

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the
Factor of Production: Labor; Request for Comment

AGENCY: Import Administration, International Trade Administration, Department of
Commerce.

ACTION: Request for Comments

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Factor of Production: Labor; Request for Comment

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SUMMARY: The Department of Commerce (“the Department”) requests public comment on
the means by which it can best capture the cost of labor in its wage rate methodology in
antidumping proceedings involving non-market economy (“NME”) countries. As part of this
process, the Department invites comments on the interim methodology for determining a
surrogate value for wage rates that is currently being applied in antidumping proceedings for
companies in NME countries.

DATES: To be assured of consideration, comments must be received no later than [INSERT 30
days after the publication of this notice in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Christopher Mutz, (202) 482-0235, Office of
Policy, Import Administration, Julia Hancock, (202) 482-1394, Office of Antidumping and
Countervailing Duty Operations, Import Administration, U.S. Department of Commerce, 14th
Street and Constitution Avenue, NW., Washington DC, 20230.

SUPPLEMENTARY INFORMATION:

Background

Section 733(c) of the Tariff Act of 1930, as amended (“the Act”), provides that the Department
will value the factors of production (“FOPs”) in NME cases using the best available information
regarding the value of such factors in a market economy (“ME”) country or countries considered
to be appropriate by the administering authority. The Act requires that when valuing the FOPs,
the Department utilize, to the extent possible, the prices or costs of factors of production in one

or more ME countries that are (1) at a comparable level of economic development and (2) significant producers of comparable merchandise. *See* section 733(c)(4) of the Act.

Previously, the Department calculated wages using a regression analysis that captured the worldwide relationship between *per capita* Gross National Income (“GNI”) and hourly wage rates in manufacturing pursuant to 19 CFR 351.408(c)(3). *See Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments* (“*Antidumping Methodologies Notice*”), 71 FR 61716 (October 19, 2006). On May 14, 2010, the Court of Appeals for the Federal Circuit (“CAFC”), in *Dorbest Ltd. v. United States*, 604 F. 3d 1363, 1372 (Fed. Cir. 2010) (“*Dorbest I*”), invalidated 19 CFR 351.408(c)(3). Subsequently, the Department issued a remand redetermination in the *Dorbest* litigation, and on February 9, 2011, the Court of International Trade (“CIT”) affirmed in part, and remanded in part, the Department’s wage rate methodology applied in that redetermination. *See Dorbest Ltd. v. United States*, Slip Op. 11-14 (CIT Feb. 9, 2011) (“*Dorbest II*”). As a consequence of the CAFC’s ruling in *Dorbest I*, the Department is no longer relying on the wage rate methodology described in its regulations. Since July 2010, the Department has applied an interim wage rate methodology that derives a surrogate wage rate from countries that are both economically comparable and significant producers of merchandise comparable to the merchandise subject to the antidumping duty proceeding.¹ In October 2010, the Department modified its calculations to apply a simple-average of industry-specific wage rates from those countries.²

Request for Comment on International Labor Organization (“ILO”) Chapter 6A Data

As part of the on-going process of evaluating options for determining labor values, the Department is considering methodologies that will best capture all labor costs. Currently, the Department uses earnings or wage data as reported in “Chapter 5B: Wages in Manufacturing” of the International Labor Organization (“ILO”) Yearbook of Labor Statistics. Chapter 5B captures the pre-tax monetary remuneration received by the employee.

Chapter 5B data includes two types of compensation: (1) direct wages and salaries (“wages”), as well as (2) earnings data, which include wages plus bonuses and gratuities (“earnings”). The Department prefers “earnings” data, when available, since it more accurately reflects the full remuneration received by workers. *See Antidumping Methodologies Notice*, 71 FR at 61721.

The ILO defines Chapter 5B wage rate data to include:

¹ *See Certain Woven Electric Blankets From the People's Republic of China (“PRC”): Final Determination of Sales at Less Than Fair Value (“Blankets from the PRC”),* 75 FR 38459 (July 2, 2010) and accompanying Issues and Decision Memorandum at Comment 13.

