

China First Pencil Co., Ltd., Shanghai Three Star Stationery Industry Co., Ltd., Orient International Holding Shanghai Foreign Trade Corporation, and Shandong Rongxin Import & Export Co., Ltd. v. United States and Sanford, L.P. and Musgrave Pencil Co., Inc.  
Consol. Court No. 09-00325, Slip Op. 10-110 (CIT September 30, 2010).

FINAL RESULTS OF REDETERMINATION  
PURSUANT TO REMAND

**A. SUMMARY**

The Department of Commerce (“Department”) has prepared these results of redetermination pursuant to the remand order of the U.S. Court of International Trade (“CIT” or “Court”) on September 30, 2010 in China First Pencil Co., Ltd., Shanghai Three Star Stationery Industry Co., Ltd., Orient International Holding Shanghai Foreign Trade Corporation, and Shandong Rongxin Import & Export Co., Ltd. v. United States and Sanford L.P. and Musgrave Pencil Co., Inc., Consol. Court No. 09-00325, Slip Op. 10-110 (“Remand Order”).

The CIT’s Remand Order concerns the Certain Cased Pencils from the People’s Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 74 FR 33406 (July 13, 2009), and accompanying Issues and Decision Memorandum (“IDM”), as amended by Certain Cased Pencils from the People’s Republic of China: Amended Final Results of Antidumping Duty Administrative Review, 74 FR 45177 (September 1, 2009) (collectively “Pencils 06-07 Final Results”). On October 15, 2010, the CIT extended its original deadline and ordered that the Department shall file its remand results in this action no later than December 20, 2010.

As a result of the Remand Order, the following three issues were remanded to the Department for further administrative proceedings: 1) calculation of the labor wage rate for China First Pencil Co., Ltd. (“China First”), Three Star Stationery Industry Co., Ltd. (“Three Star”), and Shandong Rongxin Import & Export Co., Ltd. (“Rongxin”) in accordance with

Dorbest Ltd. v. United States, 604 F.3d 1363 (Fed. Cir. 2010) (“Dorbest”); 2) calculation of the surrogate value for pencil slats for China First, Three Star, and Rongxin; and 3) calculation of the surrogate value for black cores, color cores, thick black cores, and thick color cores for China First, Three Star, and Rongxin. In accordance with Dorbest and the Remand Order, the Department has recalculated the labor wage rate using a method wholly in compliance with section 773(c)(3) of Tariff Act of 1930, as amended (“the Act”), and has recalculated its surrogate value for pencil slats and pencil cores using the pricing data in the “Paper and Stationery” article referenced in the Remand Order.

The Department has revised, as appropriate, the remanded components of the margin calculations challenged in the litigants’ complaints. Specifically, the recalculation of the wage rate resulted as a consequence of China First, Three Star, Orient International Holding Shanghai Foreign Trade Corporation (“SFTC”) (collectively “China First Plaintiffs”) and Rongxin’s complaints. Accordingly, the Department has incorporated the recalculated wage rate into China First’s, Three Star’s, and Rongxin’s margin calculations. The China First Plaintiffs’ and Rongxin’s complaints also challenged the surrogate values of slats and cores and, therefore, the Department has applied this change to the margins calculated for China First, Three Star, and Rongxin. Additionally, the China First Plaintiffs’ complaint challenged the Department’s calculation of SFTC’s separate rate should the Department be required upon remand to recalculate company-specific margins for China First, Three Star, and Rongxin. The Department has, therefore, recalculated the separate rate for SFTC based upon the changes to the margins calculated for China First, Three Star, and Rongxin in these remand results.

## **B. REMANDED ISSUES**

### **1. Pencil Slats Surrogate Value**

#### **Background**

In the Pencils 06-07 Final Results, the Department valued lindenwood pencil slats used by China First, Three Star, and Rongxin with publicly available, published U.S. prices for American basswood lumber.<sup>1</sup> The U.S. basswood lumber prices were taken from “Hardwood Market Report” for the period December 1, 2006, through November 30, 2007, for Northern 4/4 kiln-dried basswood for grades 1 and 2 Common. The Department’s determination in the Pencils 06-07 Final Results was premised upon its prior reliance on U.S. basswood lumber prices to calculate values for slats in prior segments of the proceeding and certain deficiencies identified with respect to the slat price data contained in an article from “Paper and Stationery,” an Indian trade publication.<sup>2</sup> The Court found numerous inadequacies with the “Hardwood Market Report” data as a surrogate value source in light of the alternative slat price data available from “Paper and Stationery.”<sup>3</sup> The Court ordered the Department to use “Paper and Stationery” to calculate a surrogate value for slats on remand.<sup>4</sup>

#### **Analysis**

In accordance with this Court’s Remand Order, the Department has recalculated slat surrogate values using slat prices from “Paper and Stationery” for China First, Three Star, and Rongxin. Despite our previously stated concerns with the “Paper and Stationery” data, we recognize that “Paper and Stationery” values the slat input used in the pencil production process

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<sup>1</sup> See Pencils 06-07 Final Results and accompanying IDM at Comment 4a.

<sup>2</sup> See id.

<sup>3</sup> See Remand Order at 12-16.

<sup>4</sup> See id. at 28.

in the primary surrogate country, India, and is consistent with the Department's preference to select surrogate values that are specific to the input in question.<sup>5</sup>

## 2. Pencil Cores Surrogate Value

### Background

In the Pencils 06-07 Final Results, the Department valued black and color cores for China First, Three Star, and Rongxin using World Trade Atlas (“WTA”) data. The Department declined to use “Paper and Stationery” to value cores because: 1) the Department could not determine if quoted prices represented actual transactions; 2) the source did not appear to be a regular industry survey of prices; 3) the source did not provide data regarding the total volume of sales; and 4) we could not determine if the prices excluded taxes.<sup>6</sup> Instead, as we have done in past segments of this proceeding, the Department used WTA data for the harmonized tariff subheading corresponding to “PENCIL LEADS, BLACK/COLOURED” to value black and color cores of various thicknesses. We did so because, consistent with the Department's surrogate valuation methodology, the WTA data reflect numerous transactions, represent a range of prices during the period of review (“POR”), are from a published source that is publicly available, and are tax-exclusive.<sup>7</sup> In its Remand Order, however, the Court found the Department's use of the same WTA data to value black and color cores, regardless of their thickness, to be unsupported by record evidence, which demonstrated significant price differences between black and color cores of various thicknesses.<sup>8</sup> The Court ordered the Department on remand to “recalculate separate surrogate values for black cores, color cores,

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<sup>5</sup> See Glycine From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 74 FR 41121 (August 14, 2009) and accompanying IDM at Comment 3; see also First Administrative Review of Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 74 FR 57995 (November 10, 2009) and accompanying IDM at Comment 3d.

<sup>6</sup> See Pencils 06-07 Final Results and accompanying IDM at Comment 4b.

<sup>7</sup> See id. at Comments 4 and 4b.

