

**Final Results of Redetermination Pursuant to  
*Shantou Red Garden Foodstuff Co., Ltd. v. United States*,  
Consol. Court No. 05-00080, Slip Op. 12-07  
(January 13, 2012)**

**I. Summary**

The U.S. Department of Commerce (“Department”) has prepared these final results of redetermination pursuant to the remand order of the U.S. Court of International Trade (“CIT”) in *Shantou Red Garden Foodstuff Co., Ltd. v. United States*, Consol. Court No. 05-00080, Slip Op. 12-07 (January 13, 2012) (“*Shantou*”). The CIT remanded five issues from the final determination and amended final determination of the investigation<sup>1</sup> to the Department, the latter two being issues for which the Department requested a voluntary remand. Specifically, the Court held that: 1) the Department erred in applying partial adverse facts available (“AFA”) for certain missing factors of production (“FOP”) information from one of the unaffiliated producers for Shantou Red Garden Foodstuff Co., Ltd. (“Red Garden”); 2) the Department must reconsider its determination of the surrogate value (“SV”) for fresh, raw, head-on, shell-on shrimp; 3) the Department must recalculate Red Garden’s margin using the correct production volume for a certain Red Garden supplier; 4) the Department must redetermine the SV for labor expenses consistent with the Federal Circuit’s decision in *Dorbest Ltd. v. United States*, 604 F.3d 1363, 1372-73 (Fed. Cir. 2010) (“*Dorbest*”); and 5) the Department unlawfully refused to allow Red Garden to correct a miscalculation for its growth stage multiplier submitted prior to verification.

---

<sup>1</sup> See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the People’s Republic of China*, 69 FR 70997 (December 8, 2004) (“*Final Determination*”); see also *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from the People’s Republic of China*, 70 FR 5149 (February 1, 2005).

On April 5, 2012, the Department released the draft redetermination of remand and invited interested parties to comment. The Department received no comments on the draft redetermination. Thus, we have made no changes to the calculations made in the draft redetermination.<sup>2</sup>

## **II. Analysis**

### **A. Application of Partial Facts Available in Lieu of Partial Adverse Facts Available for Missing FOP Information from an Unaffiliated Producer**

#### **Background**

During the period of investigation (“POI”), Red Garden purchased subject merchandise from five suppliers. The Department instructed Red Garden to obtain the FOPs from each of its suppliers. Red Garden obtained the FOPs from two of its suppliers. For the remaining three suppliers, Red Garden informed the Department that two supplied negligible quantities and the third, Meizhou, was unable to report its FOPs because of a change in ownership. Because Red Garden did not attempt to contact Meizhou’s former owners, the Department determined that Red Garden failed to cooperate to the best of its ability and applied facts otherwise available with an adverse inference to the portion of Red Garden’s sales supplied by Meizhou.

However, in *Shantou*, while the CIT concluded that the Department was justified in applying facts otherwise available, it concluded the Department was not justified in selecting an adverse inference because the Department failed to accurately communicate its requests to Red Garden. Therefore, the CIT held, the record lacked evidence to support a finding that Red Garden failed to cooperate to the best of its ability. Specifically, when reviewing the record, the CIT concluded that the Department’s questionnaires focused on obtaining a complete, verifiable,

---

<sup>2</sup> See *Shantou Red Garden Foodstuff Co., Ltd. v. United States*, Slip Op. 12-07, Court No. 05-00080, Draft Results of Redetermination Pursuant to Court Remand (April 5, 2012) and Red Garden Analysis Memorandum for the Draft Results of Redetermination (“Draft Results Analysis Memo”).

weight-averaged FOP database from Meizhou, rather than instructing Red Garden to contact Meizhou's previous owners. The CIT found that the issue of contacting Meizhou's former owners was not identified until after the questionnaire process was completed. Therefore, the CIT concluded "{t}he record does not support a finding that Red Garden failed to act to the best of its ability to comply with the information requests in the form in which Commerce actually communicated those requests."<sup>3</sup> On remand, the CIT has ordered the Department to redetermine the rate applied to Red Garden's sales of subject merchandise supplied by Meizhou, and has further instructed that the Department may not use an adverse inference.