² Between July 2010 and October 2010, the Department implemented an interim wage rate methodology that reflected a simple average of national wage rates from countries found to meet both criteria under section 733(c)(4) of the Act. Industry-specific data, if available, is now the presumptive surrogate data used in the Department’s calculations. *See Certain New Pneumatic Off-the-Road-Tires from the People’s Republic of China: Preliminary Results of the Antidumping Duty Administrative Review*, 75 FR 64259 (October 19, 2010) (“*Tires from the PRC*”); *see also Certain Activated Carbon from the People’s Republic of China: Final Results and Partial Rescission of Second Antidumping Duty Administrative Review*, 75 FR 70208 (November 18, 2010) and accompanying Issues and Decision Memorandum at Comment 4f (“*Activated Carbon Final*”).

Basic wages, cost-of-living allowances and other guaranteed and regularly paid allowances, but exclude overtime payments, bonuses and gratuities, family allowances and other social security payments made by employers. *Ex gratia* payments in kind, supplementary to normal wage rates, are also excluded.³

The ILO defines Chapter 5B earnings data to include:

Remuneration in cash and in kind paid to employees, as a rule at regular intervals, for time worked or work done together with remuneration for time not worked, such as for annual vacation, other paid leave or holidays. Earnings exclude employers' contributions in respect of their employees paid to social security and pension schemes and also the benefits received by employees under these schemes. Earnings also exclude severance and termination pay.⁴

The ILO Chapter 5B data that the Department currently uses in its interim, simple-average industry-specific wage rate methodology for valuing labor is comprehensive (*i.e.*, this dataset includes annual earnings and wage data reported by most countries in the world). Additionally, the ILO Chapter 5B data is reported both on a national and an industry-specific level for each reporting country.

Under the current interim wage rate methodology, the Department assumes that indirect labor costs, (*i.e.*, employer expenses for social benefits, pensions and training, etc.) are included in the calculated surrogate financial ratios, (*i.e.*, factory overhead ("OH"), selling, general and administrative ("SG&A") expenses, and profit) for the NME producer. When the OH and SG&A line items are disaggregated, the Department has a practice of adjusting the surrogate financial ratios for OH, SG&A, and profit by categorizing all identifiable labor costs not included in the ILO's definition of Chapter 5B data as overhead expenses.⁵ However, when OH and SG&A are aggregated, the Department is unable to determine whether adjustments are needed to account for all of the indirect labor-related costs.

Due to concerns that reliance on data from Chapter 5B of the ILO may under-count the NME producer's labor costs, the Department is considering alternative data sources for valuing labor to ensure all labor costs incurred by the NME producer are accounted for in the normal value ("NV") calculation. The Department proposes relying on labor and wage data that include all costs incurred by the producer related to labor including wages, benefits, housing, training, etc. One example of such a data source is "Chapter 6A: Labor Cost in Manufacturing" from the ILO Yearbook of Labour Statistics.

The ILO defines Chapter 6A data to include:

³ See <http://laborsta.ilo.org/applv8/data/c5e.html> (emphasis added).

⁴ *Id* (emphasis added).

⁵ See *Folding Metal Tables and Chairs from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 71 FR 2905 (January 18, 2006) and accompanying Issues and Decision Memorandum, at Comment 1.

