

Dorbest Limited v. United States  
Consol. Court No. 05-00003, Slip Op. 11-14 (CIT February 9, 2011).

FINAL RESULTS OF REDETERMINATION  
PURSUANT TO REMAND

**A. SUMMARY**

The Department of Commerce (“Department”) has prepared these final results of redetermination pursuant to the decision and remand order of the U.S. Court of International Trade (“CIT” or “Court”) issued on February 9, 2011, *Dorbest Limited v. United States*, Slip Op. 11-14, Consol. Court No. 05-00003 (Feb. 9, 2011) (“*Dorbest V*”).

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

This Court’s remand order follows prior proceedings in which the Court of Appeals for the Federal Circuit (“CAFC”) held that when calculating the wage rate in antidumping duty proceedings involving non-market economy countries (“NME”), the Department must use data from countries that are both economically comparable to the NME and significant producers of comparable merchandise. *See Dorbest Ltd. v. United States*, 604 F.3d 1363, 1372-73 (Fed. Cir. 2010). (“*Dorbest IV*”).<sup>1</sup> In accordance with *Dorbest IV*, the Department recalculated an hourly wage rate for labor by averaging industry-specific earnings and/or wages in countries that are

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<sup>1</sup> The CAFC’s *Dorbest IV* ruling was subsequently remanded to the Department by the CIT on July 21, 2010. *See Dorbest Limited v. United States*, Slip Op. 10-17, Consol. Court No. 05-00003 (“*Dorbest IV Remand Order*”). For ease of reference, both the CAFC’s *Dorbest IV* ruling and CIT’s *Dorbest IV Remand Order* are collectively referred to as “*Dorbest IV*” in the remainder of this document.

economically comparable to the People’s Republic of China (“PRC”) and significant producers of comparable merchandise. *See Final Results of Redetermination Pursuant to Remand*, Consol. Court No. 05-00003, Slip Op. 10-79 (CIT, July 21, 2010) (November 10, 2010) (“*Dorbest IV Remand Redetermination*”).

In order to determine the economically comparable surrogate countries from which to select data for the recalculation of the wage rate in the *Dorbest IV Remand Redetermination*, the Department relied on the list of countries contained in the initial surrogate country selection memorandum from the underlying less-than-fair-value proceeding.<sup>2</sup> The Department identified both the country with the highest and lowest per capita gross national incomes (“GNI”) on this list (*i.e.*, the Philippines and Pakistan, respectively) and used those countries to form the endpoints, or “bookends,” for economic comparability.<sup>3</sup> As such, all market economy countries with 2002 GNIs that fell at or in between Pakistan’s 410 USD GNI and the Philippines’ 1,020 USD GNI, were considered economically comparable to the PRC (with a GNI of 940 USD).<sup>4</sup>

The Court remanded the selection of the bookend countries back to the Department for reconsideration.<sup>5</sup> The Court reasoned that, given the high correlation between per capita GNI and wage rates, the Department’s selection appears arbitrarily biased towards the low end of per

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<sup>2</sup> *See* Request for List of Surrogate Countries, (Jan. 16, 2004), P.R. Doc. 260. (“Surrogate Country Memo”).

<sup>3</sup> *See Dorbest IV Remand Redetermination*, at 12. The Department used 2002 GNI figures as reported in World Bank’s 2004 *World Development Report* (“WDR”), as this was the most recent information available at the time of the initial investigation.

<sup>4</sup> These GNI figures, including China’s GNI of USD 940, represent the 2002 GNI data (reported in the 2004 WDR) available at the time of the original investigation. The Court affirmed as reasonable the Department’s decision to rely only on these GNI data. *See Dorbest V*, at 17-23. We note, however, that the Court’s opinion in *Dorbest V* references the GNI figure of USD 1100 for the PRC. *Dorbest V*, at 12. The 1100 USD figure was supplied by Petitioners, and represents updated 2002 GNI data that was more recently extracted from the World Bank website by Petitioners during the conduct of the *Dorbest IV* remand proceeding. *See Dorbest V*, at 11-12. As the Department has only relied on the 2002 GNI data available at the time of our original decision, we have relied on the USD 940 figure, as China’s GNI for both the *Dorbest IV Remand Redetermination* and the instant Final Redetermination.

<sup>5</sup> *See Dorbest V*, at 14-17.

capita GNI.<sup>6</sup> The Court further found that the Department did not provide an adequate explanation as to why higher income countries are necessarily excluded from the starting selection of countries.<sup>7</sup>

## **B. BACKGROUND**

On March 15, 2011, we released our Draft Results of Redetermination Pursuant to Remand (“Draft Redetermination”) to interested parties, which included our initial findings with regard to the recalculation of the wage rate pursuant to the *Dorbest V.*<sup>8</sup> The Department invited interested parties to submit comments on the Draft Redetermination no later than March 22, 2011. On March 16, 2011, Dorbest Limited, Rui Feng Woodwork (Dongguan) Co., Ltd. and Rui Feng Lumber Development (Shenzhen) Co., Ltd. (collectively, “Dorbest”) requested a one-week extension of time to submit these comments.<sup>9</sup> On March 17, 2011, the Department granted Dorbest’s extension request, allowing all interested parties until March 29, 2011, to submit comments.<sup>10</sup> On March 29, 2011, Dorbest provided comments on the Draft Redetermination for these Final Results of Redetermination.<sup>11</sup> Also on March 29, 2011, American Furniture Manufacturers Committee for Legal Trade and Vaughan-Bassett Furniture Company, Inc. (“Petitioners” or “AFMC”) provided comments on the Draft Redetermination for these Final

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<sup>6</sup> See *Dorbest V.*, at 14.

