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Changed Circumstances Review
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January 10, 2017

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Issues and Decision Memorandum for the Antidumping Duty Changed Circumstances Review of Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China

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SUMMARY

We analyzed the case and rebuttal briefs of interested parties in the above-referenced changed circumstances review of the antidumping duty (AD) order on tapered roller bearings and parts thereof, finished and unfinished, (TRBs) from the People's Republic of China (PRC). As a result of our analysis, we made changes to the margin calculation from the Preliminary Results.[1] We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Further, we recommend reinstating Shanghai General Bearing Co., Ltd. (SGBC/SKF) in the antidumping duty order on TRBs from the PRC. Below is the complete list of the issues in this review for which we received comments from parties:

1. Factor Reporting Methodology
2. Surrogate Value (SV) for Truck Freight
3. Ministerial Errors
4. Adjustment to Input Freight for Subcontracted Parts
5. Differential Pricing Analysis

[1] See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Preliminary Results of Changed Circumstances Review and Intent to Reinstate Shanghai General Bearing Co., Ltd. in the Antidumping Duty Order, 81 FR 45282 (July 13, 2016) (Preliminary Results), and accompanying Preliminary Decision Memorandum (Preliminary Decision Memo).

Background

On July 13, 2016, the Department published the Preliminary Results of the changed circumstances review and intent to reinstate SGBC/SKF in the antidumping duty order on TRBs from the PRC. This changed circumstances review covers TRBs from the PRC manufactured and exported by SGBC/SKF. The period of review is June 1, 2014, through May 31, 2015.

We invited parties to comment on the Preliminary Results. In August 2016, we received case briefs from the Timken Company (the petitioner) and SGBC/SKF; we also received a letter in lieu of a case brief from Stemco LP (Stemco), an interested party in the proceeding, in which Stemco supported the arguments made in the petitioner's case brief. In September 2016, we received rebuttal briefs from the petitioner and SGBC/SKF. On October 6, 2016, the Department held a public hearing at the request of the petitioner.

After analyzing the comments received, we changed the weighted-average dumping margin for SGBC/SKF from that presented in the Preliminary Results.

Margin Calculations

We calculated constructed export price and normal value (NV) using the same methodology stated in the Preliminary Results, except as follows:

- We corrected three clerical errors in the calculation of the dumping margin for SGBC/SKF.[2] See Comment 3 below; and

- We adjusted the weights used in our freight calculations for SGBC/SKF's inputs of steel bar, roller steel, and cage steel to account for yield loss.[3] See Comment 4 below.

Scope of the Order

Imports covered by the order are shipments of tapered roller bearings and parts thereof, finished and unfinished, from the PRC; flange, take up cartridge, and hanger units incorporating tapered roller bearings; and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. These products are currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) item numbers 8482.20.00, 8482.91.00.50, 8482.99.15, 8482.99.45, 8483.20.40, 8483.20.80, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.80, 8708.70.6060, 8708.99.2300, 8708.99.4850, 8708.99.68.90, 8708.99.81.15, and 8708.99.81.80. Although the HTSUS item numbers are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

[2] See Memorandum from Alice Maldonado, Senior International Trade Compliance Analyst, to the File, entitled, "Calculation Adjustments for Shanghai General Bearing Co., Ltd. for the Final Results," dated January 10, 2017 (SGBC/SKF Final Calc Memo) at 2-4.

[3] Id., at 4-5.

Discussion of the Issues

Comment 1: *Factor Reporting Methodology*

The Department relied on the factors of production (FOPs) reported by SGBC/SKF in the Preliminary Results. The petitioner argues that the Department should reject these FOPs and, instead, base SGBC/SKF's margin on adverse facts available (AFA) because SGBC/SKF's data are unreliable. According to the petitioner, SGBC/SKF's reporting is flawed because:

> 1) SGBC/SKF based the steel consumption for parts produced by subcontractors on its own production norms, rather than the experience of the subcontractors, thereby potentially understating the actual amount of steel consumed;
>
> 2) it performed a similar calculation to determine the steel consumption of suppliers from which it purchased turned parts, rather than obtaining information from these suppliers;
>
> 3) it failed to provide calculation worksheets and/or data for certain subcontractors, rendering suspect the accuracy of these calculations;
>
> 4) it reported more units of output of its own production than input parts supplied to it, thereby reducing significantly its actual steel consumption;
>
> 5) it similarly reported that its subcontractors supplied more units of TRB parts to it than they produced; and
>
> 6) it failed to adjust its calculations for defective parts produced by its subcontractors.[4]

The petitioner provided calculations to illustrate points 1, 2, and 5 above.[5] Based on the foregoing, the petitioner argues that the missing information, inaccuracies, and inconsistencies noted above demonstrate that SGBC/SKF's reporting is not a reliable basis for calculating its dumping margin. As a result, the petitioner concludes that SGBC/SKF failed to provide requested information and impeded the proceeding.

