



A-552-802

Remand: 02/01/2008-01/31/2009

Re-conducted Grobest 4<sup>th</sup> AR

**Public Document**

IA/NME/IX: SSP

**MEMORANDUM TO:** Paul Piquado  
Assistant Secretary  
for Import Administration

**FROM:** Christian Marsh *CM*  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

**SUBJECT:** Decision Memorandum for Preliminary Results of Re-Conducted  
Administrative Review of Grobest & I-Mei Industrial (Vietnam)  
Co., Ltd.: Certain Frozen Warmwater Shrimp from the Socialist  
Republic of Vietnam

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## SUMMARY

Pursuant to the Court of International Trade's ("Court" or "CIT") order, the Department of Commerce ("Commerce") is re-conducting the administrative review of the antidumping order on certain frozen warmwater shrimp ("shrimp") from the Socialist Republic of Vietnam ("Vietnam") for the period of review ("POR") February 1, 2008, through January 31, 2009, with respect to Grobest & I-Mei Industrial (Vietnam) Co., Ltd. ("Grobest").<sup>1,2</sup> The Department has preliminarily found that Grobest failed to cooperate to the best of its ability and applied adverse facts available ("AFA") to Grobest. The Department has also preliminarily determined not to revoke the antidumping duty order of shrimp from Vietnam with respect to Grobest.

If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on all appropriate entries of subject merchandise during the POR. Interested parties are invited to comment on these preliminary results. We will issue final results no later than 120 days from the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the "Act").

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<sup>1</sup> 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").

<sup>2</sup> We note that Viet I-Mei Frozen Foods Co., Ltd. ("Viet I-Mei") is the successor-in-interest to Grobest & I-Mei Industrial (Vietnam) Co., Ltd. See *Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Changed Circumstances Review*, 76 FR 30648 (May 26, 2011).

## Background

In the fourth administrative review, because of a large number of exporters and producers involved in the review, the Department limited its examination to two exporters and producers accounting for the largest volume of the subject merchandise from the exporting country pursuant to section 777A(c)(2)(B) of the Act.<sup>3</sup> Grobest submitted a request to the Department to be treated as a voluntary respondent, as well as voluntary responses to the Department's questionnaire. The Department declined to conduct an individual examination of Grobest because it believed that such examination was not practicable because doing so may limit examination of exporters or producers accounting for the largest volume of subject merchandise exported during the POR.<sup>4</sup>

Following the *Final Results*, Grobest appealed the Department's decision not to examine it individually. On January 18, 2012, the CIT rejected the Department's reasons for not individually examining Grobest stating that "in order for 1677m(a) to be meaningful, it must be read as requiring Commerce to make an independent determination of whether it can review the voluntary respondents without such review being unduly burdensome and inhibiting the timely completion of the investigation." As a result, it remanded the Department's determination.<sup>5</sup> On April 30, 2012, the Department submitted its Final Results of Redetermination Pursuant to Remand to the CIT explaining that individually reviewing Grobest as a voluntary respondent would be unduly burdensome and inhibit the timely completion of the administrative review. On July 31, 2012, the CIT rejected the Department's explanation in its final results on remand for not individually examining Grobest 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."<sup>6</sup>

On September 13, 2012, the Department submitted a motion to the CIT requesting that it enter final judgment on *Grobest II* so that the Department could re-conduct the fourth administrative review according to the Department's own regulatory deadlines and without the Court's oversight. The Court issued its final judgment on September 13, 2012, regarding the final results of the antidumping duty administrative review of shrimp from Vietnam for the period February 1, 2008, through January 31, 2009, ordering the Department to "re-conduct its administrative review of the antidumping duty order concerning certain frozen warmwater shrimp from Vietnam by individually examining Grobest as a voluntary respondent and reconsidering Grobest's revocation request in light of the results of that review, . . . ."<sup>7</sup>

On October 17, 2012, consistent with *Grobest II and the Final Judgment*, the Department published a notice of re-conduct of the 2008-2009 administrative review on Grobest pursuant to the Court's final judgment, stating that the Department will re-conduct the 2008-2009

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<sup>3</sup> See *Final Results*, and accompanying Issues and Decision Memorandum at Comment 5.