<sup>7</sup> See *Dorbest V.*, at 15. The Court found that “both of the two bookend countries have GNIs below China’s, resulting in a range of corresponding wage rates that will likely fall below China’s wage rates.” *Dorbest V.*, at 14. The Court also references a GNI of 1,100 USD for China. *Dorbest V.*, at 11. We note that the 2002 GNI for China, (as reported in the 2004 *WDR*) is 940 USD, and is thus below that of the Philippines’ GNI of 1020 USD. In any case, we understand the court raised a more general concern focused on an unbalanced data set given the correlation between GNI and wages, which we have addressed in this remand redetermination.

<sup>8</sup> See Draft Redetermination.

<sup>9</sup> See Letter from Dorbest entitled, “Wooden Bedroom Furniture from the People’s Republic of China: Extension of Time to Comment on Draft Remand Results,” dated March 16, 2011.

<sup>10</sup> See the Department’s Letter to Dorbest, entitled, “Wooden Bedroom Furniture from the People’s Republic of China: Extension of Time for Submission of Comments Regarding Draft Redetermination in *Dorbest Limited v. United States* (Court of Int’l Trade No. 05-00003),” dated March 17, 2011.

<sup>11</sup> See Letter from Dorbest entitled, “Wooden Bedroom Furniture from the People’s Republic of China: Comments of Dorbest On Draft Remand Redetermination,” dated March 29, 2011 (“Dorbest’s Post-Draft Comments”).

Results of Redetermination.<sup>12</sup> The Department's responses to parties' post-Draft Redetermination comments are set forth below.

On March 31, 2011, Petitioners submitted a letter alleging that certain information contained in Dorbest's Post-Draft Comments constituted untimely new factual information which should be rejected pursuant to 19 CFR 351.302(d).<sup>13</sup> In response, on April 5, 2011, the Department notified parties that, due to the change to the methodology used to determine economic comparability, the information contained in Dorbest's comments was appropriate to clarify previous factual submissions.<sup>14</sup> However, because certain information in this submission was not previously on the record, we provided parties with an opportunity to submit rebuttal information, with the qualifier that any such information must be limited in scope to rebutting the information submitted with Dorbest's Post-Draft Comments, or further clarifying the dataset in question with information from the 2004 publication (*i.e.*, the publication which contained the dataset in question). On April 8, 2011, Petitioners submitted rebuttal factual information.<sup>15</sup> On April 14, 2011, the Department notified Petitioners that their rebuttal submission constituted untimely filed and unsolicited new factual information, as it was reliant on a dataset not previously placed on the record and, furthermore, did not serve to rebut, clarify or corroborate

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<sup>12</sup> See Letter from Petitioners entitled, "Wooden Bedroom Furniture From The People's Republic Of China: Petitioners' Comments Concerning Draft Results Of Redetermination Pursuant To Remand In *Dorbest Limited v. United States*, Consol. Ct. No. 05-00003 (Ct. Int'l Trade Feb. 9, 2011)," dated March 29, 2011 ("Petitioners' Post-Draft Comments").

<sup>13</sup> See Letter from Petitioners entitled, "Wooden Bedroom Furniture From the People's Republic Of China: Dorbest's Untimely Factual Information Should Be Rejected," dated March 31, 2011 ("Petitioners' New Factual Allegation").

<sup>14</sup> See Letter from the Department to Petitioners entitled, "Wooden Bedroom Furniture From the People's Republic Of China: Allegation of Submission of New Factual Information Regarding the Remand Redetermination of *Dorbest Limited v. United States* (Court of Int'l Trade No. 05-00003)" dated April 5, 2011 ("New Factual Allegation Response").

<sup>15</sup> See Letter from Petitioners entitled, "Wooden Bedroom Furniture From The People's Republic Of China: Dorbest's Untimely Factual Information Should Be Rejected," dated March 31, 2011 ("Petitioners' New Factual Allegation").

the information in question.<sup>16</sup> In accordance with 19 CFR 351.302(d), the Department removed this submission from the record of this proceeding and is not considering it for purposes of this Final Redetermination.<sup>17</sup>

### **C. REVISED WAGE RATE**

In response to this Court's ruling in *Dorbest V*, the Department has expanded the basket of countries considered to be economically comparable to include countries with GNIs both above and below that of the PRC. The Department then relied on this expanded basket of economically comparable countries to calculate an hourly wage rate. Applying the methodology that was applied in the *Dorbest IV Remand Redetermination*, the Department averaged the usable industry-specific earnings and/or wage data reported by economically comparable countries that were also determined to be significant producers of comparable merchandise.

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

Consistent with the Court's opinion in *Dorbest V*, the Department's objective was to only rely upon data available at the time of the original proceeding. Accordingly, for this remand redetermination, the Department has relied on 2002 GNI and ILO data because these data were available at the time the Department conducted the investigation. The Department also relied on a current download of 2001-2003 export data to determine which countries were significant producers.<sup>18</sup>

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<sup>16</sup> See Letter from the Department to Petitioners entitled, "Wooden Bedroom Furniture from the People's Republic of China: Allegation of Submission of New Factual Information Regarding the Remand Redetermination of *Dorbest Limited v. United States* (Court of Int'l Trade No. 05-00003)" dated April 14, 2011 ("New Factual Rejection Memo").

<sup>17</sup> *Id.* This document was returned, and not considered for purposes of this Final Redetermination. Pursuant to 19 C.F.R. § 351.104(a)(2), one copy, which is attached to the New Factual Rejection Memo, has been retained solely for purposes of establishing and documenting the basis for returning the document to the submitter.

<sup>18</sup> Due to the expanded dataset, the Department needed to extract additional export data from the countries that were added to the GNI basket for this remand redetermination. However, 2001-2003 export data were available at the time of our original determination.