### **Analysis**

In response to the CIT's decision in *Shantou*, the Department has revised its previous decision to apply facts otherwise available with an adverse inference to Red Garden's sales of subject merchandise supplied by Meizhou. After reviewing the record, the Department has determined to follow its decision in the *Preliminary Determination*<sup>4</sup> of applying facts available to the missing FOPs supplied by Meizhou. In the *Preliminary Determination*, the Department calculated normal value ("NV") using the FOPs reported by Shantou Jinyuan District Mingfeng Quick-Frozen Factory ("Mingfeng") and Shantou Longfeng Foodstuff Co., Ltd. ("Longfeng"), two of Red Garden's suppliers which produced subject merchandise sold by Red Garden to the United States. As the Department explained at the *Preliminary Determination*,<sup>5</sup> all of Red Garden's sales of subject merchandise to the United States during the POI, which were produced by Meizhou, were also produced by Mingfeng and Longfeng. As such, the Department

---

<sup>3</sup> See *Shantou* at 12.

<sup>4</sup> See *Notice of Preliminary Determination of Sales at Less Than Fair Value, Partial Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the People's Republic of China*, 69 FR 42654 (July 16, 2004) ("*Preliminary Determination*").

<sup>5</sup> See *id.*, 69 FR at 42665.

substituted Mingfeng's and Longfeng's FOPs by control number ("CONNUM") for merchandise produced by Meizhou, based on which company produced that subject merchandise. For subject merchandise which was produced by both companies, we weight-averaged the FOPs of Mingfeng and Longfeng.

Therefore, as facts otherwise available, the Department will substitute Mingfeng's and Longfeng's FOPs for Red Garden's sales of subject merchandise supplied by Meizhou, as it did in the original *Preliminary Determination* using the most updated FOP database submitted by Red Garden.

## **B. SV for Fresh, Raw, Head-on, Shell-on Shrimp**

### *1. The Department's Selection of the Raw Shrimp SV*

On remand, the Court ordered the Department to: 1) redetermine the SV for raw, head-on, shell-on shrimp, base the new SV on findings of fact that are supported by substantial evidence on the record, and explain its reasons for its choice from among the various alternatives; 2) derive a SV for raw, head-on, shell-on shrimp using data on the record other than the Nekkanti financial statement data; and 3) support its decision, with an adequate explanation, should the Department continue to determine Red Garden's margin without using count-size specific SVs. Pursuant to the Court's Order, the Department has not relied on the Nekkanti financial statement data and instead is relying on the Devi Sea Foods Ltd. ("Devi") publicly-ranged data as the basis for calculating the raw shrimp SV. Moreover, the Department has provided an explanation for its selection from among the various sources. Our analysis, explained in detail below, very closely mirrors the analysis from *Allied Remand Results II*.<sup>6</sup>

---

<sup>6</sup> See *Allied Pacific Food Co. Ltd. v. United States*, 716 F. Supp. 2d 1339 (CIT 2010) (sustaining the Department's findings in the second remand redetermination); see also *Allied Pacific Food Co. Ltd. v. United States, Final Results of Redetermination Pursuant to Court Remand* (May 21, 2009) ("*Allied Remand Results II*").

a. *Potential Sources of SV Data for Raw Shrimp Input*

Excluding the Nekkanti financial statement data, the administrative record contains several alternative sources that may serve as the basis for the calculation of the raw shrimp SV: 1) ranged, public versions of data from two respondents in the companion Indian investigation, Devi and Nekkanti;<sup>7</sup> 2) data from the Seafood Exporters Association from India (“SEAI”); 3) data from Aquaculture Certification Council (“ACC”); and 4) export data from the Ecuadorean Central Bank.