<sup>4</sup> *Id.*

<sup>5</sup> See *Grobest & I-Mei Industrial (Vietnam) Co., Ltd. et al., v. United States*, 815 F. Supp. 2d 1342, 1364 (CIT 2012).

<sup>6</sup> See *Grobest & I-Mei Industrial (Vietnam) Co. v. United States*, 853 F. Supp 2d 1352, 1365 (CIT 2012) ("*Grobest IP*").

<sup>7</sup> See *Grobest & I-Mei Industrial (Vietnam) Co., Ltd. et al., v. United States*, Consol. Court No. 10-00238 (CIT September 13, 2012). ("*Final Judgment*").

administrative review beginning September 13, 2012.<sup>8</sup> On December 12, 2012, Grobest submitted a request for withdrawal from individual review as a voluntary respondent and requested to return to non-individually investigated respondent status, the same status that the Court rejected at Grobest's request.<sup>9</sup> On January 15, 2013, we released a supplemental section A, C, and D questionnaire to Grobest with the response deadline of January 29, 2013.<sup>10</sup> On January 25, 2013, Domestic Producers submitted an objection to Grobest's withdrawal request.<sup>11,12</sup> On January 29, 2013, rather than responding to the Department's supplemental questionnaire, Grobest submitted a second request for withdrawal.<sup>13</sup> On February 6, 2013, the Department reissued its supplemental questionnaire to Grobest stating that it intended to continue the individual examination of Grobest as a voluntary respondent.<sup>14</sup> Grobest's response to the questionnaire was due by February 13, 2013. On February 13, 2013, instead of responding to the Department's questionnaires and without asking for an extension of the deadline for responding to the Department's questionnaire, Grobest submitted a third request that we discontinue examination of Grobest as a voluntary respondent.<sup>15</sup> At no point did Grobest respond to the supplemental questionnaire or reissued supplemental questionnaire.

On February 20, 2013, Domestic Producers submitted comments arguing that the Department should apply AFA to Grobest.<sup>16</sup>

### Scope of the Order

The scope of this order includes certain warmwater shrimp and prawns, whether frozen, wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off, "Tails" in this context means the tail fan, which includes the telson

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<sup>8</sup> See *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*, 77 FR 63786 (October 17, 2012).

<sup>9</sup> See Letter from Grobest, to the Department, regarding Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Withdrawal of Request for Voluntary Respondent Review and Revocation of Antidumping Duty Order in Part, dated December 12, 2012 ("Withdrawal Request I").

<sup>10</sup> See Letter from the Department, to Grobest, regarding Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam, dated January 15, 2013.

<sup>11</sup> Domestic Producers are the Ad Hoc Shrimp Trade Action Committee whose members are: Nancy Edens: Papa Rod, Inc.; Carolina Seafoods; Bosarge Boats, Inc.; Knight's Seafood Inc.; Big Grapes, Inc.; Versaggi Shrimp Co.; and Craig Wallis.

<sup>12</sup> See Letter from Domestic Producers, to the Department, regarding Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Opposition to Grobest's Request to Rescind Review, dated January 25, 2013.

<sup>13</sup> See Letter from Grobest, to the Department, regarding Fresh Warmwater Shrimp from the Socialist Republic of Vietnam: Response to January 15, 2013 Supplemental Questionnaire in Reexamination of Grobest & I-Mei Industrial (Vietnam) Co., Ltd. Voluntary Responses, dated January 29, 2013.

<sup>14</sup> See Letter from the Department, to Grobest, regarding Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam, dated February 6, 2013 ("Re-Issued Supplemental").

<sup>15</sup> See Letter from Grobest, to the Department, regarding Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Response to Department's Supplemental Questionnaire and Petitioners' Objection to Rescission, dated February 13, 2013 ("Withdrawal Request III").

