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DEPARTMENT OF COMMERCE

International Trade Administration

[A-552-802]

Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Notice of Court Decision Not in Harmony With Final Results of Administrative Review, Notice of Re-conduct of Administrative Review of Grobest & I Mei Industrial (Vietnam) Co., Ltd., and Notice of Amended Final Results of Administrative Review

SUMMARY: On September 13, 2012, the United States Court of International Trade (“CIT” or “Court”) entered final judgment following its decision in *Grobest II*,¹ regarding the final results of the antidumping duty administrative review of certain frozen warmwater shrimp (“shrimp”) from the Socialist Republic of Vietnam (“Vietnam”) for the period covering February 1, 2008, through January 31, 2009.² Consistent with the decision of the United States Court of Appeals for the Federal Circuit (“Federal Circuit”) in *Timken*,³ as clarified by *Diamond Sawblades*,⁴ the Department is notifying the public that the final judgment in this case is not in harmony with the Department’s *Final Results* and is amending the *Final Results*. The Department is also notifying the public that it is re-

¹ See *Grobest & I-Mei Industrial (Vietnam) Co. v. United States*, Slip Op. 2012-100 (July 31, 2012) (“*Grobest II*”).

² See *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 75 FR 47771 (August 9, 2010), and accompanying Issues and Decision Memorandum, as amended by *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Amended Final Results of Antidumping Duty Administrative Review*, 75 FR 61122 (October 4, 2010) (“*Final Results*”).

³ See *Timken Co., v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (“*Timken*”).

⁴ *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (“*Diamond Sawblades*”).

conducting the 2008/2009 antidumping duty administrative review of Grobest & I-Mei Industrial (Vietnam) Co., Ltd. (“Grobest”) pursuant to the CIT’s order.

DATES: *Effective Date:* September 23, 2012.

FOR FURTHER INFORMATION CONTACT: Susan Pulongbarit, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-4031.

SUPPLEMENTARY INFORMATION: On August 9, 2010, the Department issued its *Final Results*. In the *Final Results*, the Department determined not to examine Grobest as a voluntary respondent and rejected Amanda Foods (Vietnam) Ltd.’s (“Amanda Foods”) untimely separate rate certification (“SRC”).⁵

In *Grobest I*, the CIT remanded the *Final Results* to the Department to, *inter alia*, reconsider its denial of Grobest’s voluntary respondent request and to accept Amanda Foods’ SRC.⁶ On April 30, 2012, the Department filed its remand results, in which it determined that individually reviewing Grobest as a voluntary respondent would have been unduly burdensome and would have inhibited the timely completion of the administrative review. The Department also accepted Amanda Foods’ SRC, per the Court’s instruction.

On July 31, 2012, the Court sustained the Department’s remand results regarding Amanda Foods’ SRC, but remanded the Department’s rejection of Grobest’s request for voluntary respondent status and ordered the Department to conduct an individual review of Grobest as a voluntary respondent and to reconsider Grobest’s revocation request in light of the results of that review.⁷

Following the Court’s remand order in *Grobest II*, the Government moved the Court to enter final judgment so that the Department could re-conduct the administrative review of Grobest under section 751(a)(3) of the Tariff Act of 1930, as amended. The Court granted this motion and ordered the Department to re-conduct the administrative review of Grobest by individually investigating Grobest as a voluntary respondent and

⁵ See *Final Results*.

⁶ See *Grobest & I-Mei Industrial (Vietnam) Co. v. United States*, 36 CIT, 2d 1342 (2012) (“*Grobest I*”).

⁷ See *Grobest II*.

reconsidering Grobest’s request for revocation in light of the results of that review. The Court also ordered the Department to treat the review of Grobest as being conducted pursuant to the deadlines listed in section 751(a)(3) of the Act, calculating the deadlines beginning from the date of the entry of final judgment.

Timken Notice

In its decision in *Timken*,⁸ as clarified by *Diamond Sawblades*, the CAFC held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (“the Act”), the Department must publish a notice of a court decision that is not “in harmony” with a Department determination and must suspend liquidation of entries pending a “conclusive” court decision. The CIT’s September 13, 2012, judgment sustaining the Department’s remand redetermination to accept Amanda Foods’ SRC and remand to individually review Grobest constitutes a final decision of that court that is not in harmony with the Department’s *Final Results*. This notice is published in fulfillment of the publication requirements of *Timken*. Accordingly, the Department will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal, or if appealed, pending a final and conclusive court decision.

Notice of Re-Conduct of Review of Grobest

Pursuant to the Court’s final judgment, the Department will re-conduct the 2008/2009 administrative review of the antidumping duty order on shrimp from Vietnam on Grobest. The Department will conduct the administrative review according to the deadlines listed in Section 751(a)(3) of the Act, calculating the deadlines beginning from the date the final judgment was entered, *i.e.*, September 13, 2012. The Department will also reconsider Grobest’s request for revocation within the context of that review.

Amended Final Results

Because there is now a final court decision with respect to the *Final Results*, the Department amends its

⁸ See *Timken*, 893 F.2d at 341.

Final Results. The Department finds the following revised margin to exist:

**CERTAIN FROZEN WARMWATER
SHRIMP FROM VIETNAM**

Exporter	Margin (percent)
Amanda Foods (Vietnam) Ltd.	3.92

The Department also amends the *Final Results* by announcing that it is re-conducting the administrative review of Grobest, pursuant to the Court's September 13, 2012, order.