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

As explained in the *Dorbest IV Remand Redetermination*, in order to minimize the effects of the variability that exists between wage data of comparable countries, the Department has employed a methodology that relies on as large a number of countries as possible that also meet the statutory criteria of economic comparability and significant production of comparable merchandise.<sup>19</sup>

In response to the Court’s remand directive, we have expanded the initial basket of countries considered to be economically comparable to the PRC, and have included countries with GNIs that fall both above and below that of the PRC. Previously, the bookend methodology used to determine economic comparability in the *Dorbest IV Remand Redetermination* resulted in finding 23 “economically comparable” countries with GNIs between that of the PRC (GNI 940 USD) and the low bookend, Pakistan (GNI 410 USD), but only a single country with a GNI above that of the PRC, the Philippines (*i.e.*, the high bookend, with GNI 1,020 USD). We have reset the high-end bookend so that the number of countries with GNIs above the PRC is equivalent to the number of countries between the PRC and the low bookend country. Thus, the GNI band range has been expanded upwards to include the next 23 countries with 2002 GNIs higher than the PRC, with Colombia (GNI 1,830 USD) now set as the high bookend.<sup>20</sup> The

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<sup>19</sup> See *Dorbest IV Remand Redetermination*, at 10-11.

<sup>20</sup> The 23 countries with 2002 GNIs above that of the PRC include: Philippines, Vanuatu, Syria, Paraguay, Swaziland, Morocco, Bosnia & Herzegovina, Cape Verde, Albania, Serbia & Montenegro, Tonga, Samoa, Ecuador, Egypt, Kazakhstan, Macedonia, Iran, Algeria, Guatemala, Jordan, Namibia, Bulgaria, and Colombia. The following two NME countries that reported 2002 GNIs within this new bookend range have been excluded from this list: Belarus and Turkmenistan. See Memorandum from Brendan Quinn to the File entitled, “Analysis Memorandum for the Draft Redetermination Pursuant to Court Remand in the Antidumping Duty Investigation of Wooden Bedroom Furniture from the People’s Republic of China: Rui Feng Woodwork Co., Ltd. (“Rui Feng Dongguan”), Rui Feng Lumber Development Co., Ltd. (“Rui Feng Shenzhen”), and their parent company Dorbest Limited (collectively “Dorbest”),” dated March 14, 2011, (“Dorbest Draft Remand Analysis Memo”) at Attachment III.

number of countries with GNIs below the PRC remains the same, as these countries were determined to be economically comparable in *Dorbest IV Remand Redetermination*.<sup>21</sup>

The Department has evaluated this revised list of countries and determines each newly included country to be economically comparable to the PRC for purposes of obtaining surrogate wage data pursuant to the Court's remand directive in this instance. We find that, for purposes of this remand redetermination, the selection of the 23 countries up to Colombia as the high bookend, which has a GNI of 1,830 USD, sets a reasonable range for economic comparability to the PRC. When considering the worldwide spectrum of economic development (where 2002 GNIs range from 90 USD per capita for the Democratic Republic of Congo to 38,830 USD for Luxembourg, based on the 2004 *WDR*), we determine the selected range of countries to be in comparably similar stages of economic development. Furthermore, we note that the selection of Colombia as a high bookend in this case is consistent with the language of the CAFC's suggestion in *Dorbest IV*, that an economically comparable subset could consist of countries with GNIs "between one and two times that of China."<sup>22</sup> Accordingly, for this remand redetermination, we find that a total of 46 countries, ranging from Pakistan (with GNI 410 USD) to Colombia (GNI 1,830 USD) are economically comparable to the PRC, which has a GNI of 940 USD.<sup>23</sup>

The Department finds that expanding the economically comparable GNI bookend list in this manner provides the best available information from which to calculate an accurate wage value in light of the Court's remand directive. We find this expansion of the bookend list to be

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<sup>21</sup> The 23 countries reporting 2002 GNIs between the PRC and the low bookend (*i.e.*, Pakistan) include: Guinea, Haiti, Mongolia, Lesotho, Senegal, India, Yemen, Rep., Papua New Guinea, Cameroon, Solomon Islands, Bhutan, Cote d'Ivoire, Angola, Congo, Rep., Equatorial Guinea, Indonesia, Kiribati, Guyana, Sri Lanka, Bolivia, Djibouti, and Honduras. The following seven NME countries that reported 2002 GNIs between the PRC and Pakistan have been excluded from this list: Vietnam, Uzbekistan, Moldova, Georgia, Azerbaijan, Ukraine, and Armenia. *See id.*

<sup>22</sup> *See Dorbest IV* at 18-19.

<sup>23</sup> *See Dorbest Draft Remand Analysis Memo* at Attachment III.

appropriate given the high correlation between per capita GNI and wage rates, and it is consistent with our preference for a broader dataset in order to minimize the effects of the variability that exist between wage data of comparable countries. It further provides for the most equitable set of potential data sources. For these reasons, we find that our revised basket of countries addresses the Court's concerns, and provides the best available data from which to value labor when considering the particular facts of the instant case.

The Department emphasizes, however, that we find an expansion of the dataset to be appropriate only in this unique instance. In general, we do not find that an exact balance of countries above and below the PRC is necessary for arriving at the best available wage rate. We further do not find that there is an exact, absolute, and/or equidistant range of GNIs of countries relative to the PRC that can denote economic comparability, nor do we interpret the Court's ruling to require such a set range. We have expanded the GNI band in this instance pursuant to the Court's opinion, and after considering that on this record, the initial GNI band contained just one country that fell above the PRC's GNI, resulting in a band that was largely unbalanced. We find the expanded band of countries provides a more equitable "start point" in response to the Court's concerns.

The Department then applied the revised methodology, set forth in *Dorbest IV Remand Redetermination*, to the revised basket of economically comparable countries to determine the surrogate wage rate for Dorbest. The results of the wage re-valuation are set forth in detail below.

Regarding the "significant producer" prong of the statute, starting with the revised list of 46 economically comparable countries, the Department identified all countries which had exports of comparable merchandise (defined as exports under Harmonized Tariff Schedule item numbers



9403.50 and 7009.92, the codes identified in the scope of this order)<sup>24</sup> between 2001 and 2003.<sup>25</sup>

In this case, we have defined a “significant producer” as a country that exported comparable merchandise between 2001 through 2003. After screening for countries that had exports of comparable merchandise, we determine that 30 of the 46 countries designated as economically comparable to the PRC are also significant producers.

