

Ad Hoc Shrimp Trade Action Committee v. United States
Consol. Court No. 13-00346, Slip Op. 15-53 (CIT June 5, 2015)

FINAL RESULTS OF REDETERMINATION PURSUANT TO COURT REMAND

I. SUMMARY

The Department of Commerce (the “Department”) has prepared these final results of redetermination pursuant to the remand order of the Court of International Trade (“CIT” or “Court”) in Ad Hoc Shrimp Trade Action Committee v. United States, Consol. Court No. 13-00346, Slip Op. 15-53 (June 5, 2015) (“Remand Opinion and Order”). These final remand results concern Certain Frozen Warmwater Shrimp from the People’s Republic of China: Final Results of Administrative Review; 2011-2012, 78 FR 56209 (September 12, 2013) (“AR7 Final Results”). On remand, the CIT ordered the Department to reconsider the surrogate data used to determine normal value for Zhanjiang Regal Integrated Marines Resources Co., Ltd.’s (“Regal”) price comparisons during the period covered by the fifth administrative review.¹ Specifically, the Court ordered that the Department must take into account the relative proximity of the potential surrogate countries’ gross national income (“GNI”) to that of the People’s Republic of China’s (“PRC”)² and that the Department cannot ignore new surrogate value information placed on the record.³

As explained below, pursuant to the CIT’s Remand Opinion and Order, we have, under protest,⁴ reconsidered the information on the record and determined to select Thailand as the primary surrogate country because we reconsidered the proximity of Thailand’s per capita GNI to the PRC’s GNI and because the Thai surrogate value (“SV”) data used to value Regal’s factors of production (“FOP”) is superior. Consequently, the Department has made changes to the

¹ See Remand Opinion and Order at 33.

² Id. at 19.

³ Id. at 25-28.

⁴ See Viraj Grp., Ltd. v. United States, 343 F.3d 1371, 1376 (Fed. Cir. 2003).

margin calculations for the purposes of these results on remand. Specifically, the Department has, with the exception of broodstock⁵ (which already was valued using Thai data), changed the SVs for Regal's inputs and has applied these changes to the margin calculated for Regal.⁶ The revised margin calculation is de minimis, with the result that Regal continues to be revoked from the order.

II. BACKGROUND

Regal, a mandatory respondent in the seventh administrative review, requested company-specific revocation pursuant to 19 CFR 351.222(b)(2) (2012), based on its receipt of de minimis margins in the fifth, sixth, and seventh administrative reviews.⁷ Because Regal was a separate rate respondent in the fifth administrative review ("AR5") it did not receive a margin calculated using its own data from that period. Ordinarily, Regal would have received the margin we calculated for the sole mandatory respondent in AR5. However, because the sole mandatory respondent in AR5 received a de minimis margin, we assigned Regal its own calculated margin from the fourth administrative review, which was also de minimis. As a result of assigning Regal a rate in AR5 rather than calculating one, the Department analyzed Regal's AR5 data in the context of the seventh administrative review ("AR7") solely to determine if Regal was eligible for revocation.⁸ In AR5, the Department originally selected India as the primary

⁵ Broodstock are a group of mature shrimp used for breeding purposes, its eggs hatch into "shrimp larvae," which grow into mature shrimp

⁶ See Memorandum to the File, through Catherine Bertrand, Program Manager, Enforcement and Compliance, Office V, from Bob Palmer, International Trade Analyst, Enforcement and Compliance, Office V, re: "Remand Redetermination Analysis Memorandum for Zhanjiang Regal Integrated Marines Resources Co., Ltd. in the Antidumping Duty Review of Certain Frozen Warmwater Shrimp from the People's Republic of China," dated concurrently with these final results of redetermination ("Regal Remand Memo").

⁷ See Certain Frozen Warmwater Shrimp from the People's Republic of China: Preliminary Results of Administrative Review; 2011-2012, 78 FR 15696, 15698 (March 12, 2013) ("AR7 Shrimp Prelim") and accompanying Decisions Memorandum ("Issues and Decisions Memo") at 10-11.

