

FINAL RESULTS OF REDETERMINATION PURSUANT TO COURT REMAND

A. SUMMARY

The Department of Commerce (the Department) has prepared these final results of redetermination pursuant to the order of the U.S. Court of International Trade (CIT or the Court) in Ad Hoc Shrimp Trade Action Committee v. United States, Slip Op. 09-151 (CIT December 29, 2009). Specifically, the Department requested a remand to reconsider and further explain whether the Rubicon Group¹ is entitled to a constructed export price (CEP) offset adjustment.

In accordance with the Court's instructions, the Department has reconsidered and further explained whether the Rubicon Group is entitled to a CEP offset in the 2006 – 2007 antidumping duty administrative review of warmwater shrimp from Thailand. As a result, for the reasons explained below, we determine that the Rubicon Group is entitled to a CEP offset for this review period and have recalculated the Rubicon Group's margin accordingly.

B. BACKGROUND

On August 29, 2008, the Department published the final results of the administrative review covering the period February 1, 2006, through January 31, 2007. See Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 73 FR 50933 (August 29, 2008) (Final Results), and the accompanying Issues and Decision Memorandum at Comment 5. In the Final Results, the Department determined that the Rubicon Group was not entitled to a CEP offset.

On October 24, 2008, the Rubicon Group filed a complaint with the Court challenging the Department's determination that the Rubicon Group was not entitled to a CEP offset. In its complaint, the Rubicon Group alleged that the Department's decision to deny the Rubicon Group a CEP offset adjustment to normal value (NV) is unsupported by substantial evidence and otherwise contrary to law. On July 17, 2009, the Department requested a voluntary remand to reconsider and further explain the CEP offset issue. On December 29, 2009, the Court granted the Department's request to reconsider and further explain its decision as to whether the Rubicon Group is entitled to a CEP offset.

On May 17, 2010, the Ad Hoc Shrimp Trade Action Committee (Ad Hoc) and the Rubicon Group submitted comments on our draft Results of Redetermination Pursuant to Court Remand (Draft Results), which were issued on May 7, 2010. On May 21, 2010, both parties submitted rebuttal comments.

¹ This group is comprised of the following companies: Andaman Seafood Co., Ltd., Chanthaburi Frozen Food Co., Ltd., Chanthaburi Seafoods Co., Ltd., Phatthana Seafood Co., Ltd., Phatthana Frozen Food Co., Ltd., Thailand Fishery Cold Storage Public Co., Ltd., Thai International Seafood Co., Ltd., and Rubicon Resources, LLC (collectively, the Rubicon Group).

Pursuant to the Court's remand order, the Department has reconsidered the CEP offset issue with respect to the Rubicon Group. As discussed further below, we have determined that the Rubicon Group is entitled to a CEP offset adjustment to NV in the 2006 – 2007 administrative review.

C. ANALYSIS

Section 773(a)(1)(B)(i) of the Tariff Act of 1930, as amended (the Act), states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (LOT) as the export price (EP) or CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa, 62 FR 61731, 61732 (Nov. 19, 1997) (Plate from South Africa). In order to determine whether the comparison sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the chain of distribution), including selling functions and class of customer (customer category).

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices), we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. When the Department is unable to match U.S. sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sales to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it practicable, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is more remote from the factory than the CEP LOT and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.*, no LOT adjustment is practicable), the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. See Plate from South Africa, 62 FR at 61732-33.

During the period of review, the Rubicon Group made sales to unaffiliated Canadian (third country market)² customers via two sales channels: 1) direct from the factory; and 2) through its affiliated reseller located in the United States, Rubicon Resources. The Rubicon Group also made U.S. sales through the same two distributions channels. In the Final Results, we analyzed the selling functions that the Rubicon Group performed through each of these distribution channels for sales to Canada, as well as the selling functions it performed to sell to its U.S. EP customers and to Rubicon Resources. Based on this analysis, the Department stated that the Rubicon Group performed basically the same selling functions when selling to both

² We determined that the Rubicon Group's aggregate volume of home market sales of the foreign like product was insufficient to permit a proper comparison with U.S. sales of the subject merchandise. Therefore, we used the Rubicon Group's sales to Canada as the basis for comparison-market sales. See Certain Frozen Warmwater Shrimp From Thailand: Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review, 73 FR 12088 (March 6, 2008), unchanged in Certain Frozen Warmwater Shrimp From Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 73 FR 50933 (August 29, 2008).