The petitioner argues that SGBC/SKF had a statutory obligation to prepare an accurate and complete record in response to the Department's questions, and because it failed to do so, the Department is justified in basing SGBC/SKF's final dumping margin on total AFA. The petitioner notes that the Court of International Trade (CIT) has upheld the Department's use of facts available when the Department has determined that a respondent withheld information,

[4] The petitioner made an additional arugment related to discarded parts not being accounted for in SGBC/SKF's steel consumption calculation. Because the petitioner withdrew this argument at the public hearing held in this case, we have not considered it further here. See the transcript of the public hearing, dated October 13, 2016, at 15.

[5] See Petitioner's Case Brief at 13 and Exhibits 1 and 2.

provided unreliable, inaccurate, or incomplete information, or impeded the proceeding. [6] According to the petitioner, the statutory obligation imposed on the Department requires only that it grant a respondent one opportunity to correct a response prior to relying on facts available,[7] and if the respondent fails to put forth its maximum effort or shows less than full cooperation, an adverse inference is appropriate.[8]

SGBC/SKF contends that the petitioner's analysis of the reported data is flawed, and its arguments are full of errors, distortions, and misleading claims. According to SGBC/SKF, the petitioner's flawed analysis created many apparent inconsistencies where none exist.

With regard to the petitioner's first two arguments (i.e., that SGBC/SKF adjusted the steel consumption reported for its subcontractors and suppliers using its own experience), SGBC/SKF agrees that this is true. However, it argues that there is no harm in doing this because: 1) these norms are not unreliable merely because they are SGBC/SKF's; 2) SGBC/SKF's engineers have many years of experience working with subcontractors to produce these parts; 3) the production processes do not vary in any significant way from subcontractor to subcontractor, and, thus, determining how much steel to use is essentially a mathematical exercise; and 4) the norms account for yield loss and manufacturing errors, and, as a result, the subcontractors do not need more steel than the amount represented by the norms. According to SGBC/SKF, the petitioner's calculations purporting to show the contrary contain methodological mistakes,[9] and when these mistakes are corrected, the steel-input-to-turned-parts-output ratio is very close to the same ratio calculated based on production data from the subcontractors.

With regard to the third argument (i.e., that SGBC/SKF failed to provide worksheets and/or data for certain subcontractors), SGBC/SKF points to the record where it did in fact provide the necessary worksheets.[10] SGBC/SKF maintains that the petitioner misunderstood the operations

[6] See Petitioner's Case Brief, at 13 (citing Sidenor Indus. SL v United States, 664 F. Supp. 2d 1349, 1356-57 (CIT 2009); and Yantai Xinke Steel Structure Co. v. United States, Slip Op. 12-95, at 21 (CIT July 18, 2012)).

[7] See Petitioner's Case Brief, at 14 (citing SKF USA, Inc. v United States, 1116 F. Supp. 2d 1257, 1268 (CIT 2000)).

[8] See Petitioner's Case Brief, at 15-16 (citing Fujian Lianfu Forestry Co. v. United States, 638 F. Supp. 2d 1325 (CIT 2009) (quoting Tung Mung Dev. Co. v. United States, 25 CIT 752 (2001); Nippon Steel Corp. v. United States, 337 F.3d 1373, at 1382 (Fed. Cir. 2003); Shanghai Taoen Int'l Trading Co. v. United States, 360 F. Supp. 2d 1339, 1344-45 (CIT 2005); and Yantai Xinke Steel Structure Co. v. United States, Slip Op. 12-95 (CIT July 18, 2012) sustained in Yantai Xinke Steel Structure Co. v. United States, Slip Op. 14-38 (CIT April 9, 2014)).

[9] According to SGBC/SKF, the petitioner compared one set of calculations based on product-specific norms to another set based on a weighted-average norm for all products from all suppliers. SGBC/SKF contends that the Department should disregard this "apples to oranges" comparison and instead compare the two sets of data at an aggregate level. SGBC/SKF provides such a comparison in its Case Brief at Attachment 1, and it argues that this comparison demonstrates that the two methods produce consistent results, showing that SGBC/SKF's norms accurately reflect the experience of the subcontractors.