<sup>16</sup> See Letter from Domestic Producers, to the Department, regarding Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Response to Viet I-Mei Frozen Foods Co., Ltd. And Request for Application of Adverse Facts Available, dated February 20, 2013.

and the uropods, deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

The frozen warmwater shrimp and prawn products included in the scope of this investigation, regardless of definitions in the Harmonized Tariff Schedule of the United States ("HTS"), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the *Penaeidae* family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, whiteleg shrimp (*Penaeus vannamei*), banana prawn (*Penaeus merguensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp (*Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope of this investigation. In addition, food preparations, which are not "prepared meals," that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of this investigation.

Excluded from the scope are: 1) breaded shrimp and prawns (HTS subheading 1605.20.1020); 2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; 3) fresh shrimp and prawns whether shell-on or peeled (HTS subheadings 0306.23.0020 and 0306.23.0040); 4) shrimp and prawns in prepared meals (HTS subheading 1605.20.0510); 5) dried shrimp and prawns; 6) canned warmwater shrimp and prawns (HTS subheading 1605.20.1040); 7) certain dusted shrimp; and 8) certain battered shrimp. Dusted shrimp is a shrimp-based product: 1) that is produced from fresh (or thawed-from-frozen) and peeled shrimp; 2) to which a "dusting" layer of rice or wheat flour of at least 95 percent purity has been applied; 3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; 4) with the non-shrimp content of the end product constituting between four and 10 percent of the product's total weight after being dusted, but prior to being frozen; and 5) that is subjected to individually quick frozen ("IQF") freezing immediately after application of the dusting layer. Battered shrimp is a shrimp-based product that, when dusted in accordance with the definition of dusting above, is coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products covered by this investigation are currently classified under the following HTS subheadings: 0306.13.0003, 0306.13.0006, 0306.13.0009, 0306.13.0012, 0306.13.0015, 0306.13.0018, 0306.13.0021, 0306.13.0024, 0306.13.0027, 0306.13.0040, 1605.20.1010, and 1605.20.1030. These HTS subheadings are provided for convenience and for customs purposes

only and are not dispositive, but rather the written description of the scope of this investigation is dispositive.<sup>17</sup>

### Intent Not to Revoke

On February 27, 2009, Grobest requested revocation from the order.<sup>18</sup> In its request for revocation, Grobest argues that it has sold subject merchandise in the United States at not less than normal value during three consecutive periods of review, and, as a result, it is eligible for revocation in accordance with 19 CFR 351.222(1)(ii) and (iii). However, as mentioned in the “Application of AFA to Grobest” section below, the Department has preliminarily applied a margin of 25.76 percent as adverse facts available (“AFA”) to Grobest for the current administrative review. Therefore, in accordance with section 751(d) of the Act and 19 CFR 351.222(b)(2), we have preliminarily determined not to revoke the order with respect to Grobest.

## DISCUSSION OF THE METHODOLOGY

### Separate Rates

Pursuant to section 771(18)(C) of the Act, a designation of a country as a non-market economy (“NME”) remains in effect until it is revoked by the Department. Accordingly, there is a rebuttable presumption that all companies within Vietnam are subject to government control and, thus, should be assessed a single antidumping duty rate.<sup>19</sup> In the *Initiation*, the Department notified parties of the application process by which exporters may obtain separate rate status in NME proceedings.<sup>20</sup> An exporter of the merchandise subject to review in NME countries can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports and avoid the application of a single rate. To establish whether a company is sufficiently independent to be entitled to a separate, company specific rate, the Department analyzes each exporting entity in an NME country under the test established in

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<sup>17</sup> The scope of this review does not contain the amendment to the scope made pursuant to court decision, as this amendment was not effective for fourth review entries. On April 26, 2011, the Department amended the antidumping duty order to include dusted shrimp, pursuant to the CIT decision in *Ad Hoc Shrimp Trade Action Committee v. United States*, 703 F. Supp. 2d 1330 (CIT 2010) and the U.S. International Trade Commission (“ITC”) determination, which found the domestic like product to include dusted shrimp. See *Certain Frozen Warmwater Shrimp from Brazil, India, the People's Republic of China, Thailand, and the Socialist Republic of Vietnam: Amended Antidumping Duty Orders in Accordance with Final Court Decision*, 76 FR 23277 (April 26, 2011); see also *Ad Hoc Shrimp Trade Action Committee v. United States*, 703 F. Supp. 2d 1330 (CIT 2010) and *Frozen Warmwater Shrimp from Brazil, China, India, Thailand, and Vietnam* (Investigation Nos. 731-TA-1063, 1064, 1066-1068 (Review), USITC Publication 4221, March 2011).