Canada and the United States (for both EP and CEP sales). We determined that these sales were at the same LOT and no LOT adjustment was warranted. Because we found that no difference in the LOTs existed between markets, we did not grant a CEP offset to the Rubicon Group.

In its complaint to the Court, the Rubicon Group argues that: (1) the record evidence does not support the Department's conclusion that Canadian and CEP sales were made at the same LOT; (2) the Department failed to account for the role played by Rubicon Resources, the U.S. affiliate, which provides compelling support for a CEP offset; and (3) the Department improperly discounted record evidence in the 2006-2007 review based on its findings in a prior segment of the proceeding.

After a thorough examination of the information on the record in the underlying administrative review, we have concluded that we did not fully take into account all of the information on the record when we were conducting the administrative review of the 2006-2007 period. In fact, we find that there are substantial differences in the selling functions between sales to Canada and sales to the United States, that it is reasonable to conclude that the sales to Canada were made at a more advanced LOT than the CEP sales, and that a CEP offset adjustment to the Rubicon Group's NV is appropriate.

In comparing the Canadian LOT to the CEP LOT, we find that the selling activities performed by the Thai packers³ for CEP sales were significantly fewer than the selling activities that were performed for the Canadian sales. Specifically, on their sales to Canada, the Thai packers performed the following selling functions: sales forecasting; market research; sales promotion; advertising; participation in trade shows; inventory maintenance; order input/processing; freight and delivery arrangements; visits, calls and correspondence to customers; development of new packaging and new markets (with customer); packing; and after-sales services. These selling functions can be generally grouped into the following four categories: sales and marketing, freight and delivery, inventory maintenance and warehousing, and warranty and technical services. The only selling functions that the Thai packers performed for CEP sales were inventory maintenance, order input/processing, freight and delivery arrangements, and packing. These selling functions can be generally grouped into the following two categories: freight and delivery, and inventory maintenance and warehousing. For these CEP sales, the Thai packers do not perform activities such as sales forecasting; market research; advertising; participation in trade shows; development of new packing for their U.S. affiliate; and visits to customers.

In fact, the chart on page 6 of Ad Hoc's May 17, 2010, comments on our draft redetermination illustrates quite clearly the stark difference in the number of selling activities between the Canadian sales and the sales to Rubicon Resources. The Thai packers performed twelve selling functions for their sales to Canada and only four selling functions for sales to Rubicon Resources. Accordingly, we find that the Thai packers performed significantly more selling functions for Canadian sales than they provided for CEP sales. Because we also find that

³ The following companies in the Rubicon Group produced subject merchandise during the POR and are collectively referred to as the "Thai packers": Andaman Seafood Co., Ltd., Chanthaburi Seafoods Co., Ltd., Chanthaburi Frozen Food Co., Ltd., Phatthana Seafood Co., Ltd., Phatthana Frozen Food Co., Ltd., Thailand Fishery Cold Storage Public Co., Ltd., and Thai International Seafoods Co., Ltd.

these additional selling activities are significant, as further explained below, we now find that the Canadian LOT is more advanced than the CEP LOT.

After considering the Rubicon Group's arguments on this issue anew, we agree that it would be inappropriate to compare sales that are otherwise identical (i.e., to the ultimate same customer of the same product) by denying an offset adjustment for indirect activities and related expenses undertaken with respect to Canada, while deducting these expenses from U.S. price. Thus, we find that Rubicon Resources' adjusted U.S. sales – that is, after removal of all the expenses associated with the company's selling activities – were not made at an equivalent LOT to unadjusted Canadian sales.