<sup>8</sup> See Remand Order at 21-23.

thick black cores, and thick color cores that reflect the differences in price established” by record evidence.<sup>9</sup>

### **Analysis**

In accordance with this Court’s Remand Order, and for the reasons set forth below, the Department has recalculated the black and color cores surrogate values using core prices from “Paper and Stationery” for China First, Three Star, and Rongxin.

The Department reviews surrogate value information on a case-by-case basis and, in accordance with section 773(c)(1) of the Act, selects the best available information from the surrogate country to value the factors of production. After reconsidering the available information on the record and acting in accordance with the Court’s Remand Order to calculate a surrogate value for cores accounting for differences in color and thickness, the Department concludes that “Paper and Stationery” constitutes the best available information on the record of the review to revalue cores. Despite our previously indicated concerns about the “Paper and Stationery” core data,<sup>10</sup> the core values in “Paper and Stationery” are publicly available, sufficiently contemporaneous, input-specific, and not aberrational.<sup>11</sup> Whereas the WTA data combine prices for black cores and color cores of various thicknesses, “Paper and Stationery” contains separate prices for black and color cores of different sizes.<sup>12</sup> Those prices represent transactions from the only known Indian supplier of both black and color cores for the pencil industry. Thus, based upon reconsideration of the record of the review on remand, the

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<sup>9</sup> See *id.* at 28.

<sup>10</sup> See Pencils 06-07 Final Results and accompanying IDM at Comment 4b.

<sup>11</sup> See Fresh Garlic from the People’s Republic of China: Final Results and Partial Rescission of the 12th Administrative Review, 73 FR 34251 (June 17, 2008) and accompanying IDM at Comment 2.

<sup>12</sup> See Pencil Industry in India – A Robust Future, Divya Jha, Paper & Stationery Samachar (Delhi November 2008), attached as Exhibit 2 to China First and Three Star’s February 10, 2009, Surrogate Value submission.

Department determines that “Paper and Stationery” values result in better input-specific prices for black and color core inputs of various thicknesses.

Therefore, in calculating the surrogate value for black cores, color cores, thick black cores, and thick color cores in the final results, the Department is using core prices from “Paper and Stationery.” Because “Paper and Stationery” does not contain a separate price for thick black cores, we have taken the percentage difference between the price of color cores and thick color cores in “Paper and Stationery” and increased the average price of black cores by this ratio to obtain a price for thick black cores.<sup>13</sup> Although the record does contain a price list from Lead Slips Products Pvt. Ltd. that includes black cores classified as “Degree or Drawing Lead” of up to 3.40 millimeter thickness,<sup>14</sup> the Department prefers to use prices that represent actual transactions instead of price lists.<sup>15</sup> In addition, we did not use the thick black cores prices from Lead Slips Products Pvt. Ltd. because record evidence indicates that the respondents’ pencil sales to the United States are all basic number two (or HB), which is “the standard writing grade for a pencil core as distinct from specialty uses such as sketching, technical drawing, art uses and the like.”<sup>16</sup> Therefore, because the thick black cores used by the respondents cannot be classified as “Degree or Drawing Leads,” we have determined not to use the thick black cores prices from Lead Slips Products Pvt. Ltd. Nevertheless, we have been able to derive separate surrogate values for black cores, thick black cores, color cores, and thick color cores using prices in “Paper and Stationery” in the manner described above.

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<sup>13</sup> See Memorandum to the File, through Nancy Decker, Acting Director, AD/CVD Operations, Office 1, from Alexander Montoro, International Trade Analyst, AD/CVD Operations, Office 1, entitled, “Analysis Memorandum for the Redetermination Pursuant to Court Remand in the 2006-2007 Administrative Review of the Antidumping Duty Order on Certain Cased Pencils from the People’s Republic of China,” dated December 6, 2010 (“Pencils 06-07 Remand Calc Memo”).

<sup>14</sup> See China First and Three Star’s February 10, 2009, Surrogate Value submission at Exhibit SV-3C and SV-3D.

<sup>15</sup> See, e.g., Laminated Woven Sacks from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances, 73 FR 35646 (June 24, 2008) and accompanying IDM at Comment 2.

<sup>16</sup> See China First and Three Star’s February 10, 2009, Surrogate Value submission at 3-4.

### 3. Wage Rate

#### **Background**

In the Pencils 06-07 Final Results, the Department calculated a surrogate wage value in accordance with the regression-based methodology set forth in 19 C.F.R. 351.408(c)(3). In their court challenge, the China First Plaintiffs and Rongxin argued, *inter alia*, that the Department's regulation was invalid because it prescribes a methodology for valuing labor that is inconsistent with the statutory requirement to derive the prices or costs of the factor of production from market economy countries that are both economically comparable to the non-market economy ("NME") country, and significant producers of the subject merchandise. See section 773(c)(4) of the Act.

In Dorbest, the U.S. Court of Appeals for the Federal Circuit ("CAFC") held that the Department's "{regression-based} method for calculating wage rates {as stipulated by 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>17</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 NME at issue and significant producers of the subject merchandise, unless such data are unavailable. Because the Department's regulation requires the Department to use data from economically dissimilar countries and from countries that do not produce comparable merchandise, the CAFC invalidated the Department's labor regulation (19 C.F.R. 351.408(c)(3)). Following Dorbest, the Department requested a voluntary remand for its wage rate calculations for China First, Three Star, and Rongxin in the Pencils 06-07 Final Results. The CIT granted

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<sup>17</sup> See Dorbest, 604 F.3d at 1372.

that request and remanded the Pencils 06-07 Final Results with instructions that the labor wage value be recalculated in accordance with the decision in Dorbest.

### **Analysis**

In response to Dorbest and this Court's Remand Order, the Department has revised its valuation of China First's, Three Star's, and Rongxin's reported labor input in the Pencils 06-07 Final Results, in accordance with the CAFC's interpretation of section 773(c) of the Act as expressed in Dorbest. To value labor, the Department has not relied on the regression-based methodology set forth in 19 C.F.R. 351.408(c)(3). Instead, as we fully explain below, for this remand redetermination, the Department calculated an hourly wage rate for labor by averaging earnings and/or wages in countries that are economically comparable to the People's Republic of China ("PRC") and that are significant producers of comparable merchandise.

### **Remand Proceedings Before the Department**

In order to calculate a new wage rate in compliance with the CAFC's remand directive in Dorbest that labor must be valued using data from countries that are both economically comparable to the PRC and significant producers of comparable merchandise, the Department found it necessary to seek new factual information. Specifically, the Department needed to place additional wage data on the record in order to determine which countries are both economically comparable and significant producers of comparable merchandise.