The cost incurred by the employer in the employment of labour. The statistical concept of labour cost comprises remuneration for work performed, payments in respect of time paid for but not worked, bonuses and gratuities, the cost of food, drink and other payments in kind, cost of workers' housing borne by employers, employers' social security expenditures, cost to the employer for vocational training, welfare services and miscellaneous items, such as transport of workers, work clothes and recruitment, together with taxes regarded as labour cost...⁶

The ILO Chapter 6A data include all costs related to labor including wages, benefits, housing, training, etc.⁷ To the extent that Chapter 6A data includes some of the expenses that may already be captured in the surrogate financial ratios, there is a possibility that the use of Chapter 6A data may overstate the cost of labor in certain cases. The Department's ability to identify and adjust for such individual labor costs is fact-specific in nature and subject to the available information on the record of the specific proceeding. *See Antidumping Methodologies Notice*, 71 FR at 61721. There will be some cases where information is available to make such adjustments, but there will be other cases where the Department cannot make such an adjustment due to a lack of available data. However, if the Department does not use an all inclusive data source, such as the ILO Chapter 6A data, the NME producer's total labor cost will be understated in cases where the surrogate financial statements do not include certain indirect labor costs that are also excluded from ILO Chapter 5B data.

The Department further notes its preference for data from as many countries as possible when considering alternative data sources for valuing labor, such as the ILO Chapter 6A data. Although information from a single surrogate country can reliably be used to value other FOPs, wage data from a single surrogate country does not normally constitute the best available information for purposes of valuing the labor input due to the variability that exists across wages from countries with similar GNI.⁸ As a result, we do not find reliance on wage data from a single country to be preferable where data from multiple countries are available for the Department to use.⁹ Although the Department discounted the use of the ILO Chapter 6A data in 2006 because very few market economy countries reported labor data, this may no longer be the case.¹⁰ As of January 2011, sixty-six market economy countries reported ILO Chapter 6A data at the national level. Though it is improbable that all of these countries would be considered economically comparable to the country subject to an investigation or review, sixty-six is not an insignificant number of initial countries. The Department also notes that some market economy countries report industry-specific data under ILO Chapter 6A, which is in keeping with the Department's current, interim practice of relying on industry-specific data within the existing ILO source where available. The Department is aware that there may be data constraints using industry-specific data classified under ILO Chapter 6A because fewer market economy countries that are found to be economically comparable to a subject country report industry-specific under ILO Chapter 6A than under ILO Chapter 5B. Accordingly, in determining whether to source

⁶ See <http://laborsta.ilo.org/applv8/data/c6e.html>.

⁷ See *Antidumping Methodologies Notice*, 71 FR at 61721.

⁸ See e.g., International Labor Organization, *Global Wage Report: 2009 Update*, (2009) at 5, 7, 10.

⁹ http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_116500.pdf.

⁹ Both the statute and our regulations recognize the need to source factor data from more than one country where appropriate. See Sections 773(c)(1) and (c)(4) of the Act and 19 CFR 351.408(c)(2).

¹⁰ See *Antidumping Methodologies Notice*, 71 FR at 61721.

wage data from alternative data sources, such as ILO Chapter 6A, the Department will need to evaluate how to address situations where there are significant data constraints in light of its current preference for data from multiple countries at the industry-specific level.

The Department invites parties to comment on these methodological issues described above.

Request for Comment on Interim Industry-Specific Wage Rate Methodology

As discussed above, the Department's interim methodology for valuing labor in NME antidumping proceedings utilizes a simple-average industry-specific wage rate calculated with data reported in Chapter 5B of the ILO Yearbook of Labour Statistics. Under this interim methodology, the Department calculates an hourly wage rate by averaging industry-specific earnings and/or wages in countries that are economically comparable to the subject country and are significant producers of the comparable merchandise, pursuant to section 773(c)(4) of the Act. The following steps explain the current interim industry-specific methodology.

First, in order to determine the economically comparable surrogate countries from which to calculate a surrogate wage rate, the Department reviews the Surrogate Country Memo issued in each proceeding. Early in each case, the Department selects a number of countries for consideration as the surrogate country for that case.¹¹ To determine which countries are at a level of economic development comparable to that of the NME country in question, the Department places primary emphasis on per capita GNI.¹² The Department relies on GNI from the most recent year available, currently 2008, to generate an initial limited list of countries considered to be economically comparable to the subject country.¹³ From this list of countries contained in the Surrogate Country Memo, the Department identifies the country with the highest GNI and the lowest GNI as "bookends" for economic comparability.¹⁴ Relying on the World Bank's World Development Report¹⁵, the Department then identifies all countries with per capita incomes from the same year that fall between the country with the highest GNI, and the country with the lowest GNI (commonly referred to as the "bookend" countries). This is the "GNI band" of countries that the Department considers to be economically comparable to the country in question for calculating wage rates.