⁸ Id.

surrogate country.⁹ For purposes of evaluating Regal’s AR5 FOP data during AR7, the Department continued to find India to be a reliable source for SVs because India was at a comparable level of economic development pursuant to section 773(c)(4) of the Tariff Act of 1930, as amended (“Act”), was a significant producer of comparable merchandise, and had publicly available and reliable data.¹⁰ In the AR7 final results, the Department continued to use India as the primary surrogate country to evaluate Regal’s AR5 data for revocation purposes.¹¹

On appeal, the Ad Hoc Shrimp Trade Action Committee (“AHSTAC”) claimed that the Department improperly revoked Regal from the order by relying on data and analysis that the Court already rejected as unreasonable.¹² Specifically, AHSTAC claimed that the Department arbitrarily ignored the potential surrogate countries’ relative GNI differences in its economic comparability analysis when evaluating SV data.

The Court agreed, holding that when “adequate data is available from more than one country that is both at a level of economic development comparable to the non-market economy (“NME”) and a significant producer of comparable merchandise, Commerce must weigh the relative merits of such potential surrogates’ datasets in a way that does not arbitrarily discount the accuracy-enhancing value of sourcing surrogate data from a market economy whose

⁹ See Administrative Review of Certain Frozen Warmwater Shrimp From the People’s Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 76 FR 51940 (August 19, 2011) (“AR5 Final Results”), using India as the primary surrogate country, unchanged from Certain Frozen Warmwater Shrimp From the People’s Republic of China: Preliminary Results and Preliminary Partial Rescission of Fifth Antidumping Duty Administrative Review, 76 FR 8338, 8342 (February 14, 2011).

¹⁰ See Memorandum to Paul Piquado, Assistant Secretary for Import Administration, through Christian Marsh, Deputy Assistant Secretary, for Antidumping and Countervailing Duty Operations, from James Doyle, Office Director, AD/CVD Operations, Office 9, re: “11/12 Antidumping Duty Administrative Review on Certain Frozen Warmwater Shrimp from the People’s Republic of China: Post-Preliminary Analysis for Zhanjiang Regal Integrated Marine Resources Co., Ltd., and Zhanjiang Newpro Foods Co., Ltd.,” dated May 20, 2011, (“Regal Post-Prelim Memo”) at 3.

¹¹ See AR7 Final Results and accompanying Issues and Decisions Memo at Comment 2.

¹² This issue was addressed by the CIT in AR5 Remand Order. However, the issue of surrogate country selection was rendered moot as a result of the only mandatory respondent in AR5 was assigned a rate based on adverse facts available. Ad Hoc Shrimp Trade Action Comm. v. United States, 882 F. Supp. 2d 1366, 1374-76 (CIT 2012) (“AR5 Remand Order”).

economic development is as close as possible to that of the NME.”¹³ Further, the Court found that “Commerce completely (and categorically) ignored the *biggest* difference in quality between the two datasets, which is that the Thai data was from a market economy that very nearly mirrored China’s level of economic development . . . whereas the Indian data reflected values present in an economy whose per capita GNI was multiple orders of magnitude lower than China’s.”¹⁴

With respect to selecting India as the surrogate country based on data quality, the Court determined that the Department ignored that key information upon which the Department based its selection of India, the shrimp larva SV, is not at issue with respect to Regal’s production process. Moreover, the Department ignored that petitioner submitted new information pertaining to the Thai surrogate company’s level of integration relative to Regal.¹⁵ The Court remanded for reconsideration the Department’s reliance upon the original AR5 analysis of surrogate dataset alternatives.

III. ANALYSIS

In accordance with the Remand Opinion and Order, we have reconsidered the evidence on the record regarding SVs and GNI. For the reasons explained below, we now find that Thailand is the appropriate surrogate country to select because it provides the best available information to value Regal’s FOPs, including its main input, broodstock, and because we acknowledge that when comparing relative GNI differences Thailand’s per capita GNI is closer than India’s GNI to the PRC’s GNI.

¹³ See Remand Opinion and Order at 19.

¹⁴ See Remand Opinion and Order at 28-29. (emphasis in original).

¹⁵ See Remand Opinion and Order at 25-27.

