Final Results of Redetermination Pursuant to Court Remand
Floor-Standing Metal-Top Ironing Tables and Certain Parts Thereof from the People's Republic of China *Home Products International, Inc. v. United States*
Court No. 11-00104, Slip Op. 12-4 (CIT January 6, 2012)

Summary

The Department of Commerce (Department) has prepared these final remand results pursuant to the remand order of the U.S. Court of International Trade (CIT or the Court) in *Home Products International, Inc. v. United States*, Court No. 11-00104, Slip Op. 12-4 (January 6, 2012) (*Remand Order*). The Court's remand concerns the final results of the August 1, 2007, through July 31, 2008, administrative review of the antidumping duty order on floor-standing metal top ironing tables and certain parts thereof from the People's Republic of China (PRC). *Floor Standing Metal Top Ironing Tables and Certain Parts Thereof from the People's Republic of China*, 76 FR 15295 (March 21, 2011) (*Final Results*), and accompanying Issues and Decision Memorandum (*Final Results I&D Memo*). The Court remanded this decision instructing the Department to reconcile its exclusion of Indian labor data with certain concerns raised by the court in *Shandong Rongxin Import & Export Co., Ltd. v. United States*, 774 F. Supp. 2d 1307 (2011) (*Shandong*). *See Remand Order* at 9-10. Pursuant to these instructions, the Department has recalculated the labor value applied to Since Hardware (Guangzhou) Co. Ltd. (Since Hardware) to include labor values from countries where labor data are available under either ISIC Revision 2, or ISIC Revision 3. The revised labor valuation for Since Hardware includes labor data from the primary surrogate country, India.

Background

To value labor in the *Final Results,* the Department calculated an hourly wage rate for labor by averaging industry-specific earnings and/or wages in countries that are economically

comparable to the PRC and significant producers of comparable merchandise.[1] To determine economic comparability, the Department, relying on the surrogate country memorandum prepared early in the proceeding, identified the country with the highest Gross National Income (GNI) (Peru) and the lowest GNI (India) as "bookends" for economic comparability.[2] Relying on the World Bank's 2008 World Development Report, the Department then identified 43 countries that fell between the bookends, and determined these countries to be economically comparable to the PRC, and significant producers of comparable merchandise.[3] Of the 43 countries, the Department based its labor calculation on data from countries that reported industry-specific labor data under ISIC Revision 3[4], classification 28 ("Manufacture of fabricated metal products except machinery and equipment"). Specifically, the Department decided to rely on data from ISIC Revision 3, rather than ISIC Revision 2 because ISIC Revision 3 contained data that were most contemporaneous to the period of review.[5] Accordingly, to value labor in the *Final Results*, the Department calculated a simple average industry-specific wage rate based

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[1] The full methodology used to value labor in the *Final Results* is set forth in the *Final Results I&D Memo*, at Comment 1; and in the Memorandum from Michael J. Heaney, Senior Analyst, to the File entitled "08/01/07-7/31/08 Administrative Review of Floor Standing, Metal-Top, Ironing Tables from the People's Republic of China: Industry Specific Wage Rate Calculation", October 22, 2010, P.R. Doc. 71 (Final Results Labor Memorandum). In these remand results, the Department only addresses those aspects of the methodology that were remanded by the Court.

[2] *See* Final Results Labor Memorandum, at 2; *see also* Surrogate Country List, July 13, 2010, P.R. Doc. 46.

[3] *See* Final Results Labor Memorandum, at 2.

[4] The International Labor Organization (ILO) industry-specific data are 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 utilizes this classification for reporting purposes. Currently, wage and earning data are available from the ILO under the following revisions: ISIC Revision 2, ISIC Revision 3, and ISIC Revision 4. 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.