Second, regarding the "significant producer" prong of the antidumping statute (section 773(c)(4)(B) of the Act), the Department identifies all countries that had exports based on value data for exports of comparable merchandise (*i.e.*, exports of any goods, by value, under the six-

¹¹ See Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process, March 1, 2004 ("Policy Bulletin").

¹² It is Departmental practice, pursuant to 19 CFR 408, to use per capita GNI, rather than per capita GDP, because while the two measures are very similar, per capita GNI is reported across almost all countries by an authoritative source (the World Bank), and because the Department believes that the per capita GNI represents the single best measure of a country's level of total income and, thus, level of economic development. See *Antidumping Methodologies Notice*, 71 FR 61716, 61716 at n. 2.

¹³ The Department notes that this initial list of countries is part of a non-exhaustive list of countries that are at a level of economic development comparable to the subject country.

¹⁴ Cf. *Dorbest II*, at *10-17. Parties are invited to address this case in their comments.

¹⁵ Indicator: GNI per capita, Atlas Method (current US\$) is obtained from <http://data.worldbank.org/indicator/>.

digit Harmonized Tariff Schedule (“HTS”) categories contained in the scope of the investigation or review). The Department obtains this export data for the last three years of available data. After obtaining total exports by value of comparable merchandise for all reporting countries, the Department filters the dataset to include only countries that are listed within the “GNI band.” If any of these countries had exports of the comparable merchandise for the last three years, that country is considered to be a significant producer.

Third, the Department selects the most appropriate industry-specific wage data based on the scope of the investigation or review, and the availability of industry-specific data.¹⁶ Industry-specific wage/earning data is reported by countries to the ILO under the United Nations’ International Standard Classification of All Economic Activities (ISIC).¹⁷ The Department determines the most appropriate industry-specific wage rate/earning data for the subject industry by examining the ISIC industry classifications and determining which classification is most specific to the subject product for the most recent revision (currently Rev. 4). If no wage data is available for that industry, the examination moves to the next most recent revision, (*i.e.*, Rev. 3.1, Rev. 3, and Rev. 2, etc.).

Fourth, using the selected industry-specific wage rate data for the countries that are economically comparable to the subject country and significant producers of comparable merchandise, the Department chooses an earnings/wage rate that is most contemporaneous with the period of the subject proceeding. Various types of earnings/wages in that industry-specific wage rate data are sorted by a set of filters to arrive at the most appropriate single earnings/wage rate.¹⁸

Fifth, the Department inflates the selected single earnings or wage rate for each country to the year that covers the majority of the period of the proceeding using the relevant Consumer Price

¹⁶ The CIT in *Dorbest II* affirmed the Department’s decision to use industry-specific data as “reasonable and in compliance with the statutory requirements “ set forth in Section 773(c)(4) of the Act. *Dorbest II*, at *25-27.

¹⁷ The ISIC identifies different industry classifications. The ISIC provides industry classifications by section (*i.e.*, A- Agriculture, hunting, and forestry), then at the two-digit division level (*i.e.*, 01 – Agriculture, hunting, and related service activities), then further sub-detail at the three-digit major group level (*i.e.*, 011 – Growing of crops; market gardening; horticulture), and sometimes a four-digit group level (*i.e.*, 0111 – Growing of cereals and other crops, nec.). There are explanatory notes at the two-digit division level, three-digit major group level, and four-digit group level that provide a detailed list of the industries covered in and excluded from each classification.