<sup>18</sup> See Letter from Grobest, to Commerce, regarding Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Request for Administrative Review, Revocation of Antidumping Duty Order in Part, and Entry of Appearance, dated February 27, 2009.

<sup>19</sup> See, e.g., *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Preliminary Results of the Eighth Antidumping Duty Administrative Review and Ninth New Shipper Reviews, Partial Rescission of Review, and Intent to Revoke Order in Part*, 77 FR 56180 (September 12, 2012) unchanged at final.

<sup>20</sup> See *Notice of Initiation of Administrative Reviews and Requests for Revocation in Part of the Antidumping Duty Orders on Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam and the People's Republic of China*, 74 FR 13178 (March 26, 2009) (“*Initiation*”).

*Sparklers*,<sup>21</sup> as amplified by *Silicon Carbide*.<sup>22</sup> However, if the Department determines that a company is wholly foreign-owned by individuals or companies located in a market economy, then a separate rate analysis is not necessary to determine whether it is independent from government control.<sup>23</sup> The Department received a completed separate rate certification from Grobest, which contained information pertaining to its eligibility for a separate rate during the fourth administrative review.<sup>24</sup> In the *Final Results*, the Department granted Grobest its separate rate.<sup>25</sup> As the separate rate determination for Grobest was not subject to litigation or altered by the *Final Judgment*, the Department is not revisiting this determination.

#### Non-Market Economy Country

In every case conducted by the Department involving Vietnam, Vietnam has been treated as an NME country.<sup>26</sup> In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. None of the parties to this proceeding has contested such treatment. Therefore, we continue to treat Vietnam as an NME country for purposes of these preliminary results.

#### Request for Withdrawal for Examination as a Voluntary Respondent

As noted above, Grobest submitted three letters to the Department arguing that it is withdrawing its request for examination as a voluntary respondent in the fourth administrative review of shrimp and its accompanying request for revocation of the order with respect to Grobest. In its first withdrawal request, Grobest stated that the administrative and legal costs associated with participating in the re-conduct of the fourth administrative review are greater than the company is willing to incur, citing management, personnel, and accounting changes, which have occurred since the fourth administrative review.<sup>27</sup> In its withdrawal requests, Grobest asserts that the Department has the discretion to forego Grobest's individual examination.<sup>28</sup> Moreover, Grobest

<sup>21</sup> See *Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China*, 56 FR 20588 (May 6, 1991) ("*Sparklers*").

<sup>22</sup> See *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China*, 59 FR 22585 (May 2, 1994) ("*Silicon Carbide*").

<sup>23</sup> See, e.g., *Wooden Bedroom Furniture from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*; 2011, 78 FR 9493 (February 6, 2013), and accompanying Decision Memorandum at p.9, unchanged in final results, *Wooden Bedroom Furniture From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*; 2011, 78 FR 35249 (June 12, 2013); *Certain Pneumatic Off-the-Road Tires from the People's Republic of China, Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 73 FR 9278, 9284 (February 20, 2008), unchanged in final affirmative determination, *Certain Pneumatic Off-The-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485 (July 15, 2013).

<sup>24</sup> See Letter from Grobest, to the Department, regarding Certain Frozen Warmwater Shrimp from Vietnam: Response to the Department's Separate Rate Certification, date April 28, 2009.

<sup>25</sup> See *Final Results*.

<sup>26</sup> See, e.g., *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of the Antidumping Duty Administrative Review and New Shipper Reviews*, 74 FR 11349 (March 17, 2009).

<sup>27</sup> See Withdrawal Request I.