Accordingly, for purposes of valuing wages in this remand redetermination, the Department determines the following 30 countries to be both economically comparable to the PRC, and significant producers of comparable merchandise: Albania, Algeria, Bosnia and Herzegovina, Bulgaria, Cameroon, Colombia, Cote d'Ivoire, Ecuador, Guatemala, Guinea, Guyana, Honduras, India, Indonesia, Iran, Jordan, Lesotho, Macedonia, Mongolia, Morocco, Namibia, Pakistan, Papua New Guinea, Paraguay, the Philippines, Samoa (Western), Serbia, Sri Lanka, Swaziland, and Syria.<sup>26</sup>

The Department then identified which of these 30 countries, determined to be both economically comparable to the PRC and significant producers of comparable merchandise, also reported the necessary wage data. In doing so, the Department has continued to rely upon International Labour Organization (“ILO”) Chapter 5B data “earnings,” if available, and

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<sup>24</sup> See 70 FR at 329, 333.

<sup>25</sup> The export data is obtained from the Global Trade Atlas (“GTA”). See Dorbest Draft Remand Analysis Memo at Attachment III.

<sup>26</sup> See *id.*

“wages” if not.<sup>27</sup> Where possible, we used wage or earnings data from 2002. If 2002 data were not available, we relied on the most recent data available from five years prior to the 2002 base year (*i.e.*, 1997-2002), and adjusted to the 2003 period of investigation (“POI”) using the relevant Consumer Price Index (“CPI”).<sup>28</sup>

Of the 30 countries that the Department has determined are both economically comparable and significant producers of comparable merchandise, 13 countries were omitted from the wage rate valuation because there were no earnings or wage data available.<sup>29</sup> The remaining countries reported either earnings or wage rate data to the ILO within the prescribed six-year period.<sup>30</sup> Accordingly, the following 17 countries reported reliable wage data for purposes of this remand determination: Albania, Bulgaria, Colombia, Ecuador, Guatemala, India, Indonesia, Iran, Jordan, Macedonia, Mongolia, Pakistan, Paraguay, Philippines, Serbia, Sri Lanka, and Swaziland.

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<sup>27</sup> The Department maintains its current preference for “earnings” over “wages” data under Chapter 5B. However, under the previous practice, the Department was typically able to obtain data from somewhere between 50-60+ countries. Given that the current basket now includes fewer countries, the Department found that our long-standing preference for a robust basket outweighs our exclusive preference for “earnings” data. Thus, if earnings data is unavailable from the base year (2002) or the previous five years (1997-2001) for certain countries that are economically comparable and significant producers of comparable merchandise, the Department will use “wage” data, if available, from the base year or previous five years. The hierarchy for data suitability described in the 2006 *Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716 (October 19, 2006) (“*Antidumping Methodologies*”) still applies for selecting among multiple data points within the “earnings” or “wage” data. This allows the Department to maintain consistency as much as possible across the basket.

<sup>28</sup> Under the Department’s former regression analysis methodology, the Department limited the years of data it would analyze to a two-year period. *See Antidumping Methodologies*, 71 FR at 61720. However, because the overall number of countries being considered in the regression methodology was much larger than the list of countries now being considered in the Department’s calculations, the pool of wage rates from which we could draw from two years’ worth of data was still significantly larger than the pool from which we may now draw using five years worth of data, in addition to the base year. The Department believes it is acceptable to review ILO data up to five years prior to the base year as necessary, as we have previously, albeit adjusted using the CPI. *See Expected Non-Market Economy Wages: Request for Comment on Calculation Methodology*, 70 FR 37761, 37762 (June 30, 2005). In this manner, the Department will be able to capture the maximum amount of countries that are significant producers of comparable merchandise, including those countries that choose not to report their data on an annual basis. *See also* Dorbest Draft Remand Analysis Memo at Attachment III for the CPI data used in the instant case.

<sup>29</sup> The following 13 countries reported no wage data: Algeria, Bosnia and Herzegovina, Cameroon, Cote d’Ivoire, Guinea, Guyana, Honduras, Lesotho, Morocco, Namibia, Papua New Guinea, Samoa (Western), and Syria.

<sup>30</sup> *See* ILO’s Yearbook of Labour Statistics, provided in the Dorbest Draft Remand Analysis Memo at Attachment III.

As we determined in the *Dorbest IV Remand Redetermination* and as affirmed by this Court in *Dorbest V*,<sup>31</sup> because industry-specific datasets relevant to this proceeding exist within the Department's preferred ILO source, we find that the more narrow industry-specific data constitutes the best available information because it is more specific to the subject merchandise than country-wide manufacturing wage data. As such, we have continued to use industry-specific data reported within Chapter 5B of the ILO's *Yearbook of Labour Statistics* to calculate a surrogate wage rate for the instant remand redetermination.

The ILO industry-specific data is reported according to the International Standard Industrial Classification of all Economic Activities ("ISIC") code, which is maintained by the United Nations Statistical Division and is periodically updated. These updates are referred to as "Revisions." The ILO, an organization under the auspices of the United Nations, utilizes this classification for reporting purposes. For the period covered by this proceeding, wage and earnings data are available from the ILO under ISIC-Rev.2 and ISIC-Rev. 3.<sup>32</sup> The ISIC code establishes a two-digit breakout for each manufacturing category, and also often provides a three- or four-digit sub-category for each two-digit category. Depending on the country, data may be reported at either the two-, three- or four-digit subcategory.

In this Final Redetermination, we turned to the industry definitions contained in each ISIC revision to find the two-digit Sub-Classification most specific to the production of wooden bedroom furniture. Of the 17 remaining countries, the following did not report industry-specific data to the ILO: Albania, Guatemala, Mongolia, Paraguay, Sri Lanka, and Swaziland.

