

<sup>12</sup> *Zhejiang III*, Slip Op. 11-120 at .3-4.

reported sales and quantity reconciled to its books and records. When examining the worksheets in electronic form on the general manager's computer, however, the Department officials noticed a worksheet showing a December 2007 quantity which differed from the quantity DunAn previously reported. Having identified this discrepancy, officials looked at additional documents and accounting records kept by DunAn, and found additional evidence that the quantities sold in December for two product codes, product codes A and B,<sup>13</sup> differed from the quantities reported to the Department. DunAn officials were never able to satisfactorily reconcile the difference in the quantities of these two models in the month of December 2007 reported to the Department, and the quantities the Department officials found in DunAn's books and records for December 2007. The Department collected documentation of the unreported quantities of both product codes A and B. See DunAn CEP Verification Report at Exhibit 7. In its *Final Determination*, the Department determined, pursuant to section 776(a) of the Tariff Act of 1930, as amended ("the Act") to apply facts otherwise available to DunAn because necessary information was not on the record and because DunAn withheld information and provided information that could not be verified.<sup>14</sup> The Department further determined, pursuant to section 776(b) of the Act, to apply AFA because DunAn failed to cooperate by not acting to the best of its ability.<sup>15</sup> As partial AFA, the Department applied a transaction-specific dumping margin of 55.62% to DunAn's reported December 2007 FSV sales of product codes A and B.<sup>16</sup>

#### *Valuation of Labor*

In the *Final Determination*, to value labor, the Department applied a regression-based analysis which included wage rate and income data from sixty-one market economy countries, in

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<sup>13</sup> We refer to the product codes at issue as A and B for simplicity's sake. Product code A is actually ( ), and product code B is [ ].

<sup>14</sup> See *Final Determination* and Issues and Decision Memorandum at Comment 12c

<sup>15</sup> *Id.*

<sup>16</sup> See *id.*

accordance with 19 C.F.R. § 351.408(c)(3).<sup>17</sup> However, in *Dorbest*, decided after the CIT's decision in *Zhejiang I*. The CAFC held that the Department's regression based methodology under 19 C.F.R. § 351.408(c)(3) was inconsistent with the surrogate valuation requirements of section 773(c)(1) of the Act.<sup>18</sup> Consequently, in *Zhejiang II*, the CAFC held that *Dorbest* rendered the CIT's decision in *Zhejiang I* incorrect, and that the Department must determine a surrogate value for labor using a different method.<sup>19</sup>

## ANALYSIS

### A. Determination of partial AFA for the quantity of FSVs sold in December 2007

On remand, the Court instructed the Department to apply partial AFA with respect to the quantity of the December 2007 sales of FSVs at issue to calculate the dumping margin. We have done so. Section 776 of the Act authorizes the Department to use facts otherwise available if "necessary information is not available on the record, or an interested party... provides such information but the information cannot be verified... or significantly impedes a proceeding." If the interested party has failed to cooperate by not acting to the best of its ability, the Department may apply an adverse inference.<sup>20</sup> In applying an adverse inference, the Department may "ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully".<sup>21</sup>

In the instant case, the Department could not verify the quantity of the FSVs at issue sold in December 2007. According to the information that DunAn Provided to the Department in its questionnaire responses and at verification, [ ] pieces of product code A and [ ] of

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<sup>17</sup> *Final Dermination* and Issues and Decision Memorandum at comment 3.

<sup>18</sup> *Dorbest*, 604 F.3d at 1372.

<sup>19</sup> See *Zhejiang II*, 652 F.3d at 1349.

<sup>20</sup> See section 776(b) of the Act.

<sup>21</sup> *Nippon Steel Corp. v. United States*, 337 F.Jd 1373, 1381 (Fed. Cir. 2003) (*quoting Uruguay Round Agreements Act, Statement of Administrative Action*, H.R. Doc. No. 103-826,870 (1994), *reprinted in* 1994 U.S.C.C.A.N. 4040).

product code B were sold in December 2007; for a total quantity of [ ]. However, the customer's inventory records discovered at verification contain contradictory quantity figures: [ ] pieces of product code A and [ ] pieces of product code B, totaling [ ]. Thus, the record contains discrepant information regarding the quantities sold of models A and B. Under its interpretation of section 776(b) of the Act, the Court has limited the Department's application of partial AFA to the determination of the quantities of models A and B sold in December 2007.<sup>22</sup> The total of product codes A and B combined, as contained in DunAn's inventory records for December, ([ ]), is the highest combined total monthly quantity on the record of the investigation for these two models. In keeping with the Court's order, and consistent with its practice of ensuring that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully, the Department is taking this total (*i. e.*, [ ],) and applying all of this quantity to product code B, which has the higher calculated margin of product codes A and B. This is consistent with the Court's order to apply partial AFA only to the quantities of the FSVs at issue for December 2007.

#### B. Revised labor rate

In this remand, the Department has recalculated the labor rate. 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 NME country and significant producers of comparable merchandise, within the meaning of section 773(c)(4) of 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

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<sup>22</sup> See *Zhejiang II*, 652 F.3d at 1348, holding "the case is remanded to the Court of International Trade to use a partial AFA only in selecting the quantity of the December 2007 sales of the FSVs at issue for purposes of calculating the relevant total dumping margin."