[5] *See Final Results I&D Memo* at Comment 1.

on ISIC Revision 3 data from 1) Ecuador, 2) Egypt, 3) Indonesia, 4) Jordan, 5) the Philippines, 6) Peru, 7) Thailand, and 8) Ukraine.[6]

On February 2, 2012, the Court granted a 28 day extension of time until March 14, 2012 to file these results of redetermination pursuant to remand. On March 2, 2012, the Department released to all parties a draft of its redetermination on remand (Draft Redetermination). We set a deadline of March 7, 2012 for parties to comment on the Draft Redetermination. We received timely comments from Since Hardware.

Remand Analysis

The Court remanded the Department's decision to select ISIC Revision 3, as opposed to Revision 2, when Revision 3 did not include labor data from the primary surrogate country, India. *Remand Order* at 9. The Court cited the CIT's reasoning in *Shandong,* 774 F. Supp. 2d at 1315. In *Shandong*, the Court found the Department's "decision to insist that data be reported under a common ISIC revision . . . {was} not supported by substantial evidence. . ." *Id.* The Court in *Shandong* also found that the Department's decision to rely on just a single ISIC Revision, where data from additional countries were available in both ISIC Revision 2 and ISIC Revision 3, inconsistent with the Department's asserted need for a broad basket of countries when applying its labor methodology. *Id.* This Court found this reasoning set forth in *Shandong* persuasive, and remanded the *Final Results* to the Department on this basis. *See Remand Order* at 9-10, quoting *Shandong.*

Pursuant to this Court's remand instructions, we have determined to rely on labor data reported by countries either under ISIC Revision 3, or, as discussed below, ISIC Revision 2. Accordingly, in these final remand results, we have continued to rely on ISIC Revision 3 labor

[6] *See* Final Results Labor Memorandum at Attachment 3; and *Final Result I&D Memo,* at Comment 1.

data from the eight countries identified in the Final Results Labor Memorandum. We have further identified, and included in the labor calculation, data from two additional countries, India and Nicaragua, where labor data were available under ISIC Revision 2. We find both India and Nicaragua are economically comparable to the PRC, as both have GNIs that fall within the parameters of economic comparability.[7] We further find that based on the significant producer test relied upon in our *Final Results*, both India and Nicaragua are significant producers of comparable merchandise, as both countries exported comparable merchandise between 2007 and 2009.[8]

When relying on data from ISIC Revision 2, we have utilized data reported under the ISIC classification 38 "Manufacture of Fabricated Metal Products" or ISIC Revision 2 sub-classification 381 "Manufacture of Fabricated Metal Products, Except Machinery." Using the data filtering, CPI adjustments, and currency conversion procedures described in the Final Results Labor Memorandum, we have included data from India and Nicaragua in our final remand calculation of labor expense.

The revised labor wage value for Since Hardware is set forth at Attachment III of the March 2, 2012, Memorandum "Since Hardware (Guangzhou) Co., Ltd. (Since Hardware) Analysis memorandum for Court No., 11-00104, Slip Op. 12-4 (CIT January 6, 2012)" (Draft Remand Results Memorandum). The Draft Remand Results Memorandum also contains the spreadsheets supporting the labor and margin calculations set forth in this draft redetermination. The Draft Remand Results Memorandum was released concurrently with the Department's draft

[7] In the *Final Results*, the Department determined countries with GNIs at or between US$ 1070 and US$ 3990 to be economically comparable to the PRC. *See* Surrogate Country List, July 13, 2010, P.R. Doc. 46. Using the GNI data relied upon in the *Final Results*, India has a GNI of US$ 1070, and Nicaragua has a GNI of US$ 1080.
[8] In the *Final Results,* the Department defined "significant producer" as "a country that has exported comparable merchandise between [. . .] 2007 and 2009." *See* Final Results Labor Memorandum, P.R. 71 at 2.

remand results on March 2, 2012. Based upon the methodology described herein, we have recalculated the margin for Since Hardware. Since Hardware's revised margin is now 66.06 percent.

Interested Party Comments

Since Hardware asserts that in its January 6, 2012 opinion the Court instructed the Department to reconcile its calculation of labor rates with the concerns set forth in *Shandong*. Since Hardware claims *Shandong* establishes that the Department cannot refuse to consider labor data from India. Moreover, Since Hardware further maintains *Shandong* precludes the Department from relying on export statistics to define "significant producer."