Accordingly, these six countries are not included in our wage rate calculation. Of the remaining

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<sup>31</sup> *Dorbest V*, at 25-27.

<sup>32</sup> We note that ISIC-Rev. 4 reporting began in 2008 and, thus, was not available at the time of the initial investigation. As such, ISIC-Rev. 3 was the most recent reporting standard available at the time of the initial investigation.

eleven countries, seven (Bulgaria, Ecuador, Iran, Jordan, Macedonia, the Philippines, and Serbia and Montenegro) reported data under the ISIC-Revision 3 Sub-Classification 36 standard (described as “Manufacture of Furniture; Manufacturing NEC”),<sup>33</sup> and five (Colombia, India, Indonesia, Macedonia and Pakistan) reported data under the ISIC-Revision 2 Sub-Classification 33 standard (described as “Manufacture of Wood and Wood Products, Including Furniture.”).<sup>34</sup>

In our *Dorbest IV Remand Redetermination*, the Department identified the two-digit series most specific to wooden bedroom furniture as ISIC-Rev. 2, Sub-Classification 33. The Department found this sub-classification to be more specific and a better match for the wooden bedroom furniture industry than the applicable ISIC-Rev. 3, Sub-Classification 36 two-digit description, because the ISIC-Rev. 2 does not contain the broad catch-all category of “manufacturing NEC,” or merchandise “not elsewhere classified,” in its description.<sup>35</sup> We further note that the use of the ISIC-Rev. 2 standard was affirmed in *Dorbest V*.<sup>36</sup> In addition, we find that the five industry-specific ISIC-Rev. 2 data points represent a sufficiently robust dataset for the purposes of calculating a wage rate, and have continued to employ this dataset for the instant proceeding, as its use was upheld in the *Dorbest V* ruling. Consistent with this prior determination, we have continued to use wage/earnings data from the countries reporting under ISIC-Rev. 2, Sub-Classification 33 to calculate the surrogate labor rate.

We found that Pakistan reported industry-specific data under the two-digit Sub-Classification 33 of the ISIC-Rev. 2 standard, but did not report data at any of the three-digit Sub-Classifications of that category. Because Pakistan did not report data at a three-digit level of specificity, we used the Pakistani data reported at the two-digit Sub-Classification level.

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<sup>33</sup> See <http://unstats.un.org/unsd/cr/registry/regct.asp?Lg=1> for a description of the industries reported in each ISIC revision sub-category. See also *Dorbest Draft Remand Analysis Memo at Attachment III*.

<sup>34</sup> See *id.*

<sup>35</sup> See *Dorbest IV Remand Redetermination*, at 15.

<sup>36</sup> See *Dorbest V*, at 25-27.

Indonesia reported industry-specific data at both the two-digit level (*i.e.*, Sub-Classification 33) and three-digit level (for both Sub-Classification 331, described as “Manufacture of wood and wood and cork products, except furniture,” and 332, described as “Manufacture of furniture and fixtures, except primarily of metal”). Colombia, India, and Macedonia did not report any data at the two-digit Sub-Classification 33 level, but each reported wage data for both Sub-Classifications 331 and 332 at the three-digit level. With respect to the three digit level sub-classifications, we find that ISIC-Rev. 2, Sub-Classification 332 (“Manufacture of furniture and fixtures, except primarily of metal”) is more specific to the wooden bedroom furniture industry than Sub-Classification 331 because non-metal furniture is explicitly included in the description for Sub-Classification 332 (and specifically excluded from the 331 description). Therefore, we have determined to use ILO wage/earnings data reported by Colombia, India, Indonesia, and Macedonia under Sub-Classification 332, which provides a greater level of specificity.

Accordingly, the Department has calculated the wage rate using a simple average of the best available ISIC-Rev. 2 data provided to the ILO by Pakistan under ISIC-Rev. 2, Sub-Classification 33 and by Colombia, India, Indonesia, and Macedonia under Rev. 2, Sub-Classification 332. As a result, the wage rate applied to Dorbest in this Final Redetermination has been revised to 0.44 USD/hour.<sup>37</sup>

#### **D. SUMMARY AND ANALYSIS OF LITIGANTS’ POST-DRAFT COMMENTS**

##### **1. Use of ISIC Rev. 2 vs. Rev. 3 Data**

Petitioners note that, in establishing the post-*Dorbest IV* wage rate methodology, the Department has stated a preference for using the most recent ISIC revisions available.

Petitioners point out that in both this and the prior remand, however, the Department noted that

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<sup>37</sup> See Dorbest Draft Remand Analysis Memo at Attachment III.

this preference does not preclude the use of data from an earlier revision should it be determined that such data is either more specific or would result in a more complete set of wage data and, thus, utilized ISIC Rev. 2 data to obtain a surrogate wage rate upon determining that such data are “more specific and a better match” for the wooden bedroom furniture (“WBF”) industry when compared to the ISIC Rev. 3 description.<sup>38</sup> Petitioners request that, should the Department continue to use Rev. 2 data, the Department should also make a determination as to the completeness of the data. Petitioners request that any such determination make clear that the use of Rev. 2 data is specific to the instant redetermination (*i.e.*, to clarify that the determination of Rev. 2 being more “industry-specific” than Rev. 3 holds no bearing on other WBF proceedings).

**Department’s Position:** We continue to find that the Rev. 2 data in the instant case is specific to the merchandise under investigation and provides a large enough basket of data for purposes of valuing the wage rate. While Petitioners are correct that in more recent proceedings, the Department has articulated a preference for the most recent revision of the ILO, in the *Dorbest IV Redetermination*, the Department chose the ISIC Rev. 2 data because they were specific to the subject merchandise and provided a larger set of data than the use of Rev. 3. The Court upheld the Department’s use of Rev. 2 data in *Dorbest V*.<sup>39</sup> We note that, in re-setting the bookends, Rev. 3 now contains seven usable data points, where Rev.2 contains five. However, we do not find that the number of data points is, by itself, sufficient justification to rely on Rev. 3. We find that Rev. 2, with five data points, provides the Department with a sufficient number of data points within the dataset to value the wage rate.<sup>40</sup> Given that Rev. 2 data is more specific to the subject merchandise in the instant investigation, and because the Department was upheld

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<sup>38</sup> See Petitioners’ Post-Draft Comments at 2, citing Dorbest Draft Remand Analysis Memo at 7 and Draft Redetermination at 9.