i. *Devi Ranged Data*

These data consist of publicly ranged data of a respondent, Devi, in the companion Indian investigation.<sup>8</sup>

ii. *SEAI Data*

These data are from the Seafood Exporters’ Association of India (“SEAI”). The data consisted of circulars provided by the SEAI to its members with prices of raw shrimp from two Indian regions: Andhra Pradesh and Tamil Nadu. Specifically, the SEAI data included shrimp prices for four individual days during the period of investigation from the Andhra Pradesh region and one price for the entire period of investigation reflecting raw shrimp prices from the Tamil Nadu region.<sup>9</sup>

---

<sup>7</sup> In preparing this remand redetermination, the Department did not consider the Nekkanti ranged data a viable source of calculating the raw shrimp SV because the Court has concluded that the Department’s findings concerning the potential extent of inaccuracies from ranging are supported by substantial evidence only with respect to Nekkanti ranged data and not with respect to Devi ranged data. The Nekkanti ranged data, unlike Devi ranged data, do not include a unit price for each count size and are presented in a format indicating that the count sizes are ranged. *See Allied Remand Results II* at B.1.a.

<sup>8</sup> *See* Allied and Yelin’s Second SV Submission at Attachment 2 (Devi’s July 13, 3004, Supplemental Section D Response at Ex. SD-3).

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

iii. ACC Data

These data consist of surveys of Indian shrimp processors compiled by the Aquaculture Certification Council (“ACC”), a council comprised of foreign shrimp farming producers and U.S. importers and distributors of foreign-farmed shrimp.<sup>10</sup> ACC was founded by the Global Aquacultural Alliance (“GAA”), which is comprised of large foreign shrimp growers, processors and U.S. entities that import and distribute foreign shrimp, some of which were subject to this investigation.<sup>11</sup>

iv. Ecuadorian Central Bank Export Data

These data consist of data from the government of Ecuador pertaining to the prices for exports of head-on shell-on shrimp during the POI.

*b. Devi Ranged Data Are the Best Information Available for Determining the Respondents’ Raw Shrimp SV*

In this case, the Court rejected the Department’s use of the Nekkanti financial statement data as the basis of calculating the raw shrimp SV.<sup>12</sup> Therefore, consistent with the Court’s Order, the Department evaluated the remaining sources of data and determined that the Devi publicly-ranged data were the best information available. The Department also determined that the prices from SEAI and ACC were unreliable as each suffered from fundamental problems that called into question the representativeness and reliability of its prices. The Department also determined, but for a different reason, that the Nekkanti ranged data were potentially less accurate than the Devi ranged data. Thus, given the problems with the SEAI and ACC data and potential degree of inaccuracy in the Nekkanti ranged data, the Department determined that the

---

<sup>10</sup> See Allied and Yelin’s Second SV Submission at Exhibit 3.

<sup>11</sup> See Letter from Petitioner to the Department, dated September 20, 2004, at Ex. 2B at 1, 3, 4 (“Petitioner’s SV Rebuttal”).

<sup>12</sup> See Remand Opinion and Order at 29.

Devi publicly-ranged data were the best available information on the record for the reasons explained below.

The Department prefers to use SVs that are publicly-available, broad-market averages, contemporaneous with the POI, specific to the input in question, and exclusive of taxes and exports.<sup>13</sup> The Devi ranged data are specific to the input in question, publicly-available, a sufficiently broad-market average given the number of Devi's transactions during the purchasing period, partially contemporaneous with the POI, and there is no evidence that Devi's prices are not exclusive of taxes and duties.

#### Specific to the Input

Apart from count-size, which is addressed below, the value of shrimp depends upon the species of shrimp used. Devi data are the only SV source that contains prices that are specific to each particular species of shrimp used to produce the subject merchandise. During the October 1, 2002, through September 30, 2003, period, Devi purchased white and black tiger shrimp.<sup>14</sup> Mingfeng (Red Garden's supplier) reported using mostly raw, white shrimp to produce the (subject merchandise) frozen shrimp sold to the United States during the POI. *See* Red Garden's Section D Questionnaire Responses. Therefore, the Devi data are based upon prices paid for the same species of shrimp that is used by Red Garden. In contrast, neither the SEAI nor ACC data specify the species of shrimp used in determining prices. Thus, there is no record evidence demonstrating that SEAI or ACC data are based upon the same shrimp species used by the Chinese respondent. Accordingly, with respect to this criterion in the Department's analysis, the Devi data are superior to SEAI and ACC data due to its specificity in species.