[10] See SGBC/SKF's Rebuttal Brief, at 4 (citing SGBC/SKF's Supplemental Section D response, dated June 1, 2016 (SGBC/SKF Supplemental D Response), at Appendix SD-25 (at 52, 53, 56, 133, 134, and 137)).

performed by these subcontractors,[11] and it overstated the significance of one of them in its arguments.[12]

Regarding the fourth argument (i.e., that it reported more parts output from its own production process than the inputs into it), SGBC/SKF asserts that the petitioner's analysis contains a number of inaccuracies, including the use of incorrect data, the failure to account for the fact that certain parts were inputs into others, and the reliance on an inaccurate chart provided in SGBC/SKF's response.[13] SGBC/SKF maintains that, when the correct figures are used, its finished production quantity is less than the number of inputs.[14]

Regarding the fifth argument related to the production quantities of SGBC/SKF's subcontractors, SGBC/SKF asserts that the differences are explained by the facts that: 1) one supplier sold parts from pre-existing inventory; 2) another subcontracted out a small portion of its production to a different supplier; and 3) the petitioner, again, used incorrect data.[15]

Finally, regarding the argument that SGBC/SKF did not account for defective parts in its calculations, SGBC/SKF maintains that this argument does not relate to purchased parts because SGBC/SKF does not buy defective products. With respect to defective "consigned" parts, SGBC/SKF notes that it receives these parts from its subcontractors (because it owns the steel used to produce them), and it then sells these defective parts as scrap. Thus, SGBC/SKF argues that it has accounted for defective parts in its calculations.

SGBC/SKF maintains that, based on the foregoing, the petitioner failed to demonstrate that SGBC/SKF provided unreliable information, and, therefore, the case law cited by the petitioner for the proposition that AFA is warranted is inapposite.

Department's Position:

We disagree that SGBC/SKF's data are unreliable and cannot be used in these final results. SGBC/SKF responded to each of the Department's requests for information in a timely manner, and it addressed each of the Department's concerns, posed to it in supplemental questionnaires,

[11] According to SGBC/SKF, these subcontractors conducted only forging operations (shown in Appendix SD-25 in the summary chart at page 11), and, thus, it maintains that it correctly did not provide additional worksheets related to turned parts.

[12] See SGBC/SKF's Rebuttal Brief, at 4-5 (citing to SGBC/SKF Supplemental D Response, at pages 38, 120 and at Appendix SD-25). SGBC/SKF concedes that this subcontractor did not provide its ratio of forged parts input to turned parts output; however, it stated that the subcontractor could not provide this information due to its record keeping practices.

[13] See SGBC/SKF's Rebuttal Brief, at 6. Regarding this latter point, SGBC/SKF notes that it failed to update a chart in Appendix SD-25, and it provides a corrected chart in its Case Brief at Attachment 4, generated from data elsewhere on the record.

[14] SGBC/SKF also argues that comparing inventory quantities at different stages may reveal differences (even after adjusting for WIP) due to errors, theft, etc.

[15] See SGBC/SKF's Rebuttal Brief at 9.

to our satisfaction.

In its response to section D of the questionnaire, SGBC/SKF reported that it obtained the parts used in its production in two ways during the POR: 1) SGBC delivered steel to its subcontractors, who manufactured parts from it (by forging and/or "turning" it); and 2) SGBC purchased finished parts from its suppliers without providing any steel.[16] In order to determine the reported FOP for steel under both scenarios, SGBC/SKF started with its model-specific per-unit "norms," which are the amounts of steel that it provides to the subcontractors to produce one finished unit of that TRB part model.[17] SGBC/SKF then adjusted these norms by a factor designed to bring the norms in line with its actual steel usage, i.e., a variance.[18]

We disagree that SGBC/SKF's use of its own production norms, rather than the subcontractors' and suppliers' production experience, renders its data so inaccurate that these data do not form a reliable basis for the calculation of NV. With respect to the subcontracted production, SGBC/SKF provides to its subcontractors the amount of steel specified in its norms. We recognize that these amounts are not the actual quantity of steel consumed in production because the subcontractors' yield/loss experience may differ from the allowances for yield/loss embedded in the norms. That said, however, there is no information on the record to demonstrate that the actual amounts are significantly different. To the contrary, the evidence on the record suggests just the opposite – that, overall, SGBC/SKF's norms were a fairly close approximation of actual consumption during the POR.[19]

With respect to the suppliers, we similarly find that there is no basis to reject the reported

[16] See SGBC/SKF's Section D response, dated October 14, 2016, at D-14.