Level of Economic Comparability

When calculating normal value (“NV”), section 773(c)(4) of the Act requires the Department to value the FOPs “to the extent possible” in a surrogate country that is (a) at a level of economic development comparable to the PRC and (b) a significant producer of comparable merchandise.¹⁶ In selecting a surrogate country, the Department adopted a “sequential consideration of the statutory elements.”¹⁷ The Act directs the Department to identify one or more countries that are “at a *level* of economic development comparable to that of the nonmarket economy country.”¹⁸ Section 773(c)(4)(A) of the Act is silent with respect to how, or on what basis, the Department may make this determination, but it is the Department’s long-standing practice to use *per capita* GNI data reported in the World Bank’s World Development Report as the indicator of the level of economic development.¹⁹

The statute does not require that the Department use a surrogate country that is (a) at a level of economic development identical to or *most* comparable to that of the NME country, nor (b) the *most* significant producer of comparable merchandise.²⁰ The statute requires only that the Department use a surrogate market economy (“ME”) country that is at a level of economic development comparable to that of the NME country, and that is a significant producer of

¹⁶ See also Import Administration Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (“Policy Bulletin 04.1”) at 2; available at <http://ia.ita.doc.gov/policy/index.html>. We note that no party contests that both India and Thailand are significant producers of comparable merchandise. For this reason, we have not included additional analysis of this criterion.

¹⁷ Id.

¹⁸ See section 773(c)(4)(A) of the Act (emphasis added).

¹⁹ See, e.g., Preliminary Determination of Sales at Less Than Fair Value: Steel Wire Garment Hangers from the People’s Republic of China, 73 FR 15726, 15728 (March 25, 2008), unchanged in Steel Wire Garment Hangers from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 73 FR 47587 (August 14, 2008); Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 76 FR 56158 (September 12, 2011), and accompanying Issues and Decision Memo at Comment 1; Fresh Garlic from the People’s Republic of China, Final Results and Partial Rescission of the 18th Antidumping Duty Administrative Review; 2011-2012, 79 FR 36721 (June 30, 2014), and accompanying Issues and Decision Memo at Comment 1.

²⁰ See Policy Bulletin No. 04.1.

comparable merchandise.²¹ Even these requirements are not binding, as the statute requires that they be met *only to the extent possible*.²²

Wherever possible, the Department selects a surrogate country at the same level of economic development as the NME country, which satisfies the statutory requirement. The Department uses the surrogate country list as a starting point for the surrogate country selection process because there is nothing in the statute that directs, or suggests, that the Department to consider which country is *most* economically comparable; instead, the only directive is for the Department to use a surrogate country that is at a level of economic development comparable to that of the NME country. As the Department, where possible, selects a surrogate country from this list of countries, all of which are at a *level* of economic development that are not only comparable, but the same as the NME country's *level*, parsing differences in the *per capita* GNIs of the surrogate candidates on a surrogate country list would do nothing to further statutory objectives or fulfill statutory requirements. Instead, consistent with the statute, the Department attempts to distinguish among the countries on a surrogate country list, and select a primary surrogate country on the basis of data quality and significant producer considerations.²³

In AR5, the Department determined that India, Indonesia, Peru, the Philippines, Thailand, and Ukraine were countries comparable to the PRC in terms of economic development.²⁴ In that period of review, the PRC had a GNI of \$2,940, India had a GNI of \$1,070, Indonesia had a GNI of \$2,010, the Philippines had a GNI of \$1,890, Thailand had a GNI of \$2,840, Ukraine had a

²¹ Id.

²² Id.

²³ We note that “economic comparability” is used here and elsewhere by the Department interchangeably with the statutory language, “level of economic development comparable to.”

²⁴ See Certain Frozen Warmwater Shrimp From the People’s Republic of China: Preliminary Results and Preliminary Partial Rescission of Fifth Antidumping Duty Administrative Review, 76 FR 8338, 8342 (February 14, 2011).

GNI of \$3,210, and Peru had a GNI of \$3,990.²⁵ For the reasons explained above, the Department respectfully disagrees with the Court’s holding that the Department must consider the relative GNI differences of potential surrogate countries that the Department considers to be at the same level of economic comparability; however, we acknowledge that a comparison of the per capita GNI of India, \$1,070, Thailand, \$2,840, and the PRC \$2,940, indicates that Thailand’s per capita GNI is closer to the PRC’s per capita GNI than India’s per capita GNI. For this reason, and for the data considerations explained below, we now rely on Thai SV data to value Regal’s inputs in AR5.

