

*Jinan Yipin Corporation, Ltd. and
Shandong Heze International Trade and Developing Company
v. United States*
Consol. Court No. 04-00240, Slip Op. 11-36 (CIT April 12, 2011)
FINAL RESULTS OF THIRD
REDETERMINATION PURSUANT TO REMAND

I. 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”) issued on April 12, 2011, *Jinan Yipin Corporation, Ltd. and Shandong Heze International Trade and Developing Company v. United States*, Slip Op. 11-36, Consol. Court No. 04-00240 (April 12, 2011) (“*Jinan Yipin III*”).

In *Fresh Garlic From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews*, 69 FR 33626 (June 16, 2004), and unchanged by the March 14, 2008, first remand results, under review by the CIT in *Jinan Yipin Corp. v. United States*, 637 F. Supp. 2d 1183 (2009) (“*Jinan Yipin II*”), the Department applied a wage rate of \$0.90 USD/hour to Jinan Yipin based on the Department’s regression methodology. In accordance with the CIT’s remand opinion in *Jinan Yipin II*, the Department filed its second remand results with the Court on February 25, 2010 (“Second Redetermination”). In the Second Redetermination, the Department declined to address Jinan Yipin’s argument concerning the calculation of its surrogate labor wage rate on the basis that the company raised the issue for the first time in its comments on the draft version of the Second Redetermination. See Second Redetermination at Comment 4. However, during the pendency of this litigation, the Court of Appeals for the Federal Circuit (“CAFC”) issued its decision in *Dorbest Ltd. v. United States*, 604 F.3d 1363, 1372-73 (Fed. Cir. 2010) (“*Dorbest*”), invalidating the Department’s regulation, 19 CFR 351.408(c)(3), which previously governed our calculation of a respondent’s surrogate

labor wage rate. On June 30, 2010, with the Department's consent, Jinan Yipin moved to amend its complaint to add a new count, "Count 8," challenging our prior calculation of the company's surrogate labor wage rate under 19 CFR 351.408(c)(3).

The CIT granted Jinan Yipin leave to amend its complaint to add this new count on July 20, 2010. On April 12, 2011, the CIT issued its opinion in *Jinan Yipin III* and granted the Department's request for a voluntary remand for the purpose of recalculating Jinan Yipin's surrogate labor wage rate. *See Jinan Yipin III*, Slip Op. 11-36 at 18. The CIT upheld the Second Redetermination with regard to all other issues; accordingly, no issues other than the wage rate calculation for Jinan Yipin remain before the Department.

Consistent with the CAFC's decision in *Dorbest*, the Department is no longer relying on the regression-based methodology for wage rates. On February 18, 2011, the Department published in the *Federal Register* a request for public comment on the interim methodology including the source data for the final labor methodology.¹ *See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor; Request for Comment*, 76 FR 9544 (February 18, 2011). On June 21, 2011, based on comments received from interested parties, and the Department's concurrent determination to develop a final labor methodology that was to be generally applied in all on-going non-market economy ("NME") cases (timing of the segment allowing), the Department developed a methodology in compliance with section 773(c)(3) of the Tariff Act of 1930, as amended ("the Act"), as described below. *See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092 (June 21, 2011) ("*Labor Methodologies*").

¹ *Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor, Request for Comment*, 76 FR 9544 (Feb. 18, 2011).

On July 19, 2011, pursuant to *Labor Methodologies*, the Department released for comment the draft remand redetermination (“Draft Redetermination”), in which the Department applied a single hourly labor cost rate to value labor using industry-specific data from India, the surrogate country selected in the underlying administrative review.² On July 27, 2011, the Department received ministerial error comments from Jinan Yipin regarding the Department’s calculations. Specifically, Jinan Yipin alleged that the Department had applied the wage rate changes to a version of the SAS margin calculation program that did not reflect the changes made in the Second Redetermination. We reviewed the SAS program and agreed with Jinan Yipin. On August 2, 2011, the Department applied the calculation from the Draft Redetermination to the margin program used in the Second Redetermination and released the revised margin result.³ The Department received no comments regarding the labor rate calculation methodology applied in the Draft Redetermination and received no further comments regarding the revised margin result.