[17] Id., at SD-16 and SD-26; and SGBC/SKF Supplemental D Response, at SD-23-25.

[18] Id., at Exhibit SD-25, at 2 and 62. SGBC/SKF calculated this factor as the total steel consumption reported by SGBC/SKF during the POR (including steel consigned to subcontractors and a derived steel figure for steel used to make purchased parts) divided by the total steel input for these same products based on SGBC/SKF's norms (adjusted for work in process (WIP)). SGBC/SKF computed factory-specific factors and then weight-averaged them to determine the ratio used in its calculations.

[19] See SGBC/SKF's Case Brief at Attachment 1, which shows that the yield/loss ratios experienced by its subcontractors (based on a comparison of the total norm-provided steel quantity and the weight of the finished parts to the derived experience of the parts suppliers). Note that this spreadsheet contains a difference in terminology, in that it labels the parts suppliers as "Subs."

With regard to the petitioner's numerical analysis, we disagree that this analysis demonstrates that SGBC/SKF under-reported its steel FOPs. Specifically, we note that the petitioner computed: 1) model-specific steel consumption for specific models, based on SGBC/SKF's norms for one of SGBC/SKF's factories; and 2) model-specific steel consumption based on the weight of the finished part, adjusted by the weighted-average yield/loss ratio for both of SGBC/SKF's factories. We find that this calculation suffers from the following methodological defects: 1) as noted above, the petitioner compared factory-specific data with results based on a non-factory-specific yield/loss ratio; and 2) the petitioner based its factory-specific calculation only on "qualified" (i.e., non-defective) parts, whereas the yield/loss ratio included the quantity of non-qualified parts in the numerator. Because SGBC/SKF did not provide non-qualified parts data on a model-specific level, we were unable to reconcile completely the two sets of figures used in the petitioner's comparison. However, we are satisfied that, when these two defects are cured, the result will be close, if not identical. For further details of this analysis, see SGBC/SKF Final Calc Memo at 5.

information. SGBC/SKF based its model-specific calculations for supplied parts on its norms, but it also used the suppliers' production experience in its final adjustments.[20] As with the calculations performed for subcontracted material, we find that there is no information on the record demonstrating that these figures are inaccurate or unreliable.

We also disagree with the petitioner that SGBC/SKF failed to provide any requested worksheets or production data. We issued an extensive supplemental section D questionnaire to SGBC/SKF,[21] and it responded completely to our questions.[22] With regard to the particular factories with which the petitioner takes issue,[23] we note that all of these factories provided forging services to SGBC/SKF, and one factory (the largest) provided turning services, as well.[24] Contrary to the petitioner's assertion, SGBC/SKF provided the worksheets for steel consumed during forging by each factory in its supplemental section D response at Appendix SD-25 (pages 38-49, 52, 53, 56-58, 120-130, 133, 134, and 137-139). It is true that SGBC/SKF did not provide similar worksheets for the turning services provided by the forger/turner, but SGBC/SKF explained the reasons for this in its questionnaire response, its proposed plug for the missing data was reasonable, and we accepted this explanation/substitution without requesting further information.[25] Thus, we disagree with the petitioner that this omission makes the accuracy of SGBC/SKF's reporting "suspect."

Moreover, we disagree with the petitioner's claim that SGBC/SKF's calculations, on their face, make no sense because they show that SGBC/SKF reported more units of output than units of input, and certain of its subcontractors supplied more parts to SGBC/SKF than they produced. As SGBC/SKF correctly notes, the petitioner's calculations regarding SGBC/SKF's production contain errors, are based on incorrect data, or fail to account for the fact that certain parts were inputs into others,[26] and the petitioner further failed to consider that companies may, in fact, sell products out of inventory or source them from other companies. Thus, we do not find the petitioner's arguments persuasive.

Finally, we agree with the petitioner that the record is silent on the question of defective parts produced by the parts suppliers. Because there is no information available to determine whether these parts are included in the steel consumption figures used to derive the norm-to-actual

[20] See SGBC/SKF Supplemental D Response, at SD-23-24.

[21] See the Department's supplemental Section D questionnaire to SGBC/SKF, dated May 4, 2016.

[22] See SGBC/SKF Supplemental D Response.

[23] See Petitioner's Case Brief, at 8.

[24] See SGBC/SKF Supplemental D Response, at SD-25, page 11.