Even though the Thai packers arrange for freight and delivery to Rubicon Resources, they do not perform this activity as intensively as they do for sales to Canada and for direct sales to the United States. For direct sales to Canada and the United States, the Thai packers actively track shipments and customs processing to ensure delivery to the customer's warehouse. For sales to Rubicon Resources, however, the Thai packers do not monitor delivery once the shipment is unloaded at the port in Thailand. At that point, Rubicon Resources assumes responsibility for tracking the shipment's progress.

Although we stated in the Final Results that the emails submitted in this review were insufficient to demonstrate that the Canadian LOT was more advanced than the CEP LOT, after reviewing the record again, we have concluded that the Rubicon Group provided substantial evidence on the record of this review supporting its contention that the selling activities that the Thai packers performed for Canadian customers, including the Rubicon Group's sales to Canada through its affiliate, Rubicon Resources, were more extensive than those performed for U.S. sales to Rubicon Resources. For example, the Rubicon Group's November 28, 2007, supplemental questionnaire response at Exhibits ABC-6 – ABC-11 contains numerous emails between certain Thai packers and their customers showing performance of various selling activities for the Thai packers' direct sales to Canada. Specifically, for one Canadian customer, one of the Thai packers provided an analysis of supply trends. In another example, a Canadian customer requested the packers' feedback on market trends. The Thai packers' sales personnel also regularly contacted individual customers directly to promote prices and target sales volumes. See emails in Exhibit ABC-6 discussing market conditions, plant tours, price promotion, the promotion of products through samples, visits of Canadian customers to Thailand, travel itinerary and hotel bills for a Thai packer visit to Canada, and discussion of new product packaging.

Conversely, as discussed above, the Thai packers did not provide a high level of service for Rubicon Resources. According to the Thai packers, Rubicon Resources was required to purchase from them because it was created for the purpose of marketing and distributing their seafood products in the United States. The Thai packers would have no need to perform activities such as sales forecasting and market research for their U.S. affiliate because Rubicon Resources performs these services itself, using its own sales and marketing staff based in the United States.

Moreover, Ad Hoc's focus on the quantitative analysis of the Rubicon Group's indirect selling expenses (ISEs) is inconsistent with the statute, the Department's regulations and the

Department's practice, which direct the Department to examine selling activities as opposed to selling expenses when performing its LOT analysis. The Department's focus on selling activities rather than selling expenses is supported by the statute, which specifies that a difference in LOTs "involves the performance of different selling activities." See 773(a)(7)(A) of the Act. The Department's regulations similarly follow the language in the statute, specifying that we will determine that sales are made at different LOTs if they are made at different marketing stages or their equivalent. See 19 CFR 351.412(c)(2). The Uruguay Round Agreements Act, Statement of Administrative Action, H.R. Doc. No. 103-316, vol. 1, (SAA) also specifies that "Commerce will grant such {LOT} adjustments only where: (1) there is a difference in the level of trade (i.e., there is a difference between the actual functions performed by the sellers at the different levels of trade in the two markets); and (2) the difference affects price comparability" (emphasis added). See SAA at 829. In addition, the CIT has affirmed the Department's practice to grant a CEP offset based on evidence of selling activities alone. See ArcelorMittal USA Inc. v. United States, Slip Op. 08-52 (CIT 2008) at 30 (ArcelorMittal).

Although the Department does in limited circumstances consider selling expenses in its LOT analysis, it does not consider them as a substitute for an analysis of the selling activities themselves.⁴ The consideration of ISEs is only appropriate in certain circumstances when the LOT analysis is not clear cut and an additional test may be necessary. Therefore, the use of ISEs in an LOT analysis may be instructive in certain circumstances but is not dispositive. In this case, a quantitative analysis is not reliable because it assumes that the expense data reported by the Rubicon Group are an accurate depiction of the level of intensity at which the selling activities are performed. However, selling expenses do not translate directly into selling activities, nor do they always capture the degree to which the activities are performed. For example, the selling expense figures may be identical for two companies, yet the types of selling activities that the two companies perform may be vastly different. See Prodotti Alimentari Meridionali, S.R.L. v. United States, 26 CIT 749, 754 (2002) (Prodotti) (where the CIT expressed concern with conducting a purely quantitative analysis in determining whether LOT differences exist).