II THE PROPER SURROGATE VALUE FOR LABOR

A. Background

Previously, due to the variability in wage rates among economically comparable market economies, the Department included wage data from as many countries as possible that were also economically comparable to the NME and significant producers of comparable merchandise, within the meaning of section 773(c)(4) of the Act. Following the CAFC’s

² See December 1, 2003, Memorandum to the File; from Edythe Artman, International Trade Analyst; through Mark Ross, Program Manager; regarding: Administrative Review and New Shipper Reviews of the Antidumping Duty Order of Fresh Garlic from the People’s Republic of China: Selection of a Surrogate Country.

³ See August 2, 2011, Memorandum to the File, from Bobby Wong, Senior International Trade Analyst; through Wendy Frankel, Office Director, regarding: SAS Program Correction to Draft Redetermination of *Jinan Yipin Corporation, Ltd.* (“*Jinan Yipin*”) pursuant to *Jinan Yipin Corporation Ltd. et. al. v. United States*, Slip Op. 11-36 (April 12, 2011) (“*Jinan Yipin III*”), and August 2, 2011, Memorandum to the File; from Bobby Wong, Senior International Trade Analyst; Through Wendy Frankel, Director; regarding: Garlic from the People’s Republic of China: Analysis Memorandum for the Amended Draft Redetermination Pursuant to Court Remand (“revised calculation”).

decision in *Dorbest*, the Department attempted to balance its desire for multiple data points with the statutory requirements that factors of production (“FOP”) data be from countries that are both economically comparable and significant producers. *See* sections 773(c)(4)(A) and (B) of the Act. While the amount of available data was more constrained following *Dorbest*, the Department determined that the industry-specific interim methodology still provided the best available wage rate because it allowed for multiple data points, and adhered to the constraints set forth in the statute. Under this methodology, the Department considered countries that exported comparable merchandise to be “significant producers.” However, in *Shandong Rongxin Import & Export Co., Ltd. v. United States*, Slip Op. 11-45 (April 21, 2011) (“*Shandong Rongxin*”) at 17-19, the 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 careful examination of our options, we found that any alternative definition for “significant producer” that would also be compliant with the court’s decision would unduly restrict the number of countries from which the Department could source wage data. We, therefore, find that the basket for an average wage calculation would be so limited that there would be little, if any, benefit from relying on averaged wage rate data from multiple countries for purpose of minimizing the variability in wages across countries. Therefore, in light of both the Federal Circuit’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.

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.

B. 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 is 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 administrative review to calculate the surrogate labor rate.

The relevant period of review (“POR”) covers November 1, 2001, to October 31, 2002. The Department conducted its administrative review of this period between November 1, 2002, and September 3, 2004. The Department relied on the available 2003 International Labour Organization (“ILO”) publication, which, due to the two-year lag between the current and reporting year reported 2002 labor cost data. Accordingly, for this remand redetermination, the Department is relying on the reported 2002 ILO data because these were the most contemporaneous data that were available at the time the Department conducted the underlying review.

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

C. 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.⁴ *See* July 19, 2011, memorandum from Bobby Wong, Analyst; through Wendy Frankel, Director, to The File; regarding Garlic from the People’s Republic of China: Analysis Memorandum for the Draft Redetermination Pursuant to Court Remand – *Jinan Yipin Corporation, Ltd. and Shandong Heze International Trade and Developing Company v. United States*, Consol. Court No. 04-00240, Slip Op. 11-36 (CIT April 12, 2011); and unchanged in the August 2, 2011, memorandum from Bobby Wong, Analyst; through Wendy Frankel, Director, to The File; regarding: SAS Program Correction—Garlic from the People’s Republic of China: Analysis Memorandum for the Draft Redetermination Pursuant to Court Remand.

Specifically, the Department has relied on the industry-specific Indian data that includes “Processing and preserving of fruit and vegetables” (provided under Sub-Classification 15 “Manufacture of food products and beverages” of the ISIC-Revision 3 standard). *See* Draft Redetermination at Attachment II.

⁴ *See Labor Methodologies* at 36094.