[25] Id., at SD-3. Specifically, SGBC/SKF explained that its forger/turner was unable to supply the ratio of forged parts input to turned parts output; therefore, SGBC/SKF used a weighted-average of the ratios of forged parts input to turned parts out for all of SGBCS's turning suppliers as a plug for the missing information. We found this to be a reasonable approximation, and we have accepted it.

[26] See SGBC/SKF's Rebuttal Brief, at 6 and Attachments 2 through 4. As discussed above, with regard to the petitioner's numerical analysis, we disagree that this analysis demonstrates that SGBC/SKF under-reported its steel FOPs. See footnote 19. For further discussion, see SGBC/SKF Final Calc Memo, at 5.

adjustment factor, we have accepted the figures as reported.

For the foregoing reasons, we find no basis to conclude that SGBC/SKF's data are unreliable or that SGBC/SKF failed to cooperate to the best of its ability in this segment of the proceeding, and we have accepted its data as reported for these final results.

The above conclusions notwithstanding, we agree with the petitioner that: 1) SGBC/SKF's norms do not account for situations where the subcontractor may use more steel than provided (due to manufacturing inefficiencies or errors); and 2) it is the Department's preference to base FOP data on the production experience of the suppliers. With respect to the first point, we intend to require SGBC/SKF to demonstrate that its subcontractors did not use more steel than they received from SGBC/SKF if this respondent participates in future segments of this proceeding.

With respect to the second point, we find that, in this review, SGBC/SKF's reported FOPs capture fully the steel consumption of its subcontractors and suppliers on an aggregate basis; however, we also note that the actual experience of the suppliers may vary, and, therefore, we intend to request supplier- and model-specific information in any future segments of this proceeding.[27]

Comment 2: *SV for Truck Freight*

In the Preliminary Results, the Department valued truck freight using data from a World Bank survey, published in Doing Business in Thailand: 2016 (Doing Business 2016).[28] The petitioner argues that, for the final results, the Department should rely instead on the same publication from the previous year (i.e., Doing Business in Thailand: 2015 (Doing Business 2015)). Although Doing Business 2016 does not identify the mode of transportation used for the basis of the freight rate, the petitioner asserts that it is based on rail, not truck freight.

The petitioner bases its conclusion on the following factors: 1) the World Bank describes the mode of transportation as "the one most widely used for the chosen export or import product;"[29] 2) the port in question is Laem Chabang, a container depot servicing transportation by both rail or truck;[30] 3) the value in Doing Business 2016 is six times smaller than the amount originally proposed by the respondents in this review based on Doing Business 2015, and seven times smaller than the rate used in the prior administrative review; and 4) the transport speed is 52.9

[27] We note that the margin calculated for SGBC/SKF in these final results serves only to set SGBC/SKF's cash deposit rate, which estimates its predicted level of dumping. If SGBC/SKF participates in future segments of this proceeding, we intend to require SGBC/SKF to report more precise information, so that the Department may accurately assess duties at the actual level of dumping.

[28] See Memorandum to the File from Blaine Wiltse and Manuel Rey, Analysts, AD/CVD Operations, Office II, entitled "Surrogate Value Memorandum for the Preliminary Results of the Antidumping Investigation of Tapered Roller Bearings and Parts Thereof, Finished, or Unfinished, from the People's Republic of China," (Surrogate Value Memo) dated July 5, 2016, at 7.

[29] See Petitioner's Case Brief, at 16-17 (citing Doing Business 2016, at 73).

[30] Id., at 17 (citing the petitioner's August 10, 2016 rebuttal factual information submission, at Attachment 2).

km/hour, notwithstanding the heavy traffic congestion of Bangkok and the fact that speeds in Southeast Asian countries in other World Bank 2016 reports are significantly slower (i.e., three to 13.5 km/hour).[31] Thus, the petitioner requests that the Department base the SV for truck freight on data in Doing Business 2015.

SGBC/SKF argues that the Department should continue to use the inland freight SV used in the preliminary results. According to SGBC/SKF, the petitioner's arguments ignore record evidence that supports the conclusion that the SV is for truck freight, including: 1) the methodology used to calculate the rate in Doing Business 2016 is based on a longer average distance, which leads to a lower per-km rate; 2) most of the drive between Bangkok and Laem Chabang is outside the city of Bangkok,[32] making 52.9 km/hr (32.9 mph) a realistic speed for truck transportation taking place primarily outside of urban areas (as opposed to low speeds in other Southeast Asia countries, where the ports are located in/near the city); and 3) documentation on the record shows that the travel time from Bangkok to Laem Chabang using a small passenger vehicle is 90 minutes (or approximately 85 km/hour), which supports the inference that 52.9 km/hr is an accurate average figure for transportation covering both urban and rural areas. Finally, SGBC/SKF notes that the Department used Doing Business 2016 to value truck freight in other recent proceedings.[33]

