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MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: Gary Taverman
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Certain New Pneumatic Off-the-Road Tires from India: Issues and
Decision Memorandum for the Final Negative Determination of
Sales at Less-Than-Fair-Value

I. SUMMARY

The Department of Commerce finds that certain new pneumatic off-the-road tires from India are not being, or are not likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended. The period of investigation is January 1, 2015 through December 31, 2015.

As a result of our analysis, and based on our findings at verification, we made changes to the margin calculations for Alliance Tires Private Limited and BKT Tires, Inc., the two mandatory respondents in this case. We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum.

List of Abbreviations and Acronyms

Acronym/Abbreviation	Full Names
A-to-A	Average-to-Average
A-to-T	Average-to-Transaction
AAP	Advanced Authorization Program
ADVERT1U	Direct Advertising Expense
AFA	Adverse Facts Available
APA	Administrative Procedures Act
ATA	Alliance Tires America
ATC	Alliance Tires Private Limited
The Act	Tariff Act of 1930, as amended

Antidumping Agreement	Antidumping Agreement of the World Trade Organization
BKT	Balkrishna Industries Limited
BKT Tires	BKT Tires, Inc.
BKT USA	BKT USA, Inc.
CAFC	Court of Appeals for the Federal Circuit
CEP	Constructed Export Price
CIT	Court of International Trade
CONNUM	Control Number
COP	Cost of Production
Deosen	Deosen Biochemical Ltd.
Department	Department of Commerce
DF	Differential Pricing
EP	Export Price
G&A	General and Administrative Expense
HM	Home market
HTSUS	Harmonized Tariff Schedule of the United States
IDM	Issues and Decision Memorandum
INVCARU	Inventory Carrying Costs
Kg	kilogram
LTFV	Less-than-fair value
LOT	Level of Trade
MUC	Merchandise under Consideration
OEM	Original Equipment Manufacturer
NV	Normal value
Petitioners	Titan Tire Corporation and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC
POI	Period of investigation
PDM	Preliminary Decision Memorandum
SAA	Statement of Administrative Action
SKU	Stock-Keeping Unit
T-T	Transaction-to-Transaction
TOTCOM	Total cost of manufacture
WTO	World Trade Organization
OTR tires	Certain New Pneumatic Off-the-road tires
U.S.	United States
URAA	Uruguay Round Agreements Act
VE	Verification Exhibit

II. LIST OF ISSUES

ATC - Specific

1. Standard Differential Pricing Methodology
2. Unreported U.S. sample sales
3. Sales Outside the Ordinary Course of Trade
4. Commission Offset to Normal Value

5. Unsolicited Changes to ATC's Cost Database
6. Affirmative Determination
7. Minor Errors from Sales Verifications
8. Warranty Expenses
9. Other Discounts

BKT-Specific

10. Classification of BKT's Sales
11. Duty Drawback
12. CEP Offset
13. Quantity Unit of Measure
14. Correction of Verification Errors
15. Correction of *Preliminary Determination* Errors

III. BACKGROUND

On August 19, 2016, the Department published the *Preliminary Determination* of sales at LTFV of OTR tires from India. Between August 31, 2016, and September 23, 2016, the Department conducted sales and cost verifications at the offices of ATC and BKT, in accordance with section 782(i) of the Act. On September 16, 2016 and September 19, 2016, ATC, BKT, and Petitioners requested a public hearing.¹ Shortly thereafter, Petitioners requested that the Department hold a portion of the hearing in closed session.² Petitioners, ATC, and BKT submitted case briefs³ and rebuttal briefs⁴ on November 3 and November 10, 2016, respectively. The Department held a hearing in this case on December 8, 2016.⁵ The next day, Petitioners submitted timely allegations that critical circumstances exist with respect to imports of certain new OTR tires from India.⁶

IV. SCOPE OF THE INVESTIGATION

The scope of this investigation is certain new pneumatic off-the-road tires (certain off road tires). Certain off road tires are tires with an off road tire size designation. The tires included in the scope may be either tube-type⁷ or tubeless, radial, or non-radial, regardless of whether for original equipment manufacturers or the replacement market.

¹ See ATC's Request for Public Hearing; BKT's Request for Public Hearing; Petitioners' Request for Public Hearing.

² See Petitioners' Request for Closed Session of the Hearing.

³ See Petitioners' Case Brief; BKT's Case Brief; ATC's Case Brief; ATC's Resubmission of Case Brief. (On November 8, 2016, the Department rejected ATC's case brief because it contained untimely factual information. On November 9, 2016, ATC resubmitted its case brief and redacted its untimely new factual information.)

⁴ See Petitioners' Rebuttal Brief; ATC's Rebuttal Brief; BKT's Rebuttal Brief.

⁵ See Closed Hearing Transcript; See Public Hearing Transcript.

⁶ See Petitioners' Critical Circumstances Allegation.

⁷ While tube-type tires are subject to the scope of this proceeding, tubes and flaps are not subject merchandise and therefore are not covered by the scope of this proceeding, regardless of the manner in which they are sold (*e.g.*, sold with or separately from subject merchandise).

Subject tires may have the following prefix or suffix designation, which appears on the sidewall of the tire:

Prefix designations:

DH – Identifies a tire intended for agricultural and logging service which must be mounted on a DH drop center rim.

VA – Identifies a tire intended for agricultural and logging service which must be mounted on a VA multipiece rim.

IF – Identifies an agricultural tire to operate at 20 percent higher rated load than standard metric tires at the same inflation pressure.

VF – Identifies an agricultural tire to operate at 40 percent higher rated load than standard metric tires at the same inflation pressure.

Suffix designations:

ML – Mining and logging tires used in intermittent highway service.

DT – Tires primarily designed for sand and paver service.

NHS – Not for Highway Service.

TG – Tractor Grader, off-the-road tire for use on rims having bead seats with nominal +0.188" diameter (not for highway service).

K – Compactor tire for use on 5° drop center or semi-drop center rims having bead seats with nominal minus 0.032 diameter.

IND – Drive wheel tractor tire used in industrial service.

SL – Service limited to agricultural usage.

FI – Implement tire for agricultural towed highway service.

CFO – Cyclic Field Operation.

SS – Differentiates tires for off-highway vehicles such as mini and skid-steer loaders from other tires which use similar size designations such as 7.00-15TR and 7.00-15NHS, but may use different rim bead seat configurations.

All tires marked with any of the prefixes or suffixes listed above in their sidewall markings are covered by the scope regardless of their intended use.

In addition, all tires that lack any of the prefixes or suffixes listed above in their sidewall markings are included in the scope, regardless of their intended use, as long as the tire is of a size that is among the numerical size designations listed in the following sections of the Tire and Rim Association Year Book, as updated annually, unless the tire falls within one of the specific exclusions set forth below. The sections of the Tire and Rim Association Year Book listing numerical size designations of covered certain off road tires include:

The table of mining and logging tires included in the section on Truck-Bus tires;

The entire section on Off-the-Road tires;

The entire section on Agricultural tires; and

The following tables in the section on Industrial/ATV/Special Trailer tires:

- Industrial, Mining, Counterbalanced Lift Truck (Smooth Floors Only);
- Industrial and Mining (Other than Smooth Floors);
- Construction Equipment;
- Off-the-Road and Counterbalanced Lift Truck (Smooth Floors Only);
- Aerial Lift and Mobile Crane; and
- Utility Vehicle and Lawn and Garden Tractor.

Certain off road tires, whether or not mounted on wheels or rims, are included in the scope. However, if a subject tire is imported mounted on a wheel or rim, only the tire is covered by the scope. Subject merchandise includes certain off road tires produced in the subject countries whether mounted on wheels or rims in a subject country or in a third country. Certain off road tires are covered whether or not they are accompanied by other parts, *e.g.*, a wheel, rim, axle parts, bolts, nuts, etc. Certain off road tires that enter attached to a vehicle are not covered by the scope.

Specifically excluded from the scope are passenger vehicle and light truck tires, racing tires, mobile home tires, motorcycle tires, all-terrain vehicle tires, bicycle tires, on-road or on-highway trailer tires, and truck and bus tires. Such tires generally have in common that the symbol “DOT” must appear on the sidewall, certifying that the tire conforms to applicable motor vehicle safety standards. Such excluded tires may also have the following prefixes and suffixes included as part of the size designation on their sidewalls:

Prefix letter designations:

AT – Identifies a tire intended for service on All-Terrain Vehicles;

P – Identifies a tire intended primarily for service on passenger cars;

LT – Identifies a tire intended primarily for service on light trucks;

T – Identifies a tire intended for one-position “temporary use” as a spare only; and

ST – Identifies a special tire for trailers in highway service.

Suffix letter designations:

TR – Identifies a tire for service on trucks, buses, and other vehicles with rims having specified rim diameter of nominal plus 0.156” or plus 0.250”;

MH – Identifies tires for Mobile Homes;

HC – Identifies a heavy duty tire designated for use on “HC” 15” tapered rims used on trucks, buses, and other vehicles. This suffix is intended to differentiate among tires for light trucks, and other vehicles or other services, which use a similar designation.

Example: 8R17.5 LT, 8R17.5 HC;

LT – Identifies light truck tires for service on trucks, buses, trailers, and multipurpose passenger vehicles used in nominal highway service;

ST – Special tires for trailers in highway service; and

M/C – Identifies tires and rims for motorcycles.

The following types of tires are also excluded from the scope: Pneumatic tires that are not new, including recycled or retreaded tires and used tires; non-pneumatic tires, including solid rubber tires; aircraft tires; and turf, lawn and garden, and golf tires. Also excluded from the scope are mining and construction tires that have a rim diameter equal to or exceeding 39 inches. Such tires may be distinguished from other tires of similar size by the number of plies that the construction and mining tires contain (minimum of 16) and the weight of such tires (minimum 1500 pounds).

The subject merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4011.20.1025, 4011.20.1035, 4011.20.5030, 4011.20.5050, 4011.61.0000, 4011.62.0000, 4011.63.0000, 4011.69.0050, 4011.92.0000, 4011.93.4000, 4011.93.8000, 4011.94.4000, 4011.94.8000, 8431.49.9038, 8431.49.9090, 8709.90.0020, and 8716.90.1020. Tires meeting the scope description may also enter under the following HTSUS subheadings: 4011.99.4550, 4011.99.8550, 8424.90.9080, 8431.20.0000, 8431.39.0010, 8431.49.1090, 8431.49.9030, 8432.90.0005, 8432.90.0015, 8432.90.0030, 8432.90.0080, 8433.90.5010, 8503.00.9560, 8708.70.0500, 8708.70.2500, 8708.70.4530, 8716.90.5035, 8716.90.5055, 8716.90.5056 and 8716.90.5059. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the subject merchandise is dispositive.

V. DISCUSSION OF THE ISSUES

Comment 1: Standard Differential Pricing Methodology

ATC's Comments:

- The Department's "differential pricing" methodology is contrary to section 777A(d)(1)(B)(ii) because, consistent with *Beijing Tianhai*, it fails to explain why any targeted dumping identified cannot be taken into account by a standard comparison methodology.⁸
- The Department's differential pricing methodology is statistically invalid because the Department has not demonstrated that it is applying the Cohen's *d* test to normal distribution.⁹
- The Department must explain why these thresholds are appropriate given the specific record because, consistent with *Carlisle Tire*, the Department has not promulgated a rule regarding the numerical thresholds for its differential pricing analysis through notice and comment procedures.¹⁰
- The Department's differential pricing methodology is contrary to law because the Department applies zeroing to the sale to which it applies the A-to-T method and Congress has incorporated the "fair comparison" requirement of the Antidumping Agreement into U.S. law and the WTO has made clear on numerous occasions that this "fair comparison" requirement does not permit the use of zeroing because zeroing artificially inflates the magnitude of dumping margin.¹¹
- The Department may not consider sales with prices significantly higher than other sales as part of the "pattern" because the purpose of section 777A(d)(1)(B) of the Act was to allow the Department to identify and address "targeted dumping." Therefore, the relevant "pattern" for the purposes of section 777A(d)(1)(B) of the Act must consist of prices that are significantly lower than other export prices among different purchases, regions, or time periods.¹²
- The differential pricing methodology's accumulation of transactions across categories is inconsistent with the terms of the statute and contrary to the law because Section 777A(d)(1)(B) states that the Department must find "a pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or periods of time."¹³
- The Department may not apply the A-to-T method to transactions that are not part of the "pattern" because, as explained above, the purpose of the statute is to allow the Department to identify and address targeted dumping and it is unreasonable for the Department to apply the A-to-T method to sales that have not been identified as part of a pattern of targeted dumping that masks sales made below fair value. Such a practice is

⁸ See ATC's Resubmission of Case Brief at 12-13 (citing *Beijing Tianhai*, 106 F. Supp. 3d at 1351).

⁹ *Id.* at 16.

¹⁰ *Id.* at 17 (citing *Carlisle Tire*, 643 F. Supp. at 423).

¹¹ *Id.* at 17-18.

¹² *Id.* at 18-19.

¹³ *Id.* at 20.

unrelated to unmasking dumping and is essentially a punitive measure taken against respondents with large volumes of pattern transactions.¹⁴

- By failing to examine the significance of prices different in any quantitative sense, the differential pricing methodology is contrary to law because the SAA recognizes that “small differences may be significant for one industry or one type of product, but not for another” and any assessment of whether a difference is “significant” must account for qualitative factors such as, circumstances regarding the nature of the product under consideration, the industry at issue, the market structure, or the intensity of competition in the markets.¹⁵
- The Department’s differential pricing methodology is inconsistent with the Department’s international obligation under the Antidumping Agreement.¹⁶

Petitioners’ Comments:

- None of ATC’s arguments regarding the Department’s differential pricing analysis, its application of the “Cohen’s *d* test,” or the use of zeroing, present any issues that differ from those previously dealt with by the Department and the courts.¹⁷ Accordingly, if the Department does not apply total AFA to ATC for the final determination, it should reject ATC’s arguments and apply its differential pricing analysis, including the application of the A-to-T methodology with zeroing.

Department’s Position: As an initial matter, we note that there is nothing in section 777A (d) of the Act that mandates how the Department measures whether there is a pattern of prices that differs significantly or explains why the A-to-A method or the T-to-T method cannot account for such differences. On the contrary, carrying out the purpose of the statute¹⁸ here is a gap filling exercise properly conducted by the Department.¹⁹ As explained in the *Preliminary Determination*, as well as in various other proceedings,²⁰ the Department’s differential pricing analysis is reasonable, including the use of the Cohen’s *d* test as a component in this analysis, and it is in no way contrary to the law.

¹⁴ *Id.* at 21.

¹⁵ *Id.* at 21-22.

¹⁶ *Id.* at 22.

¹⁷ See Petitioners’ Rebuttal Brief at 14-22.

¹⁸ See *Koyo Seiko Co., Ltd.*, 20 F. Supp. 3d at 1159 (“The purpose of the antidumping statute is to protect domestic manufacturing against foreign manufacturers who sell at less than fair market value. Averaging U.S. prices defeats this purpose by allowing foreign manufacturers to offset sales made at less-than-fair value with higher priced sales. Commerce refers to this practice as ‘masked dumping.’ By using individual U.S. prices in calculating dumping margins, Commerce is able to identify a merchant who dumps the product intermittently—sometimes selling below the foreign market value and sometimes selling above it. We cannot say that this is an unfair or unreasonable result.” (internal citations omitted)).

¹⁹ See *Chevron*, 467 U.S. at 842-43 (recognizing deference where a statute is ambiguous and an agency’s interpretation is reasonable); see also *Apex I*, 37 F. Supp. 3d at 1302 (applying *Chevron* deference in the context of the Department’s interpretation of section 777A(d)(1) of the Act).

²⁰ See, e.g., *Line Pipe from Korea*, and accompanying IDM at Comment 1; *CWP from Korea*, and accompanying IDM at Comments 1 and 2; *ASTM A-312 Stainless Steel Pipe From Korea*, and accompanying IDM at Comment 4.

With Congress' enactment of the URAA, section 777A(d) of the Act states:

(d) Determination of Less Than Fair Value.--

(1) Investigations.--

(A) In General. In an investigation under subtitle B, the administering authority shall determine whether the subject merchandise is being sold in the United States at less than fair value--

- (i) by comparing the weighted average of the normal values to the weighted average of the export prices (and constructed export prices) for comparable merchandise, or
- (ii) by comparing the normal values of individual transactions to the export prices (or constructed export prices) of individual transactions for comparable merchandise.

(B) Exception. The administering authority may determine whether the subject merchandise is being sold in the United States at less than fair value by comparing the weighted average of the normal values to the export prices (or constructed export prices) of individual transactions for comparable merchandise, if--

- (i) there is a pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or periods of time, and
- (ii) the administering authority explains why such differences cannot be taken into account using a method described in paragraph (1)(A)(i) or (ii).

(2) Reviews.--In a review under section 751, when comparing export prices (or constructed export prices) of individual transactions to the weighted average price of sales of the foreign like product, the administering authority shall limit its averaging of prices to a period not exceeding the calendar month that corresponds most closely to the calendar month of the individual export sale.

The SAA expressly recognizes that:

New section 777A(d)(1)(B) provides for a comparison of average normal values to individual export prices or constructed export prices in situations where an A-to-A or transaction-to-transaction methodology cannot account for a pattern of prices that differ significantly among purchasers, regions, or time periods, *i.e.*, where targeted dumping may be occurring.²¹

The SAA further discusses this new section of the statute and the Department's change in practice to using the A-to-A method:

²¹ See Uruguay Round Agreement Act, SAA, H.R. Doc. No. 103-316 at 843 (1994), reprinted in 1994 U.S.C.C.A.N. 4040, 4161.

In part the reluctance to use the A-to-A methodology had been based on a concern that such a methodology could conceal “targeted dumping.” In such situations, an exporter may sell at a dumped price to particular customers or regions, while selling at higher prices to other customers or regions.”²²

With the enactment of the URAA, the Department’s standard comparison method in an LTFV investigation is normally the A-to-A method. This is reiterated in the Department’s regulations, which state that “the Secretary will use the {A-to-A} method unless the Secretary determines another method is appropriate in a particular case.”²³ As recognized in the SAA, the application by the Department of the A-to-A method to calculate a company’s weighted-average dumping margin has raised concerns that dumping may be masked or hidden. The SAA states that consideration of the A-to-T method, as an alternative comparison method, may respond to such concerns where the A-to-A method, or the T-to-T method, “cannot account for a pattern of prices that differ significantly among purchasers, regions, or time periods, *i.e.*, where targeted dumping *may* be occurring.”²⁴ Neither the Act nor the SAA state that “targeted dumping” only occurs where there is a pattern of prices that differ significantly. In other words, the U.S. sales which constitute a pattern are not necessarily the only sales where “targeted dumping” *may* be occurring or dumping *may* be masked. As stated in the Act, the requirements for considering whether to apply the A-to-T method are that there exist a pattern of prices that differ significantly and that the Department explains why either the A-to-A method or the T-to-T method cannot account for such differences.

Accordingly, the Department finds that the purpose of section 777A(d)(1)(B) of the Act is to evaluate whether the A-to-A method is the appropriate tool to measure whether, and if so to what extent, a given respondent is dumping the subject merchandise at issue in the U.S. market.²⁵ While “targeting” and “targeted dumping” may be used as a general expression to denote this provision of the statute,²⁶ these terms impose no additional requirements beyond those specified in the statute for the Department to otherwise determine that the A-to-A method is not appropriate based upon a finding that the two statutory requirements have been satisfied. Furthermore, “targeting” implies a purpose or intent on behalf of the exporter to focus on a subgroup of its U.S. sales. The court has already found that the purpose or intent behind an

²² See SAA at 842.