<sup>28</sup> *Id.*

argues that the Department is free to depart from the Court's order because the matter is no longer before the Court.<sup>29</sup>

The Department disagrees with Grobest. Pursuant to the *Final Judgment*, the Department is required to re-conduct the administrative review of Grobest and individually examine Grobest as a voluntary respondent.<sup>30</sup> Specifically, the Court stated in *Grobest II*: "this case is remanded to Commerce to individually review Grobest as a voluntary respondent and, if appropriate in light of the review, to consider Grobest's request for revocation."<sup>31</sup> The Department will not ignore the Court's order in *Grobest II* or its *Final Judgment*. Moreover, even if the Department had discretion to depart from the Court's order and *Final Judgment*, as Grobest argues, the Department does not consider that the circumstances here warrant such a departure. Grobest's principle contention is that it is unwilling to incur the administrative and legal costs associated with participating in the administrative review.<sup>32</sup> However, a company may not impede an antidumping proceeding by refusing to incur administrative and legal costs associated with participating in the proceeding. Moreover, the Department has spent significant resources as a result of Grobest's challenge to the Department's original decision not to review Grobest individually. Now, after the Department devoted its resources to individually examine Grobest, Grobest inexplicably asks the Department to return it to a prior status, which the Court overturned at Grobest's request in the litigation that Grobest initiated and pursued to its conclusion.

#### Use of Facts Available and AFA

Section 776(a) of the Act provides that the Department shall apply "facts otherwise available" if (1) necessary information is not on the record or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Furthermore, section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Such an adverse inference may include reliance on information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

#### Application of AFA to Grobest

The Department determines that application of facts available is appropriate in this case in accordance with section 776(a)(1) and (2) of the Act. As noted above, Grobest withheld information requested, refused to provide responses to the Department's supplemental sections A, C, and D questionnaire, in a timely manner, despite two requests made by the Department. In

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<sup>29</sup> Citing *Final Judgment*.

<sup>30</sup> See *Final Judgment*.

<sup>31</sup> See *Grobest II* at 853 F. Supp 2d 1365.

<sup>32</sup> See *Withdrawal Request III*.

its letters to the Department Grobest did not indicate any specific attempts made to respond to the questionnaires. Instead, Grobest stated that “due to the significant management, personnel and accounting changes that have occurred at {Grobest} since the period of review ... {t}he administrative and legal costs of this examination are greater than the company wishes to incur at this time.”<sup>33</sup> As a result, information necessary to fully review Grobest is not on the record. Pursuant to sections 776(a)(2)(A), (B), and (C), the Department preliminarily determines that Grobest withheld information requested by the Department, failed to provide such information by the applicable deadlines and significantly impeded this proceeding. Further, the Department finds that Grobest’s refusal to provide the requested information constitutes circumstances under which the Department concludes that Grobest has failed to cooperate by not acting to the best of its ability to comply with a request for information from the Department.<sup>34</sup> Hence, pursuant to section 776(b) of the Act, the Department has preliminarily determined that because Grobest has failed to cooperate by not acting to the best of its ability, when selecting from among the facts otherwise available, an adverse inference is warranted with respect to Grobest.

### Selection of AFA Rate

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) authorize the Department to rely on information derived: (1) from the petitioner; (2) a final determination in the investigation; (3) any previous review or determination; or (4) any information placed on the record. In reviews, the Department normally selects as AFA the highest rate determined for any respondent in any segment of the proceeding.<sup>35</sup> The CIT and the Court of Appeals for the Federal Circuit (“CAFC”) have consistently upheld the Department’s practice.<sup>36</sup> The Department’s practice when selecting an AFA rate from among the possible sources of information has been made to ensure that the rate is sufficiently adverse “as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.”<sup>37</sup> The

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<sup>33</sup> See Letter from Grobest, to Commerce, regarding Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Response to Department’s Supplemental Questionnaire and Petitioners’ Objection to Rescission, dated February 13, 2013.