Department's Position:

The Department's practice when selecting the best available information for valuing FOPs in accordance with section 773(c)(1) of the Act is to select, to the extent practicable, SVs which are publicly available, product-specific, representative of a broad market average, tax-exclusive, and contemporaneous with the POR.[34] Because the Doing Business 2016 data meet all of these criteria and satisfy them to greater extent than the alternative (i.e., the Doing Business 2015 data), we find these data to be the best available information for use in valuing truck freight in these final results. Specifically, we note that Doing Business 2016 is more contemporaneous to the POR than Doing Business 2015. The freight information contained in Doing Business 2016 is "current as of June 2015", and is based on information collected with respect to shipments made during the entire POR. By contrast, Doing Business 2015 is reflective of freight rates in effect prior to the POR with the exception of June 1, 2014.

We disagree that evidence on the record demonstrates that the costs shown in Doing Business

[31] Id. (citing Attachment 4).

[32] See SGBC/SKF's Rebuttal Brief, at 13.

[33] Id., at 14 (citing Large Residential Washers From the People's Republic of China; Preliminary Determination of Critical Circumstances, in Part, and Postponement of Final Determination, (Washers Prelim) 81 FR 48,741 (July 19, 2016), and accompanying Preliminary Decision Memorandum, at 27-28; and Drawn Stainless Steel Sinks From the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2014-2015, 81 FR 29,528 (May 5, 2016), and accompanying Preliminary Decision Memorandum, at 22).

[34] See Hydrofluorocarbon Blends and Components Thereof from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, 81 FR 42314 (June 29, 2016), and accompanying Issues and Decision Memorandum, at Comment 28.

2016 are for rail freight. While this publication does state that the mode of transportation is "the one most widely used for the chosen export or import product," that fact does not indicate that the mode of transportation is more or less likely to be rail. Indeed, information on the record indicates that the container depot at the port services both trains and trucks.[35] Nonetheless, we find it unlikely that companies in Thailand would ship their products to the port by rail, given that the distance between the "industrial areas" and the port is 129 kilometers (i.e., a relatively short distance) and the starting and ending points are on the outskirts of the same city.[36]

Moreover, there is no information on the record to indicate that the most common transportation method in Thailand would change from one year to the next (i.e., 2015 to 2016), nor has the petitioner addressed this point. With regard to the petitioner's argument that the transport speed stated in the report (i.e., 52.9 km per hour) supports its conclusion, we disagree. As SGBC/SKF correctly notes, most of the drive between Bangkok and Laem Chabang is outside the city of Bangkok at speeds likely greater than 52.9 km per hour. Thus, the urban congestion cited by the petitioner would not come into play.

Finally, we disagree that a comparison of the costs in Doing Business 2016 and Doing Business 2015 indicates a change in the mode of transportation. We find it uninformative that the cost in the current publication is six times smaller than the amount originally proposed by the respondents in this review based on Doing Business 2015, and seven times smaller than the rate used in the prior administrative review. The rates derived from Doing Business 2015 required the Department to make certain assumptions, including different starting and ending points, which materially affected the per-unit freight cost.[37] Specifically, whereas the Doing Business 2016 data provided an average distance with which the Department could determine a per-km rate, the Doing Business 2015 data did not (thereby requiring the Department to estimate a distance). That estimate was several times smaller than the distance provided in Doing Business 2016 and, thus, accounts for much of the purported disparity. Additionally, the Doing Business 2016 publication increased its estimate of the number of kilograms which can fit into a standard 20' container to 1,500, up from 1,000 in 2015. This change in methodology also had a significant impact on the freight rate.

Because the record contains no evidence establishing the value in Doing Business 2016 is for rail freight, we find the petitioner's arguments to be based merely on speculation, rather than substantial evidence.[38] Therefore, we have continued to rely on the freight costs shown in Doing Business 2016 to determine the SV for truck freight in these final results for the reasons noted

[35] See the petitioner's August 10, 2016, rebuttal factual information submission, at Attachment 2 (CMA CGM, Thailand Import Quick Guide, available at: http://www.cmathaischedule.com/UserFiles/File/Thailand%20Import%20Quick%20Guide%20update_08.03.13.pdf).

[36] See Surrogate Value Memo.