Since Hardware argues the Department has failed to address the concerns in *Shandong* which relate to establishment as a "significant producer." Since Hardware insists that to be fully consistent with *Shandong*, the Department should have limited its labor rate calculation to that of India, which is the primary surrogate country. Since Hardware further argues that Indian wage rates constitute "the best available information" pursuant to section 773(c) of the Tariff Act of 1930, as amended, (the Act). *See* Since Hardware March 7, 2012 Comments at 4.

Citing to *Shandong*, 774 F. Supp. 2d at 1315, Since Hardware asserts "the *Shandong* Court took issue with the Department's 'construal of the term "significant producer" to mean any country with any level of exports under the relevant HTS subcategory.'" *Id.* at 3.

Since Hardware contends that to be fully compliant with *Shandong* the Department should adopt the methodology set forth in *Labor Methodologies*.[9] Since Hardware argues that *Labor Methodologies* addresses the concerns of *Shandong* by limiting labor data to those of the

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

primary surrogate country. Since Hardware notes the Department has applied *Labor Methodologies* in ongoing reviews and in redeterminations pursuant to Court remand. Since Hardware cites to *Frontseating Service Valves from the People's Republic of China, Zhejiang DunAn Heitan Metal Co., Ltd. v. United States*, Slip Op. 11-120, Court No. 09-00217 (CIT September 28, 2011), *Calgon Carbon Corp. and Norit Americas Inc v. United States et al.*, (CIT February 17, 2011), and *Jinan Yipin Corp. Ltd. and Shandong Heze Int'l Trade and Devel. Co., v. United States*, Court No., 04-00240, Slip Op. 11-36 (CIT April 12, 2011) as instances where the Department consistent with *Labor Methodologies* used data from the primary surrogate country to calculate labor rates. Since Hardware argues that using data from multiple countries is not the "best methodology" for valuing labor pursuant to *Shandong* and given the calculation procedures set forth in *Labor Methodologies*. *See* Since Hardware March 7, 2012 comments at 6.

Since Hardware further asserts that if the Department chooses to use multiple countries to calculate labor expense, it must demonstrate that each of these countries is a "significant producer" of the merchandise. Since Hardware cites to section 773(c)(4) of the Act which requires the Department to use labor data from countries that are 1) at a comparable level of economic development to that of the non-market country, and 2) are significant producers of the comparable merchandise. Since Hardware contends that the Draft Redetermination failed to address whether each of the countries that supplied labor data are "significant producers." *Id.* at 7. As such, Since Hardware asserts the Department cannot rely on these multiple countries as a source of labor data in this redetermination. Since Hardware concludes that consistent with *Labor Methodologies*, the Department should calculate labor expense exclusively upon Indian data.

Department Position:

As an initial matter, we agree that section 773(c)(4) of the Act compels the Department to rely on data from countries that are both economically comparable to the PRC, and significant producers of comparable merchandise. We have therefore clarified in our *Final Remand Results* that we find the two countries added to the wage calculation, India and Nicaragua, meet these statutory criteria. *See Remand Analysis* section of these *Final Remand Results, supra.*

We disagree with Since Hardware that the Department failed to comply with the Court's remand order because it limited its remand reexamination to whether it should include data from ISIC Revision 2. The Court's Order directed the Department to, "reconcile its exclusion of Indian labor data with the concerns raised by the court in *Shandong*;" however, the Court made clear in its opinion that it found the reasoning in *Shandong* persuasive as to the limited question of whether the Department was correct to exclude labor data from countries that reported under ISIC Revision 2. *See Remand Order* at 9-10.