Data Considerations

In response to the Court’s Remand Opinion and Order, we have reconsidered the Indian, Thai, and Indonesian SV data on the record. Policy Bulletin 04.1 states that “if more than one country has survived the selection process to this point, the country with the best factors data is selected as the primary surrogate country.”²⁶ In selecting surrogate values for FOPs, section 773(c)(1) of the Act instructs the Department to use “the best available information” from the appropriate market economy country. The Department’s criteria for choosing surrogate companies are the availability of contemporaneous financial statements, comparability to the respondent’s experience, and publicly available information.²⁷ Moreover, for valuing factory overhead, selling, general, and administrative expenses, and profit, the Department normally will use public information gathered from producers of identical or comparable merchandise in the

²⁵ See Memo to the File, From: Josh Startup, International Trade Analyst, Office 9, Import Administration, Subject: AR5 Surrogate Country and Values Memo and Comments, dated December 14, 2012, at Attachment I.

²⁶ See Policy Bulletin 04.1 at 4.

²⁷ See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates from the People’s Republic of China, 70 FR 24502 (May 10, 2005), and accompanying Issues and Decision Memo at Comment 3.

surrogate country.²⁸ Among the surrogate producers of comparable products, the Department prefers to value financial ratios using data from those surrogate producers whose financial data will not be distorted or otherwise unreliable.²⁹

Broodstock

In this case, the record contains publicly available surrogate factor information for the majority of FOPs from both India and Thailand. In the underlying AR5 Final Results, we noted that the Indian and Thai import statistics did not allow us to distinguish between data from the two countries.³⁰ There, the Department evaluated the surrogate factor information for valuing shrimp larvae because shrimp larvae was the critical input in the production of the subject merchandise for Hilltop International, the sole mandatory respondent in that review.³¹

As noted by the Court, Regal does not purchase shrimp larvae; rather, it uses broodstock as its key physical input.³² The only available SV data on the record for broodstock is from Thailand.³³ The Department favors one country over another on the basis of surrogate value specificity where a surrogate value from one country representing a significant portion of normal

²⁸ See section 773(c)(4) of the Act; 19 CFR 351.408(c)(4); see, e.g., Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China, 71 FR 29303 (May 22, 2006), and accompanying Issues and Decision Memo at Comment 2.

²⁹ See Certain Cased Pencils from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review, 67 FR 48612 (July 25, 2002), and accompanying Issues and Decision Memo at Comment 5.

³⁰ See AR5 Final Results and accompanying Issues and Decision Memo at Comment 2.

³¹ Id.; see also AR7 Final Results at Comment 2.

³² See Remand Opinion and Order at 26-27.

³³ See Memorandum to the File, through Catherine Bertrand, Program Manager, Office 9, from Alan Ray, International Trade Analyst, Office 9, re: "Seventh Administrative Review of Certain Frozen Warmwater Shrimp From the People's Republic of China: Surrogate Factor Valuations for the Post-Preliminary Analysis for Regal in AR5," dated May 20, 2013, at 3-4 and Exhibit 2.

value is more specific to a respondent's input.³⁴ Therefore, we find that Thailand is the appropriate surrogate country because the specificity offered by the Thai import data with respect to Regal's broodstock is more specific to the input than any other SV data on the record.

Financial Statements

With respect to the financial statements of Seafresh Industry Public Company, Ltd. ("Seafresh"), a Thai seafood company, we reconsidered whether Seafresh is a suitable surrogate company for Regal in AR5. In the underlying AR5 Final Results, the Department used the financial statements of Falcon Marine Exports Ltd. ("Falcon Marine"), an integrated Indian producer and exporter of shrimp, after determining that Seafresh's financial statements were unsuitable because record evidence indicated that Seafresh was not an integrated producer.³⁵ However, Petitioner placed additional information on the record during AR7 which indicates that Seafresh has both hatchery and farming operations. Specifically, Petitioner placed printouts from the website of an organization that certifies shrimp hatcheries, farms, feed mills, and processing plants for "Best Aquaculture Practices" ("BAP").³⁶ The first printout from the website, dated 2013, identifies Seafresh as a processor of shrimp;³⁷ the second printout from the website indicates that, as processing plant, Seafresh has an affiliated farm.³⁸ The third printout from the website indicates that, as hatcheries, farms and processing plants complete BAP's

³⁴ See Utility Scale Wind Towers From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 77 FR 75992 (December 26, 2012), and the accompanying Issues and Decision Memo at Comment 1, ("{T}he Department has also found that Thai import data allows the Department to value each respondent's steel plate, which accounts for a significant portion of each company's normal value, more accurately than either the South African or Ukrainian data because the Thai data is most specific to the size and chemistry of the respondents' steel plate. Specifically, the Thai tariff schedule classifies imports into four carbon content ranges and three width ranges. In contrast, the South African and Ukrainian tariff schedules do not classify steel plate imports by levels of carbon content and the South African tariff schedule provides only a single tariff item for non-alloy steel plate in excess of 10 mm.").