Based on the foregoing methodology, the revised labor rate applied to Jinan Yipin in this remand redetermination is Rupees 23.04 per hour. *See* Draft Redetermination at Attachment I

D. Adjustments to the Surrogate Financial Ratios

As stated above, the Department has used Indian ILO data reported under Chapter 6A “Labor Cost in Manufacturing” of the Yearbook of Labor Statistics to calculate the surrogate value for labor. Unlike Chapter 5B, which the Department used to calculate the regression-based wage rate, Chapter 6A reflects all costs related to labor, including wages, benefits, housing, training, *etc.*, whereas Chapter 5B reflected only direct compensation and bonuses. In using Chapter 6A (as in Chapter 5B) it is the Department’s practice to adjust, when possible, the calculated surrogate overhead (“OH”) and selling, general and administrative (“SG&A”) ratios to reflect all applicable indirect labor costs itemized in the company’s financial statement.⁵ 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 61721 (October 19, 2006) (“*Antidumping Methodologies Notice*”). However, in using Chapter 5B, there is a concern that the Department has 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

⁵ *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.

Chapter 6A data, on the rebuttable presumption that Chapter 6A better accounts for all direct and indirect labor costs. Therefore, as discussed below, the Department will adjust the surrogate financial ratios when the available record information—in the form of itemized indirect labor costs—demonstrates that labor costs are overstated under the Department’s new labor rate calculation methodology.⁶

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

The ILO defines Chapter 5B earnings data as including:

Remuneration in cash and in kind paid to employees, as a rule at regular intervals, for time worked or work done together with remuneration for time not worked, such as for annual vacation, other paid leave or holidays. Earnings exclude employers’ contributions in respect of their employees paid to social security and pension schemes and also the benefits received by employees under these schemes. Earnings also exclude severance and termination pay.⁷

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.⁸

⁶ See *Labor Methodologies* at 36094.

⁷ See <http://laborsta.ilo.org/applv8/data/c5e.html> (emphasis added).

⁸ 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 (“IDM”) 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 IDM at Comment 10. See also, Memorandum to the File, through Catherine Bertrand, Program Manager, AD/CVD Operations, Office 9, from Blaine Wiltse, International Trade Analyst, AD/CVD Operations, Office 9, re: First Antidumping Duty Administrative Review of Certain Activated Carbon from the

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...”⁹

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.¹⁰ Accordingly, we will categorize all individually identifiable direct labor costs included in the ILO’s definition Chapter 6A “Labor cost” and 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.¹¹

In the final results of the underlying administrative review, we used the 2001/2002 Perry Agro Industrial, Ltd. (“Perry Agro”) financial statements to derive the surrogate financial ratios applied in the calculation of normal value.¹² However, because there is no indication of over counting of the labor costs in the allocation of the Perry Agro financial statements used in the

People’s Republic of China: Surrogate Values for the Preliminary Results, dated April 30, 2009 at 13-14 and Attachment 10.

⁹ See Chapter 6A of the ILO Yearbook of Labour Statistics, found at <http://laborsta.ilo.org/applv8/data/c6e.html>.

¹⁰ See *Antidumping Methodologies Notice* at 61716; see also, *OTR Tires* at Comment 18.G.

¹¹ See *id.*

¹² See December 1, 2003, Memorandum to the File, from Edythe Artman, International Trade Analyst; through Mark Ross, Program Manager and Laurie Parkhill, Director; regarding Fresh Garlic from the People’s Republic of China; Administrative Review and New Shipper Reviews for the Period 11/1/01-10/31/02; subject: Factors Valuations for the Preliminary Results of the Administrative Review and New Shipper Reviews.

underlying administrative review, the Department has not made any adjustments to the financial statement allocation.

For this final remand redetermination, the Department continues to apply the ratios calculated with the final results of the underlying administrative review.

RESULTS OF REDETERMINATION

Pursuant to the Department's *Labor Methodologies*, and our discussion above, we have revised Jinan Yipin's surrogate labor rate using ILO Chapter 6A labor data, and revised Jinan Yipin's final margin to 1.77 percent.

Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

Date