Moreover, in the instant case, an analysis of ISEs is inappropriate because the ISE ratios reported for the Thai packers' sales to Rubicon Resources are overstated. Although the Rubicon Group attempted to calculate separate ISE ratios for the Thai packers' direct sales to unaffiliated customers and sales to Rubicon Resources, it allocated the majority of the ISE accounts equally between sales to unaffiliated customers and sales to Rubicon Resources, even though the amounts were mostly attributable to the packers' sales to unaffiliated customers. According to the Rubicon Group, there was no systematic or practicable way to attempt to allocate these accounts between sales to unaffiliated customers and sales to Rubicon Resources. In Alloy Piping Products, Inc., et al. v. United States, Slip Op 2009-29 (CIT April 14, 2009) (Alloy Piping) the Court noted that, "If Commerce, or this Court, in reviewing an administrative

⁴ See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar from Italy, 67 FR 3155 (January 23, 2002) (SS Bar from Italy), and accompanying Issues and Decision Memorandum at Comment 37; Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Final Results and Final Rescission in Part of Antidumping Duty Administrative Review, 74 FR 1174 (January 12, 2009), and accompanying Issues and Decision Memorandum at Comment 3.

determination, were to narrow the focus of its LOT analysis to selling expenses, it could act contrary to law and cause misleading results. Expenses do not necessarily translate directly into activities, nor do they capture the intensity of the activities. Moreover, expenses related to several selling activities may fall under a single expense field.” Similarly, in this case, the Rubicon Group’s selling activities were reported on a market-specific and subject-merchandise-specific basis, but the ISE ratios were not. See the Rubicon Group’s May 21, 2010, submission at page 4.

D. COMMENTS FROM INTERESTED PARTIES

On May 17, 2010, Ad Hoc and the Rubicon Group submitted comments on our Draft Results issued on May 7, 2010. On May 21, 2010, both parties submitted rebuttal comments. These comments are summarized below:

In the Draft Results, the Department reversed its determination in the Final Results and granted a CEP offset to the Rubicon Group. Ad Hoc opposes the Department’s Draft Results for several reasons. First, Ad Hoc argues that the Draft Results provide no guidance or explanation as to how the Department determines whether alleged differences in activities are significant. Ad Hoc contends that this lack of discussion contrasts with the developed agency practice in the original less-than-fair-value (LTFV) investigation and in the Final Results of this review. Next, Ad Hoc argues that in the Draft Results the Department seems to have abandoned its practice of assessing ISEs as a check on the asserted differences in selling functions. Ad Hoc maintains that the Final Results does not explain why a quantitative analysis is less reliable in this case but was appropriate in the LTFV investigation. Finally, Ad Hoc asserts that the Draft Results are also deficient in that they fail to identify any way in which the record in this administrative review is different from that developed in the LTFV investigation. Ad Hoc cites several cases in support of its contention that, although the Department makes determinations in a review based on the record developed in that segment of the proceeding, the Department has an established practice of giving weight to previous determinations made in prior segments of the proceeding regarding whether a CEP offset is appropriate.⁵ Ad Hoc contends that, where a CEP offset was denied in the past, the respondent must demonstrate how the record in the current proceeding differs from previous records.