³⁵ See AR5 Final Results and accompanying Issues and Decision Memo at Comment 2.

³⁶ See Petitioner's Data on Surrogate Values for the Fifth Administrative Review, dated February 4, 2013, at Attachment 6(b).

³⁷ Id.

³⁸ Id.

certification process, their status as certified BAP facilities are identified on this website.³⁹ This website identifies Seafresh, Tawee Farm 7, and Tripetch Hatchery under the heading “Seafresh Industry Group – Thailand.”⁴⁰ These three websites, and Seafresh’s financial statements, suggest that Seafresh is an integrated company with its own hatchery, shrimp farm and processing plant. Therefore, because we find that Seafresh can be considered an integrated producer like Regal, and its financial statements are otherwise suitable (i.e., contemporaneous, publicly, available)⁴¹ for calculating surrogate financial ratios, we will use Seafresh’s financial statements in this remand redetermination.

While Falcon Marine is also an integrated producer of shrimp, it is an Indian company from a country we no longer consider as the primary surrogate country. The Department has a strong preference to value all factors of production in a single surrogate country pursuant to 19 CFR 351.408(c)(2), as well as a practice “to only resort to a secondary surrogate country if data from the primary surrogate country are unavailable or unreliable.”⁴² Further, the courts have recognized the Department’s discretion when choosing appropriate companies’ financial statements to calculate surrogate financial ratios.⁴³ Accordingly, we find the financial statements of Seafresh are an appropriate source on which to base surrogate financial ratios in this remand redetermination.

³⁹ Id.

⁴⁰ Id.

⁴¹ See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates from the People’s Republic of China, 70 FR 24502 (May 10, 2005), and accompanying Issues and Decisions Memo at Comment 3.

⁴² See Jiaying Brother Fastener Co. v. United States, 11 F. Supp. 3d 1326, 1338 (September 25, 2014), quoting Sodium Hexametaphosphate From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 77 FR 59375 (September 27, 2012) and accompanying Issues and Decisions Memo at Comment I.

⁴³ See, e.g., FMC Corp. v. United States, 27 CIT 240, 251 (CIT 2003); affirmed FMC Corp. v. United States, 87 Fed. Appx. 753 (Fed. Cir. 2004) (where the CIT held that the Department can exercise discretion in choosing between reasonable alternatives); see also Crawfish Processors Alliance v. United States, 343 F. Supp.2d 1242, 1251 (CIT 2004) (“If Commerce’s determination of what constitutes the best available information is reasonable, then the Court must defer to Commerce.”).

Shrimp Feed

Although the Department finds Thailand to be the appropriate surrogate country, the Department will value the shrimp feed FOP using Global Trade Atlas (“GTA”)-Indonesia import data under Harmonized Tariff Schedule (“HTS”) 2309.90.1300 because the GTA – Thai import data are aberrational. The AR7 Prelim SV Memo contains shrimp feed SV data from India, Indonesia, the Philippines, and Thailand for the AR4, AR5 and AR6.⁴⁴ Although import statistics obtained from GTA satisfy the Department’s primary criteria for the suitability of SVs in antidumping proceedings involving NME countries, the Department disregards GTA data for a certain factor, either in whole or in part, where there is reason to believe that the prices reflected in the import data may be unreliable.⁴⁵

The Department applies certain criteria to determine whether a surrogate value is aberrational. First, the Department compares the surrogate value in question to the GTA average unit values calculated for the same period using data from the other potential surrogate countries on the Surrogate Country List, to the extent that such data are available.⁴⁶ Similarly, the Department has also examined data from the same HTS category for the surrogate country over

⁴⁴ See Memorandum to the File, through Catherine Bertrand, Program Manager, Office 9, from Josh Startup, International Trade Analyst, Office 9, re: “Seventh Administrative Review of Certain Frozen Warmwater Shrimp from the People’s Republic of China: Surrogate Factor Valuations for the Preliminary Results,” dated March 4, 2012, (“AR7 Prelim SV Memo”) at Exhibit 2.

⁴⁵ See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People’s Republic of China: Final Results of the 2007-2008 Administrative Review of the Antidumping Duty Order, 75 FR 844 (January 6, 2010), and accompanying Issues and Decision Memo at Comment 3 (“Tapered Roller Bearings”).