---

<sup>13</sup> *See Notice of Final Determination of Sales at Less Than Fair Value: Cut-to-Length Carbon Steel Plate from the People's Republic of China*, 62 FR 61972 (November 20, 1997).

<sup>14</sup> *See* Allied and Yelin's Second SV Submission at Attachment 2 (Devi's July 13, 2004, Supplemental Section D Response at Ex. SD-3).

### Public Availability

The Devi ranged data were made publicly-available by Devi as part of its participation in the companion Indian antidumping duty investigation. In contrast, SEAI data are not publicly-available. Thus, under this criterion, the Devi ranged data and ACC data are superior to the SEAI data.

### Broad-Market Average

In general, the Department prefers to use broad-market averages as opposed to data derived from a single producer. However, when other competing sources for SV data are unreliable, such as in this case, the Department may resort to the use of company-specific data.<sup>15</sup>

From a purely geographic perspective, ACC data appear to be the broadest source of data, followed by SEAI and the Devi data. However, SEAI and ACC data lack any information regarding the volume, value and per-unit price of transactions considered in determining average prices. Thus, the data could potentially be based upon a handful of transactions. This data deficiency is further exacerbated, as explained further below, by the lack of experience and potential conflict of interest for ACC data, as well as the absence of public availability of SEAI data.

In contrast, Devi data are based upon specific volume, value and per-unit prices that are clearly indentified. Moreover, the volume, value and per-unit prices, that these data were based upon, were verified by the Department in the companion investigation of shrimp from India.

Although Devi data represent purchases by one company, the data are sufficiently broad because they are based upon a large volume of transactions and a very broad range of count-sizes. The record shows that Devi had hundreds of purchases during the period of October 1,

---

<sup>15</sup> See, e.g., *Notice of Final Results of First Administrative Review: Certain Frozen Fish Fillets From the Socialist Republic of Vietnam*, 71 FR 14170 (March 21, 2006), and accompanying Issues and Decision Memorandum at Comment 3 (where the Department used a company's financial statement to value a main raw material input).



2002, through September 30, 2003. Specifically, Devi purchased a total of 255,068.5 kilograms of raw white shrimp at a value of 38,974,776 Rupees.<sup>16</sup> With respect to this factor, and given the number and volume of underlying transactions, the Devi data represent a sufficiently broad-market average, particularly in light of unreliability of SEAI and ACC data.

#### Contemporaneity

The POI of this investigation is April 1, 2003, through September 30, 2003. The Devi ranged data are from October 1, 2002, through September 30, 2003. Therefore, the Devi ranged data encompass the POI of this case making them contemporaneous with the POI.

#### Tax Exclusive

There is no evidence on the record that Devi's purchase prices included tax. Therefore, absent evidence that Devi's prices included taxes, we cannot assume that Devi purchase prices included tax.

#### *c. The SEAI and ACC Data Are Not the Best Information Available Because They Are Not Reliable*

The SEAI data are not the best information available. Unlike in the Devi ranged data, the SEIA data do not disaggregate prices by the species of shrimp; thus, there is no evidence that SEAI prices are based upon the same species of shrimp used by the respondents. Furthermore, unlike the Devi and ACC data, SEAI data are not publicly-available, nor do they contain any information regarding the volume, value and per-unit price of transactions considered. It is impossible to determine how SEAI prices were produced or calculated. As a result, the Department finds that the SEAI data are not the best information available information on the record for valuing raw shrimp.

---

<sup>16</sup> See Allied's Second SV Submission, at Attachment 2 (Supplemental Section D Response at Ex. SD-3).