On October 13, 2010, the Department notified the parties to the remand proceeding that in response to Dorbest, it would be revising its calculation of the labor wage rate applied to China First, Three Star, and Rongxin in its redetermination on remand.<sup>18</sup> In this notification, the

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<sup>18</sup> See Memorandum to the File, through Nancy Decker, Acting Director, AD/CVD Operations, Office 1 and Scott Holland, Acting Program Manager, AD/CVD Operations, Office 1 from Alexander Montoro, International Trade Analyst, AD/CVD Operations, Office 1, entitled, "Remand Determination of 2006-2007 Administrative Review of the Antidumping Duty Order on Certain Cased Pencils from the People's Republic of China: Industry-Specific

Department added the aforementioned new factual information (i.e., the necessary wage data and information regarding the exports of countries economically comparable to the PRC) to the record for the calculation of wage rate, and gave parties an opportunity to comment on the new data and to submit new factual information with regard to the narrow issue of the recalculation of labor wage rate.<sup>19</sup>

On October 14, 2010, China First Plaintiffs and Rongxin provided initial comments on the wage rate data released by the Department.<sup>20</sup> Sanford L.P. and Musgrave Pencil Co., Inc. (“Petitioners”) did not offer wage rate comments at that time. After the CIT granted an extension of the remand deadline to December 20, 2010, the Department, on October 18, 2010, afforded parties an additional opportunity to comment on the wage rate data released by the Department.<sup>21</sup> On October 25, 2010, China First Plaintiffs and Rongxin provided additional comments on the wage rate data released by the Department.<sup>22</sup> Petitioners did not offer wage rate comments or rebuttal comments.

The Department issued its Draft Remand Results to parties for comments on December 6, 2010.<sup>23</sup> On December 10, 2010, Rongxin provided comments on the Draft Remand Results.

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Wage Rate Selection,” dated October 13, 2010 (“Wage Rate Memo”).

<sup>19</sup> See id.

<sup>20</sup> See Letter from China First Plaintiffs entitled, “China First, Three Star, and SFTC’s Comments on Remand Wage Rate Data: Administrative Review of Certain Cased Pencils from the People’s Republic of China, A-570-827,” dated October 14, 2010; Letter from Rongxin entitled, “Comments on Remand Determination Regarding Labor, U.S. Court of International Trade Consol. Ct. 09-00325,” dated October 14, 2010.

<sup>21</sup> See Memorandum to the File from Nancy Decker, Program Manager, AD/CVD Operations, Office 1, entitled, “Request for Parties’ Additional Comments: Industry-Specific Wage Rate Selection - Remand Determination of 2006-2007 Administrative Review of the Antidumping Duty Order on Certain Cased Pencils from the People’s Republic of China,” dated October 18, 2010.

<sup>22</sup> See Letter from China First Plaintiffs entitled, “Additional Comments on Remand Labor Rate in the 2006-2007 Antidumping Duty Administrative Review of Certain Cased Pencils from China – Remand in Slip Op. 10-110,” dated October 25, 2010 (“China First Plaintiffs Additional Wage Rate Comments”); Letter from Rongxin entitled, “Certain Cased Pencils from the People’s Republic of China: Provision of Surrogate Value For Labor Rate and Comments on Remand Determination Regarding Selection of Surrogate Country, Consol. Ct. 09-00325,” dated October 25, 2010.

<sup>23</sup> See Letter to All Interested Parties, from Nancy Decker, Acting Director, AD/CVD Operations, Office 1, regarding, “Request for Parties’ Comments: Draft Remand Results of 2006-2007 Administrative Review of the Antidumping Duty Order on Certain Cased Pencils from the People’s Republic of China,” dated December 6, 2010

China First Plaintiffs and Petitioners did not offer comments on the Draft Remand Results. The parties' comments are addressed below.

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

To achieve a labor value that is both responsive to the Remand Order and the CAFC's directives in Dorbest, and also based on the best available information for this remand redetermination, we have relied on labor data from several countries that we have determined to be both economically comparable to the PRC and significant producers of comparable merchandise.

Although the Department is no longer using a regression-based method to value labor, we continue to find reliance on labor data from multiple countries, as opposed to labor data from a single country, constitutes the best available information for valuing the labor input. While data from a single surrogate country can reliably be used to value most other factors of production, wage data from a single surrogate are not the best method for valuing the labor input due to the variability that exists between wages and gross national income per capita ("GNI").<sup>24</sup> While there is a strong worldwide relationship between wage rates and GNI, we continue to find that too much variation exists among the wage rates of comparable market economies.

For example, when examining the relevant wage data on the record, even for countries that are relatively comparable in terms of GNI for purposes of factor valuation (e.g., countries with GNIs between USD 950 and USD 3,400, as explained in the paragraph below), the wage rate spans from USD 0.40 to USD 1.87.<sup>25</sup> Additionally, in 2007, although both Indonesia and the Philippines had GNIs below USD 2000 per capita, and both could be considered

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("Draft Remand Results").

<sup>24</sup> See Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments, 71 FR 61716, 61720 (October 19, 2006) ("Antidumping Methodologies").

<sup>25</sup> See Wage Rate Memo at Attachment 1.

economically comparable to the PRC, Indonesia's observed labor rate is USD 0.40, as compared to the Philippines' observed wage rate of USD 1.15 – almost three times that of Indonesia.<sup>26</sup>

There are many socio-economic, political and institutional factors, such as labor laws and policies unrelated to the size or strength of an economy, that cause significant variances in wage levels between countries. See, e.g., International Labor Organization, Global Wage Report: 2009 Update, (2009) at 5, 7, and 10, available at [http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms\\_116500.pdf](http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_116500.pdf). For this reason, and because labor is not traded internationally, the variability in labor rates among countries that are otherwise economically comparable, as a general rule, does not characterize other production inputs or impact other factor prices. Moreover, the large variance in these wage rates illustrates the arbitrariness of relying on a wage rate from a single country. The Department thus finds that reliance on wage data from a single country would be unreliable and arbitrary. For these reasons, the Department maintains its longstanding position that, even when not employing a regression-based methodology, more data are still better than less data for purposes of valuing labor. Accordingly, 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 multiple countries that also meet the statutory criteria of economic comparability and significant producer.

In order to determine the economically comparable surrogate countries from which to calculate a surrogate wage rate, the Department looked to the Surrogate Country Memo.<sup>27</sup> Early in the review, the Department selected five countries for consideration as the primary surrogate

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<sup>26</sup> See id.