[37] See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of the Antidumping Duty Administrative Review; 2013-2014, 81 FR 1396 (July 12, 2016) (Final Results), and accompanying Issues and Decision Memorandum, at Comment 3. (Final Decision Memo).

[38] See Asociacion Colombiana Exportadores de Flores v. United States, 40 F. Supp. 2d 466, 472 (CIT 1999), explaining that speculation cannot constitute substantial evidence.

above. This decision is consistent with the Department's decisions in other recent cases.[39]

Comment 3: *Ministerial Errors*

The petitioner argues that the Department made a ministerial error in the Preliminary Results by misstating the variable name for the SV for international freight in its margin calculations. Specifically, the petitioner asserts that the Department should have used the variable INTFRU_SV, instead of INTNFRU_SV, and, as a result, U.S. prices were not adjusted for international freight expenses. The petitioner requests that the Department correct this error for purposes of the final results.

SGBC/SKF argues that the Department made two additional ministerial errors in the Preliminary Results by: 1) using an inaccurate percentage factor for roller steel purchased from market economy sources in the calculation of the per-unit roller steel value; and 2) misplacing the punctuation marks in the formula used to calculate packing input costs (including packing freight). SGBC/SKF requests that the Department correct both of these errors for purposes of the final results.

Department's Position:

We examined the Preliminary Results and agree with both parties. Therefore, we made the requested corrections in our final margin calculations.

Comment 4: *Adjustment to Input Freight for Subcontracted Parts*

In the Preliminary Results, the Department adjusted the SVs for steel bar, roller steel, and cage steel to include freight costs in order to render them delivered prices.[40] We calculated these freight costs using the reported quantity of each FOP, the distance that the FOP was moved (capped in accordance with Sigma,[41] as appropriate), and the SV for the relevant method of transportation (e.g., truck freight).[42]

SGBC/SKF argues that the Department should revise its calculation of transportation expenses

[39] See Certain Iron Mechanical Transfer Drive Components from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, 81 FR 75032 (June 8, 2016), and accompanying surrogate value memorandum, at 9 (unchanged in Certain Iron Mechanical Transfer Drive Components From the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value, 81 FR 75032 (October 28, 2016); see also, Washers Prelim 81 FR 48741 (July 26, 2016), and accompanying factor value memorandum, at 5, (unchanged in Large Residential Washers From the People's Republic of China: Final Determination of Sales at Less than Fair Value and Final Negative Determination of Critical Circumstances, 81 FR 90776 (December 15, 2016).

[40] See Preliminary Results, and accompanying Preliminary Decision Memorandum, at 15.

[41] See Sigma Corp. v. United States, 117 F.3d 1401, 1408 (Fed. Cir. 1997)

[42] See the memorandum from Alice Maldonado, Senior International Trade Analyst, to the File, entitled, "Calculation Adjustments for Shanghai General Bearing Co., Ltd. for the Preliminary Results," dated July 5, 2016, at Attachment 1.

for inputs of steel bar, roller steel, and cage steel to account for the loss of steel which occurs at each processing plant prior to processed parts' reaching SGBC/SKF. SGBC/SKF contends that the loss in weight lowers the transportation charge after each successive stop, and, thus, the expenses used in the Department's calculations are overstated. SGBC/SKF notes that the Department calculated transportation expenses for its affiliate, Changshan Peer Bearing Co., Ltd. (CPZ/SKF), in the same manner in the prior two segments of this proceeding.[43]

SGBC/SKF maintains that, to capture the proper transportation expense for these inputs, the Department should multiply the distance the input travels by the SV for truck freight and, then, by the weight of a unit of the input. SGBC/SKF contends that the Department should perform separate calculations to account for each input's processing step (e.g., between the steel supplier and the forger, between the forger and the turner, and between the turner and SGBC/SKF) to ensure proper weights are used in the adjustment for freight. SGBC provides a suggested calculation formula in its case brief, at pages 4-11.

The petitioner argues that the Department should reject SGBC/SKF's suggested adjustment to input freight costs and instead calculate SGBC/SKF's final dumping margin based on AFA, as discussed above.