The ACC data are not the best information available. Unlike the Devi data, the ACC data do not disaggregate prices by the species of shrimp; thus, there is no evidence that the ACC prices are based upon the same species of shrimp used by the respondents. The ACC data also do not contain any information regarding the volume, value and per-unit price of transactions considered. We are unable to determine how the ACC prices were produced or calculated.

Additionally, the ACC data are not sufficiently insulated from potential conflicts of interest, as the Department explained in *Allied Remand Results II*. The ACC was founded by members of the GAA, which is comprised of large foreign shrimp growers, processors and U.S. entities that import and distribute foreign shrimp, some of which were subject to this investigation.<sup>17</sup> In addition, we explained that the timing of the posting of the ACC prices was suspect given that the ACC “never posted such prices before or again” since the investigation of this case.<sup>18</sup> Here, as in *Allied Remand Results II*, we continue to place a significant amount of weight on the fact that the ACC was founded by members who had an interest in manipulating the prices posted by ACC and that the posting of these prices was a one-time event. As a result, the Department finds that the ACC data are not the best information available information on the record for valuing raw shrimp.

*d. The Data from the Central Bank of Ecuador Are Not the Best Information Available for Determining the Respondent’s Raw Shrimp SV*

As noted above, in the *Final Determination*, the Department selected India as the primary surrogate country. It is the Department’s practice to rely upon the primary surrogate country for

---

<sup>17</sup> See *Allied Remand Results II* at 12.

<sup>18</sup> See *id.*

all SVs whenever possible.<sup>19</sup> The record of the investigation contains a suitable source to value the main input from a producer, Devi, of the identical merchandise in India as described above. Therefore, the Department determines that it is unnecessary to look outside India, *i.e.*, to Ecuador, for purposes of valuing the main input, head-on shell-on shrimp.

## 2. *Count-size Specific vs. Single Value*

With regard to calculating Red Garden's margin using count-size specific SVs, unlike the other respondents in the investigation, Yelin and Allied, Red Garden does not process whole shrimp itself, but instead purchases processed shrimp from suppliers for resale to the United States. For this reason, we sought the FOP information from Red Garden's suppliers, as discussed above in Issue II.A. Further, it is the manner in which Red Garden's suppliers purchased whole shrimp for processing that is relevant to our FOP calculation, rather than the count-size basis on which Red Garden sold the subject merchandise.<sup>20</sup> Again, unlike Yelin and Allied, Red Garden's two suppliers for whom we have data did not provide count-size specific information for their whole shrimp purchases; in fact, they did not purchase, or have the information in their records regarding having made purchases, on a count-size basis.<sup>21</sup> Most critically, the FOP data for whole shrimp reported by Red Garden via its suppliers were not reported on a count-size basis,<sup>22</sup> making the application of count size-specific SVs impossible. This is because there is no indication on the record that Red Garden's suppliers did or did not use a certain count-size of head-on shell-on raw material to produce a certain count-size of finished

---

<sup>19</sup> See *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results and Partial Rescission of the Seventh Antidumping Duty Administrative Review*, 77 FR 15039 (March 14, 2012) and accompanying Issues and Decision Memorandum at Comment II.A.; see also *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 at Comment 3.

<sup>20</sup> See *e.g.*, *Certain Steel Nails From the People's Republic of China: Final Results and Final Partial Rescission of the Second Antidumping Duty Administrative Review*, 77 FR 12556 (March 1, 2012) and accompanying Issues & Decision Memorandum at Comment 9.

<sup>21</sup> See Red Garden Verification Report at X.2.A and Verification Exhibit Mingfeng 17.

<sup>22</sup> See, *e.g.*, Red Garden's FOP database, submitted as Attachments 1-2 to its November 19, 2004, submission.

product of head-off and tail-off shrimp.<sup>23</sup> Furthermore, the record does not indicate to what extent Red Garden's suppliers may have used a certain count-size of raw material. Therefore, unlike for respondents Yelin and Allied, there is nothing on the record that allows us to determine, or reverse engineer, what size of whole shrimp Red Garden's suppliers used to produce a certain size of processed shrimp. Thus, we will continue to apply a single value to value to value the whole shrimp input, by averaging the count-size values reported by Devi.