<sup>27</sup> See Memorandum to Susan H. Kuhbach, Director, Office 1, from Carole Showers, Acting Director, Office of Policy, re: Administrative Review of the Antidumping Duty Order on Certain Cased Pencils (“Pencils”) Request for a List of Surrogate Countries, dated July 9, 2008 (“Surrogate Country Memo”). See also, 19 C.F.R. 351.408(b).

country for this investigation. To determine which countries were at comparable levels of economic development to the PRC, the Department placed primary emphasis on GNI. The Department relies on GNI to generate its initial list of countries considered to be economically comparable to the PRC.<sup>28</sup> In the administrative review, the list of potential surrogate countries found to be economically comparable to the PRC included India, the Philippines, Indonesia, Colombia, and Thailand.<sup>29</sup> From the list of countries contained in the Surrogate Country Memo, the Department used the country with the highest GNI (i.e., Thailand) and the lowest GNI (i.e., India) as “bookends” for economic comparability. The Department then identified all countries in the World Bank’s World Development Report with per capita GNIs that fell between the “bookends.” This resulted in 40 countries, ranging from India (with USD 950 GNI) to Thailand (with USD 3,400 GNI), that the Department considers economically comparable to the PRC.<sup>30</sup> There were 36 countries after we excluded the NME designated countries from the GNI band.<sup>31</sup>

Regarding the “significant producer” prong of the statute, the Department identified all countries that had exports of comparable merchandise (defined as the Harmonized Tariff Schedule of the United States (“HTSUS”) 9609.10.00, which is identified in the scope of this order) between 2005 and 2007.<sup>32</sup> In this case, we have defined a “significant producer” as a country that has exported comparable merchandise from 2005 through 2007. After screening for countries that had exports of comparable merchandise, we determine that 27 of the 36 countries designated as economically comparable to the PRC are also significant producers.

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<sup>28</sup> See Surrogate Country Memo.

<sup>29</sup> See id.

<sup>30</sup> See Wage Rate Memo at Attachment 2.

<sup>31</sup> We note that Azerbaijan, Armenia, Georgia, and Moldova have been excluded because they are NME designated countries. See <http://ia.ita.doc.gov/wages/07wages/final/final-2009-2007-wages.html> for Expected 2007 Wages of Selected NME Countries and see also Pencils 06-07 Remand Calc Memo.

<sup>32</sup> See Wage Rate Memo at Attachment 2. Export data are obtained from the Global Trade Atlas (“GTA”).

Accordingly, for purposes of valuing wages in this remand redetermination, the Department determines the following 27 countries to be both economically comparable to the PRC, and significant producers of comparable merchandise: Albania; Algeria; Bolivia; Cameroon; Cape Verde; Colombia; Ecuador; Egypt; El Salvador; Guatemala; Guyana; Honduras; India; Indonesia; Jordan; Maldives; Morocco; Namibia; Nicaragua; Paraguay; Philippines; Sri Lanka; Swaziland; Syria; Thailand; Tunisia; and Ukraine.<sup>33</sup>

The Department then identified which of those 27 countries also reported the necessary wage data. In doing so, the Department has continued to rely upon International Labor Organization (“ILO”) Chapter 5B data “earnings,” if available and “wages” if not.<sup>34</sup> We used the most recent data that would have been available at the time of this administrative review (2001-2007), and adjusted those values to the 2006-2007 POR using the relevant Consumer Price Index (“CPI”).<sup>35</sup> Of the 27 countries that the Department has determined are both economically comparable and significant producers of comparable merchandise, twenty countries (*i.e.*, Albania, Algeria, Bolivia, Cameroon, Cape Verde, Colombia, El Salvador, Guatemala, Guyana,

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<sup>33</sup> See *id.*

<sup>34</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 are unavailable from the base year (2007) or the previous five years (2001-2006) 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 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>35</sup> Under the Department’s regression analysis, 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 Wage Rate Memo at Attachment 2 for the CPI data used in the instant case.

Honduras, India, Maldives, Morocco, Namibia, Nicaragua, Paraguay, Sri Lanka, Swaziland, Syria, and Tunisia), were omitted from the wage rate valuation because there were no earnings or wage data available. The remaining countries reported either earnings or wage rate data to the ILO within five years of the base year.<sup>36</sup>

Based on the selection methodology set forth above, seven countries reported reliable wage data for purposes of this remand determination: Ecuador; Egypt; Indonesia; Jordan; the Philippines; Thailand; and Ukraine.

Having identified these countries, the Department further determined it appropriate to rely on industry-specific wage data for this remand redetermination. Specifically, the Department has relied on the industry-specific data that includes pencils (provided to the ILO under Sub-Classification 36 of the ISIC-Revision 3 standard) by countries determined to be both economically comparable to the PRC and significant producers of comparable merchandise. Of the seven countries determined by this selection process, industry-specific data (i.e., data from Sub-Classification 36 of the ISIC-Revision 3) are available from all. Therefore, the revised wage rate relies on information from: Ecuador; Egypt; Indonesia; Jordan; the Philippines; Thailand; and Ukraine.

Based on the foregoing methodology, the revised wage rate being applied to China First, Three Star, and Rongxin in this remand redetermination is USD 1.07 /hour. This revised wage rate is derived from comparable economies that are also significant producers of the comparable merchandise, consistent with the CAFC's ruling in Dorbest and the statutory requirements of section 773(c) of the Act.

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<sup>36</sup> See ILO's Yearbook of Labour Statistics.

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

Although the Department has had to add new information to the record in order to carry out the remand directives, the Department finds that it is appropriate to rely only on wage rate data that would have been available to the Department at the time it conducted the administrative review. The relevant POR covers December 1, 2006, through November 30, 2007. The Department conducted its administrative review of this period between January 28, 2008, and September 1, 2009. Accordingly, in this remand determination, we have relied on GNI and ILO data that were published and available in 2009. Due to the reporting practices of our data sources, there is normally a two-year interval between the year for which data are reported and the current year. Accordingly, for this remand redetermination, the Department is relying on 2007 GNI and ILO data because these data were available at the time the Department conducted the review. To consider information available subsequent to the publication of Pencils 06-07 Final Results on remand would give incentive to parties in other administrative proceedings to challenge Department decisions before this Court on the basis of evidence not available until the administrative record had closed.

### **Summary and Analysis of Litigants' Wage Rate Comments**

#### ***Use of Wage Rate Data only Available on Record of Review***

China First Plaintiffs argue that rather than using data that would have been available during the administrative review, the Department should only rely on information that was on the record at the time of the final determination in this review.

In particular, China First Plaintiffs urge the Department to use the Indian wage rate from the ILO, Geneva Labour Statistics Database Chapter 5B, Wages in Manufacturing, submitted by

China First.<sup>37</sup> According to China First Plaintiffs, the issue of whether to use this labor value was fully briefed in the underlying proceeding, with all parties having had the opportunity to comment on and rebut China First's argument.

**Department's Position:**

For the reasons explained above under "Re-Valuation of Labor Wage Rate," the Department seeks to use multiple countries' data for valuing the labor factor. To achieve this, it was necessary to place new information on the record. The parties have had ample opportunity in the course of this remand proceeding to comment on and submit arguments regarding these data. Therefore, we disagree that we were constrained to use the Indian information on the original record of the review as the basis for determining the labor value.

***Use of Indian Wage Data for Labor Surrogate Value***

China First Plaintiffs argue that the Department should rely solely on India labor values. According to China First Plaintiffs, the labor rate from India complies with section 773(c)(4) of the Act and the CAFC's directives in Dorbest since India is an economically comparable country that is a significant producer of comparable merchandise. Moreover, the China First Plaintiffs argue that the Department selected India as the primary surrogate country for this administrative review due to the reliability of its data.<sup>38</sup> Given its longstanding preference is to derive surrogate values from the primary surrogate country as long as there is useable data, the Department should do so here.<sup>39</sup> China First Plaintiffs further cite to 19 C.F.R. 351.408(c)(2), which states

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<sup>37</sup> See China First's Post-Preliminary Surrogate Value Submission, at Exhibit 1 (February 10, 2009).