²³ See 19 CFR 351.414(c)(1). This approach is also now followed by the Department in administrative and new shipper reviews. See *Final Modification for Reviews* (where the Department explained that it would now “calculate weighted-average margins of dumping and antidumping duty assessment rates in a manner which provides offsets for non-dumped comparisons while using monthly {A-to-A} comparisons in reviews, paralleling the WTO-consistent methodology that the Department applies in original investigations”).

²⁴ See SAA at 843 (emphasis added).

²⁵ See 19 CFR 351.414(c)(1).

²⁶ See, e.g., *Samsung*, 72 F. Supp. 3d at 1364 (“Commerce may apply the A-to-T methodology ‘if (i) there is a pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or period of time, and (ii) the administering authority explains why such differences cannot be taken into account using’ the A-to-A or T-to-T methodologies. *Id.* § 1677f-1(d)(1)(B). Pricing that meets both conditions is known as ‘targeted dumping.’”).

exporter's pricing behavior in the U.S. market is not relevant to the Department's analysis of the statutory provisions of section 777A(d)(1)(B) of the Act.²⁷ The CAFC has stated:

Section 1677f-1(d)(1)(B) does not require Commerce to determine the reasons why there is a pattern of export prices for comparable merchandise that differs significantly among purchasers, regions, or time periods, nor does it mandate which comparison methods Commerce must use in administrative reviews. As a result, Commerce looks to its practices in antidumping duty investigations for guidance. Here, the {U.S. Court of International Trade (CIT)} did not err in finding there is no intent requirement in the statute, and we agree with the CIT that requiring Commerce to determine the intent of a targeted dumping respondent "would create a tremendous burden on Commerce that is not required or suggested by the statute."²⁸

As stated in section 777A(d)(1)(B) of the Act, the requirements for considering whether to apply the A-to-T method are that there exists a pattern of prices that differ significantly and that the Department explains why either the A-to-A method or the T-to-T method cannot account for such differences. The Department's application of a differential pricing analysis in this investigation provides a complete and reasonable interpretation of the language of the statute, regulations and SAA to identify when pricing cannot be appropriately taken into account when using the standard A-to-A method, and it provides a remedy for masked dumping when the conditions exist.

As described in the *Preliminary Determination*, the differential pricing analysis addresses each of these two statutory requirements.²⁹ The first requirement, the "pattern requirement," is addressed using the Cohen's *d* test and the ratio test. The pattern requirement will establish whether conditions exist in the pricing behavior of the respondent in the U.S. market where dumping may be masked or hidden, where higher-priced U.S. sales offset lower-priced U.S. sales. Consistent with the pattern requirement, the Cohen's *d* test, for comparable merchandise, compares the mean price to a given purchaser, region or time period to the mean price to all other purchasers, regions or time periods, respectively, to determine whether this difference is significant. The ratio test then aggregates the results of these individual comparisons from the Cohen's *d* test to determine whether the extent of the identified differences in prices which are found to be significant is sufficient to find a pattern and satisfy the pattern requirement, *i.e.*, that conditions exist which may result in masked dumping.

When the respondent's pricing behavior exhibits conditions in which masked dumping may be a problem – *i.e.*, where there exists a pattern of prices that differ significantly – then the Department considers whether the standard A-to-A method can account for "such differences" – *i.e.*, the conditions found pursuant to the pattern requirement. To examine this second statutory requirement, the "explanation requirement," the Department considers whether there is a meaningful difference between the weighted-average dumping margin calculated using the A-to-

²⁷ See *JBF RAK*, 991 F. Supp. 2d at 1355; see also *Borusan*.

²⁸ See *JBF RAK*, 790 F.3d at 1368 (internal citations omitted).

²⁹ See Preliminary Decision Memorandum at 8-10.

A method and that calculated using the appropriate alternative comparison method based on the A-to-T method. Comparison of these results summarize whether the differences in U.S. prices mask or hide dumping when normal values are compared with average U.S. prices (the A-to-A method) as opposed to when normal values are compared with sale-specific U.S. prices (the A-to-T method). When there is a meaningful difference in these results, the Department finds that the extent of masked dumping is meaningful to warrant the use of an alternative comparison method to quantify the amount of a respondent's dumping in the U.S. market, thus fulfilling the language and purpose of the statute and the SAA.

1. The Department's Differential Pricing Analysis Fails to Identify a "Pattern"

As stated in the *Preliminary Determination*, the purpose of the Cohen's *d* test is to evaluate "the extent to which the net prices to a particular purchaser, region, or time period differ significantly from the net prices of all other sales of comparable merchandise."³⁰ The Cohen's *d* coefficient is a recognized measure which gauges the extent (or "effect size") of the difference between the means of two groups.

In the final determination for *Xanthan Gum from the PRC*, the Department explained that "{e}ffect size is a simple way of quantifying the difference between two groups and has many advantages over the use of tests of statistical significance alone." In addressing the respondent Deosen's comment in *Xanthan Gum from the PRC*, the Department continued:

Effect size is the measurement that is derived from the Cohen's *d* test. Although Deosen argues that effect size is a statistic that is "widely used in meta-analysis," we note that the article also states that "{e}ffect size quantifies the size of the difference between two groups, and may therefore be said to be a true measure of *the significance of the difference*." The article points out the precise purpose for which the Department relies on the Cohen's *d* test to satisfy the statutory language, to measure whether a difference is significant.³¹

The Cohen's *d* coefficient is based on the difference between the means of the test and the comparison groups relative to the variances within the two groups, *i.e.*, the pooled standard deviation. When the difference in the weighted-average sale prices between the two groups is measured relative to the pooled standard deviation, then this value is expressed in standardized units, and is based on the dispersion of the prices within each group. In other words, the "significance" of differences between the average prices of the test group and the comparison group (*i.e.*, between a specific purchaser, region or time period and all other purchasers, regions or time periods, respectively) is measure by how widely the individual prices differ within these two groups. When there is little variation in prices within each of these groups (*i.e.*, not between the two groups), then a small difference in the mean prices of the test and comparison groups will be found to be significant. Conversely, when there are wide variations in prices within each

³⁰ See Preliminary Decision Memorandum at 9.

³¹ See *Xanthan Gum from the PRC*, and accompanying IDM at Comment 3 (emphasis in original, internal citations omitted).

of these groups, then a much larger difference in the mean prices of the test and comparison groups will be necessary in order to find that the difference is significant.

The Department thus relies on the Cohen's *d* coefficient as a measure of effect size to determine whether the observed price differences are significant. In this application, the difference in the weighted-average (*i.e.*, mean) U.S. price to a particular purchaser, region or time period (*i.e.*, the test group) and the weighted-average U.S. price to all other purchasers, regions or time periods (*i.e.*, the comparison group) is measured relative to the variance of the U.S. prices within each of these groups (*i.e.*, all U.S. prices).

Subsequently, the ratio test aggregates the sales value for each U.S. sale whose price has been found to differ significantly among purchasers, regions or time periods. As described in the *Preliminary Determination*, when 66 percent or more of the U.S. sales value are represented by U.S. prices which differ significantly, then the Department finds that the "pattern" requirement of the statute has been met and that the Department should consider that the appropriate alternative comparison method is the application of the A-to-T method to all U.S. sales. When between 33 percent and 66 percent of the U.S. sales value are represented by U.S. prices which differ significantly, then the Department also finds that the "pattern" requirement of the statute has been met and that the Department should consider that the appropriate alternative comparison method is the application of the A-to-T method to those U.S. sales which exhibit prices that differ significantly (*i.e.*, which pass the Cohen's *d* test) and the application of the A-to-A method to those sale which do not exhibit prices that differ significantly.³²

First, the Department disagrees with ATC that the relevant "pattern" for the purposes of section 777A(d)(1)(B) of the Act must consist of prices that are significantly lower than other export prices among different purchases, regions, or time periods and that the Department may not consider sales with prices significantly higher than other sales as part of the "pattern" because the purpose of section 777A(d)(1)(B) of the Act was to allow the Department to identify and address "targeted dumping."³³ Indeed, the statute is silent on what price differences the Department should consider when evaluating whether there exists a pattern of prices that differ significantly. The Department must fill this gap and use its discretion to consider sales information on the record in its analysis and to draw reasonable inferences as to what that data show. As noted above, the SAA states that "targeted dumping" is a situation where "exporter may sell at a dumped price to particular customers or regions, while selling at higher prices to other customers or regions."³⁴ Thus, it is reasonable for the Department to consider both lower priced and higher priced sales in the Cohen's *d* analysis because higher priced sales are equally capable as lower priced sales to create a pattern of prices that differ significantly. Further, higher priced sales will offset lower priced sales, either implicitly through the calculation of a weighted-average sale price for a U.S. averaging group, or explicitly through the granting of offsets when aggregating the A-to-A comparison results, that can mask dumping. The statute states that the Department may apply the A-to-T comparison method if "there is a *pattern of export prices . . .* for comparable merchandise that *differ* significantly among purchasers, regions, or periods of

³² See Preliminary Decision Memorandum at 10.

³³ See ATC's Resubmission of Case Brief at 18-19.

³⁴ See SAA at 842.

time,” and the Department “explains why *such differences* cannot be taken into account” using the A-to-A comparison method.³⁵ The statute directs the Department to consider whether a pattern of prices differ significantly. The statutory language references prices that “differ” and does not specify whether the prices differ by being priced lower or higher than the comparison sales. The statute does not provide that the Department considers only higher priced sales or only lower priced sales when conducting its analysis, nor does the statute specify whether the difference must be the result of certain sales being priced higher or lower than other sales. The Department explained that higher priced sales and lower priced sales do not operate independently; all sales are relevant to the analysis.³⁶ By considering all sales, higher priced sales and lower priced sales, the Department is able to analyze an exporter’s pricing practice and to identify whether there is a pattern of prices that differ significantly. Moreover, finding such a pattern of prices that differ significantly among purchasers, regions, or periods of time, signals that the exporter has a varying pricing behavior between purchasers, regions, or periods of time within the U.S. market rather than following a more uniform pricing behavior. Where the evidence indicates that the exporter is engaged in such pricing behavior, “where targeted dumping may be occurring,”³⁷ there is cause to continue with the analysis to determine whether the A-to-A method or the T-to-T method can account for such pricing behavior and is the appropriate tool to evaluate the exporter’s amount of dumping. Accordingly, both higher- and lower- priced sales are relevant to the Department’s analysis of the exporter’s pricing behavior.³⁸

Second, the Department disagrees with ATC that its differential pricing methodology’s accumulation of transactions across categories is inconsistent with the terms of the statute and contrary to the law because Section 777A(d)(1)(B) of the Act states that the Department must find “a pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or periods of time.”³⁹ As stated above, the purpose of a differential pricing analysis is to determine whether the A-to-A method is appropriate for calculating ATC’s weighted-average dumping margin. Obviously, the Department calculates a single weighted-average dumping margin to evaluate the respondent’s pricing behavior in the U.S. market. When examining whether there exists a pattern of prices that differ significantly, the results of the Cohen’s *d* test determine whether the sales in the test group are at prices which differ significantly from the prices in the comparison group of sales. Both the test group and the comparison group are composed of multiple U.S. sales with individual prices; these are not the patterns to which the Act refers. The Act refers to “a” single pattern for the respondent. This pattern is manifested to the extent that prices for comparable merchandise differ significantly among purchasers, regions or time periods.

³⁵ See section 777A(d)(1)(B) of the Act (emphasis added).

³⁶ See *Plywood*, and accompanying IDM at Comment 5.

³⁷ See SAA at 843.

³⁸ See *Apex II*, 144 F. Supp. 3d at 1330. “All sales are subject to the differential pricing analysis because its purpose is to determine to what extent a respondent’s U.S. sales are differentially priced, not to identify dumped sales. (citation omitted) Commerce is not restricted in what type of sales it may consider in assessing the existence of such a pattern so long as its methodological choice enables Commerce to reasonably determine whether application of A-to-T is appropriate.”

³⁹ See ATC’s Resubmission of Case Brief at 20.

The existence, or not, of a pattern of prices that differ significantly may indicate that conditions exist in the respondent's pricing behavior to consider whether the A-to-A method is appropriate. To subdivide the respondent's pricing behavior into multiple groups, by purchaser, by region, and by time period, and to separately consider each result would individually be an incomplete examination of the respondent's overall pricing behavior. Thus, the Department's Cohen's *d* and ratio tests are consistent with this idea of "a" single pattern found in the language of the Act and disagree with ATC that the Department must somehow segregate the results of the ratio test by purchasers, by regions, and by time periods.

Third, ATC also argues that by failing to examine the significance of prices different in any quantitative sense, the differential pricing methodology is contrary to law because the SAA recognizes that "small differences may be significant for one industry or one type of product, but not for another" and any assessment of whether a difference is "significant" must account for qualitative factors such as, circumstances regarding the nature of the product under consideration, the industry at issue, the market structure, or the intensity of competition in the markets.⁴⁰ We disagree. As described above, the difference in the weighted-average prices between the test group and the comparison group is gauged relative to the "pooled standard deviation" for the sale prices within these two groups. The pooled standard deviation is an average of the variances in the prices within the test group and the comparison group. Accordingly, when there is small variations in the sale prices within each group, then a difference between the weighted-average prices within the two groups is also relatively small to find this difference "large" (*i.e.*, at least 80% of the pooled standard deviation) and significant. When there are larger variations in the sale prices within each group, then the difference between the weighted-average prices within the two groups must be greater in order to find that these prices differ significantly. Therefore, the Department finds that this approach does precisely address the intent expressed in the SAA where small differences may be significant in certain situations but not in other situations. The differences in prices are measured relative to the pricing behavior of the respondent, which is determined by the industry, product and market conditions in which the respondent is selling the subject merchandise.

Therefore, contrary to the arguments submitted by ATC, the Department continues to find that this approach reasonably fills the gap in the statute and the intent expressed in the SAA in determining whether there exist prices that differ significantly.⁴¹

2. The Department's Differential Pricing Analysis Fails to Address Why the A-to-A Method Cannot Account for Such Differences

ATC argues that its differential pricing methodology is contrary to section 777A(d)(1)(B)(ii) of the Act because, consistent with *Beijing Tianhai*, it fails to explain why any targeted dumping identified cannot be taken into account by a standard comparison methodology.⁴² The Department disagrees with ATC's reliance on *Beijing Tianhai* that we have not provided an

⁴⁰ See ATC's Resubmission of Case Brief at 21-22.

⁴¹ See *Apex II*, 144 F. Supp. 3d at 1330, *appeal pending* ("Commerce is not restricted in what type of sales it may consider in assessing the existence of such a pattern so long as its methodological choice enables Commerce to reasonably determine whether application of A-to-T is appropriate.").

⁴² See ATC's Resubmission of Case Brief at 12-13 (citing *Beijing Tianhai*, 106 F. Supp. 3d at 1351).

adequate explanation why the A-to-A method cannot account for such differences. As an initial matter, *Beijing Tianhai* is still before the Court and no final judgement has been issued on this question; therefore, ATC's reliance on this case is misplaced. Furthermore, in *Timken Co.*, *Samsung*, and *Apex II*, the Court rejected similar arguments and upheld the Department's explanation of why differences in pricing cannot be taken into account under the A-to-A method by showing there is a meaningful difference in the calculated weighted-average dumping margins resulting from the standard and alternative comparison methods.

To consider the extent of the masking under the A-to-A method, as opposed to an alternative comparison method based on the A-to-T method, the Department uses a "meaningful difference" test where it compares the weighted-average dumping margin calculated using the A-to-A method and the weighted-average dumping margin calculated using the appropriate alternative comparison method. A meaningful difference in these two results is caused by higher U.S. prices offsetting lower U.S. prices where the dumping, which may be found on lower priced U.S. sales, is hidden or masked by higher U.S. prices, such that the A-to-A method would be unable to account for such differences. Such masking or offsetting of lower prices with higher prices may occur implicitly within the averaging groups or explicitly when aggregating the A-to-A comparison results. Therefore, in order to understand the impact of the unmasked "targeted dumping," the Department finds that the comparison of each of the calculated weighted-average dumping margins using the standard and alternative comparison methodologies exactly quantifies the extent of the unmasked "targeted dumping."

The simple comparison of the two calculated results belies all of the complexities in calculating and aggregating individual dumping margins (*i.e.*, individual results from comparing export prices, or constructed export prices, with normal values). It is the interaction of these many comparisons of EPs or CEPs with NVs, and the aggregation of these comparison results, which determine whether there is a meaningful difference in these two calculated weighted-average dumping margins. When using the A-to-A method, lower-priced U.S. sales (*i.e.*, sales which may be dumped) are offset by higher-priced U.S. sales. Congress was concerned about offsetting and that concern is reflected in the SAA which states that "targeted dumping" is a situation where "an exporter may sell at a dumped price to particular customers or regions, while selling at higher prices to other customers or regions."⁴³ The comparison of a weighted-average dumping margin based on comparisons of weighted-average U.S. prices that also reflects offsets for non-dumped sales, with a weighted-average dumping margin based on comparisons of individual U.S. prices without such offsets (*i.e.*, with zeroing) precisely examines the impact on the amount of dumping which is hidden or masked by the A-to-A method. Both the weighted-average U.S. price and the individual U.S. price are compared to a normal value that is independent from the type of U.S. price used for comparison, and the basis for NV will be constant because the characteristics of the individual U.S. sales⁴⁴ remain constant whether weighted-average U.S. prices or individual U.S. prices are used in the analysis.

⁴³ See SAA at 842.

⁴⁴ These characteristics include may include such items as product, level-of-trade, time period, and whether the product is considered as prime- or second-quality merchandise.

Consider the simple situation where there is a single, weighted-average U.S. price, and this average is made up of a number of individual U.S. sales which exhibit different prices, and the two comparison methods under consideration are the A-to-A method with offsets (*i.e.*, without zeroing) and the A-to-T method with zeroing.⁴⁵ The normal value used to calculate a weighted-average dumping margin for these sales will fall into one of five scenarios with respect to the range of these different, individual U.S. sale prices:

- 1) the NV is less than all of the U.S. prices and there is no dumping;
- 2) the NV is greater than all of the U.S. prices and all sales are dumped;
- 3) the NV is nominally greater than the lowest U.S. prices such that there is a minimal amount of dumping and a significant amount of offsets from non-dumped sales;⁴⁶
- 4) the NV is nominally less than the highest U.S. prices such that there is a significant amount of dumping and a minimal amount of offsets generated from non-dumped sales;
or
- 5) the NV is in the middle of the range of individual U.S. prices such that there is both a significant amount dumping and a significant amount of offsets generated from non-dumped sales.