### **C. Using the Correct Production Volume for a Certain Red Garden Supplier**

#### **Background**

Red Garden had two suppliers who provided FOP data during the POI. The Department weight-averaged the two suppliers' FOPs by production quantity to calculate NV. One of those producers, Mingfeng, had difficulty reconciling the overall total production quantity reported in its original section D response to the sum of the CONNUM-specific production quantities it subsequently reported in a supplemental response. At verification, the Department found that the correct overall quantity included some CONNUMs that Red Garden stated had not been exported to the United States, but actually were.<sup>24</sup> These additional CONNUMs accounted for the discrepancy discussed above. In the *Final Determination*, the Department used, as FA, the quantity Mingfeng had reported in the supplemental response because Mingfeng did not provide (or reconcile) the correct amount until verification (*e.g.*, not on a timely basis).<sup>25</sup>

---

<sup>23</sup> The Department notes that given a certain count-size of whole shrimp, the final count-size of finished product varies depending on the level of processing. By the same token, given a certain count-size of finished product can be produced from different count-size whole shrimp depending on the level of processing. For examples of Red Garden's levels of processing, *see, e.g.*, Red Garden Verification Report (Public Version) at V.B (noting that the heads and part of the tails are removed and the shrimp are frozen or cooked and glazed); and X.2 (noting the types of additives, if any, added to the shrimp).

<sup>24</sup> *See* Verification Report at VIII.B.

<sup>25</sup> *See Final Determination* at Comment 6.A.

## **Analysis**

Upon further review, the Department now determines that the correct production quantity of Mingfeng should be used to weight-average the FOP database: 1) given that the correct quantity was on the record before verification; 2) the Department used the correct amount in the *Preliminary Determination* to weight average the FOP database; and 3) the Department eventually verified the correct amount. With regard to the actual implementation of the correct production amount in the margin program, upon reviewing the analysis memorandum and calculations, it appears that the Department actually did not implement what it stated it intended to do for the *Final Determination*, *i.e.*, use the quantity reported in the supplemental response. Instead, the Department actually used the correct amount, which it had used in the *Preliminary Determination*, to weight average the FOP databases.<sup>26</sup> Accordingly, no change needs to be made to the margin program as it already contains the result mandated by the Court.

## **D. Labor SV**

### **Background**

In the *Final Determination*, the Department calculated a surrogate wage value in accordance with the regression-based methodology set forth in 19 CFR 351.408(c)(3). In its court challenge, Red Garden argued that in calculating the wage rate, the Department should exclude all countries found not to be economically comparable to China. Red Garden further argued that the revised wage rate should not exceed the rate applied to the other mandatory respondents at the conclusion of the Allied Pacific litigation.

In *Dorbest*, the United States Court of Appeals for the Federal Circuit (“CAFC”) held that the Department’s “{regression-based} method for calculating wage rates {as stipulated by

---

<sup>26</sup> See Memorandum to the File; RE: Red Garden Final Determination Analysis Memorandum dated November 29, 2004, at SAS LOG lines 552-612.

19 C.F.R. 351.408(c)(3)} uses data not permitted by {the statutory requirements laid out in section 773 of the Act (*i.e.*, 19 U.S.C. § 1677b(c))}.”<sup>27</sup> Specifically, the CAFC interpreted section 773(c) of the Act to require the use of data from market-economy countries that are both economically comparable to the non-market economy (“NME”) at issue and significant producers of the subject merchandise, unless such data are unavailable. Because the Department’s regulation required the use of data from economically dissimilar countries which did not produce comparable merchandise, the CAFC invalidated the Department’s labor regulation (19 CFR 351.408(c)(3)).