Also in its May 17, 2010, submission, Ad Hoc argues that the Court’s decision in ArcelorMittal addressed different facts than those presented in this review. Ad Hoc maintains that in ArcelorMittal, the Court noted that the record established that the respondents had met their evidentiary burden in demonstrating that a CEP offset was warranted. More significantly, according to Ad Hoc, ArcelorMittal did not involve any evidence that detracted from the conclusion that sales were made at different LOTs. Ad Hoc also cites Prodotti in support of its belief that an analysis of the Rubicon Group’s ISEs is appropriate, arguing that the Court did not

⁵ See Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review, 74 FR 40167 (August 11, 2009), and accompanying Issues and Decision Memorandum at Comment 2 (OJ 2009); Certain Orange Juice from Brazil: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 73 FR 46584 (August 11, 2008), and accompanying Issues and Decision Memorandum at Comment 5 (OJ 2008); and Stainless Steel Sheet and Strip in Coils From the Republic of Korea; Final Results and Rescission of Antidumping Duty Administrative Review in Part, 72 FR 4486 (January 31, 2007), and accompanying Issues and Decision Memorandum at Comment 1 (SSSSC Korea).

question the appropriateness generally of an ISE analysis; rather, it held that an ISE analysis was not appropriate in that case.

In its May 17, 2010, submission, the Rubicon Group states that it agrees with the Department's conclusion that the Rubicon Group is entitled to a CEP offset. In addition, the Rubicon Group maintains that the record evidence also supports the conclusion that: 1) Rubicon Resources' sales to Canada were made at a more advanced LOT than CEP sales; 2) the Thai packers did not provide a high level of service for sales to Rubicon Resources; and 3) even though the statute requires the Department to focus on selling activities in analyzing differences in LOT, with respect to ISEs, the record evidence supports the conclusion that Canadian sales were made at a more advanced LOT than CEP sales.

In its May 21, 2010, rebuttal comments, Ad Hoc argues that the Department's Final Results addressed and rejected the Rubicon Group's last two arguments and these findings were not disturbed by the Department's Draft Results. Ad Hoc maintains that the Rubicon Group does not now point to evidence on the record previously overlooked by the Department which would demonstrate that the Thai packers did not continue to perform the same selling activities for CEP sales to Rubicon Resources as those found in the original LTFV investigation. Nor, according to Ad Hoc, do the Draft Results address the Department's prior correct finding that the Thai packers had previously been found to have "regularly" provided sales forecasting to Rubicon Resources and that the respondent had not provided evidence nor even argued that this activity was no longer performed by the Thai packers during the review period.

Furthermore, Ad Hoc argues that, although the Rubicon Group downplays the significance of an analysis of ISEs with respect to this issue, its claim highlights a defect in the Draft Results. Specifically, Ad Hoc maintains that, even though the Department correctly observed in the Final Results that the respondent must first demonstrate that there are substantial differences in selling functions between the third country and CEP LOTs in order for a CEP offset to be granted, the Draft Results omit any reference to the respondent's burden of demonstration. Ad Hoc notes that in the Final Results, the Department determined that the Rubicon Group failed to meet that burden.

Finally, Ad Hoc notes that the Rubicon Group's comments on ISEs appear to concede that such an analysis could not support the company's narrative claims due to the respondent's chosen method for reporting ISEs. Ad Hoc protests that the Department's acceptance of the Rubicon Group's argument (*i.e.*, that its choice of reporting methodology for ISEs supports the Department's decision in the Draft Results) incorrectly excuses the Rubicon Group's failure to meet its burden of demonstration based on its chosen methodology for reporting ISEs.

In conclusion, Ad Hoc argues that the arguments made in the Rubicon Group's comments fail to address the evidence previously considered by the Department and, as a result, the Department's conclusion in the Final Results should be maintained.

In its May 21, 2010, rebuttal comments, the Rubicon Group argues that, in determining whether the Rubicon Group qualified for a CEP offset, the Department properly focused on the record evidence of selling activities, as required by the statute. The Rubicon Group maintains that Ad Hoc's argument that the Department impermissibly limited its LOT analysis to an

examination of selling activities, instead of giving greater weight to ISEs, is misplaced. The Rubicon Group asserts that the Department considered the ISEs in its analysis, but concluded that they were not a reliable measure of selling activities because ISEs and selling activities were not reported on the same basis.