Under scenarios (1) and (2), either there is no dumping or all U.S. sales are dumped such that there is no difference between the weighted-average dumping margins calculated using offsets or zeroing and there is no meaningful difference in the calculated results and the A-to-A method will be used. Under scenario (3), there is a minimal (*i.e.*, *de minimis*) amount of dumping, such that the application of offsets will result in a zero or *de minimis* amount of dumping (*i.e.*, the A-to-A method with offsets and the A-to-T method with zeroing both results in a weighted-average dumping margin which is either zero or *de minimis*) and which also does not constitute a meaningful difference and the A-to-A method will be used. Under scenario (4), there is a significant (*i.e.*, non-*de minimis*) amount of dumping with only a minimal amount of non-dumped sales, such that the application of the offsets for non-dumped sales does not change the calculated results by more than 25 percent, and again there is not a meaningful difference in the weighted-average dumping margins calculated using offsets or zeroing and the A-to-A method will be used. Lastly, under scenario (5), there is a significant, non-*de minimis* amount of dumping and a significant amount of offsets generated from non-dumped sales such that there is a meaningful difference in the weighted-average dumping margins calculated using offsets and zeroing. Only under the fifth scenario can the Department consider the use of an alternative comparison method.

⁴⁵ The calculated results using the A-to-A method with offsets (*i.e.*, no zeroing) and the calculated results using the A-to-T method with offsets (*i.e.*, no zeroing) will be identical. See ATC's Final Analysis Memorandum, where the calculation results of the A-to-A method and each of the alternative comparison methods are summarized. The sum of the "Positive Comparison Results" and the "Negative Comparison Results" for each of the three comparison methods (*i.e.*, the A-to-A method, the "mixed" method, and the A-to-T method, are identical, *i.e.*, with offsets for all non-dumped sales (*i.e.*, negative comparison results), the amount of dumping is identical. As such, the difference between the calculated results of these comparison methods is whether negative comparison results are used as offsets or set to zero.

⁴⁶ As discussed further below, please note that scenarios 3, 4 and 5 imply that there is a wide enough spread between the lowest and highest U.S. prices so that the differences between the U.S. prices and NV can result in a significant amount of dumping and/or offsets, both of which are measured relative to the U.S. prices.

Only under scenarios (3), (4) and (5) are the granting or denial of offsets relevant to whether dumping is being masked, as there are both dumped and non-dumped sales. Under scenario (3), there is only a *de minimis* amount of dumping such that the extent of available offsets will only make this *de minimis* amount of dumping even smaller and have no impact on the outcome. Under scenario (4), there exists an above-*de minimis* amount of dumping, and the offsets are not sufficient to meaningfully change the results. Only with scenario (5) is there an above-*de minimis* amount of dumping with a sufficient amount of offsets such that the weighted-average dumping margin will be meaningfully different under the A-to-T method with zeroing as compared to the A-to-T/A-to-A method with offsets. This difference in the calculated results is meaningful in that a non-*de minimis* amount of dumping is now masked or hidden to the extent where the dumping is found to be zero or *de minimis* or to have decreased by 25 percent of the amount of the dumping using the A-to-A method.

This example demonstrates that there must be a significant and meaningful difference in U.S. prices in order to resort to an alternative comparison method. These differences in U.S. prices must be large enough, relative to the absolute price level in the U.S. market, where not only is there a non-*de minimis* amount of dumping, but there also is a meaningful amount of offsets to impact the identified amount of dumping under the A-to-A method with offsets. Furthermore, the normal value must fall within an even narrower range of values (*i.e.*, narrower than the price differences exhibited in the U.S. market) such that these limiting circumstances are present (*i.e.*, scenario (5) above). This required fact pattern, as represented in this simple situation, must then be repeated across multiple averaging groups in the calculation of a weighted-average dumping margin in order to result in an overall weighted-average dumping margin which changes to a meaningful extent.

Further, for each A-to-A comparison result which does not result in set of circumstances in scenario (5), the “meaningfulness” of the difference in the weighted-average dumping margins between the two comparison methods will be diminished. This is because for these A-to-A comparisons which do not exhibit a meaningful difference with the A-to-T comparisons, there will be little or no change in the amount of dumping (*i.e.*, the numerator of the weighted-average dumping margin) but the U.S. sales value of these transactions will nonetheless be included in the total U.S. sales value (*i.e.*, the denominator of the weighted-average dumping margin). The aggregation of these intermediate A-to-A comparison results where there is no “meaningful” difference will thus dilute the significance of other A-to-A comparison results where there is a “meaningful” difference, which the A-to-T method avoids.

Additionally, the extent of the amount of dumping and potential offsets for non-dumped sales is measured relative to the total export value (*i.e.*, the denominator of the weighted-average dumping margin) of the subject merchandise. Thus, the “targeted dumping” analysis accounts for the difference in the U.S. prices relative to the absolute price level of the subject merchandise. Only under scenario (5) above will the Department find that the A-to-A method is not appropriate – where there is an identifiable above *de minimis* amount of dumping along with an amount of offsets generated from non-dumped sales such that the amount of dumping is changed by a meaningful amount when those offsets are applied. Both of these amounts are

measured relative to the total export value (*i.e.*, absolute price level) of the subject merchandise sold by the exporter in the U.S. market.

For ATC, based on the results of the differential pricing analysis, the Department finds that at least 65.33 percent of the value of U.S. sales pass the Cohen's *d* test,⁴⁷ and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, the Department determines that there is no meaningful difference between the weighted-average dumping margin calculated using the A-to-A method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the A-to-T method to those U.S. sales which passed the Cohen's *d* test and the A-to-A method to those sales which did not pass the Cohen's *d* test. Thus, for this final determination, the Department is applying the A-to-A method for all U.S. sales to calculate the weighted-average dumping margin for ATC.

3. The Department's Differential Pricing Rulemaking

We disagree with ATC's contention that the Department must explain why these thresholds are appropriate given the specific record because, consistent with *Carlisle Tire*, the Department has not promulgated a rule regarding the numerical thresholds for its differential pricing analysis through notice and comment procedures.⁴⁸ The notice and comment requirements of the APA do not apply "to interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice."⁴⁹ Further, as we noted previously, the Department normally makes these types of changes in practice (*e.g.*, the change from the targeted dumping analysis to the current differential pricing analysis) in the context of our proceedings, on a case-by-case basis.⁵⁰ As the CAFC has recognized, the Department is entitled to make changes and adopt a new approach in the context of its proceedings, provided it explains the basis for the change, and the change is a reasonable interpretation of the statute.⁵¹ Moreover, the CIT in *Apex II* recently held that the Department's change in practice (from targeted dumping to its differential pricing analysis) was exempt from the APA's rule making requirements, stating:

Commerce explained that it continues to develop its approach with respect to the use of {A-to-T} "as it gains greater experience with addressing potentially hidden or masked dumping that can occur when the Department determines weighted- average dumping margins using the {A-to-A} comparison method." Final I&D Memo at 18 (internal quotations omitted). Commerce additionally explained that the new approach is "a more precise characterization of the purpose and application of {19 U.S.C. § 1677f-(d)(1)(B)}" and is the product of Commerce's "experience over the last several years, . . . further research, analysis and consideration of the numerous comments and suggestions on what guidelines, thresholds, and tests should be used in determining whether to apply an alternative comparison method based on the {A-to-T} method." Request for Comments,

⁴⁷ See ATC's Final Analysis Memorandum.

⁴⁸ See ATC's Resubmission of Case Brief at 17 (citing *Carlisle*, 643 F. Supp. at 423).

⁴⁹ See 5 U.S.C. § 553(b)(3)(A).

⁵⁰ See *Differential Pricing Comment Request*.

⁵¹ See *Saha Thai Steel Pipe Company*, 635 F.3d at 1341; and *Washington Raspberry*, 859 F. 2d at 902-03. See also *Carlisle Tire*, 634 F. Supp. at 423 (discussing exceptions to the notice and comment requirements of the APA).

79 Fed. Reg. at 26,722. Commerce developed its approach over time, while gaining experience and obtaining input. Under the standard described above, Commerce's explanation is sufficient. Therefore, Commerce's adoption of the differential pricing analysis was not arbitrary.⁵²

Moreover, as we noted previously, as the Department "gains greater experience with addressing potentially hidden or masked dumping that can occur when the Department determines weighted-average dumping margins using the {A-to-A} comparison method, the Department expects to continue to develop its approach with respect to the use of an alternative comparison method."⁵³ Further developments and changes, along with further refinements, are expected in the context of our proceedings based upon an examination of the facts and the parties' comments in each case. Thus, we find that these thresholds are reasonable and consistent with the requirements of section 777A(d)(1)(B) of the Act. Accordingly, the Department's development of the differential pricing analysis and the application of this analysis in this case, including the thresholds established therein, are consistent with established law.

4. The Department May Not Apply the A-to-T Method to All U.S. Sales

We disagree with ATC's argument that the Department may not apply the A-to-T method to transactions that are not part of the "pattern" because, as explained above, the purpose of section 777A(d)(1)(B) of the Act is to allow the Department to identify and address "targeted dumping." In such a situation, the A-to-A method may not be able to account for "targeted" or masked dumping⁵⁴ such that it would not be appropriate to use the A-to-A method to calculate a respondent's weighted-average dumping margin.⁵⁵ As an alternative, in an investigation, the statute permits the Department to use the A-to-T method when the two statutory requirements have been satisfied. Neither the statute nor the SAA provide guidance in determining how to apply the A-to-T method once the requirements of section 777A(d)(1)(B)(i) and (ii) have been satisfied and nowhere else did Congress set forth a prescription on how the A-to-T method must be applied as an alternative comparison method to either of the standard comparison methodologies (*i.e.*, the A-to-A method or the T-to-T method). Accordingly, the Department has reasonably created a framework to fill the gap in the statutory language to determine how the A-to-T method may be considered as an alternative to the standard A-to-A method based on the extent of the pattern of prices that differ significantly as identified with the Cohen's *d* test. This discretion has been affirmed by the Court.⁵⁶ Although ATC's approach may also be a different, permissible construction under the statute, the courts' have afforded the Department discretion when interpreting the statute and when filling in gaps in its provisions. Accordingly, the Department has continued with its reasonable framework for determining whether, and how, to use the A-to-T method as an alternative to the standard comparison method.

5. The WTO Antidumping Agreement Prohibits the Application of the A-to-T Method to All U.S. Sales and the Use of Zeroing

⁵² See *Apex II*, 144 F. Supp. 3d at 1322.

⁵³ See *Differential Pricing Comment Request*.

⁵⁴ See SAA at 842-843.

⁵⁵ See 19 CFR 351.414(c)(1).

⁵⁶ See, *e.g.*, *Apex II*, 144 F. Supp. 3d at 1319.

ATC argues that the Department's differential pricing methodology is contrary to law because the Department applies zeroing to the sale to which it applies the A-to-T method and Congress has incorporated the "fair comparison" requirement of the Antidumping Agreement into U.S. law and the WTO has made clear on numerous occasions that this "fair comparison" requirement does not permit the use of zeroing because zeroing artificially inflates the magnitude of dumping margin.⁵⁷ The Department disagrees with ATC. The CAFC has held that WTO reports are without effect under U.S. law, "unless and until such a {report} has been adopted pursuant to the specified statutory scheme" established in the URAA.⁵⁸ In fact, Congress adopted an explicit statutory scheme in the URAA for addressing the implementation of WTO reports.⁵⁹ As is clear from the discretionary nature of this scheme, Congress did not intend for WTO reports to automatically supersede the exercise of the Department's discretion in applying the statute.⁶⁰ With regard to the A-to-T method, specifically, as an alternative comparison method and the use of zeroing under the second sentence of Article 2.4.2 of the WTO Antidumping Agreement, the Department has issued no new determination and the United States has adopted no change to its practice pursuant to the statutory requirements of sections 123 or 129 of the URAA.

6. The Department's differential pricing methodology is statistically invalid because the Department has not demonstrated that it is applying the Cohen's *d* test to normal distribution.

ATC argues that the Department's differential pricing methodology is statistically invalid because the Department has not demonstrated that it is applying the Cohen's *d* test to normal distribution.⁶¹ We disagree. ATC's has not provided any evidence to support its contention that the Cohen's *d* test must be applied to normal distribution in order to be statistically invalid. As such, we find ATC's claim lacks merit and continue to find that the Department's differential pricing methodology is statistically valid.

7. Summary

Accordingly, for all of the foregoing reasons, we find that the Department's differential pricing analysis is consistent with section 777A(d)(1)(B) of the Act and the SAA. Furthermore, the differential pricing analysis represents a reasonable framework to determine whether the A-to-A method is appropriate, and if not, then how the A-to-T method may be considered as an alternative to the standard A-to-A method based on the extent of the pattern of prices that differ significantly, as identified by the Cohen's *d* test.

Comment 2: Unreported U.S. Sample Sales

Petitioners' Comments:

⁵⁷ See ATC's Resubmission of Case Brief at 17-18.

⁵⁸ See *Corus Staal*.

⁵⁹ See, e.g., 19 U.S.C. § 3533, 3538 (sections 123 and 129 of the URAA).

⁶⁰ See, e.g., 19 U.S.C. § 3538(b)(4) (implementation of WTO reports is discretionary).

⁶¹ See ATC's Resubmission of Case Brief at 16.

- The Department should apply total AFA to ATC because ATC refused to report all of its U.S. sample sales, despite the Department's repeated instructions for ATC to do so.⁶² The Department should apply the higher of either the highest margin in the petition or the highest margin calculated for any respondent in the final determination to ATC as total AFA.⁶³
- If the Department does not apply total AFA to ATC, it should apply AFA to ATC's unreported sample sales to the full extent the information on the record allows.⁶⁴
- It is not within ATC's authority to instruct the Department on which U.S. sales the Department will consider in its dumping analysis.⁶⁵
- The Department's practice is to include samples in its antidumping analysis unless the respondent provides evidence that the transaction was not a sale.⁶⁶
- The Department's practice is to apply adverse facts available to unreported U.S. sales, including unreported samples.⁶⁷ The Department's practice is to reject new information on unreported sales at verification.⁶⁸

ATC's Comments:

- ATC's U.S. sales file is complete and its reporting of sample transactions was accurate because sample transactions are not "sales" and are not included in the Department's margin calculation. ATC claims that both ATC and Petitioners agree that subject merchandise provided without consideration does not constitute a "sale" under sections 731 and 772(c) of the Act and in *NSK Ltd.* which held that a "sale" requires "both a transfer of ownership to an unrelated party and consideration."⁶⁹ ATC argues that in *NSK Ltd.*, the court concluded that "NSK's samples given to potential customers at no charge lack consideration." Based on this precedent, ATC contends that the Department has

⁶² See Petitioners' Case Brief at 29-34 (citing *Folding Tables and Chairs from China Prelim; Mukand Ltd.; Shenzhen Xinboda Indus.*).

⁶³ *Id.* at 34-37 (citing *Am. Tubular Prod.; Lined Paper from India; Uncoated Paper from Australia; Pneumatic OTR Tires from India Initiation; Lined Paper from Indonesia; GOES from China; Pneumatic OTR Tires from India Initiation Checklist*).

⁶⁴ *Id.* at 37-41 (citing *Silica Bricks from China; Folding Tables and Chairs from China Prelim; Large Residential Washers from Korea*).

⁶⁵ *Id.* at 8 (citing *Fujian Lianfu Forestry*).

⁶⁶ *Id.* at 11-16 (citing *FAG U.K. Ltd; Frozen Fish Fillets from Vietnam; NSK Ltd.; NTN Bearing Corp. of Am.; Steel Concrete Bars from Turkey; Wooden Bedroom Furniture from China*, and accompanying IDM at Comment 33; *Folding Tables and Chairs from China*, and accompanying IDM at Comment 4; *Tapered Roller Bearings from Japan; NTN Bearing II*).

⁶⁷ See Petitioners' Case Brief at 16-24 (citing *Solar Cells from China Prelim 2012-2013; Wooden Bedroom Furniture from China*, and accompanying IDM at Comment 31.B.; *Pneumatic OTR Tires from China; Polyethylene Retail Carrier Bags from Thailand; Folding Tables and Chairs from China Prelim; Folding Tables and Chairs from China*, and accompanying IDM at Comments 4 and 5; *Tapered Roller Bearings from Japan*).

⁶⁸ See Petitioners' Case Brief at 24-27 (citing *Light-Walled Rectangular Pipe and Tube from Mexico; Shandong Huarong Gen. GRs Corp.; Silica Bricks from China; Nippon Steel Corp.; Pneumatic OTR Tires from China; Folding Tables and Chairs from China*, and accompanying IDM at Comment 4; *Diamond Sawblades Mfrs.; Tung Mung Dev. I; Folding Tables and Chairs from China Prelim*).

⁶⁹ See ATC's Resubmission of Rebuttal Brief at 1 (citing *NSK Ltd. I*, 115 F.3d at 975).

consistently applied the principle that “{s}amples given to potential customers at no charge lack consideration and therefore do not constitute sales.”⁷⁰

- ATC fully and correctly reported the sample transactions of ATA, the importer/affiliate, in its questionnaire responses because there were no “sales” of free samples to report. ATC also explained that the costs of any sample tires provided to customers were captured in its indirect selling expense ratio. ATC proved that it did not receive consideration for these sample transactions by fully reconciling ATA’s, the importer/affiliate, sales revenue to its financial statements, thus demonstrating that no revenue was received for tires given away for free. ATC’s reporting of its sample transactions was verified without exception because the Department specifically reviewed the accuracy and completeness of ATC’s reporting of sample transactions and verified its reporting without exception. Other information provided at verification confirms that no consideration was received for any unreported sample tire.⁷¹
- ATC argues that the respondent in *Solar Cells from China* was able to confirm at verification that the transactions it had previously reported as samples were, in fact, samples, and thus, were appropriately excluded from the dumping calculation. Similarly in *PET Film from the UAE*, the Department relied almost entirely on the examination of sample transaction documentation at verification in concluding that respondent met its burden of demonstrating that no consideration was provided in exchange for the sample transactions. Given ATC’s manner of reporting its sample transactions is the same as in several prior investigations in which this method has been verified and accepted without exception, it would be arbitrary and capricious for the Department to find ATC’s reporting of its U.S. sales was flawed.⁷²
- Petitioners identify another account as one such potential expense category but provide no record evidence that the cost of any sample transactions was actually booked to this category. Petitioners speculate that the cost of sample tires might have been booked in other expense accounts but all record evidence points to the opposite conclusion.⁷³
- Petitioners’ concerns about potential manipulation of U.S. sales confuse investigations with administrative reviews.⁷⁴

Department’s Position: We agree with Petitioners that partial AFA is warranted but disagree with Petitioners that total AFA is warranted under these circumstances. Sections 776(a)(1) and (2) of the Act provide that the Department shall apply “facts otherwise available” if necessary information is not on the record or an interested party: (A) withholds information requested by the Department, (B) fails to provide such information by the deadline, or in the form or manner requested, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified, as provided by section 782(i) of the Act.

⁷⁰ *Id.* at 1 (citing *Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the UK*, and accompanying IDM at Comment 8; *see also PET Film from UAE*).

⁷¹ *Id.* at 2-3.

⁷² *Id.* at 10-11 (citing *Solar Cells from China*, and accompanying IDM at Comment 31; *see also PET Film from UAE*).

⁷³ *Id.* at 11-13.