<sup>38</sup> See Certain Cased Pencils from the People's Republic of China; Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review, 74 FR 673, 674 (January 7, 2009).

<sup>39</sup> See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Silicon Metal From the Russian Federation, 68 FR 6885 (February 11, 2003) and accompanying IDM at Comment 7 and Citric Acid and Certain Citrate Sales From the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value, 74 FR 16838 (April 13, 2009) and accompanying IDM at Comment 5A.

that the Department will normally value all factors in a single surrogate country, as support.<sup>40</sup>

China First Plaintiffs finally point out that all other surrogate values in this review will be from India after taking into account the Remand Order.

China First Plaintiffs next address the industry-specific wage information they submitted pertaining to pencil production in India.<sup>41</sup> Citing Allied Pac. Food and the subsequent Thai Shrimp Remand, China First Plaintiffs argue that Indian sector-specific labor rate data are directly in accord with CIT precedent.<sup>42</sup> Moreover, this value can be inflated using a labor-specific wage index from the 2009-2010 India Labor Report.<sup>43</sup> Thus, China First Plaintiffs argue their submitted sector-specific labor rate is the most accurate of the potential labor rates on the record.

Citing Shanghai Foreign Trade Enterprises, Ltd. v. United States, 318 F. Supp. 2d 1229, 1350 (2004) (“Shanghai Foreign Trade”), Rongxin argues that the Department must calculate dumping margins as accurately as possible and, to do so, should use Indian wage data relating to pencil production. Like China First Plaintiffs, Rongxin states that the Department has already declared India as the primary surrogate country and cites to 19 C.F.R. 351.408(c)(2), arguing that the Department normally values inputs in a single country. Moreover, Rongxin argues that the Indian wage rate is the most contemporaneous with the POR of any data on the record.

#### **Department’s Position:**

We disagree that it is appropriate to rely on wage data from a single surrogate country. As fully explained in the Re-Valuation of the Labor Wage Rate section, above, the Department

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<sup>40</sup> China First Plaintiffs acknowledge 19 C.F.R. 351.408(c)(2) has an exception for labor, but argue it has been invalidated by Dorbest and no longer applies.

<sup>41</sup> See China First Plaintiffs Additional Wage Rate Comments at Attachments 1 and 2.

<sup>42</sup> See Allied Pac. Food (Dalian) Co. v. United States, 587 F. Supp. 2d 1330 (Ct. Int’l Trade 2008) (“Allied Pac. Food”) and Final Results of Redetermination Pursuant to Court Remand: Frozen and Canned Warmwater Shrimp from the People’s Republic of China (May 21, 2009) (“Thai Shrimp Remand”).

<sup>43</sup> See China First Plaintiffs Additional Wage Rate Comments at Attachment 1.

finds that data from a single country do not constitute the best available information. Despite the strong worldwide relationship between wage rates and GNI, there exists an unacceptable variation between among the wage rates of comparable market economies. Therefore, the Department prefers to employ a methodology that relies on a wider pool of countries in order to minimize the effects of the variability that exists between wage data of comparable countries.

To this point, the Department disagrees with China First Plaintiffs' and Rongxin's assertion that Dorbest compels the Department to rely on wage data from a single surrogate country. Section 351.408(c)(2) of the Department's regulations does not prohibit the Department from sourcing factor data from multiple countries. Rather, both the statute and our regulations recognize the discretion to source factor data from more than one country.<sup>44</sup> Although 19 C.F.R. 351.408(c)(2) provides that the Department will normally source the factor of production from a single surrogate country, the use of the word "normally" means that this is not an absolute mandate. As we explained in detail above, the unique nature of the labor input warrants a departure from our normal preference of sourcing all factor inputs from a single surrogate country. Moreover, there is nothing in the CAFC's opinion in Dorbest to suggest the court's intent was to prohibit the use of multiple surrogate countries when valuing labor. On the contrary, Dorbest states, in relevant part:

Although we need not resolve which of those countries, or which additional countries, could properly be considered economically comparable to China, some subset of these countries must surely fit the bill.<sup>45</sup>

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<sup>44</sup> See section 773(c)(1) of the Act ("the valuation of the factors of production shall be based on the best available information . . . in a market economy country or countries considered to be appropriate. . . ." (emphasis added)); see also section 773(c)(4) of the Act ("in valuing factors of production [the Department] . . . shall utilize . . . the prices or costs of factors of production in one or more market economy countries . . ." (emphasis added)).

<sup>45</sup> See Dorbest, 604 F.3d at 1372 (emphasis added).

Accordingly, we find that our reliance on wage data from several countries to value labor is fully consistent with the statute and our regulations, and disagree that it contravenes the directives set forth in Dorbest.

Regarding the labor-specific inflator submitted by China First Plaintiffs, this argument is immaterial because India is not among the countries used to calculate our labor rate surrogate value.

### ***Selection of Countries that are Significant Producers***

China First Plaintiffs claim that the Department's proposed methodology does not comply with the requirements of Dorbest and the statute, because it contravenes the significant producer prong of the statute. They cite to Chevron, U.S.A., Inc. v. NDRC, Inc., 467 U.S. 837, 842-43 (1982), stating that the statute is clear and, hence, the Department must carry out the directive of Congress and only rely on data from significant producers of comparable merchandise. They also cite to Platt v. Union P. R. Co., 99 U.S. 48, 58-59 (1878) stating that "Congress is not to be presumed to have used words for no purpose." China First Plaintiffs contend that the Department's definition of significant producer - all countries having exports of pencils from 2005-2007<sup>46</sup> - is impermissible. They point out the Department used Moldova, a country having USD 1,439 of pencil exports in 2006 and USD 5 in 2007, in its calculation.<sup>47</sup>

Rongxin also objects to the Department's identification of ten countries as significant producers of pencils. Rongxin notes that Azerbaijan had zero exports in 2006 and 2007, coinciding with the POR. Georgia had zero exports in 2006 and USD 211 of pencils exports in 2007 and, Moldova only exported a few boxes of pencils in 2006 and USD 5 worth in 2007. Rongxin also points out that Ecuador, Egypt, Jordan, the Philippines, and Ukraine exported less

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<sup>46</sup> See Wage Rate Memo at 3.