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 CIT found the 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 CIT'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 of countries 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 CIT'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 Antidumping*

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

Accordingly, the Department finds that using the data on 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.

***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 deemed at a comparable level of economic development 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 investigation to calculate the surrogate labor rate.

The relevant period of investigation ("POI") covers July 1, 2007, to December 31, 2007. The Department conducted its investigation between April 15, 2008, and March 6, 2009 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 data reported in the 2005 ILO publication because these were the most contemporaneous data that were available at the time the Department conducted the underlying investigation.

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. 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 1.

### ***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.<sup>23</sup> Specifically, the Department has relied on the industry-specific Indian data that includes "Labour cost in manufacturing" (provided under Subcategory- 29 "Manufacture of Machinery and Equipment NEC" of the International Standard Industrial Classification of all Economic Activities ("ISIC")- Revision 3 standard).<sup>24</sup>

Based on the foregoing methodology, the revised labor rate applied to DunAn in this remand redetermination is 68.22 Indian Rupees per hour.<sup>25</sup>

### ***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 58, 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 58 reflected only direct compensation and bonuses. In using Chapter 6A (as in Chapter 58) it is the Department's practice to adjust, when possible, the calculated surrogate overhead ("OH") and selling, general and administrative ("SG&A") ratios to

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<sup>23</sup> *See Labor Methodologies* 76 FR at 36094. *See also* Draft Results Analysis Memo.

<sup>24</sup> *See* Draft Results Analysis Memo.

<sup>25</sup> *See id.*

reflect all applicable indirect labor costs itemized in the company's financial statement.<sup>26</sup> 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. *See Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716,61721 (Oct. 19,2006) ("*Antidumping Methodologies Notice*"). However, in using Chapter 58, as we used to do, there is a concern that the Department under-counted certain line items in circumstances where costs are not itemized in the surrogate financial statements as necessary to coincide with the definitions of Chapter 5B data. While the Department is sometimes able to make the necessary adjustments to direct and indirect labor costs, there may be instances in which the lack of data precludes the Department from making such adjustments. For this reason, the Department has decided to change to the use of Chapter 6A data, on the rebuttable presumption that Chapter 6A data 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.<sup>27</sup>

The Department's previous surrogate wage rate methodologies (including the interim and regression-based methodology applied in the instant underlying administrative investigation) used ILO Chapter 5B "wages and earnings." The ILO defines Chapter 5B data to include two

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<sup>26</sup> *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.

<sup>27</sup> *See Labor Methodologies* 76 FR at 36094.

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 58 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.<sup>28</sup>

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<sup>27</sup>

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....",<sup>30</sup>

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<sup>28</sup> See <http://laborsta.ilo.org/applv8/data/c5e.html> (emphasis added).

<sup>29</sup> 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.

<sup>30</sup> See Chapter 6A of the TLO Yearbook of Labour Statistics, found at <http://laborsta.ilo.org/applv8/data/c6e.html>.

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.<sup>31</sup> 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 surrogate financial ratio calculations. Such adjustments to the surrogate financial ratios are fact-specific in nature and subject to available information on the record.<sup>32</sup>

In the final results of the underlying investigation, we used the 2007-2008 financial statement of Dharpat Casting Private Ltd. ("Dharpat"), Pyrocast India Private Ltd. ("Pyrocast") and Siddhi Cast Private Limited ("Siddhi"), to derive the surrogate financial ratios applied in the calculation of normal value.<sup>33</sup> We re-categorized the following expenses obviate the double counting of labor costs:

- We reclassified Dharpat's Provident Fund Expenses from manufacturing overhead to direct labor;
- We reclassified Pyrocast's Employee Supplemental Insurance ("ESI") and Provident Fund ("PF") Contribution from manufacturing overhead to direct labor; and,
- We reclassified Siddhi's Worker Insurance Expense from manufacturing overhead to direct labor.

As a result, there were no changes to the ratios for SG&A and profit, but the surrogate financial ratio for overhead changed as follows:

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<sup>31</sup> See *Antidumping Methodologies Notice*; see also, *OTR Tires* at Comment 18.G.

<sup>32</sup> See *id.*

<sup>33</sup> See, Memorandum to the File, "Antidumping Duty Investigation of Frontseating Service Valves from the People's Republic of China: Factor Valuations for the Final Determination," dated March 6, 2009, at 2-3.

Company	Overhead Investigation	Overhead Remand	SG&A (unchanged)	Profit (unchanged)
Dharpat	6.0427%	5.9009%	12.4534%	2.2106%
Pyrocast	4.9393%	4.5058%	9.2901%	2.1623%
Siddhi	5.5786%	5.5109%	7.4448%	2.3378%
Average	5.5202%	5.3058%	9.7294%	2.2369%

## FINAL RESULTS OF REDETERMINATION

Pursuant to the Court's remand order, the Department has recalculated the partial AFA for certain sales of DunAn's FSV sales in December 2007, and recalculated the surrogate labor rate. As a result of the redetermination, the antidumping duty margin for DunAn is 11.83 percent.

Christian Marsh

Acting Assistant Secretary  
for Import Administration

1/4/12  
(Date)