⁷⁴ *Id.* at 13-14.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits, the Department may disregard all or part of the initial and subsequent responses, subject to section 782(e) of the Act, as appropriate. Pursuant to section 782(e) of the Act, the Department shall not decline to consider submitted information if all of the following requirements are met: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties. In addition, the SAA accompanying the Uruguay Round Agreements explains that the Department may use an adverse inference “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.”⁷⁵

Facts Available

Pursuant to sections 776(a)(1) and (2) of the Act, we find that total facts available is not warranted because record evidence indicates that, with the exception of ATA’s free sample U.S. sales, ATC provided the necessary information related to its remaining U.S. sales transactions without undue difficulties in order for the Department to calculate a margin. Specifically, ATC provided full responses to the Department’s initial questionnaire and seven supplemental questionnaires within the established deadlines. ATC also participated in three verifications for its home market sales, CEP sales, and cost of production.⁷⁶ During verification, the Department reconciled the quantity and value for July 2015 and found few invoices that demonstrate that ATC made free sample U.S. sales during July 2015.⁷⁷ The Department also reconciled ATC’s indirect selling expenses during verification and observed that the total cost of the sample sales is less than one percent of ATC’s U.S. sales by value. Because we have thoroughly examined and examined all of ATC’s responses (including its home market, U.S. market, and cost reconciliations) and we do not find any information calls into question the accuracy of the information reported by ATC, we determine that total AFA is unwarranted. We agree with ATC that Petitioners’ concern about other potential unreported sample sales based on another expense account that could also include sample sales are not supported by record evidence and, therefore, is speculation. As a result, we believe that with the exception of ATA’s free sample U.S. sales, ATC acted to the best of its ability and met the burden sufficiently for us to calculate a margin for its U.S. sales.

However, pursuant to section 776(a)(2)(A) of the Act, we determine that the application of partial facts available is warranted for ATC because ATC withheld information requested by the Department when it failed to comply with the Department’s explicit instructions to report its free sample U.S. sales during the course of this investigation. We requested that ATC report its free

⁷⁵ See SAA at 870; see, e.g., *Austenitic Stainless Pressure Pipe from China*.

⁷⁶ ATC’s Cost Verification Report; ATC’s Home Market Sales Verification Report; ATC’s U.S. Sales Verification Report.

⁷⁷ See ATC’s Final Analysis Memorandum due to proprietary nature of this issue.

sample U.S. sales on three separate occasions. Throughout this investigation, ATC did not report its free sample U.S. sales. ATC has the burden of reporting complete and accurate responses.⁷⁸ The Department's initial questionnaire instructed ATC to:

If the transaction in question involved sample merchandise, please report the code "S" (sample). Explain the circumstances surrounding the sales of sample merchandise. Describe how sales of sample merchandise differ from sales of merchandise that does not fall under this category.⁷⁹

In response to the Department's initial questionnaire, ATC reported that ATC could not identify which products were sold by ATA, the importer/affiliate, as samples. Therefore, ATC unilaterally removed this field from the file.⁸⁰ In its Section A response, ATC reported that ATA will sell sample tires on a full price basis or on a discounted basis and will sometimes give away tires for free.⁸¹ In a Section A supplemental questionnaire, the Department requested that ATC provide further information regarding its sample sales, as it was not clear which sample sales ATC had included in its databases.⁸² In its response, ATC provided the quantity of its home market sample sales and stated that these sales were included in the home market database.⁸³ For its U.S. sample sales, however, ATC reported only that ATA "either sells samples at a discounted price or gives them away for free," and that the free sample sales "are not reported on the file."⁸⁴ In the Department's third supplemental Section B and C questionnaire to ATC, the Department clearly repeated its instructions for ATC to report all of its free sample U.S. sales: "as requested in the initial questionnaire, please report these sales and distinguish these sales using the code "FS" (free sample)."⁸⁵ Notably, ATC's response to the Department's supplemental questionnaire did not include a request for clarification or a request for an exemption to report these sales. In its response to the Department's supplemental questionnaire, ATC acknowledged the Department's request for the free sample U.S. sales and refused to provide the Department with the information arguing that:

"{c}onsistent with relevant judicial precedent, merchandise that is given away for free, without consideration, is not a "sale" for purposes of U.S. antidumping law. Accordingly, ATC has not included on the file any tires that were given away for free of charge. The cost of these free tires were captured in the indirect selling expense rate under "Administrative Expenses."⁸⁶

As such, we determine that the application of "facts otherwise available" is warranted for ATC because ATC withheld information requested by the Department when it failed to comply with the Department's repeated and explicit instructions to report its free sample U.S. sales.

⁷⁸ See *China Steel Corp.*, 306 F. Supp. 2d at 1306.

⁷⁹ See ATC's CQ at C-29.

⁸⁰ See ATC's CQR at C-61.

⁸¹ See ATC's AQR at A-44.

⁸² See ATC's SAQ.

⁸³ See ATC's SAQR at 72-73.

⁸⁴ See ATC's SAQR at 73.

⁸⁵ See ATC's 3SQ at 7.

⁸⁶ See ATC's 3SQR at 25.

Adverse Inference

Once the Department determines that the use of facts available is warranted, section 776(b) of the Act permits the Department to apply an adverse inference if it makes the additional finding that “an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information.” We find that pursuant to section 776(b) of the Act, the use of an adverse inference is warranted because ATC failed to cooperate to the best of its ability to comply with the Department’s repeated requests for ATC to report its free sample U.S. sales. We also find that the use of an adverse inference is appropriate to ensure that ATC does not obtain a more favorable result by failing to cooperate than if it had fully cooperated. As stated above, the Department gave explicit instructions for ATC to provide its free sample U.S. sales. Nowhere in the Department’s questionnaire does it state that ATC has the option to exclude its free sample U.S. sales. Thus, ATC had the obligation to submit information regarding its free sample U.S. sales. ATC never requested clarification from the Department as to whether it could omit the sample field or whether it could be exempted from reporting its free sample U.S. sales. ATC never indicated that it lacked the ability to report the free sample U.S. sales. Instead, ATC ignored the Department’s instructions, did not provide the Department with the quantity of its free sample sales, and did not report its free samples U.S. sales in the U.S. sales database without prior approval by the Department. As such, we find that the record shows that ATC failed to cooperate by not acting to the best of its ability to comply with a request for information, pursuant to section 776(b) of the Act.

The Department’s approach to instruct ATC to report its free sample U.S. sales is consistent with *Folding Metals Tables and Chairs from China*. In *Folding Metals Tables and Chairs from China*, the Department gave the respondent explicit instructions to report its free sample U.S. sales and determined that there was substantial evidence on the record supporting the Department’s decision to include the purported transactions as “sales”:

First, New-Tec provided many pieces of the same product, indicating that these “sample” did not primarily serve for evaluation or testing of the merchandise. However, New-Tec provided significant numbers of the same product to its U.S. customer while that customer was purchasing that same product.... Second, New-Tec provided “samples” to the same customers to whom it was selling the same products in commercial quantities. In fact, New-Tec eventually acknowledged that it gave these products at zero price to its U.S. customers (already purchasing the same items) to sell to their own customers. New-Tec was not providing samples to entice its U.S. customers to buy the product. Moreover, the transactions relevant to the Department’s analysis are between New-Tec and its customers, not between New-Tec customers and its customer.

As we stated in the New-Tec Memo, the Court in *NSK 2002* stated that it saw “little reason in supplying and re-supplying and yet re-supplying the same product to the same customer in order to solicit sales “if the supplies are made in reasonably short periods of time.” See *NSK 2002*, at 1311-12. The Court also stated that “it would be even less logical to supply a sample to a client that has made a recent bulk purchase of the very item being sampled by the client. See *NSK 2002*, at 1312.

Because ATC refused to follow the Department's instructions to report all of its free sample U.S. sales in its U.S. sales database, we find that ATC failed to cooperate to the best of its ability and precluded the Department from conducting the same type of analysis as in *Folding Metal Tables and Chairs from China*. More specifically, ATC precluded the Department from determining whether there was substantial evidence on the record to support the Department's decision to include the purported transactions as "sales." As a result, it is unclear whether ATC was supplying and re-supplying and yet re-supplying the same products to the same customer in order to solicit sales in a reasonably short period. Additionally, it is unclear whether ATC was supplying the free sample U.S. sales to a client that it had recently made a bulk purchase of the very item sampled by the client. To ensure that ATC does not obtain a more favorable result by failing to cooperate than if it had fully cooperated, we find that the use of partial AFA is appropriate with respect to its unreported free sample U.S. sales. As AFA, we selected the maximum comparison result and assigned the unreported U.S. sample sales this dumping margin. For a more detailed discussion, see ATC's Final Analysis Memorandum.

ATC maintains that its U.S. sales file is complete and its reporting of sample transactions was accurate because sample transactions are not "sales" and are not included in the Department's margin calculation. According to ATC, subject merchandise provided without consideration does not constitute a "sale" under sections 731 and 772(c) of the Act and in *NSK Ltd.*, which held that a "sale" requires "both a transfer of ownership to an unrelated party and consideration." ATC claims that the court concluded that "NSK's samples given to potential customers at no charge lack consideration." Based on this precedent, ATC argues that the Department has consistently applied the principle that "{s}amples given to potential customers at no charge lack consideration and therefore do not constitute sales."⁸⁷ We disagree with ATC's interpretation of the long-standing case precedent. As stated by the CIT, the Department is not required by statute or regulation to exclude zero-priced or *de minimis* sales from its analysis.⁸⁸ Unlike the definition of normal value, the definition of export price contains no requirement that the prices used in export price calculations be the prices charged "in the ordinary course of trade."⁸⁹ Therefore, the Department only excludes zero-priced sample transactions if they are not properly considered to be "sales." The Court has defined a sale as requiring "both a transfer of ownership to an unrelated party and consideration."⁹⁰ Consideration can take both monetary *and non-monetary forms*.⁹¹ Therefore, in addition to demonstrating that these transactions were actually zero-priced, ATC bore the burden of also demonstrating there was no non-monetary consideration.⁹² Even where the Department does not ask a respondent for specific information that would enable it to make an exclusion determination in the respondent's favor, the respondent has the burden to present the information in the first place with its request for exclusion.⁹³ Simply labeling these sales as samples and stating they were zero-priced sales is insufficient to demonstrate that

⁸⁷ See *Ball Bearings from France, Germany, Italy, Japan, and the United Kingdom*; see also *PET Film from UAE*.

⁸⁸ See, e.g., *FAG U.K. Ltd.*, 20 CIT at 1281; see also *Frozen Fish Fillets from Vietnam*.

⁸⁹ See, e.g., *FAG U.K. Ltd.*, 20 CIT at 1281.

⁹⁰ See *NSK Ltd.*, 115 F. 2d at 975.

⁹¹ See, e.g., *NTN Bearing Corp.* 25 CIT at 687.

⁹² See, e.g., *Folding Metal Tables and Chairs from China*.

⁹³ See *Folding Metal Tables and Chairs from China*.

no consideration was provided for these sales.⁹⁴ Additionally, as this is a sale-specific determination, the Department's determination that one sample has no consideration had no bearing whether another sample was provided for consideration⁹⁵

ATC also argues that given ATC's manner of reporting its cost of selling its sample transactions is the same as in *PET Film from the UAE* in which this method has been verified and accepted, it would be arbitrary and capricious for the Department to find ATC's reporting of its U.S. sales was flawed. We agree with ATC that, consistent with *PET Film from the UAE*, the expenses associated with the delivery of sample merchandise should be recognized as selling expenses and included as deductions to U.S. price and that ATC correctly reported its cost of selling its sample transactions. However, consistent with *Folding Metal Tables and Chairs*, we find that ATC should also have reported its free sample U.S. sales in its U.S. sales database in order for the Department to determine whether ATC continued to provide free merchandise to the same customer after the customer made bulk purchases of the same product. It is not clear whether in *PET Film from the UAE* and *Solar Cells from China* the respondents provided sufficient information to establish that the respondents in those cases continued to provide free merchandise to the same customer after the customer made bulk purchases of the same product. It is evident, however, that in the instant investigation, the Department explicitly instructed ATC three times to include all of its free samples sales in its U.S. sales database and ATC made a determination to only report its home market sample sales but withheld the information regarding its free sample U.S. sales, and thus failed to cooperate to the best of its ability.

ATC argues that Petitioners overlook the fact that ATC proved that it did not receive consideration for these sample transactions by fully reconciling ATA's sales revenue to its financial statements, thus demonstrating that no revenue was received for tires given away for free. According to ATC, had ATA received consideration for any free samples, it necessarily would have been reflected in one of ATA's revenue accounts, and would have been reflected in its financial statements. We disagree with ATC. The Department acknowledges that during verification we did not find evidence that ATC received monetary consideration for the free sample sales that we examined. Nonetheless, the Department finds that the lack of record evidence that ATC received sales revenue for these sample sales only provides evidence that the customer did not provide any money to ATC for the sample sales because no consideration was *paid*. It does not, however, provide evidence that no non-monetary consideration was given.⁹⁶

Finally, we are unpersuaded by ATC's argument that ATC was not obligated to report its free sample U.S. sales because the concern for potential manipulation of free samples sales only exists with respect to administrative reviews and not investigations. The CIT did not limit its legal standard for determining what constitutes a "sale" when assessing zero-priced transactions to administrative reviews in *NSK III*. Further, the Department's initial questionnaire for investigations explicitly requests that parties report their sample sales. The Department also notes that the potential for manipulation of free sample U.S. sales exists in this case as it would in administrative reviews because their inclusion in our analysis would have had an impact on

⁹⁴ See, e.g., *NTN Bearing Corp II*, 248 F. Supp. 2d at 1286.

⁹⁵ See *Folding Metal Tables and Chairs from China*.

⁹⁶ See, e.g., *Folding Metal Tables and Chairs*.

the outcome of this margin. In this instant investigation, 65.33 percent of ATC's reported sales passed the Cohen's *d* test in the final determination; therefore, if the Department had determined that ATC's zero-priced transactions represent a "sales," it is reasonable to suggest that more than 66 percent of ATC's reported U.S. sales would have passed the Cohen's *d* test, which would have resulted in an affirmative final determination in this investigation. As a result, we find that the obligation to report free sample U.S. sales exists in investigations as it does in administrative reviews and ATC did not meet this obligation. For these reasons, we believe that ATC provided the necessary information and met the burden sufficiently for us to calculate a margin for its U.S. sales, but did not meet the burden sufficiently to avoid the application of partial facts available for its free sample U.S. sales. For a complete discussion of this issue, due to the proprietary nature of the free sample U.S. sales, see ATC's Final Analysis Memorandum dated concurrently with this memorandum.

Comment 3: Sales Outside the Ordinary Course of Trade

ATC's Comments:

- The Department should exclude ATC's home market sales made to one specific customer, as these sales were made outside the ordinary course of trade. Record evidence demonstrates that the prices for these sales were originally negotiated for a market other than India, but when the delivery location was changed to India, the ex-factory prices for these sales remained the same. Because the profit rate on ATC's export sales is generally higher than the profit rate on its home market sales, these sales, when considered on an ex-factory basis, were far more profitable than comparable sales to home market original equipment (OE) customers.⁹⁷

Petitioners' Comments:

- The only significant difference of the sales to the customer that ATC points to is the profit margins, the characteristic the Department and the Federal Circuit have both explained is "not enough to establish that the sales outside the ordinary course of trade."⁹⁸
- There is nothing unique about making a small percentage of sales to a single customer; most companies' sales to a single customer are a small percentage of their overall sales.⁹⁹
- Unlike *Non-Oriented Electrical Steel from Korea*, ATC has not shown or even suggested that the type of OTR tires it sold to the customer were somehow unique from the other types of tires it sold in India.¹⁰⁰
- ATC also misconstrues what the record shows about how the sale prices in question were established.¹⁰¹ These prices were not prices set in a foreign market, but were negotiated and adjusted specifically for the Indian market, and were not for a unique type

⁹⁷ See ATC's Resubmission of Case Brief at 6-10 (citing *Non-Oriented Electrical Steel from Korea*, and accompanying IDM at Comment 2; *Cement from Mexico*, and accompanying IDM at Comment 5; *Cement from Mexico II*, and accompanying IDM at 7; *Sulfur Dyes from the UK*, 58 FR at 3253-57).

⁹⁸ See Petitioners' Rebuttal Brief at 9-11 (citing *Ribbons from Taiwan LTFV*; see also *Koenig & Bauer-Albert AG*).

⁹⁹ *Id.* at 12.

¹⁰⁰ *Id.* at 12-13.

¹⁰¹ *Id.* at 13.

of merchandise or otherwise possessed of unique or unusual characteristics that made them unrepresentative of ATC's home market sales.¹⁰²

Department's Position: We disagree with ATC that its sales to its Indian customer are outside the ordinary course of trade, and therefore we have continued to include them in our calculation for the final determination. Section 771(15) of the Act defines the "ordinary course of trade" as the "conditions and practices which, for a reasonable time prior to the exportation of the subject merchandise, have been normal in the trade under consideration with respect to merchandise of the same class or kind." The SAA provides several examples of types of sales which could be considered as outside the ordinary course of trade:

Commerce may consider other types of sales or transactions to be outside the ordinary course of trade when such sales or transactions have characteristics that are not ordinary as compared to sales or transactions generally made in the same market. Examples of such sales or transactions include merchandise produced according to unusual product specifications, merchandise sold at aberrational prices, or merchandise sold pursuant to unusual terms of sale. As under existing law, amended section 771(15) does not establish an exhaustive list, but the Administration intends that Commerce will interpret section 771(15) in a manner which will avoid basing normal value on sales which are extraordinary for the market in question, particularly when the use of such sales would lead to irrational or unrepresentative results.

Consistent with this guidance, the Department has explained in prior cases that its purpose in determining whether a sale is outside the ordinary course of trade is to prevent dumping margins from being based on unrepresentative sales.¹⁰³ Pursuant to 19 CFR 351.102(b)(35), to determine whether a sale is outside the "ordinary course of trade," the Department evaluates the transactions based on all the circumstances particular to the sales in question. Where the Department finds that such sales or transactions have characteristics that are extraordinary for the market in question, we will determine that the sale is outside the ordinary course of trade. In addition, the CIT has held that, for sales to qualify as being outside the ordinary course of trade, they should possess unique or unusual characteristics which make them unrepresentative of home market sales.¹⁰⁴

After reexamining the information on the record with respect to ATC's sales in the home market to its Indian customer, we continue to find that in considering the totality of the circumstances there is insufficient evidence to establish that these sales are outside the ordinary course of trade as discussed below. Record evidence (*i.e.*, ATC's factory invoice) shows that ATC's home market sales of subject merchandise to its Indian customer were made in India and that there is no evidence suggesting that the specifications or physical characteristics of this particular merchandise is somehow unique from the other types of tires sold in India.¹⁰⁵

¹⁰² *Id.* at 13-14.

¹⁰³ See *Stainless Steel Pipe Fittings from Italy; Pineapples from Thailand*, 60 FR at 29562-63.

¹⁰⁴ See, *e.g.*, *NSK Ltd. II*, 245 F. Supp. 2d at 1360-61; *NTN Corp.*, 306 F. Supp. 2d at 1347.

¹⁰⁵ See ATC's BQR at Exhibit B-17.