⁴⁶ See, e.g., Carbazole Violet Pigment 23 from the People’s Republic of China: Final Results of Antidumping Administrative Review, 75 FR 36630 (June 28, 2010) (“Carbazole”), and accompanying Issues and Decision Memo at Comment 4, and Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People’s Republic of China, 71 FR 53079 (September 8, 2006) (“Certain Lined Paper”), and accompanying Issues and Decision Memo at Comment 5.

multiple years to determine if the current data appear aberrational with respect to historical values.⁴⁷

The value for feed of 25.50 U.S. dollars per kilogram (“USD/kg”) based on Thai GTA data reflects significant volatility from year to year.⁴⁸ Specifically, the Thai GTA values for feed in AR4, AR5, AR6, and AR7 are 2.6, 25.50, 14.50, and 26.83 USD/kg, respectively.⁴⁹

Additionally, the GTA value for Philippine shrimp feed during AR5 was 0.12 USD/kg and the value for Indonesian shrimp feed during the POR was 1.23 USD/kg. Therefore, because the Thai import data for shrimp feed appears to be aberrational based on historical data and contrasting against imports made during the POR by economically comparable countries, the Department has looked to other potential sources by which to value shrimp feed. We also note that the Department found the Thai GTA values for shrimp feed to be aberrational in AR6 and AR7.⁵⁰

As stated above, it is the Department’s preference to value all FOPs in a single surrogate country, when possible, consistent with section 351.408(c)(2) of the Department’s regulations. However, where no suitable SV is available from the primary surrogate country, the Department has valued FOPs in other countries that have been found to be significant producers of comparable merchandise and economically comparable to the NME country in question.⁵¹

⁴⁷ See, e.g., Lightweight Thermal Paper From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 73 FR 57329 (October 2, 2008) (“Thermal Paper”), and accompanying Issues and Decision Memo at Comment 10; and Saccharin from the People’s Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 71 FR 7515 (February 13, 2006) (“Saccharin”), and accompanying Issues and Decision Memo at Comment 5.

⁴⁸ See Petitioner’s SV Submission, dated February 4, 2013, at Attachment 5.

⁴⁹ See AR7 Prelim SV Memo at Exhibit 2.b and Petitioner’s SV Submission, dated September 24, 2012, at Attachment 2.

⁵⁰ See Administrative Review of Certain Warmwater Shrimp From the People’s Republic of China: Final Results, Partial Rescission of Sixth Antidumping Duty Administrative Review and Determination Not to Revoke in Part, 77 FR 53856 (September 4, 2012), (“AR6 Final Results”) and accompanying Issues and Decision Memo at Comment 10; see also, AR7 Shrimp Prelim and Decision Memo at 20-21, unchanged in AR7 Final Results.

⁵¹ See Tapered Roller Bearings at Comment 3; see also Certain Cut-to-Length Carbon Steel Plate from Romania: Notice of Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 70 FR 12651 (March 15, 2005), and accompanying Issues and Decision Memo at Comment 3.

In determining an alternative source by which to value shrimp feed, we have looked to the list of potential surrogate countries.⁵² That list included Indonesia, India, Peru, the Philippines, Thailand, and Ukraine as all comparable to the PRC. The Indonesian value in AR5 was 1.23 and the Indian value in AR5 was 1.36.⁵³ Other potential surrogate values for feed include the GTA value for Philippine shrimp feed which is 0.12 USD/kg.⁵⁴ No other countries on the surrogate country list use specific HTS numbers for feed.

Based on U.S. import data placed on the record by American Shrimp Processors Association (“ASPA”) to demonstrate significant production, we find Indonesia to be the second largest producer of comparable merchandise amongst the list of potential surrogate countries suggested by the Office of Policy.⁵⁵ Accordingly, for this remand redetermination, we valued shrimp feed using GTA - Indonesia import data under HTS 2309.90.1300 that is contemporaneous with AR5, specific to the input and tax and duty exclusive. Additionally, we note we used the Indonesian SV for feed in AR6 and AR7.⁵⁶

IV. SUMMARY AND ANALYSIS OF LITIGANT’S COMMENTS ON DRAFT REMAND RESULTS

Petitioner commented on only the Department’s decision to value Regal’s shrimp feed input using GTA – Indonesian import shrimp feed data under HTS 2309.90.1300 that is contemporaneous with AR5. No other interested parties filed comments on the Draft Remand Results. As explained below, we make no changes from the Draft Remand Results.