The ISIC also has different revisions of this classification system: Rev. 2 (1968); Rev. 3 (1989); Rev. 3.1 (2002); and Rev. 4 (2008).

¹⁸ The Department filters the data based on ILO data parameters in the following order:

1. “Type of Data - I,” *i.e.*, reported under the categories earnings or wages. We use earnings data if available and wages data where earnings data are not available;
2. “Sex,” *i.e.*, male/female coverage (we eliminate male only, female only, and indices data);
3. “Contemporaneity,” *i.e.*, the Department uses the most recent earnings/wage rate data point available;
4. “Worker Coverage,” *i.e.*, the Department selects from the following categories in the following hierarchy: 1) wage earners; 2) employees; 3) salaried employees; and 4) total employment;
5. “Type of Data - II,” *i.e.*, the unit of time for which the wage is reported. The Department selects from the following categories in the following hierarchy: 1) per hour; 2) per day; 3) per week; or 4) per month. Where data is not available on a per-hour basis, the Department converts that data to an hourly basis based on the premise that there are 8 working hours per day, 5.5 working days a week and 24 working days per month.
“Source ID,” *i.e.*, a code for the source of the data. The Department prioritizes data with a “Source ID” value of “no value” over “1,” “2” and “3,” in that order.

Index (“CPI”).¹⁹ Next, the Department converts these inflation-adjusted hourly earnings or wage rate data for each country, which are denominated in each country’s national currency, to U.S. dollars using annual exchange rates²⁰ as reported by the IMF’s *IFS* for the year that covers the majority of the period of investigation or review. Finally, the Department calculates a simple-average, industry-specific wage rate across the selected countries.

Since implementing this interim industry-specific wage rate methodology, the Department has encountered a number of methodological and practical challenges that must be considered in evaluating whether this methodology should be adopted for the longer term. For example, the Department normally prefers using multiple data points when evaluating labor data, because of the large variance in wage rates, as explained above. However, relying on industry-specific data necessarily constrains the amount of available data. Additionally, the Department notes that the interim method is a significant endeavor that requires screening hundreds of data points in each case. Given the statutory time constraints present in every proceeding, the Department will also be evaluating this methodology in relation to its long-term administrative feasibility. Based on the challenges described above by the Department regarding the interim industry-specific wage rate methodology, the Department invites comments by parties on these issues.

Submission of Comments

To be assured of consideration, comments must be received no later than [INSERT 30 days after the publication of this notice in the Federal Register]. All comments must be submitted through the Federal eRulemaking Portal at <http://www.regulations.gov>, Docket No. ITA-2010-0010, unless the commenter does not have access to the internet. Commenters that do not have access to the internet may submit the original and two copies of each set of comments by mail or hand delivery/courier. All comments should be addressed to the Secretary of Commerce, Attention: Christopher Mutz, Office of Policy, Room 1870, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., N.W., Washington, DC 20230.

The Department will consider all comments received before the close of the comment period. The Department will not accept comments accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. All comments responding to this notice will be a matter of public record and will be available for inspection at Import Administration's Central Records Unit (Room 7046 of the Herbert C. Hoover Building) and on the Department's Web site at <http://www.trade.gov/ia/>.

¹⁹ The CPI for each country is obtained from the International Monetary Fund (“IMF”)’s *International Financial Statistics* (“IFS”) database, located at <http://www.imfstatistics.org/imf>.

²⁰ The exchange rate for each country is obtained from the IMF’s IFS database by selecting: (1) “Economic Concept View;” (2) “Country Exchange Rates;” (3) “National Currency Per US\$ (Per Avg);” and (4) “RF.ZF NC/US\$, Period Average.”

Any questions concerning file formatting, document conversion, access on the Internet, or other electronic filing issues should be addressed to Andrew Lee Beller, Import Administration Webmaster, at (202) 482-0866, e-mail address: webmaster-support@ita.doc.gov.

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