<sup>34</sup> See e.g., *Certain New Pneumatic Off-the-Road Tires From the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 75 FR 64259 (October 19, 2010), unchanged in final results, *Certain New Pneumatic Off-the-Road Tires From the People’s Republic of China: Final Results of the 2008-2009 Antidumping Duty Administrative Review*, 76 FR 22871 (April 25, 2011).

<sup>35</sup> See, e.g., *Freshwater Crawfish Tail Meat from the People’s Republic of China: Notice of Final Results of Antidumping Duty Administrative Review*, 68 FR 19504 (April 21, 2003).

<sup>36</sup> See *KYD, Inc. v. United States*, 607 F.3d 760, 766-67 (CAFC 2010) (“KYD”); *Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1190 (CAFC 1990) (“Rhone Poulenc”); *NSK Ltd. v. United States*, 346 F. Supp. 3d 1312, 1335 (CIT 2004) (upholding a 73.55 percent total rate, the highest available dumping margin from a different respondent in a less-than-fair-value (“LTFV”) investigation); *Kompass Food Trading Int’l v. United States*, 24 CIT 678, 684 (2000) (upholding a 51.16 percent total AFA rate, the highest available dumping margin from a different, fully cooperative respondent); and *Shanghai Taoen International Trading Co., Ltd. v. United States*, 369 F. Supp. 2d 1339, 1348 (CIT 2005) (upholding a 223.01 percent total AFA rate, the highest available dumping margin from a different respondent in a previous administrative review).

<sup>37</sup> See Statement of Administrative Action accompanying the URAA, H.R. Rep. No. 103-316, vol. 1, at 870 (1994) (“SAA”).

Department's practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."<sup>38</sup>

In choosing the appropriate balance between providing respondents with an incentive to respond accurately and imposing a rate that is reasonably related to the respondent's commercial activity, selecting the highest prior margin reflects a "common sense inference that the highest prior margin is the most probative evidence of current rates because, if it were not so, the importer, knowing the rule, would have produced current information showing the respondent's rate to be less."<sup>39</sup> Consistent with the statute, court precedent, and its normal practice, the Department has assigned as AFA a rate of 25.76 percent to Grobest. This margin, which is the rate also assigned as AFA to the Vietnam-wide entity in the original investigation,<sup>40</sup> is the highest dumping margin on the record of any segment of this proceeding.<sup>41</sup> The Department finds that the rate of 25.76 percent for use as AFA is appropriate for Grobest in that it is sufficient to ensure that Grobest does not benefit from failing to cooperate in our review by refusing to respond to the Department's request for complete information regarding its affiliations, sales of subject merchandise, and factors of production. The Department preliminarily determines that this information is the most appropriate from the available sources to effectuate the purposes of AFA.

#### Corroboration of Secondary Information

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.<sup>42</sup> To corroborate means that the Department will satisfy itself that the secondary information to be used has probative value.<sup>43</sup> Independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation.<sup>44</sup>

In an administrative review, if the Department chooses to use as facts available a petition rate which was corroborated in the LTFV investigation and no information has been presented in the current review that calls into question of reliability of this information, the information is

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<sup>38</sup> See *id.*; see also *Final Determination of Sales at Less than Fair Value: Certain Frozen Canned Warmwater Shrimp from Brazil*, 69 FR 76910 (December 23, 2004), and *D&L Supply Co. v. United States*, 113 F.3d 1220, 1223 (CAFC 1997).

<sup>39</sup> See *KYD*, 607 F.3d at 766 (citing *Rhone Poulenc*, 899 F.2d at 1190 (original emphasis)).

<sup>40</sup> See *LTFV Determination*, and accompanying Issues and Decision Memorandum at Comment 6 stating that "the Vietnam-wide rate from this proceeding of 25.76 percent ... is derived from the *Petition*."

<sup>41</sup> See *LTFV Determination*.

<sup>42</sup> See SAA.