Specifically, the Court stated ". . .Since Hardware does raise *one* issue from [the Department's] labor wage rate determination that merits a remand. . ." *Remand Order,* at 9 (emphasis added). The large block quote cited by the Court from the *Shandong* decision relates exclusively to this issue, and does not address other aspects of the Department's labor wage rate. *See Remand Order* at 9-10. We note that the block quote relied on by this Court includes an expressed concern that ISIC Revision 2 Indian data were "apparently valid." *See Remand Order*, quoting *Shandong* 774 F. Supp. 2d at 1315. The quote further includes a finding that exclusion of Indian data was "at odds" with a "paramount" agency interest which was to "generate[ ] data from the broadest basket of countries possible to value labor." *Id.* At the end of the block quote, this Court articulated that "[t]his is persuasive. Accordingly, the court will remand this

issue to [the Department] to address *these specific issues . . .*" *See Remand Order*, at 10 (emphasis added). It was this question that Commerce was ordered to address on remand. Accordingly, in these *Final Remand Results,* we have determined to include both ISIC Revision 2 and ISIC Revision 3 data in our calculation of labor expense, allowing for the broadest basket of data available. We find this to be in full compliance with the *Remand Order* issued by this Court.

We disagree that the Department was required to make any other adjustments to its labor calculation. Nowhere in the *Remand Order* is the Department ordered to to revise its definition of significant producer or to revisit its decision to rely on data from multiple countries when calculating the labor value. On the contrary, the Court rejected both of these propositions put forth by Since Hardware.

Since Hardware refuted the significant producer definition in its brief filed with the Court, but the Court did not disturb this aspect of the Department's decision. *See* Since Hardware Brief at 7-8 (Aug. 18, 2011); *see Remand Order* at 7-8. On this basis, we disagree that we should discard any countries already included in our wage calculation prior these *Final Remand Results.*

When determining which countries to include using the ISIC Revision 2 data, consistent with other decisions where this wage methodology was applied, we find it appropriate to define "significant producer" as a country that has exported comparable merchandise during the relevant period.[10] This is because, the Department finds that a country's ability to export

[10] *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 I&D Memo 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 I&D Memo at Comment 34; *Administrative*

comparable merchandise is indicative of substantial production because it is likely producing merchandise at a level that surpasses its internal consumption. 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.[11]

We further do not agree with Since Hardware that the circumstances leading to the court's conclusion with respect to the significant producer definition in *Shandong* compels a similar outcome here. In *Shandong*, the court found it implausible that lower levels of exports could be indicative of significant production. *See Shandong,* 774 F. Supp. 2d at 1316 (rejecting the Department's finding that countries with exports of $43, $67, $159 and $218 could be considered significant producers.). Here, all countries determined to be significant producers had exports well above zero whereas, in this instance, the countries found to be significant producers had exports in the hundreds of thousands of dollars, with several countries exporting well into the tens or hundreds of millions of dollars of comparable merchandise.[12] On this record, the larger export figures alone denote a greater level of production for each of the countries included in the wage rate calculation, including the newly added countries of India and Nicaragua.

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 I&D Memo at Comment 8; *Certain Magnesia Carbon Bricks from the People's Republic of China*, 75 FR 45468 (August 2, 2010), and accompanying I&D Memo 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 I&D Memo 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 I&D Memo at Comment 8.

[11] *See* Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Rep. No. 100-576, at 590 (1988).

[12] *See* Final Results Labor Memorandum, P.R. 71 at Attachment 1, which contains a listing of shipments of ironing tables for the period 2007-2009. As can be seen from these data, all of the countries that the Department relied upon as sources of ISIC Revision 3 (Ecuador, Egypt, Indonesia, Jordan, the Philippines, Peru, Thailand, and Ukraine) and ISIC Revision 2 (India and Nicaragua) exported ironing tables to the United States during the period 2007-2009.