Furthermore, the Rubicon Group argues that Ad Hoc's claim that the Department failed to identify how the record in the current review differs from the record developed in the LTFV investigation fails for two reasons: 1) contrary to Ad Hoc's view, the Department's longstanding practice is to limit its analysis to the record established in the current segment of the proceeding; and 2) even if it were permissible to take the LTFV investigation into account, the Rubicon Group provided more information and documentation to support a CEP offset in the 2006-2007 review than was provided in the LTFV investigation. The Rubicon Group asserts that none of the administrative cases cited by Ad Hoc supports their theory of the Department's "established practice." According to the Rubicon Group, in each case the Department made a decision on whether to grant a CEP offset based on an analysis of the record evidence in the current segment of the proceeding, noting prior determinations of the CEP offset issue only in passing. In addition, the Rubicon Group notes that, even if it were possible to take into account the Department's decision and the corresponding record in the LTFV investigation, this would not conflict with the Department's decision to grant a CEP offset upon remand of the 2006-2007 review because the Rubicon Group provided more information and documentation to support a CEP offset in the 2006-2007 review than was provided in the LTFV investigation. The Rubicon Group maintains that, unlike in the LTFV investigation, in the 2006-2007 administrative review, it identified the full range of selling activities that were performed for Canadian customers, but not by the Thai packers for sales to Rubicon Resources. On the other hand, in the LTFV investigation, the Rubicon Group explains that it identified sales forecasting/market research as the only selling activity that the Thai packers performed for sales to Canadian customers but not for Rubicon Resources.

In sum, the Rubicon Group urges the Department to reject Ad Hoc's arguments and determine in this remand proceeding that it is entitled to a CEP offset adjustment in the 2006-2007 administrative review.

DOC Position:

We continue to find that the Rubicon Group is entitled to a CEP offset adjustment to NV. We disagree with Ad Hoc's argument that the Department has announced an analytical approach to section 773(a)(7)(B) of the Act that would grant a CEP offset whenever a respondent could identify differences in "activities" alone between sales made in the comparison or home market and CEP sales in the United States. The standard for evaluating LOTs is set forth in 19 CFR 351.412(c) and the SAA at 829-30 and we properly applied this standard in the Draft Results. In addition to the reported selling activities, we relied upon the reported distribution systems and customer categories in each market, as well as the role played by Rubicon Resources in the Canadian market.

With respect to Ad Hoc's argument that the Department abandoned its practice of assessing ISEs as a check on the asserted differences in selling functions, as we explained above, the Department's practice is to focus the LOT analysis on selling activities, and the Department

only considers selling expenses when necessary. As we stated in the Draft Results, while the Department does in some cases consider selling expenses in its LOT analysis, it does not consider them as a substitute for an analysis of the selling activities themselves. We did not state in the Draft Results that ISEs could never be used as a reasonable check on reported differences in selling activities. In the LTFV investigation as well as in the Final Results, ISEs were considered in conjunction with the analysis of selling functions. However, after reevaluating the information on the record, we now find that there are substantial differences in the selling functions between the comparison market and CEP LOTs, and thus we are able to make a determination as to whether a CEP offset is appropriate in this case based upon this analysis alone. Accordingly, an analysis of the ISEs is unnecessary in this case. Also, as explained above, an analysis of the ISEs would not be appropriate here because the Rubicon Group's selling activities and ISEs were not reported on the same basis and the ISEs were not reflective of the relative selling activities performed on sales to Rubicon Resources and sales to unaffiliated customers.

Furthermore, although Ad Hoc continually cites to the record in the LTFV investigation, arguing that the Draft Results fail to identify any differences between the record in this review and the record developed in the original LTFV investigation with respect to the Rubicon Group's claim for a CEP offset, the Department's practice is to rely on the record established in the current segment of the proceeding when making determinations as to the issues raised by interested parties.⁶ The CIT has upheld the Department's longstanding practice to treat each segment of an antidumping proceeding, including the antidumping investigation and the administrative reviews that may follow, as independent segments with separate records which lead to independent determinations.⁷ While we agree that consistency across segments of individual proceedings is a worthwhile goal, we disagree that issues may not be decided on their own merits using primary data generated during the instant review.