⁵² See Memorandum To the File, from Josh Startup, International Trade Analyst, Office 9, re: “AR5 Surrogate Country and Values Memo and Comments,” dated December 14, 2012.

⁵³ See AR7 Prelim SV Memo at Exhibit 2.b.

⁵⁴ Id.

⁵⁵ See Letter from ASPA, re: “Administrative Review of the Antidumping Duty Order Covering Frozen Warmwater Shrimp from the People’s Republic of China (2/1/11-1/31/12): ASPA’s Surrogate Country Submission for Regal POR-5,” date January 22, 2013, at Attachment 1.

⁵⁶ See Administrative Review of Certain Frozen Warmwater Shrimp from the People’s Republic of China: Final Results, Partial Rescission of Sixth Antidumping Duty Administrative Review and Determination Not to Revoke in Part, 77 FR 53856 (September 4, 2012), and accompanying Issues and Decisions Memo at Comment 10, see also see also, AR7 Shrimp Prelim and Decision Memo at 20-21, unchanged in AR7 Final Results.

Issue 1: Shrimp Feed Valuation

Petitioner's Comments

- The Department has demonstrated a strong preference for valuing a respondent's inputs from the same surrogate country. For this reason, the Department should value Regal's shrimp feed input by inflating the Thai AR4 shrimp feed SV because this value is not aberrational.
- The Department improperly looked at only whether the Thai GTA shrimp feed data from the POR is aberrational, but it must demonstrate that all potential shrimp feed SVs from Thailand that are on the record are aberrational before using a SV from a different surrogate country.
- The Department may not conclude that the AR4 Thai GTA shrimp feed value is aberrational just because it is at one end of a continuum of values.

Department's Position:

We agree with AHSTAC that the Department prefers to use SV data from the primary surrogate country and has stated this preference in a number of cases.⁵⁷ However, when the record demonstrates that a particular value is not suitable, the Department will consider alternative sources of data on the record.⁵⁸

The CIT has held that the Department is permitted to select surrogate values from sources other than the primary surrogate country when there are other methods available to determine the best available information.⁵⁹ When presented with sufficient evidence to demonstrate a particular SV is aberrational, and therefore unreliable, the Department will examine all relevant price information on the record, including any appropriate benchmark data, in order to accurately

⁵⁷ See Certain Fish Fillets From the Socialist Republic of Vietnam: Final Results and Partial Rescission of the Seventh Antidumping Duty Administrative Review, 77 FR 15039 (March 14, 2012) ("Frozen Fish Fillets 2012") and accompanying Issues and Decisions Memorandum at Comment II D. 1.

⁵⁸ See Tapered Roller Bearings and accompanying Issues and Decisions Memorandum at Comment 3; see also, Carbon Steel Plate and accompanying Issues and Decision Memorandum at Comment at 3.

⁵⁹ See Shakeproof Assembly Components v. United States, 268 F.3d 1376, 1381-82 (Fed.Cir.2001) ("We have specifically held that Commerce may depart from surrogate values when there are other methods of determining the 'best available information' regarding the values of the factors of production.").

value the input in question.⁶⁰ As noted above, the Department compares the surrogate value in question to the GTA average unit values calculated for the same period using data from the other potential surrogate countries on the Surrogate Country List, to the extent that such data are available.⁶¹ Similarly, the Department has also examined data from the same HTS category for the surrogate country over multiple years to determine if the current data appear aberrational with respect to historical values.⁶² Here, we also compared the shrimp feed values over the same review periods with respect to the potential surrogate countries relative to Thailand.

We disagree with Petitioner in that the record does not demonstrate that the Thai shrimp feed values on the record are aberrational and therefore unusable. The Department analyzed Thai shrimp feed import prices for AR4, AR6 and AR7, relative to AR5, as well as shrimp feed import prices for the Philippines, India, and Indonesia⁶³ for the periods corresponding to AR4, AR5, and AR6.⁶⁴ Based on our analysis of all the shrimp feed price data on the record, we continue to find Indonesia has the best import prices for shrimp feed during the POR from among the potential surrogate countries that are at the same level of economic development as the PRC and are a significant producers of comparable merchandise. We also find the imports of shrimp feed into Thailand for the periods AR4, AR5, AR6, and AR7 to be aberrational based on

⁶⁰ See e.g., Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and New Shipper Review; 2011-2012, 79 FR 19053 (April 7, 2014) and accompanying Issues and Decision Memorandum at Comment V (“Frozen Fish Fillets 2014”); see also Polyethylene Terephthalate Film, Sheet, and Strip From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2012-2013, 80 FR 33241, (June 11, 2015) and accompanying Issues and Decision Memorandum at Comment 3.