ATC argues that the fundamental reason that these sales are outside the ordinary course of trade is that the high prices reported on the home market sales file do not reflect levels of profitability for sales of the merchandise in the home market, but in fact represent profitability levels associated with sales to export markets.¹⁰⁶ We disagree. The Department has explained in prior cases that high levels of profitability alone, for sales of merchandise in the home market, are not enough to establish that the sales are outside the ordinary course of trade.¹⁰⁷ For instance, in *Ribbons from Taiwan*, the Department determined that “high profit by themselves is not a sufficient basis for the Department to determine that sales are outside the ordinary course of trade.”¹⁰⁸ Instead, the Department determined that “for sales to truly be outside the ordinary course of trade, they should possess unique or unusual characteristics that make them unrepresentative.”¹⁰⁹ In addition, the CIT has also held that “the {Department’s} decision to require additional evidence demonstrating that sales with higher profits were outside of the ordinary course of trade was consistent with the statutory scheme and a reasonable construction of the provision at issue.”¹¹⁰ Furthermore, the CAFC has long established in *Koenig & Bauer-Albert AG* that the SAA only states that the Department “may” or “could” consider such sales to be outside the ordinary course of trade.¹¹¹ The use of “may” and “could” indicates that high profits alone are not enough to establish that the sales are outside the ordinary course of trade.¹¹² In this investigation, ATC has provided no evidence that its sales are unusual and relies on one factor, a higher profit, to support its contention that the sales in question should be found outside the ordinary course of trade.¹¹³ However, we note that this is not a characteristic, which makes sales outside the ordinary course of trade. Consistent with *Ribbons from Taiwan*, in order for ATC sales to its Indian customer to be truly outside the ordinary course of trade, we find they should possess unique or unusual characteristics which make them unrepresentative of home market sales.¹¹⁴ Because ATC has not supported its contention that these sales to its Indian customer possess unique specifications or physical characteristics which make them unrepresentative of its home market sales, we find that these sales are not outside the ordinary course of trade.¹¹⁵

ATC argues that because the sales were made to only one customer and represent a small percentage of ATC’s overall home market sales, these factors support a finding that these sales are outside the normal course of trade, and that the *Preliminary Determination* does not challenge this point.¹¹⁶ We disagree with ATC and find that it is not unusual *per se* for a respondent to make a small percentage of sales to a single customer. For instance, in *Bars from*

¹⁰⁶ See ATC’s Resubmission of Case Brief at 7.

¹⁰⁷ See, e.g., *Ribbons from Taiwan*, and accompanying IDM at Comment 3, footnote 51.

¹⁰⁸ See *Ribbons from Taiwan*, and accompanying IDM at Comment 3.

¹⁰⁹ *Id.*, at footnote 47.

¹¹⁰ See *Mitsubishi Heavy Industries*, 15 F. Supp. 2d at 830.

¹¹¹ See SAA at 839-40; see also *Koenig & Bauer-Albert AG*, 259 F.3d at 1345.

¹¹² See *Koenig & Bauer-Albert AG*, 259 F.3d at 1345.

¹¹³ See ATC’s Resubmission of Case Brief at 6-11.

¹¹⁴ See, e.g., *Ribbons from Taiwan*, and accompanying IDM at Comment 3, footnote 47.

¹¹⁵ See *Ribbons from Taiwan*, and accompanying IDM at Comment 3, footnote 47; see ATC’s Final Analysis Memorandum.

¹¹⁶ See ATC’s Final Analysis Memorandum due to proprietary nature of ATC’s argument; see also ATC’s Resubmission of Case Brief at 7; see also ATC’s Preliminary Analysis Memorandum at 7-8.

Turkey, the Department stated that “the mere identification of sales as infrequent small quantity sales, without further explanation...was insufficient to establish that the sales were made outside the ordinary course of trade.”¹¹⁷ Additionally, the CIT has held “{t}hat a business is able to charge higher prices for smaller volume of sales does not, on its face, make the sales extraordinary; indeed it is not an uncommon practice for businesses to provide a volume discount.”¹¹⁸ As such, we disagree that these factors, on their face, support a finding that these sales were outside the ordinary course of trade. ATC also claims that in *Non-Oriented Electrical Steel from Korea*, the Department found the small number of sales to a few customers supported a finding of sales being outside the ordinary course of trade.¹¹⁹ We find ATC’s reliance on *Non-Oriented Electrical Steel from Korea* is misplaced because that case involved overrun sales and the Department explained that it considered sales of a certain type of merchandise (overrun production) to be outside the ordinary course of trade due to the unique characteristics of that type of product.¹²⁰ In this case, ATC’s sales to its Indian customer do not involve overrun sales and ATC has not demonstrated that the type of OTR tires it sold to this customer were somehow unique from the other types of tires it sold in India. Moreover, record evidence demonstrates that the quantities of ATC’s sales fall within the range of its home market customers and were sold in commercial quantities.¹²¹ As such, we find that these sales quantities are not unusual and do not support a finding that these sales are outside the ordinary course of trade.

ATC also argues that the Department’s *Preliminary Determination* fails to take into account the other sale, which accounted for half of the volume of the sales to its Indian customer and was not sold to any other customer during the POI.¹²² While we acknowledge that ATC did not sell this specific tire model to any other customer during the POI, we continue to find that, consistent with *Steel Concrete Bars from Turkey*, ATC has not demonstrated that this type of OTR tire that it sold to its Indian customer had unusual specifications or physical characteristics that made it inherently unique from the other types of tires it sold in India.¹²³ Specifically, this type of tire was sold to an OEM, which is similar to many of ATC’s other customers, and were not made pursuant to unusual terms of trade.¹²⁴ Further, unlike *Non-Oriented Electrical Steel from Korea*, the record does not show, and ATC did not argue, that these products were of lower quality than ATC’s other products, or that there was anything unusual about their production.¹²⁵ Thus, we do not find that the sales at issue to be outside the ordinary course of trade.

¹¹⁷ See *Bars From Turkey*, and accompanying IDM at Comment 1 (citing *Koyo Seiko*, 932 F. Supp. at 1498).

¹¹⁸ See *NSK Ltd. II*, 462 F. Supp. 2d at 1632.

¹¹⁹ See ATC’s Resubmission of Case Brief at 7, footnote 16.

¹²⁰ See *Non-Oriented Electrical Steel from Korea*, and accompanying IDM at 22.

¹²¹ See ATC’s BQR at Exhibit B-17 (see factory invoice); see also ATC’s 6QR (submission of revised U.S. sales database).

¹²² See ATC’s Final Analysis Memorandum due to proprietary nature of ATC’s argument; see also ATC’s Resubmission of Case Brief, at 9; see also ATC’s Preliminary Analysis Memorandum at 7-8.

¹²³ See, e.g., *Steel Concrete Bars from Turkey*, and accompanying IDM at Comment 1 (finding that the products involved in these transactions were within the mainstream of products sold in home market, the customer was an end user, similar to respondent’s other customers, and that the record did not show that these products were of lower quality).

¹²⁴ See ATC’s BQR at Exhibit B-17 (see factory invoice); see also ATC’s 6QR (submission of revised U.S. sales database).

¹²⁵ See, e.g., *Non-Oriented Electrical Steel from Korea*, and accompanying IDM at Comment 2.

Moreover, ATC argues that the unusual nature of these sales is further supported by the fact that the sales in question were made pursuant to an agreement that was made in substantially different manner than ATC's other home market sales.¹²⁶ ATC argues that it is not seeking to have the Department exclude these sales simply because their profit margin happens to be unusually high, but instead because this aberrational profit rate was a direct result of the unusual manner by which these prices were established.¹²⁷ As correctly noted by Petitioners, ATC misconstrues what the record shows about how the sale prices in question were established. Record evidence shows that ATC renegotiated the price of the tires when the sales shifted to India.¹²⁸ ATC's home market sales of subject merchandise to its Indian customer were made in India and there is no evidence that the products were a unique type of merchandise or possessed unique or unusual characteristics that made them unrepresentative of ATC's home market sales. Therefore, the Department finds that the only factor distinguishing ATC's alleged high profits sales from other sales is the fact that there was a higher profit in such sales, which the Department has consistently found in prior cases to be an insufficient basis to demonstrate that sales were made outside the ordinary course of trade.¹²⁹ For the final determination, after considering the totality of the circumstances, we find that the facts surrounding this case do not establish that the aforementioned sales were made outside the ordinary course of trade and continue to include ATC's home market sales to its Indian customer in our calculations for the final determination.¹³⁰

Comment 4: Commission Offset

ATC's Comments:

- The Department should make a commission offset adjustment to normal value that is consistent with *Large Power Transformers from Korea* and conclude that ATC incurred commission expenses on sales to its direct customers' customers outside the United States. ATC incurred an obligation to pay these commissions in 2013, which was well prior to the time that the goods were imported (or even produced, for that matter). The fact that the commissions were ultimately paid by ATA, ATC's sales affiliate, instead of by ATC does not detract from the conclusion that a commission offset to normal value is required under the regulations and consistent with the Department precedent. Accordingly, the Department should grant a commission offset to normal value per its regulations and practice.¹³¹

Petitioners' Comments:

¹²⁶ See ATC's Resubmission of Case Brief, at 9-10.

¹²⁷ *Id.* at 10.

¹²⁸ See ATC's Final Analysis Memorandum due to proprietary nature of this information; *see also* ATC's BQR at Exhibit B-17.

¹²⁹ See *Ribbons from Taiwan*, and accompanying IDM at Comment 3; *Koenig & Bauer-Albert AG*; *Mitsubishi Heavy Industries*, 15 F. Supp. 2d at 830.

¹³⁰ See ATC's Preliminary Analysis Memorandum at 7-8.

¹³¹ See ATC's Resubmission of Case Brief at 3-4 (citing *Large Power Transformers from Korea*).

- Per the Department’s practice, commission expenses incurred in the United States prior to importation are deducted from the CEP price.¹³² ATA did not incur any expenses until ATA made actual sales to its customers’ customers, which ATA could only do after the tires were imported into the United States.¹³³ Additionally, ATA points to nothing about the agreement that actually occurred outside the United States.¹³⁴ Finally, ATA’s “commission” payments are not actually commission payments.¹³⁵ ATA was only making payments to keep its current customers happy when it made sales directly to their customers, not paying them for services performed.¹³⁶ While these expenses were expense incurred on ATA’s U.S. sales, they were not “commissions.”¹³⁷ In sum, there is no reason to modify the Department’s *Preliminary Determination*.

Department’s Position: We agree with Petitioners that we should deny ATA’s request for a commission offset because these “commission” payments are not actually commission payments. Commissions are payments to parties (selling agents) who facilitate a sale.¹³⁸ Commissions compensate selling agents for providing services relating to the sale of merchandise.¹³⁹ For instance, in *Hot-Rolled Steel Flat Products from Thailand*, record evidence demonstrated that the selling agent provided services to the respondent in order to warrant a commission offset.¹⁴⁰ However, in the instant case, ATA’s agreement does not characterize the expense as a commission.¹⁴¹ Record evidence does not indicate that ATA’s direct customers rendered any services relating to the sale or facilitated the sales between ATA and ATA’s direct customers’ customers.¹⁴² As such, we find that a commission offset is not warranted in the instant investigation because ATA’s payments to its direct customers are not commissions. Because this is not a commission, the issue regarding whether a commission offset is warranted is moot. For a complete discussion of this issue, due to the proprietary nature of this expense, see ATC’s Final Analysis Memorandum

Comment 5: ATC’s Revised Cost Database Submitted After Verification

Following ATC’s cost verification, the Department instructed the company to submit a revised cost database to correct certain CONNUM coding errors and to report additional depreciation expenses.¹⁴³ After ATC submitted the revised cost database (“atccp05”), the Department reviewed the data and discovered that the specified changes had not been made as instructed. The Department requested that ATC resubmit the cost data to incorporate the specified changes

¹³² See Petitioners’ Rebuttal Brief at 6 (citing *Pasta from Italy*; *Nails from the UAE*).

¹³³ *Id.* at 6-7.

¹³⁴ *Id.* at 7-8.

¹³⁵ *Id.* at 8.

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ See Antidumping Manual at Chapter 8.

¹³⁹ *Id.*

¹⁴⁰ See *Hot-Rolled Steel Flat Products from Thailand*, and accompanying IDM at Comment 5.

¹⁴¹ See ATC’s Final Analysis Memorandum due to proprietary nature of this agreement.

¹⁴² See ATC’s Resubmission of Case Brief at 4.

¹⁴³ See ATC’s Request for Revised Databases.

to the CONNUM coding and depreciation expenses as instructed.¹⁴⁴ ATC subsequently filed another revised cost database, “atccp06.”

Petitioners’ Comments:

- ATC made substantial, unsolicited changes to its reported costs (*i.e.*, changes other than those specified in the Department’s request for a revised cost file).¹⁴⁵
- These unsolicited changes included revisions to the production quantity that were not specified in the Department’s request.¹⁴⁶ For example, there were three CONNUMs that had zero production quantities in the atccp05 database and therefore had surrogate costs, but in the atccp06 file ATC reported a production quantity for each of these three CONNUMs and did not use surrogate costs.
- In the revised atccp06 file that ATC submitted after the Department discovered the errors in atccp05, there were other changes made to the cost data that the company did not explain.¹⁴⁷ For example, for fixed overhead, ATC made revisions to all reported CONNUMs which varied from CONNUM to CONNUM when comparing the different versions of the databases. There are several examples where the reported fixed overhead for a given CONNUM was one per-unit amount in the pre-verification cost database, another in the first revised file (atccp05), then yet another amount in the second revised database (atccp06).
- The Department should accordingly reject the unsolicited changes ATC made to its database.¹⁴⁸

ATC’s Comments:

- ATC did not make any unsolicited changes to its cost data. The changes identified by Petitioners in its case brief were part of the correction of quantity-related errors made when compiling the atccp05 database that ATC had to correct to implement the requested correction of the CONNUM coding.¹⁴⁹
- The correction of the CONNUM coding errors required ATC to reassign certain SKUs to new CONNUMs. For some CONNUMs, not all individual SKUs contained in the CONNUM needed to be reclassified to a different CONNUM. However, when preparing the atccp05 file, ATC incorrectly assumed that all SKUs within that particular CONNUM had moved to the different CONNUM designation, and therefore reported the “old” CONNUM as having zero production quantity. ATC corrected this quantity-related error when it resubmitted the data in the atccp06 file.¹⁵⁰
- There were no unsolicited changes to fixed overhead either. When ATC submitted the atccp05 database, it increased fixed overhead for all CONNUMs by a single ratio to report the entire amount (*i.e.*, in total for both plants) of additional depreciation. However, in the atccp06 file, ATC calculated a revised fixed overhead which considered

¹⁴⁴ See ATC’s Request to Correct Cost Database.

¹⁴⁵ See Petitioners’ Case Brief at 5.

¹⁴⁶ *Id.* at 5-6.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ See ATC’s Resubmission of Rebuttal Brief at 15.

¹⁵⁰ *Id.* at 16.

the additional depreciation at a plant-specific level. The plant-specific figures for depreciation were clearly identified in the cost verification minor corrections exhibit.¹⁵¹

- When ATC applied the plant-specific ratios for the additional depreciation in creating atccp06, it resulted in a change to all the CONNUMs compared to the atccp05 file in which an overall ratio was used.¹⁵²

Department's Position: We disagree with Petitioners and have used the corrected cost data submitted by ATC in its atccp06 database for the final determination. As noted above, following the cost verification, the Department requested that ATC submit a revised database to correct certain errors identified in the company's opening day minor correction submission.¹⁵³ Specifically, ATC was instructed to revise the CONNUM-specific costs to correct SKU coding errors and to include additional production-related depreciation expenses that had been omitted from the reported costs.

In reviewing the revised atccp05 cost database, the Department discovered that the changes specified in our request had not been implemented as instructed, and requested that the company correct these errors and resubmit its cost data.¹⁵⁴ ATC filed another revised cost database, atccp06, along with a description of the errors it made when preparing the previous file.¹⁵⁵ The Department carefully examined the cost data submitted by the company in the atccp06 database to ensure that the changes set forth in our initial request were implemented correctly and that no additional revisions beyond those specified had been made. For example, with regard to the SKU coding errors that necessitated a revision to certain CONNUMs, we found no discrepancies when comparing the revised production quantities and costs for these CONNUMs in atccp06 with the information provided in the opening day minor corrections submission.¹⁵⁶ We do not find that ATC made any unsolicited changes to its cost data as alleged by Petitioners. Therefore, for this final determination we have relied on the company's atccp06 cost file for our margin calculations.¹⁵⁷

Comment 6: Affirmative Determination of ATC

Petitioners' Comments:

- The Department should find, even before the application of AFA, that ATC's level of dumping during the POI was greater than *de minimis* and make an affirmative final determination for ATC.¹⁵⁸

No other parties commented on this issue.

¹⁵¹ See ATC's Resubmission of Rebuttal Brief at 18.

¹⁵² *Id.* at 19.

¹⁵³ See ATC's Request for Revised Databases.

¹⁵⁴ See ATC's Request to Correct Cost Database.

¹⁵⁵ See ATC's 7QR.

¹⁵⁶ See, e.g., ATC's Cost Verification Exhibit 1, at 3-4 and 7-8.

¹⁵⁷ See ATC's Final Analysis Memorandum.

¹⁵⁸ See Petitioners' Case Brief at 3-4.

Department's Position: We disagree with Petitioners. In the *Preliminary Determination*, we calculated a zero dumping margin for ATC. For the final determination, we made changes to ATC's margin calculation based on our verification findings and correction of errors from the *Preliminary Determination*.¹⁵⁹ Based on these changes, we continue to calculate a zero dumping margin for ATC before and after the application of partial AFA.

Comment 7: Correction of Minor Errors from U.S. Sales Verification

ATC's Comments:

- The Department should revise FIELD USDUTYU to reflect the actual amount of U.S. duty because ATA incorrectly reported U.S. duties.¹⁶⁰
- The Department should revise the INLFWCU field to reflect the actual amount of freight expenses for freight from warehouse to the customer associated with two sales because ATA misreported these two inland freight expenses.¹⁶¹

No other parties commented on this issue.

Department's Position: We agree with ATC. For the final determination, we have revised the USDUTYU and INLFWCU fields based on the verification findings which were reported in the U.S. sales verification report.¹⁶²

Comment 8: Warranty

ATC's Comments:

- The Department should revise the warranty expense rate used in its calculations.¹⁶³

No other parties commented on this issue.

Department's Position: We agree with ATC. In the *Preliminary Determination*, the Department incorrectly calculated ATC's warranty expenses.¹⁶⁴ For the final determination, we have used the correct rate and have eliminated ATC's weight as the denominator in the warranty expense formula.¹⁶⁵

Comment 9: Other Discounts

ATC's Comments:

¹⁵⁹ See ATC's Final Analysis Memorandum; see ATC's Home Market Sales Verification Report; see ATC's U.S. Sales Verification Report.

¹⁶⁰ See ATC's Resubmission of Case Brief at 5.

¹⁶¹ *Id.* at 6.

¹⁶² See ATC's U.S. Sales Verification Report.

¹⁶³ See ATC's Resubmission of Case Brief at 2.

¹⁶⁴ See ATC's Preliminary Analysis Memorandum at 13.

¹⁶⁵ For further discussion, see ATC's Final Analysis Memorandum.

- The Department should deduct OTHDIS2H from the home market price for the final determination.¹⁶⁶

No other parties commented on this issue.