<sup>43</sup> See *id.*

<sup>44</sup> See SAA, H.R. Rep. No. 103-316, vol. 1, at 870; see also *Notice of Final Determination of Sales at Less Than Fair Value: Live Swine From Canada*, 70 FR 12181, 12183 (March 11, 2005).

reliable.<sup>45</sup> Specifically, to assess the probative value of the AFA rate selected for the Vietnam-wide entity in the LTFV investigation, the Department compared this 25.76 percent rate to model-specific margins of the cooperating mandatory respondent in the investigation. This rate from the petition was corroborated in the investigation in which the Department found that the 25.76 percent rate was in the range of the mandatory respondent's models with positive margins calculated in the investigation.<sup>46</sup> Because the AFA rate of 25.76 percent in this review was corroborated in the LTFV investigation, and no information in the current review calls into question the reliability of this rate, we find the AFA rate of 25.76 percent reliable.<sup>47</sup>

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin.<sup>48</sup> For example, in *Flowers from Mexico*, the Department disregarded the highest margin in that case as best information available (the predecessor to facts available), because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin. Similarly, the Department does not apply a margin that has been discredited or judicially invalidated.<sup>49</sup>

The Department corroborated the relevance of this rate to Grobest in this review by comparing the 25.76 percent rate to the transaction-specific margins of cooperating respondents in the fourth administrative review.<sup>50, 51</sup> Specifically, the Department corroborated the rate using the transaction-specific margins from the fourth administrative review's mandatory respondents, the Minh Phu Group and Nha Trang Seafood. The Department notes that the 25.76 percent AFA margin falls within the range of both mandatory respondents' transaction-specific margins. Accordingly, the Department finds the rate to be corroborated for purposes of these preliminary results.

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<sup>45</sup> See, e.g., *Certain Tissue Paper from the People's Republic of China: Preliminary Results and Preliminary Rescission, In Part, of Antidumping Duty Administrative Review*, 72 FR 17477 (April 9, 2007), unchanged in *Certain Tissue Paper Products from the People's Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review*, 72 FR 58642 (October 16, 2007).

<sup>46</sup> See Memorandum for the File, through Edward Yang, through James C. Doyle, regarding Antidumping Duty Investigation on Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam ("Vietnam"), Final Determination, Corroboration of the Vietnam-Wide Adverse Facts-Available Rate for Final Determination, dated November 29, 2004.

<sup>47</sup> See *Notice of Preliminary Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip from Brazil*, 73 FR 24560 (May 5, 2008), unchanged in final determination, *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 55039 (September 24, 2008).

<sup>48</sup> See *Fresh Cut Flowers From Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996) ("*Flowers from Mexico*").

<sup>49</sup> See *D&L Co., v. United States*, 113 F.3d 1220, 1221 (Fed. Cir. 1997).

<sup>50</sup> See Memo to the File, from Susan Pulongbarit, regarding Corroboration of Adverse Facts Available for Grobest & I-Mei Industrial (Vietnam) Co., Ltd., subject Corroboration Memo of Adverse Facts Available for Grobest – Minh Phu Seafood Corporation (and its affiliates Minh Qui Seafood Co., Ltd. and Minh Phat Seafood Co., Ltd. (collectively "Minh Phu Group")), dated September 12, 2013.

<sup>51</sup> See Memo to the File, from Susan Pulongbarit, regarding Corroboration of Adverse Facts Available for Grobest & I-Mei Industrial (Vietnam) Co., Ltd., subject Corroboration Memo of Adverse Facts Available for Grobest – Nha Trang Seaproduct Company ("Nha Trang Seafoods") Margins, dated September 12, 2013.

As the AFA rate is both reliable and relevant, we find it has probative value. Therefore, with the information at the Department's disposal for the corroboration of this AFA rate, the Department finds that the rate of 25.76 percent is corroborated to the extent practicable in accordance with section 776(c) of the Act. We preliminary find that the use of 25.76 percent as AFA is sufficiently high to ensure that Grobest does not benefit from failing to cooperate in the review by not responding to the Department's supplemental questionnaire.

Conclusion

We recommend applying the above methodology for these preliminary results.

Agree

Disagree

  
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Paul Piquado  
Assistant Secretary  
for Import Administration

10 SEPTEMBER 2017  
(Date)