⁶¹ See, e.g., Carbazole and accompanying Issues and Decision Memo at Comment 4 and Certain Lined Paper and accompanying Issues and Decision Memo at Comment 5.

⁶² See, e.g., Thermal Paper and accompanying Issues and Decision Memo at Comment 10; and Saccharin and accompanying Issues and Decision Memo at Comment 5.

⁶³ These countries are considered economically comparable to Thailand. See Memo to the File, From: Josh Startup, International Trade Analyst, Office 9, Import Administration, Subject: AR5 Surrogate Country and Values Memo and Comments, dated December 14, 2012, at Attachment I.

⁶⁴ See AR7 Prelim SV Memo at Exhibit 2.b.

extreme AUV volatility.⁶⁵ Specifically, the Thai AUVs for shrimp feed over the periods examined ranged from 2.6 to 26.83 USD/kg,⁶⁶ while the AUVs for the other economically comparable countries to the PRC ranged from 0.13-0.51 USD/kg (Philippines), 0.92-1.29 USD/kg (Indonesia) to 1.30-1.37 USD/kg (India) during the same periods.⁶⁷

We disagree with Petitioner's claim that we found the AR4 Thai shrimp feed prices aberrational merely because they are the lowest value compared to other values on the record. As noted above, the record of this review contains shrimp feed prices for multiple review periods for three of the other countries we found to be comparable to the PRC, *i.e.*, Indonesia, India, and the Philippines. We examined the AR4 Thai prices for shrimp feed in the context of all the shrimp feed prices on the record, including those from the other potential surrogate countries. While the AR4 Thai AUV is significantly lower than the other Thai AUVs on the record, taken as a whole the annual Thai values range from two times the values from same-period values from the other countries to over 25 times higher than the value from the other country. Given this wide variability, it would be inaccurate to select one of the Thai values, such as AR4's, without considering it as nested in the wider overall pattern of great variability, particularly given the stability exhibited in the data from the other countries. Accordingly, because we find the AUVs for the GTA-Thai import data to be aberrational and, therefore, the GTA-Thai import data for shrimp feed is unreliable as a whole.⁶⁸

Moreover, when analyzing what is the best available SV information on the record, the Department considers whether the data is publicly available, specific to the input,

⁶⁵ Id.

⁶⁶ See AR7 Prelim SV Memo at Exhibit 2.b and Petitioner's SV Submission, dated September 24, 2012, at Attachment 2.

⁶⁷ Id.

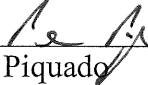
⁶⁸ See AR6 Final Results and accompanying Issues and Decision Memo at Comment 10; see also, AR7 Shrimp Prelim and Decision Memo at 20-21, unchanged in AR7 Final Results.

contemporaneous and tax and duty exclusive.⁶⁹ Here, the Department has chosen a SV for shrimp feed that satisfies all of these criteria even though it is not from the primary surrogate country. In contrast, AHSTAC suggests that the Department use data from a different review period, i.e. not contemporaneous, and inflate that value.⁷⁰ Thus, we note that although AHSTAC argues that the Department should value all SVs using Thai data, the Thai AR4 data does not satisfy all of the Department's SV selection criteria.

Therefore, because the Department finds the Thai import data for shrimp feed to be unreliable, based on historical data and compared to imports made during the POR by economically comparable countries, the Department continues to find that the GTA-Indonesian import data for shrimp feed is the best available information to value shrimp feed because it is publicly available, specific to the input, contemporaneous and tax and duty exclusive.

FINAL RESULTS OF REDETERMINATION

We have implemented all changes discussed above. As a result of this remand redetermination, we continue to calculate a de minimis weighted-average dumping margin for Regal.



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

11 SEPTEMBER 2015

Date

⁶⁹ See Frozen Fish Fillets 2012 and accompanying Issues and Decision Memo at Comment II.

⁷⁰ The Department will inflate non-contemporaneous SV's in proceedings when warranted, but did not in this remand redetermination because the Indonesian shrimp feed value is contemporaneous with AR5.