Moreover, because the facts have changed since the LTFV investigation, and the record contains adequate evidence that the selling activities are now substantially different, it is reasonable to draw a different conclusion in this remand redetermination. First, the Rubicon Group provided additional evidence in its November 28, 2007, submission supporting its assertion that the selling activities performed for Canadian customers were significantly more extensive than those performed for sales to Rubicon Resources. For example, as noted above, the Rubicon Group's November 28, 2007, supplemental questionnaire response at Exhibits ABC-6 – ABC-11 contains numerous emails between certain Thai packers and their customers showing performance of various selling activities for the Thai packers' direct sales to Canada. Second, since the time of the LTFV investigation, Rubicon Resources began selling to Canada via its sales office located in the United States. As noted above, the selling functions performed by Rubicon Resources are substantial, including activities such as advertising, sales forecasting, sales promotion, market research, trade shows, inventory maintenance, calls and correspondence

⁶ See, e.g., Circular Welded Non-Alloy Steel Pipe From the Republic of Korea; Final Results of Antidumping Duty Administrative Review, 69 FR 32492 (June 10, 2004), and accompanying Issues and Decision Memorandum at Comment 7.

⁷ See Gourmet Equipment (Taiwan) Corp. v. United States, 24 CIT 572, Slip Op 2000-78 (CIT July 6, 2000); Alloy Piping.

to customers, and after-sales services. Because: 1) we find that there is only one LOT in the Canadian market (a finding undisputed by Ad Hoc); and 2) the activities performed by Rubicon Resources to sell to the Canadian market, as well as the activities undertaken by the Thai packers to make direct sales to Canada, differ significantly from those undertaken by the Thai packers to sell to Rubicon Resources, we continue to find in this redetermination that the LOT in the comparison market differs from – and is more advanced than – the LOT of sales to the U.S. market. Contrary to AD Hoc’s contention, this finding is not inconsistent with our finding in the LTFV investigation because this fact pattern did not exist then.

We also disagree with Ad Hoc that the cases cited as evidence of the Department’s administrative practice are on point here. In each of those cases, identified in footnote 4, above, the Department analyzed the information submitted in the context of that particular segment of the proceeding and reached its conclusions based on those facts. Here, we have done the same; however, unlike in OJ 2008 and OJ 2009, the facts in the instant segment differ significantly from the facts in prior segments. Thus, while the outcomes do differ, this is neither inconsistent nor surprising. With respect to SSSSC Korea, this case is also consistent with Department practice because, as in the instant case, the Department found that the facts in two segments of the proceeding were different and, therefore, a different conclusion with respect to the CEP offset issue was appropriate. With respect to Ad Hoc’s argument that the Department previously found that the Thai packers regularly provided sales forecasting to Rubicon Resources, there is no evidence on the record of the 2006-2007 administrative review that the Thai packers are providing this service to Rubicon Resources.

With respect to the court cases cited by Ad Hoc, we believe that its cite to ArcelorMittal is inapposite because the Rubicon Group did meet its evidentiary burden, as described above, with respect to the CEP offset issue in this review. Also, with respect to Prodotti, as stated above, an analysis of ISEs is inappropriate because we found the ISE ratios reported for the Thai packers’ sales to Rubicon Resources to be overstated since there was no systematic or practicable way to allocate these accounts between sales to unaffiliated customers and sales to Rubicon Resources.

E. FINAL RESULTS OF REDETERMINATION

We find that it is appropriate to grant a CEP offset adjustment to the Rubicon Group’s NV. Consequently, we have recalculated the dumping margin for the Rubicon Group based upon the change set forth above. See Attachment 1. Accordingly, for these final results of redetermination, the weighted-average margin for the Rubicon Group for the period February 1, 2006, through January 31, 2007, is 3.00 percent.

Paul Piquado
Acting Deputy Assistant Secretary
for Import Administration

Date