On June 21, 2011, the Department revised its labor calculation methodology for valuing an NME respondent’s cost of labor in NME antidumping proceedings.<sup>28</sup> In *Labor Methodologies*, the Department found that the best methodology for valuing the NME respondent’s cost of labor is to use the industry-specific labor rate from the surrogate country. Additionally, the Department found that the best data source for calculating the industry-specific labor rate for the surrogate country is the data reported under “Chapter 6A: Labor Cost in Manufacturing” from the International Labor Organization (“ILO”) Yearbook of Labor Statistics,<sup>29</sup> rather than the Chapter 5B data it previously used in all NME cases. Accordingly, the Department is changing its SV selection for labor in this remand redetermination.

Following *Dorbest*, the Department requested a voluntary remand of its wage rate calculations for Red Garden in the *Final Determination*. The CIT granted that request and remanded the *Final Determination* with instructions that the labor wage value be recalculated in accordance with law, supported with substantial evidence, and comply with *Dorbest*.

---

<sup>27</sup> See *Dorbest*, 604 F.3d at 1366.

<sup>28</sup> See *Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092 (June 21, 2011) (“*Labor Methodologies*”).

<sup>29</sup> See *Labor Methodologies*, 76 FR at 39093.

## Analysis

In response to *Dorbest* and the CIT's decision in *Shantou*, the Department has revised its valuation of Red Garden's reported labor input in the *Final Determination*, in accordance with the CAFC's interpretation of section 773(c) of the Act as expressed in *Dorbest*. To value labor, as fully explained below, the Department has calculated an industry-specific hourly wage rate for the single, primary surrogate country, India.

The POI covers April 1, 2003, through September 30, 2003. The Department conducted its investigation between January 20, 2004, and December 8, 2004. Due to the reporting practices of our data sources, there is normally a lag between the year for which data are reported and the current year. Accordingly, for this remand redetermination, the Department is relying on 2002 ILO data because these data were available at the time the Department conducted the investigation.<sup>30</sup>

In order to calculate a new labor rate in conformity with the labor methodology set forth in *Labor Methodologies*, we are using data from the surrogate country, India, as 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.<sup>31</sup> Accordingly, the Department needed to place additional labor data on the record in order to determine the surrogate labor rate derived from Indian labor cost data.

Specifically, the Department has relied on the industry-specific data that includes shrimp processing (provided to the ILO under Sub-Classification 15 "Manufacture of Food Products and

---

<sup>30</sup> See *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 554-555 (1978) ("Administrative consideration of evidence . . . always creates a gap between the time the record is closed and the time the administrative decision is promulgated [and, we might add, the time the decision is judicially reviewed]. . . ." (citing *ICC v. Jersey City*, 322 U.S. 503, 514 (1944))).

<sup>31</sup> See *Preliminary Determination*, 69 FR at 42658.

Beverages” of the ISIC-Revision 3 standard). We used Chapter 6A data that would have been available at the time of the investigation and adjusted those values to the 2003 POI using the Consumer Price Index.<sup>32</sup>

## **E. Correction of Growth Stage Multiplier**

### **Background**

At verification, the Department was presented with a list of minor corrections including a correction to the growth stage multiplier of one of Red Garden’s suppliers.<sup>33</sup> In the *Final Determination*, the Department did not use this corrected growth stage multiplier and did not explain its reasoning. The Department requested a voluntary remand for the purposes of considering Red Garden’s supplier’s growth stage multiplier.

### **Analysis**

Upon further review, the Department will use the revised growth stage multiplier collected at verification as there is no indication that the Department rejected it as a minor correction at verification or that it intended to reject it in the *Final Determination*.

### **Final Results of Redetermination**

Pursuant to *Shantou*, we have implemented all changes discussed above and revised the margin for Red Garden. As a result of the redetermination, the antidumping duty margin for Red Garden is 7.20 percent.<sup>34</sup>

---

Paul Piquado  
Assistant Secretary  
for Import Administration

---

Date

---

<sup>32</sup> See Draft Results Analysis Memo at Attachment 1.

<sup>33</sup> See Red Garden Verification Report at Exhibit Mingfeng 1.

<sup>34</sup> See Draft Results Analysis Memo at Attachment 2.