<sup>47</sup> See id. at Attachment 2.

than four to five containers in an entire year based on the typical value of a container shipped by Rongxin in the POR. It asserts that the test is not whether countries are exporters, but rather significant exporters and Rongxin concludes that of the ten countries named by the Department, only Indonesia and Thailand are significant producers.<sup>48</sup>

In support of its argument, Rongxin states that the legislative history of the provision indicates that the term “significant producer” includes any country that is a significant net exporter and a significant net exporting country may be used in valuing factors.<sup>49</sup> Moreover, the Department has previously relied on countries being a net exporter in order to qualify as a significant producer.<sup>50</sup>

Rongxin finally suggests that, if the Department uses the wage rates of all these countries, the calculation should be a weighted-average, relying on the level of exports of pencils, and not on a simple-average of the wage rates because using a simple average over-emphasizes the wage rates of countries that had zero exports in the POR.

**Department’s Position:**

We disagree that only net exporters can be considered significant producers. 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. The antidumping statute and regulations are silent in defining a “significant producer,” and the antidumping statute grants the Department discretion to look at various data sources for determining the best available information. See section 773(c) of the

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<sup>48</sup> Rongxin argues that of Indonesia and Thailand, only Indonesia has data contemporaneous with the POR. However, based on the clear language of the statute, Rongxin claims that the Department must use India by itself or India in conjunction with Indonesia.

<sup>49</sup> See Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Rep. No. 100-576, at 590 (1988).

<sup>50</sup> Certain Non-Frozen Apple Juice Concentrate from the People’s Republic of China: Final Results, Partial Rescission and Termination of a Partial Deferral of the 2002-2003 Administrative Review, 69 FR 65148 (November 10, 2004) and accompanying IDM at Comment 1.

Act. Moreover, while the legislative history provides that the “term ‘significant producer’ includes any country that is a significant net exporter,”<sup>51</sup> it does not stipulate a specific metric that must be used to determine whether a country is a significant producer and, thus, does not preclude consideration of additional factors. While not definitive, the reference to net exporters in the legislative history presumes that exports provide at least some indication of significant production.<sup>52</sup>

Moreover, the parties’ arguments concerning Azerbaijan, Georgia, and Moldova are moot because we have removed these countries, as well as Armenia, from the wage rate data since they are NME designated countries.<sup>53</sup>

With regard to Rongxin’s argument that the Department should weight-average the wage rate calculation based on the export levels rather than use a simple average, we disagree that this is appropriate, and we have continued to base the calculation on a simple average. Rongxin has not provided any basis to support its argument that the Department should weight-average wage rates using exports. Given that all the selected countries have been found to be significant producers of comparable merchandise, we see no reason to assign greater importance to one country’s wage rate just because that country may export more pencils than another.

***Use of Indonesian Wage Data and Comparison of Choices for the Surrogate Value for Labor***

Rongxin states that the Department’s potential rejection of public, contemporaneous, industry-specific data from the primary surrogate country is unlawful.<sup>54</sup> Moreover, according to Rongxin, the Department must review all data and provide an explanation of what constitutes the

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<sup>51</sup> See Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Rep. No. 100-576, at 590 (1988).

<sup>52</sup> See *id.*

<sup>53</sup> See <http://ia.ita.doc.gov/wages/07wages/final/final-2009-2007-wages.html> for Expected 2007 Wages of Selected NME Countries and see also Pencils 06-07 Remand Calc Memo.

<sup>54</sup> See *Allied Pac. Food (Dalian) Co. v. United States*, Consol. Court No. 05-00056, Slip Op. 10-83, at \*21-\*22 (Ct. Int’l Trade July 29, 2010).

best available information.<sup>55</sup> Finally, Rongxin posits the Department must provide a reasoned explanation when it rejects a respondent's choice for a surrogate value<sup>56</sup> and must hold the data it uses for valuing labor to the same test it applies to the data provided by a respondent.<sup>57</sup>

Rongxin next states the Department did not make a fair comparison of the data on the record and argues only India and Indonesia would pass the substantial evidence standard<sup>58</sup> because: 1) the Department offers no explanation why the data from other countries better meet its standards of quality, specificity, and contemporaneity vis-à-vis the Indian data; 2) the multiple-country data are extraordinarily higher than the Indian domestic data and varies widely;<sup>59</sup> 3) labor-rate data used by the Department is not as contemporaneous as the Indian data, and the Department provides no justification for this;<sup>60</sup> and 4) the Department identifies a country that exports less than the equivalent of one container of pencils a year as a significant producer and includes the country in the labor rate, yet provides no reasonable justification for such an action.

Rongxin further claims that it is inappropriate to use data from Thailand because the data are from 2003 and, thus, not contemporaneous with the POR. Second, Rongxin argues that the

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<sup>55</sup> See Olympia Indus. v. United States, 22 CIT 387, 390 (1998) (The Department's longstanding policy is to "fully consider available information to satisfy the overarching mandate to select the best available information, weighting all relevant characteristics of the data, in accordance with 773(c)(1) of the Act."). See also Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review, and Final Partial Rescission of Antidumping Duty Administrative Review, 67 FR 19546 (April 22, 2002) and accompanying IDM at Comment 2.

<sup>56</sup> See CITIC Trading Company Ltd. v. United States of America and ABC Coke, et al., Court No. 01-00901, Slip Op. 03-23, 27 CIT at 365 n.12 (Ct. Int'l Trade 2003).

<sup>57</sup> See Shanghai Foreign Trade, 318 F. Supp. 2d at 1350.

<sup>58</sup> See Allied Pac. Food (Dalian) Co. v. United States, 435 F. Supp. 2d 1295, 1313-1314 (Ct. Int'l Trade 2006); Dorbest Ltd. v. United States, 462 F. Supp. 2d 1262 (Ct. Int'l Trade 2006); Atlantic Sugar, Ltd. v. United States, 744 F.2d 1556, 1562 (Fed. Cir. 1984); and Jinan Yipin Corp. v. United States, 637 F. Supp. 2d 1183, 1192 (Ct. Int'l Trade 2009).

<sup>59</sup> Rongxin notes high prices and wide variations are not considered to be the best available information. See Jinan Yipin Corp. v. United States, 526 F. Supp. 2d 1347, 1377 (Ct. Int'l Trade 2007).

<sup>60</sup> See Asociacion Colombiana De Exportadores v. United States, 40 F. Supp. 2d 466, 472 (Ct. Int'l Trade 1999) (cited for proposition that mere speculation is not sufficient and the Department must provide a reasonable justification).

Department has not provided record evidence to show why the country-wide inflation rate is applicable to wages and, thus, the inflator is not based on substantial evidence. Moreover, the Department has not justified using information from different periods, something it does not do for other inputs. Rongxin claims the Indonesian data are contemporaneous with the POR and cites to Zhejiang Native Produce & Animal By-Products Imp. & Exp. Corp v. United States, 28 C.I.T. 1427, 1435 (2004) (“Zhejiang Native Produce”), which states that “Commerce rightly favors data contemporaneous with the POI over that which is not.”

**Department’s Position:**

We disagree with Rongxin’s argument that we should base our wage rate calculation on data only for India and/or Indonesia. As explained above under “Re-Valuation of the Labor Wage Rate,” we have determined that it is preferable to rely on wage data from multiple countries. Moreover, because India did not report wage data in the ISIC Revision we relied upon for industry-specific wage rates, it is not among the countries we considered for inclusion in the average. Therefore, we do not agree that the data for India or Indonesia individually or in combination constitute the best available information for valuing labor in this remand redetermination.