Department's Position: We agree with ATC. In the *Preliminary Determination*, the Department did not deduct OTHDIS2H from the home market price.¹⁶⁷ For the final determination, the Department deducted OTHDIS2H from the home market price.¹⁶⁸

Comment 10: Classification of BKT's Sales

Petitioners' Comments:

- The Department should re-classify BKT's EP sales into CEP sales based on the definition of the statute of EP and CEP sales.¹⁶⁹ An agreement to sell occurred in the United States based on communication between BKT's U.S. affiliates, BKT Tires and BKT USA, and the unaffiliated U.S. customer.¹⁷⁰
- BKT's sales process for EP and CEP1 sales are similar, with exception of the issuance of the commercial invoice.¹⁷¹ BKT Tires issues a second invoice to the U.S. customer in CEP1 and CEP2 sales, whereas for EP sales, BKT generates the invoice to the U.S. customer.¹⁷² However, there is no practical difference between the EP and CEP sales processes.
- BKT's U.S. affiliates communicate with BKT's U.S. customers on issues pertaining to products and pricing equally for EP and CEP sales.¹⁷³
- Agreement to sell the subject merchandise occurs in the United States as the U.S. affiliates are negotiating price and quantity with the U.S. customer.¹⁷⁴
- Title, issuance of invoice, and date of importation do not preclude CEP classification. The CIT found that "agreement to sell" does not require either proof of transfer of ownership or title, or proof of payment of consideration."¹⁷⁵

BKT's Comments:

- The Department should not reclassify BKT's EP sales as CEP sales because BKT sold directly to the U.S. customer and the sales took place in India. Typically, BKT Tires and BKT USA receive purchase orders from the U.S. customers and even on these purchase orders there are instances where BKT is listed as the seller.¹⁷⁶ Changes made after the issuance of *pro forma* invoices are approved by BKT, and are reflected in commercial

¹⁶⁶ See ATC's Resubmission of Case Brief at 3.

¹⁶⁷ See ATC's Preliminary Analysis Memorandum at 8-9.

¹⁶⁸ For further discussion, see ATC's Final Analysis Memorandum.

¹⁶⁹ See Petitioners' Case Brief at 42-43 (citing Section 772 of the Act).

¹⁷⁰ *Id.* at 43-44.

¹⁷¹ *Id.* at 43-45.

¹⁷² *Id.* at 45-46.

¹⁷³ *Id.* at 46-47 (citing BKT's SAQR at 4 and 7).

¹⁷⁴ *Id.* at 48-49 (citing BKT's Verification Report at page 8 of VE-18.B).

¹⁷⁵ *Id.* at 50-51 (citing *Corus Staal*, 502 F.3d at 1376; and *AK Steel*, 226 F. 3d at 1370-71).

¹⁷⁶ See BKT's Rebuttal Brief at 1-2 (citing BKT's AQR, at pages 2, 14, and 20 of Exhibit A-10).

invoices. BKT holds the title of the EP sales until invoicing and then it passes the title to its U.S. customers rather than its affiliates.¹⁷⁷ U.S. customers directly pay BKT for EP sales.¹⁷⁸

- Location and identity of the seller are critical in the definition of a CEP sale.¹⁷⁹ Specifically, location of the sale is the place of the transfer of ownership or title.¹⁸⁰ Moreover, cases cited by Petitioners do not apply to BKT because the facts on the record of this proceeding are different.¹⁸¹
- The Department has already recognized that BKT's U.S. affiliates are involved in the sales process of EP sales and determined that the involvement does not classify these sales CEP.¹⁸² In past cases, the Department has determined a sale to be EP if the foreign producer invoiced the U.S. customer prior to the date of importation and the U.S. affiliate did not take the title to the product and was not identified as the seller on the invoice. The Department classified the sale as an EP sale because the sale was made by a foreign producer and occurred outside of the United States.¹⁸³
- BKT Tires and BKT USA are conduits for BKT's EP sales and prices are set by price lists issued by BKT. Additionally, U.S. affiliates have no authority to change the sales process without approval from BKT.¹⁸⁴ BKT's U.S. affiliates are not listed in any of the documents other than purchase order, which they forward to BKT for approval. Conversely, for CEP sales, BKT Tires is listed as the buyer of MUC and the unaffiliated U.S. customer as the consignee.¹⁸⁵

Department's Position: We agree with BKT that its EP sales are properly classified as EP sales. As we stated in the preliminary determination:

In accordance with section 772(a) of the Act and careful consideration of all parties' comments, we calculated EP for BKT's U.S. sales where the subject merchandise was sold to the first unaffiliated purchaser in the United States prior to importation. BKT's EP sales were directly shipped from India to the first unaffiliated customer and were invoiced accordingly, whereas BKT's CEP sales were sold through its U.S. affiliates.¹⁸⁶

None of these facts have changed since preliminary determination. To substantiate their claim that BKT's EP sales should be reclassified as CEP sales, Petitioners emphasize the fact that in both EP and CEP sales, the transaction takes place in the United States as reflected by the entity on the purchase order. Petitioners also rely on BKT's statement that its U.S. affiliates are heavily involved in both EP and CEP sales to point out that there is little difference between EP and CEP sales.¹⁸⁷ However, notwithstanding the U.S. affiliates' involvement in the EP sales,

¹⁷⁷ See BKT's Rebuttal Brief at 2 (citing BKT's AQR at 25 and SCQR, at 7).

¹⁷⁸ *Id.* (citing BKT's Verification Report at page 16 of VE-18.A, page 30 of VE-18.B, page 24 of VE-18.C, page 16 of VE-18.D, and page 25 of VE-21.A).

¹⁷⁹ See BKT's Rebuttal Brief at 3 (citing *AK Steel*, 226 F. 3d at 1369).

¹⁸⁰ *Id.* at 4 (citing *AK Steel*, 226 F. 3d at 1370).

¹⁸¹ *Id.* at 6-8 (citing *Nucor*; *Pasta from Italy 11th Review*; and *GOES from Korea*).

¹⁸² *Id.* at 8 (citing BKT's Preliminary Analysis Memo at 10).

¹⁸³ *Id.* at 9 (citing *Coated Paper from China*; *Silicon Metal from Russia*; and *Steel Wire Rod from Mexico*).

¹⁸⁴ *Id.* at 10 (citing BKT's AQR at 24).

¹⁸⁵ *Id.* at 10 (citing BKT's AQR at 13-18 of Exhibit A-10).

¹⁸⁶ See Preliminary Decision Memo at 12.

¹⁸⁷ See BKT's AQR at A-25-6 and BKT's CQR at C-24.

BKT's commercial invoices for all its EP sales reflect BKT as the seller and the unaffiliated U.S. customer as the purchaser.¹⁸⁸ Additionally, record evidence¹⁸⁹ indicates that the commercial invoice is the document where the material terms of sale are set.

Based on *Corus Staal* and *AK Steel*, the controlling factors for determining whether a sale should be classified as EP or CEP are: (1) the locus of the transaction at issue (when and where the sale is made) and, (2) whether the foreign producer/exporter and the U.S. importer are affiliated.¹⁹⁰ In particular, the CAFC, has explained that “[n]either a sale nor an agreement to sell occurs until there is mutual assent to the material terms (price and quantity).”¹⁹¹ Regarding Petitioners’ argument that title, issuance of invoice, and date of importation do not preclude CEP classification we do not disagree with Petitioners that agreement to sell does not require either proof of transfer of ownership or title, or proof of payment of consideration. However, in the instant investigation, record evidence indicates that for all of BKT’s EP sales the terms of sale take place in India.¹⁹² Consistent with these decisions, the Department has defined a sale or agreement to sell as the point at which the material terms of the agreement, *i.e.*, price and quantity, have been established between the foreign producer/exporter and the customer.¹⁹³ Additionally, following *AK Steel* and *Corus Staal*, the Department found that it is unnecessary to focus on the functions of the foreign parent and its U.S. subsidiary or engage in an in-depth analysis of such functions in order to identify the seller, when the seller can be clearly identified in the documents effectuating the sale (*e.g.*, the contract controlling the sale or, in the absence of a contract, the invoice setting the final terms of sale, *etc.*).¹⁹⁴ Therefore, in the instant investigation, we will continue to follow *AK Steel* and *Corus Staal* and use the documentation on the record to determine where the sale takes place.

Moreover, record evidence demonstrates that while customers send their emails and purchase orders to BKT Tires, terms of sale are set by the prices set by price list and approved by BKT in India.¹⁹⁵ And although purchase orders were typically issued to BKT’s U.S. affiliates, some purchase orders listed BKT.¹⁹⁶ Based on record evidence, for EP sales, BKT is the seller of subject merchandise as it is located in India as established on the commercial invoice.¹⁹⁷ Conversely, the customer is BKT’s unaffiliated U.S. customer and BKT’s U.S. affiliates do not hold a title to the sold merchandise in EP sales.¹⁹⁸ Further, the record contains no evidence that the sale, price and quantity agreed to between parties, takes place before BKT issues its invoice.¹⁹⁹ Additionally, in this case, although the purchase order was issued by the U.S. customer to BKT Tires, BKT could, and as the record evidence shows, did change the terms of

¹⁸⁸ See, *e.g.*, Verification Report at Exhibits VE-18.A, 18.B, 18.C, and 18.D; see BKT’s AQR at Exhibit A-10.

¹⁸⁹ See BKT’s SAQR at 20 and BKT’s Verification Report at 7.

¹⁹⁰ See *Corus Staal*, 502 F.3d at 1376; *AK Steel*, 226 F.3d at 1369.

¹⁹¹ See *Corus Staal*, 502 F.3d at 1376.

¹⁹² See BKT’s Verification Report at 7 and Exhibit VE-4.A.

¹⁹³ See, *e.g.*, *Pasta from Italy 11th Review*.

¹⁹⁴ *Id.*

¹⁹⁵ See BKT’s SAQR at Exhibit 10, at 2-5, 13-14, and 19-22 and BKT’s SCQR at Exhibit SC-3B.

¹⁹⁶ See BKT’s SAQR at Exhibit 10, at 2, 14, and 20.

¹⁹⁷ See, *e.g.*, Verification Report at Exhibits VE-18.A, 18.B, 18.C, and 18.D.

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

sale *via* the invoice for the sales at issue.²⁰⁰ Given these facts, mutual assent to the material terms (price and quantity) are finalized in the final invoice from BKT. Therefore, for the final determination, we find it appropriate to continue treating the transactions at issue as EP sales.

Finally, with respect to *Pasta from Italy 11th Review*, we agree with BKT that the facts of that case support a finding that the respondent's sales were CEP. This determination is consistent with the Department's practice as *Bars from Turkey* and *Wire Rod from Mexico*. Specifically, the Department relied on proof of transfer based on an invoice to determine the sales were CEP.²⁰¹ Furthermore, by agreeing with *AK Steel* and *Corus Staal*, the Department stated in *Pasta from Italy 11th Review*:

we believe it is unnecessary to focus on the functions of the foreign parent and its U.S. subsidiary or engage in an in-depth analysis of such functions in order to identify the seller, when the seller can be clearly identified in the documents effectuating the sale (e.g., the contract controlling the sale or, in the absence of a contract, the invoice setting the final terms of sale).

Accordingly, by abstaining from a function-driven approach, we find in the instant segment of the proceeding, commercial invoice is the controlling document and identifies BKT as the seller to the first unaffiliated U.S. customer and – and India, as the location of the seller. Therefore, we have determined that BKT's EP sales should continue to be classified as EP sales for this final determination.

Comment 11: Duty Drawback

Petitioners' Comments:

- The Department should eliminate the duty drawback adjustment granted in the *Preliminary Determination* to achieve a duty neutral comparison.²⁰²
- Specifically, an addition to export price is not warranted unless the home market price is inclusive of the duty. If record evidence does not support the assumption that imported inputs were also used to produce tires sold in the home market, there should be no duty drawback adjustment.²⁰³
- BKT did not demonstrate that the home market prices reflected unrebated import duties. In fact, record evidence shows that BKT consumed both imported and domestically sourced inputs in the production of tires.²⁰⁴
- To calculate the duty drawback adjustment, BKT divided the total of exempted duties by the total value of all direct materials consumed. Such a calculation is correct only, if it is assumed that imported materials subject to import duties (and eligible for rebate upon exportation) are consumed at equal rates for all products sold, whether for export or for domestic sales.²⁰⁵

²⁰⁰ See BKT's Verification Report at 7 and Exhibit VE-4.A.

²⁰¹ See *Pasta from Italy 11th Review*.

²⁰² See Petitioners' Case Brief at 53.

²⁰³ *Id.* at 53-56.

²⁰⁴ *Id.* at 57.

²⁰⁵ *Id.* at 57.

- In the instant case, there were more than sufficient quantities of domestically sourced inputs, (which would not have incurred the import duty), to support all domestic sales.²⁰⁶
- While the Department normally assumes that raw materials sourced domestically and abroad are consumed proportionally between export and domestic sales, Petitioners argue that the assumption is not valid here.²⁰⁷
- The Department should assume that domestic inputs were used to support domestic sales. In such a circumstance, an adjustment is not justified, because the domestic sales would not reflect import duties, and, as such, are directly comparable to U.S. prices, which likewise would not reflect an import duty.²⁰⁸
- If the Department nevertheless believes that there remains a legal obligation to make an upward adjustment to U.S. prices, then it should make a corresponding offsetting downward adjustment to home market prices to preserve the neutrality of the comparison.²⁰⁹
- If the Department ultimately decides to grant the duty drawback adjustment, it should include the exempted duty in the calculation of the TOTCOM in the cost database.²¹⁰

BKT's Comments

- The Department should continue to grant a duty drawback adjustment, as it did for the *Preliminary Determination*, because its duty drawback claim satisfies the Department's two-prong test.
- The statute requires that EP and CEP be increased by "the amount of any import duties imposed by the country of exportation... which have not been collected, by reason of the exportation of subject merchandise."²¹¹
- In *Core from India*, the Department established a new drawback methodology in which it increased each respondent's cost of production by their total uncollected import duties to ensure that the prices of the home market sales were above the duty-inclusive cost of production threshold. This methodology results in a "fair" comparison for dumping purposes between a duty-inclusive U.S. price and a duty-inclusive NV.
- The Department's assumption that "imported raw material and the domestically sourced raw material are proportionally consumed in producing the merchandise, whether sold domestically or exported" is a general assumption applicable to all dumping cases in which a drawback adjustment is warranted.
- BKT's data confirms that it did proportionally consume imported and domestically sourced raw materials inputs for its domestic and export sales during the POI. Therefore, the Department should continue to rely on *Core from India*²¹² to calculate duty-inclusive NV's for the final determination and reject Petitioners' arguments to the contrary.

Department's Position: We disagree with Petitioners that the duty drawback adjustment should be eliminated. The statutory language in section 772(c)(1)(B) of the Act directs the Department to account for a duty drawback by adding it to U.S. price. In determining whether a duty

²⁰⁶ *Id.* at 58.

²⁰⁷ *Id.* at 58.

²⁰⁸ *Id.* at 58.

²⁰⁹ *Id.* at 58-59.

²¹⁰ *Id.* at 59.

²¹¹ See BKT's Rebuttal Brief at 14 (citing Section 772(2)(1)(B) of the Act).

²¹² *Id.* at 153 (citing *Core from India*).

drawback adjustment should be granted, first we look for a reasonable link between the duties imposed and those rebated or exempted. Specifically, we require that the company meet our “two-pronged” test in order for this adjustment to be made.²¹³ The first element is that the import duty and its corresponding rebate or exemption be directly linked to, and dependent upon, one another. The second element is that the company must demonstrate that there were sufficient imports of the imported material to account for the amount of import duty refunded or exempted for the export of the manufactured product. The Department found that BKT satisfied the criteria for one duty drawback program, the AAP.

A duty drawback adjustment to EP and CEP is based on the principle that the “goods sold in the exporter’s domestic market are subject to import duties while exported goods are not.” In other words, home market sales prices are import duty “inclusive,” while U.S. (and third-country) export sales prices are import duty “exclusive.” Therefore, the question of whether prices or costs are import duty exclusive or inclusive will result in an inequity in the comparison of EP or CEP with fair value or NV. As such, it is incumbent on the Department to ensure that the comparison of EP or CEP with fair value or NV is undertaken on an equitable duty neutral basis. In order to do so, when warranted, the Department must make the duty drawback adjustment to EP or CEP in a manner that will render this comparison duty neutral.

In applying the duty drawback adjustment, consideration must be given to what import duties are included the respondent’s costs of materials or inequities may be created. The amount of the duty drawback adjustment should be determined based on the import duty absorbed into, or imbedded in, the overall cost of producing the merchandise under consideration.²¹⁴ In looking to the duty imbedded in the COP, we consider inputs from both foreign and domestic sources. That is, we assume for dumping purposes, that imported raw material and the domestically sourced raw material are proportionally consumed in producing the merchandise, whether sold domestically or exported. Contrary to Petitioners’ contention, the Department does not assume that only domestic inputs were used to support domestic sales. The Department calculates an average COP for each product, not market-specific costs (*i.e.*, one cost for a given product sold in the domestic market and a different cost for the same product when exported). The annual average cost for the input is the average cost of both the foreign sourced input, which incurs import duties, and the domestic sourced input on which no duties were imposed. Thus, the average import duty cost imbedded in the cost of producing the merchandise is the duty cost “reflected in NV,”²¹⁵ whether NV is based on home market prices or constructed value.

Accordingly, in order to accurately determine an adjustment for “the amount of import duties imposed...which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States,”²¹⁶ the Department has made an upward adjustment to EP and CEP based on the per unit amount of the import duty cost included in the COP for each CONNUM.²¹⁷

²¹³ See *Saha Thai Steel Pipe Company*, 635 F.3d at 1340-41.

²¹⁴ See *Core from India*.

²¹⁵ See *Saha Thai Steel Pipe Company*, 635 F.3d at 1342.

²¹⁶ See Section 772(c) (1)(B) of the Act.

²¹⁷ See BKT’s Cost Memorandum. This is consistent with *CWP from Thailand*, where we stated that “we disagree with Saha Thai and determine that its duty drawback amount be adjusted so that the amount added to EP is

BKT divided the total imputed duties during the POI by the total direct material costs incurred during the POI.²¹⁸ BKT multiplied this ratio by the direct material cost calculated for all products reported in the cost database and included the exempted duty in the cost database. For the *Preliminary Determination*, we replaced the reported duty drawback (“AAPU”) in BKT’s U.S. sales file with the calculated CONNUM-specific duty drawback amounts in the COP database.²¹⁹ The methodology we used was consistent with the methodology used in *Core from India*. For the final determination, we have continued to apply this methodology.²²⁰

Comment 12: CEP Offset

BKT’s Comments:

- The Department should grant BKT a CEP offset because record evidence supports the conclusion that the HM LOT is more advanced than the CEP LOT for critical functions. The CEP LOT is considered to be that which corresponds to the foreign producer’s sales to its U.S. affiliate, and not the LOT corresponding to the U.S. affiliate’s sale to the first unaffiliated customer.
- Four of the six selling activities cited by the Department in the *Preliminary Determination* yield a different result.²²¹ Therefore, the Department’s *Preliminary Determination* is not supported by record evidence.
- It is the Department’s practice to take into consideration not only the number of selling activities but also their weight and intensity.²²² Record evidence indicates that HM LOT involved more selling activities and were at higher levels of intensity than those performed by BKT for sales through CEP channels.²²³
- Certain critical functions warrant a finding that HM LOT is at a higher LOT than the LOT for CEP.