This notice is issued and published in accordance with sections 516A(e)(1), 751(a)(1), and 777(i)(1) of the Act.

Dated: October 10, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-864]

Pure Magnesium in Granular Form from the People's Republic of China: Continuation of Antidumping Duty Order

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

SUMMARY: As a result of determinations by the Department of Commerce (the "Department") and the International Trade Commission (the "ITC") that revocation of the antidumping duty ("AD") order on pure magnesium in granular form from the People's Republic of China ("PRC") would likely lead to a continuation or recurrence of dumping, or to a continuation or recurrence of material injury within a reasonably foreseeable time to an industry in the United States, the Department is publishing this notice of continuation of the AD order.

DATES: *Effective Date:* October 17, 2012.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita or Eugene Degnan, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-4243 and (202) 482-0414, respectively.

SUPPLEMENTARY INFORMATION: On February 1, 2012, the Department

initiated the second sunset review of the AD order on pure magnesium in granular form from the PRC, pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act").¹

The Department conducted an expedited sunset review of the order. As a result of its review, the Department determined that revocation of the AD order on pure magnesium in granular form from the PRC would be likely to lead to continuation or recurrence of dumping and notified the ITC of the magnitude of the margins likely to prevail were the order to be revoked.²

On October 1, 2012, the ITC published its determination, pursuant to section 751(c) of the Act, that revocation of the AD order on pure magnesium in granular form from the PRC would likely lead to a continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.³

Scope of the Order

There is an existing AD order on pure magnesium from the PRC.⁴ The scope of this order excludes pure magnesium that is already covered by the existing order on pure magnesium in ingot form, and currently classifiable under item numbers 8104.11.00 and 8104.19.00 of the Harmonized Tariff Schedule of the United States ("HTSUS").

The scope of this order includes imports of pure magnesium products, regardless of chemistry, including, without limitation, raspings, granules, turnings, chips, powder, and briquettes, except as noted above.

Pure magnesium includes: (1) Products that contain at least 99.95 percent primary magnesium, by weight (generally referred to as "ultra pure" magnesium); (2) products that contain less than 99.95 percent but not less than 99.8 percent primary magnesium, by weight (generally referred to as "pure" magnesium); (3) chemical combinations of pure magnesium and other material(s) in which the pure magnesium content is 50 percent or greater, but less than 99.8 percent, by weight, that do not conform to an "ASTM Specification for

Magnesium Alloy"⁵ (generally referred to as "off specification pure" magnesium); and (4) physical mixtures of pure magnesium and other material(s) in which the pure magnesium content is 50 percent or greater, but less than 99.8 percent, by weight. Excluded from this order are mixtures containing 90 percent or less pure magnesium by weight and one or more of certain non-magnesium granular materials to make magnesium-based reagent mixtures. The non-magnesium granular materials of which the Department is aware used to make such excluded reagents are: Lime, calcium metal, calcium silicon, calcium carbide, calcium carbonate, carbon, slag coagulants, fluorspar, nepheline syenite, feldspar, aluminum, alumina (Al₂O₃), calcium aluminate, soda ash, hydrocarbons, graphite, coke, silicon, rare earth metals/mischmetal, cryolite, silica/fly ash, magnesium oxide, periclase, ferroalloys, dolomitic lime, and colemanite. A party importing a magnesium-based reagent which includes one or more materials not on this list is required to seek a scope clarification from the Department before such a mixture may be imported free of antidumping duties.

The merchandise subject to this order is currently classifiable under item 8104.30.00 of the HTSUS. Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this order is dispositive.⁶

Continuation of the Order

As a result of these determinations by the Department and the ITC that revocation of the AD order on pure magnesium in granular form would likely lead to a continuation or recurrence of dumping, and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the AD order on pure magnesium in granular form from the PRC.

⁵ The meaning of this term is the same as that used by the American Society for Testing and Materials in its Annual Book of ASTM Standards: Volume 01.02 Aluminum and Magnesium Alloys.

⁶ The Department has issued four scope rulings with respect to pure magnesium in granular form. See *Notice of Scope Rulings and Anticircumvention Inquiries*, 68 FR 7772, 7774 (February 18, 2003); Memorandum to the File "Pure Magnesium in Granular Form from the People's Republic of China: Final Scope Ruling: ESM Group Inc.," dated September 18, 2006; Memorandum to Christian Marsh, "Pure Magnesium in Granular Form from the People's Republic of China: Final Scope Ruling on Granular Magnesium Ground in Mexico," dated October 27, 2011; Memorandum to Christian Marsh, "Pure Magnesium in Granular Form from the People's Republic of China: Final Scope Ruling for ESM Group Inc. (Atomized Magnesium)," dated October 28, 2011.

¹ See *Initiation of Five-Year ("Sunset") Review*, 77 FR 4995 (February 1, 2012) ("Initiation Notice").

² See *Pure Magnesium in Granular Form from the People's Republic of China: Final Results of Expedited Second Sunset Review of Antidumping Duty Order*, 77 FR 33165 (June 5, 2012).

³ See *Pure Magnesium (Granular) from China* (Inv. No. 731-TA-895 (Second Review)), 77 FR 59979 (October 1, 2012).

⁴ See *Notice of Antidumping Duty Orders: Pure Magnesium From the People's Republic of China, the Russian Federation and Ukraine; Notice of Amended Final Determination of Sales at Less Than Fair Value: Antidumping Duty Investigation of Pure Magnesium From the Russian Federation*, 60 FR 25691 (May 12, 1995).