<sup>39</sup> *Dorbest V*, at 25-27.

<sup>40</sup> *Dorbest IV Redetermination*, at 16-17 (In *Dorbest IV Redetermination*, the Department found 3 data points from Rev. 2 sufficiently robust).

on the use of this Rev. 2 data in *Dorbest V*, the Department does not find it necessary to switch revisions, nor to elucidate on the differences in completeness between Rev. 2 and Rev. 3 data, as requested by Petitioners.

2. **Whether the Remand Order Necessitated Recalculation of the Wage Rate**

Dorbest argues that the CIT's *Dorbest V* opinion did not require the Department to change the wage rate calculation, rather, only to consider the Court's concerns in accordance with the remand directive. Dorbest asserts that the Department may have fulfilled this obligation by explaining how the Court's concerns were actually addressed in the prior calculation. Furthermore, Dorbest asserts that the CIT based its decision on incorrect information (*i.e.*, the supposition that no potential surrogates had GNIs above the PRC, when the Philippines' GNI was, in fact, higher). As such, Dorbest argues that the Department should have respectfully explained that the Court's concerns were addressed by record evidence and, thus, the prior calculation was valid.

**Department's Position:** We disagree with Dorbest that the Department erred in recalculating its wage rate methodology in response to the Court's directive. The Department explained in the Draft Redetermination that while there may have been a misunderstanding regarding the GNIs of both bookend countries to be below that of the PRC, "in complying with the Court's remand order, the Department sought to address the Court's general concern that focused on the unbalanced data set."<sup>41</sup> The Department is not persuaded by Dorbest's argument, and continues to determine that an alteration to our methodology to expand the band of bookend countries presents the best available option for creating a more equitable "start point" in response to the Court's concerns in the instant case.

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<sup>41</sup> See Draft Redetermination, at footnote 6.

3. **Whether the “Country Counting” Methodology Conflicts with Precedent and is Flawed**

Dorbest argues that the decision to “country count” upwards to set the high bookend conflicts with the established precedent to set the GNI bookends based on absolute value - a practice which has been employed in every other post-*Dorbest IV* decision to date. Dorbest contends that the Department abused its discretion by diverging from established precedent without sufficient explanation. Furthermore, Dorbest asserts that this “country counting” method is irrational and results-oriented, arguing that the Department failed to explain how the resulting countries are “economically comparable” and that the results are now skewed toward the high-end GNI countries when the non-significant producer countries are filtered out. Dorbest suggests that the Department should set Egypt (GNI 1470 USD) as the high bookend, as it was previously suggested as an appropriate bookend by Petitioners in the prior remand.

**Department’s Position:** We disagree with Dorbest that the “country-count” methodology, applied in response to the instant remand from the Court, is in conflict with prior Department practice or constitutes an abuse of discretion. As explained in the Draft Redetermination, in its examination of the *Dorbest IV Remand Redetermination*, the Court was concerned with the imbalance of the GNIs in relation to the PRC and, specifically, that the GNI band was skewed low. This Final Redetermination addresses the Court’s concern by ensuring that the initial basket of economically comparable countries contains an equal number of countries both below and above the PRC. For these reasons, we find that expanding the bookend so that the number of countries with GNIs above the PRC is equivalent to the number of countries between the PRC and the low bookend country provides the best available information



from which to calculate an accurate wage value in light of the Court’s concerns as articulated raised in the remand order.

We further do not agree that the methodology employed here conflicts with the Department’s other post-*Dorbest IV* determinations. In other instances where the Department has relied on the surrogate country selection memorandum to form the GNI band, the initial basket of economically comparable countries was more equitably distributed around the PRC in terms of per-capita GNI.<sup>42</sup> By contrast, in this instance, the list of countries contained in the Surrogate Country Memorandum resulted in a GNI band that was largely unbalanced, in that it included only one country that fell above the PRC’s GNI. Considering the Court’s remand directive and the uniqueness of the data in this investigation, we find that the “country-counting” methodology applied in our Draft Redetermination constitutes the best option in this instance, and does not conflict with our wage rate calculation in other proceedings.

Contrary to Dorbest’s assertion, the Department has fully explained its economic comparability determination for each of the countries contained in the GNI band, and this explanation is set forth above.<sup>43</sup> We further disagree with Dorbest’s assertion that the expanded GNI basket does not follow the Court’s directive because, despite the initial balance, the number of countries on either side becomes unbalanced once the Department filters for significant producers.<sup>44</sup> As an initial matter, the remand directive does not require an exact balance when

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<sup>42</sup> See, e.g., *Final Results of 2008-2009 Antidumping Duty Administrative Review: Chlorinated Isocyanurates from the People’s Republic of China*, 75 FR 70212 (November 12, 2010), *Final Results of First Antidumping Duty Administrative Review: Certain Steel Nails from the People’s Republic of China*, 76 FR 16379 (March 23, 2011), etc.

<sup>43</sup> See page 7, *supra*.