Petitioners’ Comments:

- The Department should not alter its *Preliminary Determination* for not granting CEP offset based on record evidence and past precedents. In order to grant a CEP offset, the Department should find that significant differences exist in selling functions for HM LOT versus U.S. market LOT.²²⁴

consistent with the amount added to Saha Thai’s calculated COP.” See *CWP from Thailand*, and accompanying IDM at Comment 8. Additionally, we stated that “it is the Department’s intention to match expenses with the benefits derived from them. Therefore, we recommend adjusting Saha Thai’s duty drawback amount used to adjust the U.S. price to correspond with that reported in its COP data.” *Id.*

²¹⁸ See BKT’s SDQR at Exhibit D-32.

²¹⁹ See BKT’s Preliminary Analysis Memorandum at 11-12.

²²⁰ See BKT’s Cost Memorandum.

²²¹ See BKT’s Case Brief at 3.

²²² *Id.* at 5 (citing *Corus Engineering Steels*).

²²³ *Id.* at 5 (citing BKT’s SCQR at Exhibit SC-5 and BKT’s SAQR at Exhibit 8).

²²⁴ See Petitioners’ Rebuttal Brief at 24-25 (citing *Cold-Rolled Products from Korea*).

- Record evidence does not support finding substantial differences in selling functions between HM LOT and U.S. market LOT.²²⁵ Additionally, single HM LOT is comparable to the single U.S. LOT as BKT sells to the same type of customers in these two LOTs.²²⁶
- BKT claims regarding intensity of certain selling functions, but the record provides no description of activities with respect to the same functions in the HM and U.S. markets.²²⁷ BKT provided only generic summaries for the activities and services without any discussion of why they are critical. Therefore, for the final determination, the Department should not grant a CEP offset to BKT.

Department's Position: We disagree with BKT that the differences in its selling functions in the HM LOT are substantially greater than its selling functions in U.S. LOT to warrant a CEP adjustment. As we stated in *Preliminary Determination*:

We compared the LOTs in the home market to the LOT in the U.S. market and found the LOT in the U.S. market to be comparable to the home market LOT. While the level of intensity of selling activities in the home market LOT is at times higher than the level of intensity of selling activities in the U.S. LOT, the types of selling activities undertaken in the two LOTs (*e.g.*, sales forecasting, engineering services, direct sales, market research, technical assistance, and after-sale services) are typically the same. Furthermore, the types of customers in these two LOTs are identical.²²⁸

None of the underlying facts or descriptions of selling functions have changed since the *Preliminary Determination*. Notably, during the sales verification the Department did not observe any different level of any activity with respect to HM LOT to be at a different level than U.S. LOT, *i.e.*, the selling activities performed by BKT for sales to its unaffiliated HM customers (its EP sales) as opposed to its selling activities for sales to BKT Tires or BKT USA.²²⁹ The Department did not find any activity level to be different from what was reported and described in BKT's responses.²³⁰ Record evidence indicates that BKT's sales adjustments are far fewer in the HM market than in the U.S. market.²³¹ The existence of CEP type sales supports our finding that there are no fewer selling functions being performed for CEP sales compared to HM sales. Due to proprietary nature of specific examples of selling activities, we have discussed the details of the CEP offset in the BKT Final Analysis Memorandum.

Comment 13: Quantity Unit of Measure

BKT's Comments:

- The Department should re-calculate BKT's margin on a per-kg and not on a per-tire basis as it did in the *Preliminary Determination*.²³²

²²⁵ *Id.* at 24 (citing BKT's Final Analysis Memorandum due to proprietary nature of this argument).

²²⁶ *Id.* at 26-27 (citing Preliminary Decision Memorandum at 18).

²²⁷ *Id.* at 28-29 (citing BKT's AQR at 19-22).

²²⁸ See Preliminary Decision Memorandum at 18.

²²⁹ See BKT's Verification Report *in toto*.

²³⁰ See BKT's SCQR at SC-5 or BKT's AQR at Exhibit A-10, and BKT's Verification Report *in toto*.

²³¹ See BKT's SCQR at SC-5 or BKT's AQR at Exhibit A-10.

²³² See BKT's Case Brief at 6 (citing BKT's Pre-Preliminary Rebuttal Comments at 6-7).

Petitioners' Comments:

- The Department should continue to calculate BKT's prices and costs on a per-tire basis because it sells its tires on a per-tire basis and it is consistent with its past practice and the record.²³³

Department's Position: We agree with Petitioners that per-tire basis is the appropriate unit of measure for calculation of U.S. net price and NV. BKT first reported its HM sales, U.S. sales, and cost database on a weight (kg) basis.²³⁴ However, after evaluation of BKT's sales practice, we requested that BKT submit all of its databases on a per-unit (tire) basis.²³⁵ As pointed out by Petitioners, it is the Department's practice to use the unit of measure based on which the sales are made. As we stated in *Ribbons from Taiwan LTFV*:

It is the Department's general practice to require respondents to report their data in the same unit of measure in which they sell their products. In *Viraj Forgings, Ltd. v. United States*, 283 F. Supp. 1335, 1354 (CIT 2003), the Court instructed the Department to "conform itself to its prior precedent and compare plaintiff's merchandise in the manner in which it was sold." Consistent with this practice, we solicited data from the respondents in this case on a per-spool basis because this is the unit of measure used to set their prices. Specifically, the invoices issued by the respondents to their respective customers demonstrate that NWR is sold on a per-spool basis, not sold by the square yard. This fact that NWR is sold on a per-spool basis was also documented during verification for each respondent in this investigation.²³⁶

We find that the record evidence of the instant case is consistent with the facts in *Ribbons from Taiwan LTFV*. Specifically, all BKT's HM and U.S. sales invoices indicate tires are sold on per-tire basis.²³⁷ Therefore, for the final determination, we have continued to calculate BKT's final margin based on per-tire basis.²³⁸

Further, BKT argues in its pre-preliminary rebuttal comments that in the past the Department has calculated margins based on weight even when records suggest that subject merchandise is sold on a per-unit basis.²³⁹ However, *Stainless Steel Pipe Fittings from Italy* cited by BKT is not applicable because that case discusses the unit of measure of freight expense, whereas in the instant case the issue the unit of measure of the product is sold and produced and not the unit of measure of the product is transported.²⁴⁰

Comment 14: Correction of Verification Errors

A. Conversion Costs and G&A

²³³ See Petitioners' Rebuttal Brief at 23 (citing *Ribbons from Taiwan LTFV* and *Steel Plate from Canada*, as well as BKT's AQR at A-37.

²³⁴ See, e.g., database submitted with SCQR.

²³⁵ See U.S. sales database submitted in BKT's second supplemental sections A-D response, dated July 27, 2016, and HM and cost database submitted on August 1, 2016.

²³⁶ See *Ribbons from Taiwan LTFV* at 8.

²³⁷ See, e.g., BKT's Verification Report at VE-17.A and VE-18.A.

²³⁸ See BKT's Final Analysis Memorandum.

²³⁹ See BKT's Pre-Preliminary Rebuttal Comments at 6-7.

²⁴⁰ See *Stainless Steel Pipe Fittings from Italy*.

BKT's Comments:

- The Department should adjust the reported conversion costs and G&A expenses based on its findings at verification.

No other parties commented on this issue.

Department's Position: We agree that BKT's conversion costs and G&A expense ratio should be revised to reflect the findings from verification which were documented in the October 17, 2016 Cost Verification Report.²⁴¹

BKT's conversion costs were allocated at each production plant based on the relative production times of all products produced at each plant.²⁴² However, at verification, we found that some non-subject tube production was subcontracted, and the associated production times and job-work costs were included in both the allocation basis (*i.e.*, production times) used to allocate conversion costs to all products and the total conversion costs allocated to all products (*i.e.*, MUC, non-MUC tubes and other non-MUC self-produced products) at each plant. For the final determination, we have adjusted BKT's reported conversion costs to correct for this allocation error related to the subcontracted services.²⁴³

While reviewing BKT's G&A expense ratio calculation with company officials, we found inconsistencies in some of the income and expense line item classifications (*e.g.*, COM, G&A expenses, financial expenses, selling expenses, etc.) in the fiscal year trial balance that resulted in exclusions from both the numerator and denominator of the G&A expense ratio calculation.²⁴⁴ We revised the G&A expense ratio to reflect the correct amounts for the final determination.²⁴⁵

B. Correction of ADVERT1U

BKT's Comments:

- BKT incorrectly calculated ADVERT1U based on gross unit price as opposed to the total invoice price. The Department should correct this error.

No other parties commented on this issue.

Department's Position: In the *Preliminary Determination*, BKT had calculated per-unit ADVERT1U by applying per-customer advertising expense ratio to the gross unit price in the U.S. sales database.²⁴⁶ At verification, we found that BKT reported its advertising expense based on gross unit price rather than on the invoice price or the variable INVPRU.²⁴⁷ Therefore, for the

²⁴¹ See BKT's Cost Verification Report at 18-19.

²⁴² *Id.* at 2.

²⁴³ See BKT's Cost Memorandum.

²⁴⁴ See BKT's Cost Verification Report at 19.

²⁴⁵ *Id.*

²⁴⁶ See BKT's Verification Report at 2 and 19.

²⁴⁷ *Id.* at 19.

final determination, we have recalculated BKT's advertising expense based on BKT's recalculation of ADVERTIU.²⁴⁸

C. Correction of INVCARU

BKT's Comments

- BKT incorrectly calculated INVCARU days. The Department should correct this error.

No other parties commented on this issue.

Department's Position: In the *Preliminary Determination*, BKT had incorrectly calculated number of days included in INVCARU in the U.S. sales database.²⁴⁹ At verification, we found that BKT incorrectly reported the number of days in its inventory carry cost calculation.²⁵⁰ Therefore, for the final determination, we have recalculated BKT's INVCARU based on BKT's recalculation of INVCARU.²⁵¹

D. Correction of PACKH

BKT's Comments:

- BKT incorrectly calculated its PACKH in the HM database for a certain product code. The Department should correct this error.

No other parties commented on this issue.

Department's Position: In the *Preliminary Determination*, BKT had incorrectly calculated PACKH for a product code sold only in HM.²⁵² At verification, we found that BKT incorrectly reported the number of days in its inventory carry cost calculation.²⁵³ Therefore, for the final determination, we have recalculated BKT's home market packing expense based on BKT's recalculation of PACKH.²⁵⁴

Comment 15: Correction of *Preliminary Determination* Errors

A. Ocean Freight Revenue Cap

BKT's Comments:

- In the *Preliminary Determination*, the Department incorrectly capped ocean freight revenue by three individual data fields. Instead, the Department should have capped ocean freight revenue by the sum of variables for ocean freight paid in INR (*i.e.*,

²⁴⁸ See BKT's Final Analysis Memorandum.

²⁴⁹ See BKT's Verification Report at 2 and 22.

²⁵⁰ *Id.* at 22.

²⁵¹ See BKT's Final Analysis Memo.

²⁵² See BKT's Verification Report at 2 and 22-3.

²⁵³ *Id.* at 2 and 22-23.

²⁵⁴ See BKT's Final Analysis Memo.

INTNFRU_INR_USD) and in USD (*i.e.*, INTNFRU_US) combined rather than by those variables individually. The Department should correct this error.

No other parties commented on this issue.

Department's Position: In the *Preliminary Determination*, we capped ocean freight revenue by the movement expenses associated with that revenue.²⁵⁵ We agree with BKT that the ocean freight revenue should have been capped by the sum of variables for ocean freight paid in INR and in USD combined rather than by those variables individually because ocean freight is expressed by the sum of the two variables. Therefore, for the final determination, we have corrected this error by capping ocean freight by the sum of freight variables paid in USD and in INR.²⁵⁶

B. U.S. Duty Refund Cap

BKT's Comments:

- In the *Preliminary Determination*, the Department incorrectly capped the U.S. duty refund by three individual data fields. Instead, the Department should have capped it by the sum of variables for U.S. duty paid in INR (*i.e.*, USDUTY1U_USD) and in INR and USD (*i.e.*, USDUTY2U) combined rather than by those variables individually. The Department should correct this error.

No other parties commented on this issue.

Department's Position: In the *Preliminary Determination*, we capped U.S. duty freight by the movement expenses associated with that refund.²⁵⁷ We agree with BKT that the U.S. duty refund should have been capped by the sum of variables for U.S. duty paid in INR and in USD combined rather than by those variables individually because paid duty expense is expressed by the sum of the two variables. Therefore, for the final determination, we have corrected this error by capping U.S. duty refund by the sum of U.S. duty variables paid in USD and in INR.²⁵⁸

C. U.S. Packing Expenses

BKT's Comments:

- In the *Preliminary Determination*, the Department incorrectly used export packing variable PACKU. Instead, the Department should have used the variable PACKU_USD in order to capture the variable after conversion into USD. The Department should correct this error.

No other parties commented on this issue.

²⁵⁵ See BKT's Preliminary Analysis Memo at 12.

²⁵⁶ See BKT's Final Analysis Memo.

²⁵⁷ See BKT's Preliminary Analysis Memo at 12-3.

²⁵⁸ See BKT's Final Analysis Memo.

Department's Position: In the *Preliminary Determination*, the Department listed the field PACKU as one of the variables to be converted into USD.²⁵⁹ However, we inadvertently used the variable PACKU (which was denominated in INR), instead of using PACKU_USD.²⁶⁰ Therefore, for the final determination, we have used the variable PACKU_USD in order to capture the post-conversion variable.²⁶¹

D. Domestic Indirect Selling Expenses Incurred in the United States

BKT's Comments:

- In the *Preliminary Determination*, the Department incorrectly set DINDIRSU to equal to USD because it was reported in USD.²⁶² The Department should correct this error by using variable DINDIRSU as opposed to DINDIRSU_USD.

No other parties commented on this issue.

Department's Position: In the *Preliminary Determination*, we inadvertently treated DINDIRSU as a field reported in INR by converting it into USD and using that converted field in the calculation of U.S. indirect selling expenses.²⁶³ Therefore, for the final determination, we deleted DINDIRSU from the list of variables to be converted into USD and used the field DINDIRSU in the calculation of U.S. indirect selling expenses.²⁶⁴

²⁵⁹ See BKT's Preliminary Analysis Memo at 10.

²⁶⁰ *Id.*

²⁶¹ See BKT's Final Analysis Memo.

²⁶² See BKT's CQR at Exhibits C2-C3.

²⁶³ See BKT's Preliminary Analysis Memo at 10 and 14.

²⁶⁴ See BKT's Final Analysis Memo.

VI. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above positions. If this recommendation is accepted, we will publish the final determination of this investigation and the final weighted-average dumping margins in the *Federal Register*.



Agree

Disagree

X

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

Table of Shortened Citations

<i>ASTM A–312 Stainless Steel Pipe From Korea</i>	<i>Welded ASTM A–312 Stainless Steel Pipe From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2013–2014, 81 FR 46647 (July 18, 2016)</i>
<i>Austenitic Stainless Pressure Pipe from China</i>	<i>Circular Welded Austenitic Stainless Pressure Pipe from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 74 FR 4913 (January 28, 2009)</i>
<i>Ball Bearings from France, Germany, Italy, Japan, and the UK</i>	<i>Ball Bearings from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, 71 FR 40064 (July 14, 2006)</i>
<i>Bars from Turkey</i>	<i>Certain Steel Concrete Reinforcing Bars From Turkey; Final Results of Antidumping Duty Administrative Review and Determination to Revoke in Part, 73 FR 66218 (November 7, 2008)</i>
<i>CWP from Korea</i>	<i>Circular Welded Non-Alloy Steel Pipe From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2012–2013, 80 FR 32937 (June 10, 2015)</i>
<i>CWP from Thailand</i>	<i>Circular Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review; 2012–2013, 79 FR 64170 (October 28, 2014)</i>
<i>Cement from Mexico</i>	<i>Gray Portland Cement and Clinker from Mexico; Final Results of Antidumping Duty Administrative Review, 64 FR 13148 (March 17, 1999)</i>
<i>Cement from Mexico II</i>	<i>Gray Portland Cement and Clinker from Mexico; Notice of Final Results of Antidumping Duty Administrative Review, 71 FR 2909 (January 8, 2006)</i>
<i>Coated Paper from China</i>	<i>Certain Coated Paper Suitable for High Quality Print Graphics Using Sheet-Fed Presses from the People’s Republic of China, 75 FR 59217 (September 27, 2010)</i>
<i>Cold-Rolled Products from Korea</i>	<i>Certain Cold-Rolled Steel Products from the Republic of Korea, AD Investigation, Final Determination, 81 FR 49953 (July 29, 2016)</i>
<i>Folding Tables and Chairs from China Prelim</i>	<i>Folding Metal Tables and Chairs from the People’s Republic of China: Notice of Preliminary Results of Antidumping Duty Administrative Review, 70 FR 39726 (July 11, 2005)</i>
<i>Folding Tables and Chairs from China</i>	<i>Folding Metal Tables and Chairs from the People’s Republic of China; Final Results of Antidumping Duty Administrative Review, 71 FR 2905 (January 18, 2006)</i>
<i>GOES from China</i>	<i>Grain-Oriented Electrical Steel From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 79 FR 59226 (October 1, 2014)</i>
<i>GOES from Korea</i>	<i>Grain-Oriented Electrical Steel from the Republic of Korea: Final Determination in Antidumping Investigation, 79 FR 59224 (October 1, 2014)</i>
<i>Hot-Rolled Steel Flat Products from Korea</i>	<i>Certain Hot-Rolled Steel Flat Products From the Republic of Korea: Final Determination of Sales at Less Than Fair Value, 81 FR 53419 (August 12, 2016)</i>
<i>Hot-Rolled Steel Flat Products from Thailand</i>	<i>Certain Hot-Rolled Carbon Steel Flat Products from Thailand: Final Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review, 72 FR 27802 (May 17, 2007)</i>