The Department disagrees with Rongxin that our rejection of data from either the primary surrogate country, India, or Indonesia is unlawful. Section 351.408(c)(2) of our regulations provides that the Department will normally source the factors of production from a single surrogate country, the use of the word “normally” means that this is not an absolute mandate. As we explained in detail above, the unique nature of the labor input warrants a departure from our normal preference of sourcing all factor inputs from a single surrogate

country. Moreover, there is nothing in the CAFC's opinion in Dorbest to suggest the court's intent was to prohibit the use of multiple surrogate countries when valuing labor.

We acknowledge that the methodology we have used differs from the Department's standard factor of production methodology, but the CAFC has recognized that the Act does not "say anywhere that the factors of production must be ascertained in a single fashion,"<sup>61</sup> and has stressed that the critical question is whether the methodology used by the Department in deriving a surrogate value is based on the best available information and establishes antidumping margins as accurately as possible.<sup>62</sup> In fact, the CAFC has also concluded that section 773(c)(4) of the Act "does not preclude consideration of pricing or costs beyond the surrogate country if necessary."<sup>63</sup>

Additionally, the Department disagrees with Rongxin that there are concerns about the Department's methodology with respect to contemporaneity. Although it is our preference to use data that are the most contemporaneous on the record when possible, it is also the Department's preference when valuing wage rates to use data from a broad basket of countries. As explained above, more data are better than less data for purposes of valuing labor. If the Department were to limit its surrogate value analysis and use only India or Indonesia (or both), as argued by Rongxin, the Department would be rejecting its preference for using more data. We do not believe this is appropriate. Accordingly, the Department has employed a methodology that takes into consideration wage rates from several countries and still falls within five years of the base year.<sup>64</sup>

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<sup>61</sup> See Lasko Metal Prods. v. United States, 43 F.3d 1442, 1446 (Fed. Cir. 1994).

<sup>62</sup> See Shakeproof Assembly Components Div. of Ill. Tool Works v. United States, 268 F.3d 1376, 1382 (Fed. Cir. 2001).

<sup>63</sup> See Nation Ford Chem. Co. v. United States, 166 F.3d at 1378 n.5 (Fed. Cir. 1999).

<sup>64</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 much smaller, the Department finds that our long-standing preference

Finally, we disagree with Rongxin that it is improper to use a country-wide inflator on Thailand's wage data. We acknowledge that the wage data from four of the seven countries do not fall within the POR. However, we will not exclude those countries for that reason. As we have stated, we prefer using data from multiple countries for valuing the labor input. To accomplish this, we have indexed the older data to make it useable for our POR. Rongxin objects, claiming that we have assumed, but not proved, there is a link between the country-wide inflator (the CPI) and wages. We disagree that such a link is necessary. Because it is an economy-wide inflator, we would not expect that every individual price in the economy in question would move in lockstep with the inflator. Instead, the CPI reflects movements across all prices in the economy and, thus, we use it to index any and all factor values that require indexing. We do not select different product-specific indices for different inputs.<sup>65</sup> Accordingly, the Department has continued to use CPI data to inflate wage rates in the instant case.

### **Summary and Analysis of Litigants' Comments on Draft Remand Results**

#### ***Selection of Countries that are Significant Producers***

Rongxin reiterates in its comments on the Draft Remand Results that the Department's definition of significant producers is not reasonable because the Department defines a significant producer as "a country that has exported comparable merchandise from 2005 through 2007."

Thus, according to Rongxin, if a country exported only USD 5 worth of pencils, it is considered

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for a robust basket outweighs our exclusive preference for "earnings" data. Thus, if earnings data are unavailable from the most recent year of available data (2007) or the previous five years (2002-2007) 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 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>65</sup> See, e.g., Hand Trucks and Certain Parts Thereof From the People's Republic of China: Final Results of Administrative Review and Final Results of New Shipper Review, 72 FR 27287 (May 12, 2007) and accompanying IDM at Comment 1 ("Hand Trucks from the PRC") and 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) and accompanying IDM at Comment 16 ("Tires from the PRC").

a significant producer.<sup>66</sup> Moreover, Rongxin argues, according to the Department's definition, a country such as Maldives that had USD 0 of pencil exports in the POR, qualifies as a significant producer. Rongxin does not find it reasonable for the Department to include exports outside of the POR with exports within the POR as the "best available information."

Rongxin next claims that the primary surrogate country in this segment of the proceeding, India, is not even included in the Department's list of seven countries it proposes to use, even though Indian wage-rate data are on the record. Rongxin points out that the Department has already selected India as the primary surrogate country, that India had a significant level of exports during the POR, and its data are contemporaneous with the POR. Rongxin also contests that there is no evidence on the record that any of the countries selected by the Department produced pencils, but there is evidence on the record that India produced pencils.

**Department's Position:**

We disagree with Rongxin's claim that there is no evidence on the record that any of the countries selected by the Department produced pencils. The Department placed data on the record from Global Trade Atlas and the United Nations showing all countries that had exports of comparable merchandise (defined as exports under HTS 9609.10.00, the HTS subheading identified in the scope of the order) between 2005 and 2007 (see Wage Rate Memo at Attachment 1).

As the Department stated above in our position addressing the "Selection of Countries that are Significant Producers," we find that a country's ability to export comparable merchandise is indicative of substantial production because the country is likely producing merchandise at a level that surpasses its internal consumption. The antidumping statute and regulations are silent in defining a "significant producer," and the antidumping statute grants the

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<sup>66</sup> See Draft Remand Results at 12.

Department discretion to look at various data sources for determining the best available information. See section 773(c) of the Act.<sup>67</sup>

Rongxin has provided no new arguments that the countries the Department selected are not significant producers of subject merchandise and should be excluded from the wage rate calculation. Therefore, the Department has continued to rely on the countries it selected as significant producers for these final remand results.

We acknowledge that India was selected as the primary surrogate country in the underlying administrative review. However, for the reasons explained above, the Department has determined to use data from multiple countries to value the labor input. While India was considered for inclusion in the calculation, it was eliminated because industry-specific wage data for India were not available in ISIC-Rev.3 Code 36, the ISIC Revision we relied upon to calculate the wage rate. See Wage Rate Memo.

***Use of Labor Data that is Contemporaneous with the POR***

Rongxin states that India, Indonesia, and Thailand are the only three significant producers of pencils during the POR. However, Rongxin asserts that it is inappropriate to use data from Thailand because the data are from 2003 and not contemporaneous with the POR. In addition, Rongxin argues that the Department has not provided record evidence to show why the country-wide inflation rate is applicable to wages, and the Department has not justified its change in policy from that used for all other inputs.