<sup>44</sup> See Dorbest’s Post-Draft Comments at 13, stating that “by employing {the country counting} method, the Department has created a new and distortive imbalance in the data pool... {wherein the resulting significant producer filter} ‘stacks the deck’ by more than 50% toward high-GNI countries and cannot be said to comply with the Department’s interpretation of the CIT’s objective of seeking a balanced pool of countries as starting candidates for inclusion in the average labor rate calculation.”

addressing the selection of the initial basket of countries.<sup>45</sup> Additionally, while the Court’s analysis faults the imbalance of the starting selection of countries,<sup>46</sup> it does not address the later filtering stages of the analysis. We find nothing in the remand directive that requires the Department to ensure a balanced dataset during the subsequent stages of the wage analysis. In any case, Dorbest’s argument that the selected methodology causes the wage rate to be weighted in favor of high income countries once the significant producer filter is applied is further unfounded in this instance given that the resulting wage rate is calculated using wage data from more countries with GNIs below the PRC than above (*i.e.*, the ultimate wage rate is comprised of a simple average of three sub-PRC GNI countries (India, Indonesia, and Pakistan) and just two above-PRC GNI countries (Macedonia and Colombia)).

Finally, we do not find that Dorbest has presented any evidence or reason to support the use of Egypt as the high bookend. As we explain above, based on the data in this case, the Department finds countries with GNIs as high as Colombia’s to be economically comparable to China, when considering the broader spectrum of worldwide economic comparability. In light of the Court’s remand directive to begin with a more balanced dataset, we therefore find no basis or reason to limit our wage analysis to Egypt and countries that fall below Egypt in terms of GNI.

Moreover, we note that setting Egypt as the high bookend for economic comparability would result in no change from the wage rate calculated for the remand redetermination in *Dorbest IV*, as there is no usable Rev. 2 wage information reported by the significant producing countries with GNIs between the PRC and Egypt. Thus, the resultant wage rate would produce fewer usable data points, and be based only on countries with GNIs below China. Despite

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<sup>45</sup> See *Dorbest V*, at 14. (The Court specifically recognized that the Department “does not have to achieve mathematical perfection in its choice of countries . . .”).

<sup>46</sup> See *e.g. Dorbest V*, at 15 (“Commerce has not provided any adequate explanation as to why these higher-income countries are necessarily excluded from the starting selection of countries.”).

Dorbest's claims to the contrary, the Department did not utilize a results-based analysis in our initial determination regarding economic comparability and, instead, employed what was determined to be the most appropriate methodology response to the Court's concerns in this redetermination (*i.e.*, the "country-counting" methodology). Nevertheless, in consideration of the Court's preference for a more equitable dataset at the outset, as well as the Department's preference for relying on as many countries as possible, we do not find that using Egypt as the economic comparability ceiling would result in a more equitable outcome than the current methodology. Given that the methodology employed in the Draft Redetermination results in the inclusion of more data, as well as data from countries with GNIs that fall both below and above China, we find no reason to adopt Dorbest's suggested method in the alternative.

4. **Suitability of Equatorial Guinea's GNI Figure**

Dorbest argues that the 2002 GNI figure for Equatorial Guinea should not be included in the GNI band. Dorbest argues that the record evidence suggests that the reported figure is shown to be from a year other than what was specified in the column heading (*i.e.*, not 2002).

**Department's Position:** We continue to find Equatorial Guinea an economically comparable country based on the information available to the Department. As an initial matter, the Department prefers not to question authoritative sources that we routinely rely on unless there is a compelling reason to believe the data is erroneous. In this case, the 2004 *WDR* noted that the data might be up to two years old but, nevertheless, reported it as the GNI for Equatorial Guinea for the year 2002. Dropping Equatorial Guinea out of the economically comparable list would be contrary to our practice of accepting the best surrogate value information available at the time it is collected and needed.

Furthermore, even assuming the figure is sourced from a previous year, with a GNI per capita of 700, Equatorial Guinea is still well within the range of economic comparability with a GNI that is 290 USD above the GNI of the lowest bookend country, Pakistan. Thus, we do not find that Dorbest's argument calls into question our finding that Equatorial Guinea is economically comparable to the PRC.

Moreover, a decision as to whether to rely on the particular 2002 figure reported from Equatorial Guinea would not control or undermine the economic comparability determinations made as to other countries, as Dorbest appears to suggest.<sup>47</sup> Our determinations of economic comparability do not depend on the exact precision of the GNI that a country reports to a neutral data source, but instead depends on our determination of that country's economic proximity to the NME in question, given the best available information.

#### 5. **Guinea's Inclusion within the Bookend Band**

Dorbest argues that Guinea should be excluded from the band of countries that is economically comparable to the PRC because its 410 USD GNI per capita figure is equivalent to Pakistan (the low bookend) and, as such, it is not "in between" the bookends.

**Department's Position:** We disagree with Dorbest that Guinea should be excluded from the wage rate calculation because its GNI figure is equivalent to Pakistan, which is the low bookend, and thus is not "in between" the bookends. In our Draft Redetermination, the Department's intent was to include all countries that fall within, are equivalent to, and are identified as the bookends in our economic comparability determination. This is evident from our determination to include both the high and the low bookend countries in our analysis. As Guinea's GNI figure is equivalent to Pakistan, which we have found to be economically comparable to the PRC, it would not make sense to exclude Guinea from our economically

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<sup>47</sup> See Dorbest's Post-Draft Comments at footnote 2.

comparable basket. Thus, we have continued to include Guinea in the GNI band of countries that have been determined to be economically comparable to the PRC.

#### 6. Suitability of Guinea as a Significant Producer

Dorbest argues that Guinea only exported 300 USD of comparable merchandise in 2001 and 0 USD in both 2002 and 2003; thus, it should not be considered a significant producer.

**Department's Position:** We disagree with Dorbest. The antidumping statute and regulations are silent in defining "significant producer," and the AD statute grants the Department discretion to look to various sources for determining the best available information.<sup>48</sup> Consistent with our recent decisions, for calculating the wage rate in this Final Redetermination, we define "significant producer" as a country that has exported comparable merchandise during the relevant period. The Department finds that a country's ability to export comparable merchandise is indicative of substantial production because it is likely producing merchandise at a level that surpasses its internal consumption.<sup>49</sup> While not definitive, the reference to "net exporters" in the legislative history supports this finding in that it presumes that exports provide at least some indication of significant production.<sup>50</sup> Thus, we are not persuaded by Dorbest's argument that Guinea should be excluded from the analysis because, in Dorbest's view, it has not exported comparable merchandise in sufficient quantities.