We note further that while Since Hardware takes issue with the Department's definition, it does not raise any specific arguments refuting the Department's findings that either Nicaragua, India, or any of the other countries included in the wage value, is a significant producer. Accordingly, we continue to find that both India and Nicaragua to be significant producers of comparable merchandise, and are therefore appropriate for inclusion in the labor value for these *Final Remand Results.*

The Court similarly rejected Since Hardware's argument that the Department is required to value labor using data from a single country. *See Remand Order* at 7. The Court was explicit that the statute does not mandate valuation of labor from a single country, but rather found that "this argument is untenable in the face of a statute, agency regulation, and CAFC case law, which all explicitly permit the agency to utilize data from multiple countries." *Remand Order*, at 7, *citing Shandong,* 774 F. Supp. 2d at 1314. While the Department may "as a matter of discretion, decide to use only one country when valuing labor (an approach it has since adopted in its New Labor Wage Rate Policy), . . . nothing in the authorities . . .mandates that result." *Remand Order* at 7. Accordingly, there is nothing in the *Remand Order* that compels the Department to abandon the multiple country methodology that was employed during the *Final Results.*

We further determine not to apply the Department's revised labor methodology that was published in *Labor Methodologies* and applicable to subsequent reviews. The Department announced that the new labor methodology would apply as of June 10, 2011, to "ongoing administrative NME proceedings where the statutory deadlines permit." *Labor Methodologies*, 76 FR at 36094. The new method was therefore not in effect at the time the Department issued

the *Final Results*, as the contested review was completed two months prior to the effective date of *Labor Methodologies*.

The Department's determination to continue its multiple country approach here is not rendered unlawful merely because a new practice has been announced but was not yet effective. *See generally Laizhou v. United States*, Court No. 06-00430, Slip Op. 08-71, at 21-22 (Ct. Int'l Trade, June 26, 2008) ("At the time the new methodology is finalized and effective, it becomes the best available information, but until that point, [the Department] must be granted some discretion to assess the advantages and disadvantages of a work-in-progress methodology in place of an existing one. . ."). While the Department revised its methodology to respond to certain court decisions, in doing so, it did not abandon its initial position that labor data from multiple countries is preferable due to the variability in wage rates. *See Labor Methodologies*, 76 FR at 36093. Rather, the Department determined that the statutory parameters, coupled with constraints imposed by recent court decisions, would leave datasets so limited that there would be little benefit to relying on an average of wages from multiple countries for purposes of minimizing the variability that occurs in wages across countries. *Id.* In this instance, however, a limited data is not a concern because the record contains viable data from 10 countries that meet the statutory criteria.

We are further not persuaded that the revised labor methodology should be applied here simply because it may have been applied in other remand determinations cited by Since Hardware. *See* Since Hardware Comments on Draft Results of Redetermination, at 5-6. Each of the cases cited by Since Hardware were on remand to the Department because the Department had relied on its former regression methodology pursuant to a regulation that was invalidated by the Federal Circuit in *Dorbest v. United States,* 604 F.3d 1363, 1371-73 (Fed. Cir. 2010). In

those instances, because the Department needed to revise its entire methodology in order to be compliant with those orders, it relied on its most current method. In this instance, by contrast, the Court remanded one narrow aspect of the labor methodology that the Department was able to address without dismantling the entire methodology. Indeed, this Court made reference to the "New Labor Wage Rate Policy" (*Remand Order* at 7), but specifically stated it was a matter of discretion as to whether the Department should apply that revised methodology on remand. For this reason, we find that adjusting the existing methodology both responds to the Court's remand concern, and comports with the statute.

Based upon the foregoing, we continue to maintain that use of ISIC Revision 3 and ISCIC Revision 2 data complies with the Court's instructions. We have thus continued to use the approach enunciated in our March 2, 2012 Draft Redetermination.

Remand Results

Since Hardware's revised margin pursuant to this Court's *Remand Order* has changed from 67.37 percent to 66.06 percent. If the Court approves these remand results, the Department will instruct U.S. Custom and Border Protection (CBP) to liquidate appropriate entries for the period August 1, 2007, through July 31, 2008, based upon these final results. We will issue liquidation instructions directly to CBP.

Paul Piquado
Assistant Secretary
for Import Administration

14 MARCH 2012
Date