Rongxin also argues that the Department has failed to explain why non-contemporaneous wage-rate data from 2003 for the Philippines and Thailand are equally the best available

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<sup>67</sup> While the legislative history provides that the “term ‘significant producer’ includes any country that is a significant net exporter, it does not stipulate a specific metric that must be used to determine whether a country is a significant producer and, thus, does not preclude consideration of additional factors. See Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Rep. No. 100-576, at 590 (1988).

information as that which is contemporaneous with the POR, such as wage-rate data from India. Therefore, the Department should not use non-contemporaneous data when contemporaneous data from India are available on the record. In addition, Rongxin states that the Department should not use the country-wide inflation rate for labor when a country calculates its inflation rate based on many other factors, such as energy costs, food production, and manufacturing.

**Department's Position:**

As the Department stated above in our position addressing the “Use of Indonesian Wage Data and Comparison of Choices for the Surrogate Value for Labor,” while it is our preference to use data that are the most contemporaneous on the record when possible, it is also our preference when valuing wage rates to use data from a broad basket of countries. If the Department were to limit its surrogate value analysis as suggested by Rongxin, the Department would be rejecting its preference for using wage rates from multiple countries. We do not believe this is appropriate. Accordingly, the Department continues to employ a methodology that takes into consideration wage rates from several countries and still falls within five years of the base year.<sup>68</sup>

Finally, as we already stated in our position addressing the “Use of Indonesian Wage Data and Comparison of Choices for the Surrogate Value for Labor,” we disagree with Rongxin that it is improper to use a country-wide inflator on Thailand's (or any other country's) wage data. Specifically, we disagree that it is necessary to establish a link between the CPI and wages. Because the CPI is an economy-wide inflator, we would not expect that every individual price in the economy in question would move in lockstep with the inflator. Instead, the CPI reflects movements across all prices in the economy and, thus, we use it to index all factor values that

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<sup>68</sup> See supra footnote 64.

require indexing.<sup>69</sup> Accordingly, the Department has continued to use CPI data to inflate wage rates in the instant case.

### ***Explanation of Wage Rate Methodology***

Rongxin argues that the Department relied substantially on speculation to justify its decision on the wage rate methodology and must make a fair comparison of the data. It states that the Department failed to reasonably justify the exclusion of Indian labor rates, as well as the inclusion of countries, such as Thailand, that have labor rates prior to the POR. Furthermore, Rongxin disagrees with the Department's statement that "wage data from a single surrogate country are not the best method for valuing labor input due to the variability that exists between wages and GNI."<sup>70</sup> Rongxin asserts that the Department did not explain why this variability is important for wages but not for all other factors of production. Similarly, Rongxin states that the Department provided no reasoned explanation as to why the use of a single country's wage rate is "unreliable and arbitrary" other than labor is not "not traded internationally."<sup>71</sup>

Rongxin cites to Dorbest where the CAFC stated that surely there must be a subset of countries that can be used for labor.<sup>72</sup> Rongxin responds that Dorbest does not require the use of data from multiple countries, only the best available information, and Rongxin asserts that the appropriate subset is India because the Department has already identified it as economically comparable to the PRC. Rongxin also disagrees with the Department's statement that it prefers "to use data that are consistent across countries," because it claims the Department has argued

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<sup>69</sup> We do not select different product-specific indices for different inputs because such an analysis would require the collection of an unreasonable amount of data over an excessive period of time, and even then there is no guarantee such data would exist. See, e.g., Hand Trucks from the PRC and accompanying IDM at Comment 1 and Tires from the PRC and accompanying IDM at Comment 16.

<sup>70</sup> See Draft Remand Results at 10.

<sup>71</sup> Id. at 11.

<sup>72</sup> See Dorbest, 604 F.3d at 1372.

that it must use data from many countries to average out the variances.<sup>73</sup> Therefore, Rongxin suggests the Department should use data from India because the variability is zero.

Finally, Rongxin claims that the Department has not reconciled its decision on labor with its consistent policy in other cases as reflected in Zhejiang Native Produce, which states that “Commerce rightly favors data contemporaneous with the POI over that which is not.”<sup>74</sup>

Rongxin states the only two significant exporting countries with labor data in the POR are India and Indonesia. Rongxin concludes that India is the best choice for the labor rate followed by Indonesian labor data or a combination of the two.

**Department’s Position:**

While Rongxin argues that the Department failed to reasonably justify the exclusion of Indian wage data, the Department has already explained that it excluded India because industry-specific wage data were not available for India under ISIC-Rev.3 Code 36. While other Indian data are available, the Department has determined to use data from a single ISIC revision to ensure consistency of the industry category. While Rongxin disputes the Department’s claim that it prefers data to be consistent across countries because the Department uses data from multiple countries, Rongxin mixes two ideas. The Department seeks to include as many countries as possible (within the constraints established by the statute), but not to the point of mixing and matching data that can cover different industry groupings from different ISIC Revisions.

We further disagree with Rongxin’s argument that the Department did not reasonably justify the inclusion of countries, such as Thailand, that have labor rates prior to the POR. As explained above, the Department prefers to use more data rather than less data and, thus, we have used non-contemporaneous wage rates. These rates, however, have been adjusted to the POR.

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<sup>73</sup> See Draft Remand Results at 20.

<sup>74</sup> See Zhejiang Native Produce, 28 CIT at 1435.

Rongxin argues that the Department did not explain why variability is an important consideration for wages, but not for all other factors of production, or why the use of a single country's wage rate is unreliable and arbitrary. As we stated above in the "Re-Valuation of the Labor Wage Rate" section, while data from a single surrogate country can reliably be used to value most other factors of production, using wage data from a single surrogate is not the best method for valuing the labor input due to the variability that exists between wages and GNI.<sup>75</sup> Even though there is a strong worldwide relationship between wage rates and GNI, we continue to find that excessive variation exists among the wage rates of comparable market economies. There are many socio-economic, political and institutional factors, such as labor laws and policies unrelated to the size or strength of an economy, that cause these significant variances in wage levels between countries. The large variance in these wage rates demonstrates the arbitrariness of using wage rate data from a single surrogate country. Therefore, we have employed a methodology that uses multiple countries in order to reduce the effects of the variability that exists between wage rate data of comparable countries.

With regard to Rongxin's reference to Dorbest, the methodology we have used is entirely consistent with the cited language because the subset of countries we have relied upon meets both the economic comparability and significant producer criteria.

## **RESULTS OF REDETERMINATION**

Pursuant to the Dorbest ruling and the Remand Order, we have revised the wage rate calculation methodology to comply with the CAFC's interpretation of section 773 of the Act and have recalculated the pencil slats and cores surrogate values using prices from "Paper and Stationery." Accordingly, China First's final margin has been revised to 1.13 percent; Three Star's margin has been revised to 3.06 percent; and Rongxin's margin has been revised to 1.55

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<sup>75</sup> See Antidumping Methodologies.

percent. Based on these revisions, the margin of the separate rate company, SFTC, has been revised to 1.66 percent.

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Ronald K. Lorentzen  
Deputy Assistant Secretary  
for Import Administration

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Date