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<sup>48</sup> See Section 733(c) of the Tariff Act of 1930, as amended ("the Act").

<sup>49</sup> See *Certain Activated Carbon From the People's Republic of China: Final Results and Partial Rescission of Second Antidumping Duty Administrative Review*, 75 FR 70208 (November 17, 2010) and accompanying IDM at Comment 4f; *Wooden Bedroom Furniture From the People's Republic of China: Final Results and Final Rescission in Part*, 75 FR 50992 (August 18, 2010) and accompanying IDM at Comment 34; *Administrative Review of Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 75 FR 49460 (August 13, 2010), and accompanying IDM at Comment 8; *Certain Magnesia Carbon Bricks from the People's Republic of China*, 75 FR 45468 (August 2, 2010), and accompanying IDM at Comment 1.b.; *Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty New Shipper Review*, 75 FR 44764 (July 29, 2010), and accompanying IDM at Comment 2; *Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 41808 (July 19, 2010), and accompanying IDM at Comment 8.

<sup>50</sup> See Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Rep. No. 100-576, at 590 (1988).

Moreover, as we continue to find that more data are better than less data when calculating wages, we find this threshold for significant producer maximizes the size of the ultimate basket while still accounting for the significant producer criterion, which, in turn, provides the best available wage rate because multiple data points for labor will minimize potential distortions or arbitrary variations in wage data that are normally present among otherwise economically comparable countries.

#### 7. Use of Colombian Wage Data

Dorbest argues that Colombia should not be included in the calculation because the Department relied on Colombian wage data from 1999 while relying on data from a different time period (2001-2003) to determine whether Colombia was a significant producer.

**Department's Position:** We do not agree that Colombia should be excluded from our analysis for the reasons articulated by Dorbest. Section 773(c)(1) of the Act provides that, "the valuation of 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 . . . ." The statute requires the use of the "best available information," but it does not define the term, nor does it clearly delineate how the Department should determine what constitutes the best available information.<sup>51</sup>

In this Final Redetermination, the Department has determined to rely on data that are as contemporaneous as possible to the POI, provided such data were available during the time it conducted the original investigation. For Colombia, as for the other countries examined in this remand redetermination, export data are available for a contemporaneous period (*i.e.*, 2001-2003), which supports a finding that Colombia was a significant producer during the period of

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<sup>51</sup> See *Shakeproof Assembly Components Div. of Ill. Tool Works, Inc. v. United States*, 59 F. Supp. 2d 1354, 1357 (CIT 1999), *aff'd* 268 F.3d 1376 (Fed. Cir. 2001); *China Nat'l Mach. Import & Export Corp. v. United States*, 264 F. Supp. 2d 1229, 1236 (CIT 2003).

investigation. However, because many countries do not report wage data in a given year, and because the Department prefers to rely on wage data from as many countries as possible, the Department has determined to rely on wage data from up to five years prior to the period to ensure that it has sufficient data to calculate a wage rate. The Department then inflates older wage data to be contemporaneous with the current year, which ameliorates concerns of relying on outdated data. As the Federal Circuit has recognized, selecting surrogate values is a difficult and necessarily imprecise process.<sup>52</sup> For this Final Redetermination, consistent with our current practice regarding the calculation of wage rates, for each country that passed the prior filters, we searched first for wage data in the contemporaneous period. If we did not find usable data for a particular country within that period, we determined that use of wage data from prior years constituted the best available information, because such data is the only information available.

#### 8. **Petitioners' Other Arguments**

Citing to their arguments from the prior *Dorbest IV* remand, Petitioners request that the Department: a) use 2003 ILO and GNI data in the wage rate calculation, and b) exclude Indian data from the labor rate calculation. While Petitioners recognize that the Court affirmed the Department's decision both to utilize Indian wage data and to reject record information which would not have been available during the initial proceeding, they note their strong disagreement with these decisions and their belief that they will be reversed on appeal.

**Department's Position:** The Court affirmed, and did not remand, the Department's determinations to 1) include Indian wage data in its wage rate calculation and 2) exclude from consideration data not available during the initial proceeding.<sup>53</sup> Therefore, we have not revisited these positions, as they are not before us on remand. For the Final Redetermination, we have

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<sup>52</sup> *Nation Ford Chem. Co. v. United States*, 166 F.3d 1373, 1377 (Fed. Cir. 1999).

<sup>53</sup> *See Dorbest V.*

continued to include Indian wage data in our calculations and we have continued to rely on 1) 2002 GNI and 2) ILO data that were available at the time of the original investigation.

## **E. FINAL RESULTS OF REDETERMINATION**

Pursuant to the *Dorbest V* ruling, we have revised the wage rate calculation methodology. The surrogate wage rate applicable to Dorbest has been revised to 0.44 USD. The revised wage rate is based on data from significant producers of the comparable merchandise, consistent with the CAFC's ruling in *Dorbest IV* and the statutory requirements of section 773(c) of the Act. Further, in accordance with *Dorbest V*, the result is based on an expanded data basket that represents a greater balance of countries that fall both below and above the PRC's GNI.

As a result of this recalculated wage rate, Dorbest's final margin has been revised to 2.40 percent.<sup>54</sup> Consistent with the Department's practice to include above *de minimis* margins in the calculation of the separate rate,<sup>55</sup> we have re-included Dorbest's margin in the calculation of the separate rate. Accordingly, the margin for the separate rate companies is now 6.68 percent.

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Paul Piquado  
Acting Deputy Assistant Secretary  
for Import Administration

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Date

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<sup>54</sup> See *id.*

<sup>55</sup> See, e.g., *Preliminary Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China*, 71 FR 77373, 77377 (December 26, 2006), unchanged in *Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China*, 72 FR 19690 (April 19, 2007).