<i>Large Power Transformers from Korea</i>	<i>Large Power Transformers from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2013-2014, 81 FR 14087 (March 16, 2016)</i>
<i>Large Residential Washers from Korea</i>	<i>Large Residential Washers From the Republic of Korea: Final Results of the Antidumping Duty Administrative Review; 2014-2015, 81 FR 61715 (September 12, 2016)</i>
<i>Light-Walled Rectangular Pipe and Tube from Mexico</i>	<i>Light-Walled Rectangular Pipe and Tube from Mexico: Notice of Final Determination of Sales at Less Than Fair Value, 69 FR 53677 (September 2, 2004)</i>
<i>Line Pipe from Korea</i>	<i>Welded Line Pipe From the Republic of Korea: Final Determination of Sales at Less Than Fair Value, 80 FR 61366 (October 13, 2015)</i>
<i>Lined Paper from India</i>	<i>Notice of Final Determination of Sales at Less Than Fair Value, and Negative Determination of Critical Circumstances: Certain Lined Paper Products from India, 71 FR 45012 (August 8, 2006)</i>
<i>Lined Paper from Indonesia</i>	<i>Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Certain Lined Paper Products from Indonesia, 71 FR 47171 (August 16, 2006)</i>
<i>Nails from the UAE</i>	<i>Certain Steel Nails from the United Arab Emirates: Final Results of Antidumping Duty Administrative Review; 2011-2013, 79 FR 78396 (December 30, 2014)</i>
<i>Non-Oriented Electrical Steel from Korea</i>	<i>Non-Oriented Electrical Steel from the Republic of Korea: Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances, 79 FR 61612 (October 14, 2014)</i>
<i>OJ from Brazil</i>	<i>Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review, 77 FR 63291 (October 16, 2012).</i>
<i>Pasta from Italy 11th Review</i>	<i>Certain Pasta From Italy: Notice of Final Results of the Eleventh Administrative Review and Partial Rescission of Review, 73 FR 75400 (December 1, 2008)</i>
<i>Pasta from Italy</i>	<i>Certain Pasta From Italy: Final Results of Antidumping Duty Administrative Review; 2012-2013, 80 FR 8604 (February 18, 2015)</i>
<i>PET Film from UAE</i>	<i>Polyethylene Terephthalate Film, Sheet, and Strip from the United Arab Emirates: Final Determination of Sales at Less Than Fair Value, 73 FR 55036 (September 24, 2008)</i>
<i>PET Resin from Oman</i>	<i>Certain Polyethylene Terephthalate Resin From the Sultanate of Oman: Final Determination of Sales at Less than Fair Value, 81 FR 13336 (March 14, 2016)</i>
<i>Pineapples from Thailand</i>	<i>Notice of Final Determination of Sales at Less Than Fair Value: Canned Pineapple Fruit from Thailand, 60 FR 29553 (June 5, 1995)</i>
<i>Plywood</i>	<i>Hardwood and Decorative Plywood From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 78 FR 58273 (September 23, 2013)</i>
<i>Pneumatic OTR Tires from China</i>	<i>Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014, 81 FR 23272 (April 20, 2016)</i>
<i>Pneumatic OTR Tires from India Initiation</i>	<i>Certain New Pneumatic Off-the-Road Tires From India and the People's Republic of China: Initiation of Less-Than-Fair-Value Investigations, 81 FR 7073, 7078 (February 10, 2016)</i>
<i>Polyethylene Retail Carrier</i>	<i>Polyethylene Retail Carrier Bags from Thailand; Final Results and</i>

<i>Bags from Thailand</i>	<i>Partial Rescission of Antidumping Duty Administrative Review</i> , 74 FR 2511 (January 15, 2009)
<i>Rectangular Pipe from Korea</i>	<i>Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes From the Republic of Korea: Final Determination of Sales at Less Than Fair Value</i> , 81 FR 47347 (July 21, 2016)
<i>Ribbons from Taiwan LTFV</i>	<i>Notice of Final Determination of Sales at Less Than Fair Value: Narrow Woven Ribbons With Woven Selvedge From Taiwan</i> , 75 FR 41804 (July 19, 2010)
<i>Ribbons from Taiwan</i>	<i>Narrow Woven Ribbons With Woven Selvedge From Taiwan; Final Results of Antidumping Duty Administrative Review; 2012-2013</i> , 80 FR 19635 (April 13, 2015)
<i>Shrimp from Thailand</i>	<i>Certain Frozen Warmwater Shrimp from Thailand</i> , 74 FR 47551 (September 16, 2009)
<i>Silica Bricks from China</i>	<i>Final Determination of Sales at Less Than Fair Value: Silica Bricks and Shapes From the People's Republic of China</i> , 78 FR 70918 (November 27, 2013)
<i>Silicon Metal from Russia</i>	<i>Silicon Metal from the Russian Federation</i> , 68 FR 6885 (February 11, 2003)
<i>Solar Cells from China</i>	<i>Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, and Affirmative Final Determination of Critical Circumstances, in Part</i> , 77 FR 63791 (October 17, 2012)
<i>Solar Cells from China Prelim (2012-2013)</i>	<i>Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2012-2013</i> , 80 FR 1021 (January 8, 2015)
<i>Stainless Steel Pipe Fittings from Italy</i>	<i>See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Butt-Weld Pipe Fittings from Italy</i> , 65 FR 81830 (December 27, 2000)
<i>Steel Concrete Bars from Turkey</i>	<i>Certain Steel Concrete Reinforcing Bars From Turkey; Final Results of Antidumping Duty Administrative Review and Determination to Revoke in Part</i> , 73 FR 66218 (November 7, 2008)
<i>Steel Wire Rod from Mexico</i>	<i>Carbon and Certain Allor Steel Wire Rod from Mexico</i> , 67 FR 55800 (August 30, 2002)
<i>Sulfur Dyes from the UK</i>	<i>Final Determination of Sales at Less Than Fair Value: Sulfur Dyes, Including Sulfur Vat Dyes, from the United Kingdom</i> , 58 FR 3253 (January 8, 1993)
<i>Tapered Roller Bearing from Japan</i>	<i>Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Review</i> , 63 FR 63860 (November 19, 1998)
<i>Uncoated Paper from Australia</i>	<i>Certain Uncoated Paper From Australia: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances, In Part</i> , 81 FR 3108 (January 20, 2016)
<i>Wooden Bedroom Furniture from China</i>	<i>Wooden Bedroom Furniture From the People's Republic of China: Final Results and Final Rescission in Part</i> , 75 FR 50992 (August 18, 2010)

<i>Xanthan Gum from the PRC</i>	<i>Xanthan Gum From the People's Republic of China: Final Determination of Sales at Less Than Fair Value</i> , 78 FR 33351 (June 4, 2013)
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<i>AK Steel</i>	<i>AK Steel Corp. v. United States</i> , 226 F.3d 1361 (Fed. Cir. 2000)
<i>Am. Tubular Prod.</i>	<i>Am. Tubular Prods., LLC v. United States</i> , 36 Int'l Trade Rep. (BNA) 1073 (CIT 2014)
<i>Apex</i>	<i>Apex Frozen Foods Private Ltd. v. United States</i> , 37 F. Supp. 3d 1286 (CIT 2014)
<i>Apex II</i>	<i>Apex Frozen Foods Private Ltd. v. United States</i> , 144 F. Supp. 3d. 1308 (CIT 2016)
<i>Beijing Tianhai</i>	<i>Beijing Tianhai Indus. Co. v. United States</i> , 106 F. Supp. 3d 1342 (CIT 2015)
<i>Borusan</i>	<i>Borusan Mannesmann Boru Sanayi ve Ticaret A.S. v. United States</i> , 61 F. Supp. 3d 1306 (CIT 2015)
<i>Carlisle Tire</i>	<i>Carlisle Tire & Rubber Co., Div. of Carlisle Corp. v. United States</i> , 634 F. Supp. 419 (CIT 1986)
<i>Chevron</i>	<i>Chevron U.S.A., Inc. v. NRDC, Inc.</i> , 467 U.S. 837 (1984)
<i>China Steel Corp.</i>	<i>China Steel Corporation v. United States</i> , 306 F. Supp. 2d 1291 (CIT 2004)
<i>Corus Staal</i>	<i>Corus Staal BV v. DOC</i> , 395 F.3d. 1343 (Fed. Cir. 2005), <i>cert. denied</i> 126 S. Ct. 1023 (2006); <i>accord Corus Staal BV v. United States</i> , 502 F.3d 1370 (Fed. Cir. 2007)
<i>Corus Engineering Steels</i>	<i>Corus Eng'g Steels LTD v. United States</i> , I27 CIT 1286 (CIT 2003)
<i>Diamond Sawblades Mfrs.</i>	<i>Diamond Sawblades Mfrs. Coalition v. United States</i> , 35 Int'l Trade Rep. (BNA) 2121 (CIT 2013)
<i>FAG U.K. Ltd.</i>	<i>FAG U.K. Ltd. v. United States</i> , 945 F. Supp. 260 (CIT 1996)
<i>Fujian Lianfu Forestry</i>	<i>Fujian Lianfu Forestry Co., Ltd. v. United States</i> , 33 CIT 1056 (CIT 2009)
<i>JBF RAK</i>	<i>JBF RAK LLC v. United States</i> , 991 F. Supp. 2d 1343 (CIT 2014); <i>aff'd JBF RAK LLC v. United States</i> , 790 F.3d 1358 (Fed. Cir. 2015)
<i>Koenig & Bauer-Albert AG</i>	<i>Koenig & Bauer-Albert AG v. United States</i> , 259 F. 3d 1341 (Fed. Cir. 2001)
<i>Koyo Seiko</i>	<i>Koyo Seiko Co. v. United States</i> , 932 F.Supp. 1488 (CIT 1996)
<i>Mitsubishi Heavy Industries</i>	<i>Mitsubishi Heavy Indus. v. United States</i> , 15 F. Supp. 2d 807 (CIT 1998)
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<i>Nippon Steel Corp.</i>	<i>Nippon Steel Corp. v. United States</i> , 337 F. 3d 1373 (Fed. Cir. 2003)
<i>NSK Ltd. I</i>	<i>NSK Ltd. v. United States</i> , 115 F.3d 965 (Fed. Cir. 1997)
<i>NSK Ltd. II</i>	<i>NSK Ltd. v. United States</i> , 245 F. Supp. 2d 1335 (CIT 2003)
<i>NSK Ltd. III</i>	<i>NSK Ltd. v. United States</i> , 462 F. Supp.2d 1254 (CIT 2006)
<i>NTN Bearing</i>	<i>NTN Bearing Corp. of Am. v. United States</i> , 25 CIT 664 (CIT 2001)
<i>NTN Bearing II</i>	<i>NTN Bearing Corp. of Am. v. United States</i> , 248 F. Supp. 2d 1256 (CIT 2003)
<i>NTN Corp.</i>	<i>NTN Corp. v. United States</i> , 306 F. Supp. 2d 1319 (CIT 2004)
<i>Nucor</i>	<i>Nucor Corp. v. United States</i> , 612 F. Supp. 2d 1264 (CIT 2009)
<i>Saha Thai Steel Pipe Company</i>	<i>Saha Thai Steel Pipe (Public) Co. v. United States</i> , 635 F.3d 1335 (Fed. Cir. 2011)

<i>Shandong Huarong</i>	<i>Shandong Huarong Gen. Group Corp. v. United States</i> , 27 CIT 1568 (CIT 2003)
<i>Shenzhen Xinboda Indus.</i>	<i>Shenzhen Xinboda Indus. Co. v. United States</i> , __CIT__, Slip Op. 16-74 (CIT 2016)
<i>Timken Co.</i>	<i>The Timken Co. v. United States</i> , __CIT__, Slip Op. 16-47 (CIT 2016)
<i>Tung Mung Dev. II</i>	<i>Tung Mung Dev. Co. v. United States</i> , 219 F. Supp. 2d 1333 (CIT 2002)
<i>Tung Mung Dev. I</i>	<i>Tung Mung Dev. Co. v. United States</i> , 25 CIT 752 (CIT 2001)
<i>U.S. Steel Corp.</i>	<i>United States Steel Corp. v. United States</i> , 621 F. 3d 1351 (Fed. Cir. 2010)
<i>Washington Raspberry</i>	<i>Washington Red Raspberry Com. v. United States</i> , 859 F.2d 898 (Fed. Cir. 1988)

AD Questionnaire Responses

Petitioners' Case Brief	Petitioners' Case Brief entitled, "Certain New Pneumatic Off-the-Road Tires from India: Case Brief of ATC Tires Private Limited," dated November 3, 2016
ATC's Case Brief	ATC's Case Brief entitled, "Certain New Pneumatic Off-the-Road Tires from India: Case Brief of ATC Tires Private Limited," dated November 3, 2016
ATC's Resubmission of Case Brief	ATC's Resubmitted Case Brief entitled, "Certain New Pneumatic Off-the-Road Tires from India: Resubmission of Case Brief of ATC Tires Private Limited," dated November 9, 2016
BKT's Case Brief	BKT's Case Brief entitled, "Certain New Pneumatic Off-the-Road Tires from India; Balkrishna Industries Limited's Case Brief," dated November 3, 2016
Petitioners' Rebuttal Brief	Petitioners' Rebuttal Brief entitled, "Certain New Pneumatic Off-the-Road Tires from India: Rebuttal Case Brief," dated November 10, 2016
ATC's Rebuttal Brief	ATC's Case Brief entitled, "Certain New Pneumatic Off-the-Road Tires from India: Rebuttal Brief of ATC Tires Private Limited," dated November 15, 2016
BKT's Rebuttal Brief	BKT's Rebuttal Brief entitled, "Certain New Pneumatic Off-the-Road Tires from India; Balkrishna Industries Limited's Rebuttal Brief," dated November 10, 2016
ATC's Resubmission of Rebuttal Brief	ATC's Resubmitted Rebuttal Brief entitled, "Certain New Pneumatic Off-the-Road Tires from India: Resubmission of Rebuttal Brief of ATC Tires Private Limited," dated November 15, 2016
ATC's AQR	ATC's March 31, 2016 Section A Questionnaire Response
ATC's BQR	ATC's April 21, 2016 Section B Questionnaire Response
ATC's CQR	ATC's April 21, 2016 Section C Questionnaire Response
ATC's DQR	ATC's April 21, 2016 Section D Questionnaire Response
ATC's SAQR	ATC's May 11, 2016 Supplemental Section A Questionnaire Response
ATC's SBQR	ATC's June 7, 2016 Supplemental Section B Questionnaire Response

ATC's SCQR	ATC's June 9, 2016 Supplemental Section C Questionnaire Response
ATC's 2SQR	ATC's June 24, 2016 Second Supplemental Questionnaire Response
ATC's 3SQR	ATC's July 13, 2016 Third Supplemental Questionnaire Response
ATC's 4SQR	ATC's July 26, 2016 Fourth Questionnaire Response
ATC's 5SQR	ATC's August 1, 2016 Fifth Questionnaire Response
ATC's 6QR	ATC's August 10, 2016 Submission of ATC FYE 2016 Financial Statements and FYE 2016 GNA Rate
ATC's 7QR	ATC's October 31, 2016 Submission of Revised Post-Verification Databases
BKT's SAQR	BKT's May 31, 2016 Supplemental Section A Response
BKT's CQR	BKT's April 21, 2016 Section C Response
BKT's SCQR	BKT's July 5, 2016 Supplemental Section C Response
BKT's SDQR	BKT's June 14, 2016 Supplemental Section D Response
BKT's Pre-Preliminary Rebuttal Comments	BKT's Pre-Preliminary Rebuttal Comments, dated July 22, 2016

AD Questionnaire

ATC's CQ	Department's Letter, "Investigation of Certain New Pneumatic Off-the-Road Tires from India: Antidumping Duty Questionnaire," dated March 3, 2016
ATC's SAQ	Department's Letter, "Certain New Pneumatic Off-the-Road Tires from India: ATC Tires Private Limited's Response to Supplemental Section A of the Department's Questionnaire," dated May 11, 2016
ATC's 3SQ	Department's Letter, "Antidumping Duty Investigation of Certain New Pneumatic Off-the-Road Tires from India: ATC Tires Private Limited's Sections B and C Supplemental Questionnaire," dated July 1, 2016

DOC Memoranda and Letters

ATC's Preliminary Analysis Memorandum	Memorandum entitled, "Analysis for the Negative Preliminary Determination of Less Than-Fair-Value Investigation of Certain New Pneumatic Off-the-Road Tires from India: ATC Tires Private Limited," dated August 11, 2016
ATC's Final Analysis Memorandum	Memorandum entitled, "Antidumping Duty Investigation of Certain New Pneumatic Off-the-Road Tires (OTR) from India: Analysis of the Final Determination Margin Calculation for ATC Tires Private Limited," dated January 3, 2016.
ATC's Cost Verification Report	Memorandum entitled, "Verification of the Cost Response of ATC Tires Private Ltd. in the Less-Than-Fair-Value Investigation of Certain New Pneumatic Off-the-Road Tires from India," dated October 18, 2016
ATC's Home Market Sales Verification Report	Memorandum entitled, "Verification of the Home Market Sales Information Submitted by ATC Tires Private Ltd.," dated October 18, 2016
ATC's U.S. Sales Verification	Memorandum entitled, "Verification of the U.S. Market Sales

Report	Information Submitted by Alliance Tires Americas, Inc., the U.S. affiliate of ATC Tires Private Ltd.,” dated October 24, 2016
ATC’s Request for Revised Databases	Department’s Letter, “Request for ATC Tires Private Limited’s Revised Databases in the Antidumping Duty Investigation of Certain New Pneumatic Off-The-Road Tires from India,” dated October 25, 2016
ATC’s Request to Correct Cost Database	Memorandum entitled, “Telephone Call with Eric Emerson of Steptoe & Johnson LLP Regarding Revised Cost File,” dated October 31, 2016
BKT’s Cost Verification Report	Memorandum entitled, “Verification of the Cost Response of Balkrishna Industries Limited in the Antidumping Duty Investigation of Certain New Pneumatic Off-the-Road Tires from India,” dated October 20, 2016
BKT’s Verification Report	Memorandum entitled, “Verification of the Home Market Sales Information Submitted by Balkrishna Industries Limited (“BKT”), in the Antidumping Duty Investigation of Certain New Pneumatic Off-the-Road Tires from India,” dated October 20, 2016
BKT’s Preliminary Analysis Memorandum	Memorandum entitled, “Analysis for the Preliminary Determination of the Less-Than-Fair-Value Investigation of Certain New Pneumatic Off-the-Road Tires from India: Balkrishna industries Limited,” dated August 11, 2016
BKT’s Final Analysis Memorandum	Memorandum entitled, “Analysis for the Final Determination of the Less-Than-Fair-Value Investigation of Certain New Pneumatic Off-the-Road Tires from India: Balkrishna industries Limited,” dated January 3, 2017
BKT’s Cost Memorandum	Memorandum entitled, “Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – Balkrishna Industries Limited,” dated January 3, 2017

Others

<i>Differential Pricing Comment Request</i>	<i>Differential Pricing Analysis; Request for Comments</i> , 79 FR 26720, 26722 (May 9, 2014)
<i>Final Modification for Reviews</i>	<i>Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification</i> , 77 FR 8101 (February 14, 2012)
Pneumatic OTR Tires from India Initiation Checklist	Certain New Pneumatic Off-the-Road Tires from India (A-533-869), Initiation Checklist (February 3, 2016) at 7-11
<i>Preliminary Determination</i>	<i>Certain New Pneumatic Off-the-Road Tires From India: Negative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination</i> , 81 FR 55431 (August 19, 2016)
Preliminary Decision Memorandum	Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Certain New Pneumatic Off-the-Road Tires from India, dated August 11, 2016
ATC’s Request for Public Hearing	Letter from ATC, “Certain New Pneumatic Off-the-Road Tires from India: ATC Tires Private Limited’s Request for a Public Hearing,” dated September 16, 2016
BKT’s Request for Public Hearing	Letter from BKT, “Certain New Pneumatic Off-the-Road Tires from India; Balkrishna Industries Limited’s Request for Hearing,” dated September 19, 2016

Petitioners' Request for Public Hearing	Letter from Petitioners, "Certain New Pneumatic Off-the-Road Tires from India - Petitioners' Hearing Request," dated September 19, 2016
Petitioners' Request for Closed Session of the Hearing	Letter from Petitioners, "Certain New Pneumatic Off-the-Road Tires from India - Petitioners' Request for a Closed Session of the Hearing," dated November 3, 2016
Closed Hearing Transcript	"Certain New Pneumatic Off-the-Road Tires from India: Closed Hearing Transcript," dated December 8, 2016
Public Hearing Transcript	"Certain New Pneumatic Off-the-Road Tires from India: Public Hearing Transcript," dated December 8, 2016
Petitioners' Critical Circumstances Allegation	Letter from Petitioners, "Certain New Pneumatic Off-the-Road Tires from India - Petitioners' Critical Circumstances Allegation," dated December 9, 2016