Department's Position:

We agree with SGBC/SKF that it is more accurate to compute transportation expenses incurred within the PRC using the FOP weight at the end of each stage of production, consistent with our calculations performed for CPZ/SKF in the prior two administrative reviews. Without these calculations, the expenses are overstated as SGBC/SKF has described. Therefore, we adjusted the weights used in the freight component for these FOPs using the methodology proposed by SGBC/SKF.[44]

Comment 5: *Differential Pricing Analysis*

In the Preliminary Results, the Department applied a "differential pricing" analysis to determine whether to make average-to-average (A-to-A) or alternative comparisons to calculate SGBC/SKF's dumping margin. Our analysis showed that between 33 and 66 percent of SGBC/SKF's U.S. sales passed the Cohen's *d* test, which confirmed the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. We further determined that the A-to-A method could not appropriately account for such differences because there was a meaningful difference in the weighted-average dumping margins calculated using the A-to-A method and the "mixed alternative" method (i.e., applying the average-to-transaction

[43] See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of the Antidumping Duty Administrative Review and Final Results of the New Shipper Review, 2012-2013, 80 FR 4244 (January 27, 2015), and accompanying Issues and Decision Memorandum, at Comment 7; and Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of the Antidumping Duty Administrative Review; 2013 – 2014, 81 FR 1396 (January 12, 2016), and accompanying Issues and Decision Memorandum, at Comment 2.

[44] For further details of our calculations, see SGBC/SKF Final Calc Memo, at 2.

method for U.S. sales which pass the Cohen's *d* test, and the A-to-A method for sales which do not pass). Accordingly, to calculate SGBC/SKF's weighted-average dumping margin, we preliminarily applied the mixed alternative methodology.

SGBC/SKF argues that the Department failed to explain why any targeted dumping cannot be taken into account by a standard comparison. SGBC/SKF points out that the CIT recently concluded that an approach that relies simply on differences in dumping margins produced by two methodologies does not meet the requirements of the statute.[45] Further, SGBC/SKF notes that a World Trade Organization (WTO) dispute settlement panel recently came to a similar conclusion, finding that, for purposes of determining whether the A-A methodology can account for any differences in prices, the Department must consider whether the price differences stem from an intentional act of targeting or from normal market fluctuations.[46] Thus, SGBC/SKF contends that the Department failed to consider reasons for price differences other than targeted dumping, and, therefore, the Department's finding that the normal A-to-A methodology is inadequate is inconsistent with the statute.[47]

According to SGBC/SKF, in order to ensure that its differential pricing methodology identifies instances of targeted dumping rather than price differences driven by market forces, the Department must ensure that its methodology: 1) accounts for differences in levels of trade; and 2) include a test for statistical significance.[48] According to SGBC/SKF, when the Department's differential pricing analysis is applied to a dataset encompassing all imports of a particular commodity product to a particular country, the Department will find differential pricing.[49] Thus, SGBC/SKF contends that the Department must modify its methodology to ensure that price differences are not the result of forces other than targeted dumping.

SGBC/SKF claims that no reasonable basis exists for the Department to find a pattern of prices that differ significantly by a purchaser, region, or time period, as required by section

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[45] See SGBC/SKF's Case Brief, at 12-13 (citing Beijing Tianhai Indus. Co. v. United States, 106 F. Supp. 3d 1342, 1351 (CIT 2015); and Beijing Tianhai Indus. Co. v. United States, 7 F. Supp. 3d 1318, 1332 (CIT 2014). SGBC/SKF maintains that although these CIT cases involved application of the nails test, the Court's conclusions were based on the language and structure of the statute and are equally applicable to the differential pricing methodology.

[46] See United States – Anti-dumping and Countervailing Measures on Large Residential Washers from Korea, WT/DS464/R (March 11, 2016) (U.S. – Washers), at 123. SGBC/SKF further points out that the WTO noted that, for example, differences in price due to changes in costs are not the type of price differences that are properly addressed using the alternative methodology. Id., at 57.

[47] SGBC/SKF provides analysis demonstrating that in some instances sales passed the Cohen's *d* test not because GBC changed its prices or any other factor under its control, but because credit and international freight expenses changed. See SGBC/SKF's Case Brief, at Attachment 2. Further, SGBC/SKF provides analysis to support its assertion that the differential pricing methodology tends to identify "patterns" of significant price differences based on random market fluctuations. Id.

[48] See SGBC/SKF's Case Brief, at 15 (citing to Certain Hot-Rolled Steel Flat Products From Japan: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, 81 FR 53409 (August 12, 2016) and accompanying Issues and Decision Memorandum, at Comment 8).

[49] See SGBC/SKF's Case Brief, at Attachment 2.

777A(d)(1)(B) of the Act. According to SGBC/SKF, because the Act does not define "significant," this term must be defined using its ordinary meaning.[50] SGBC/SKF points to its analysis where it compared sales prices on a regional and time basis, which shows that differences in sales prices of less than one cent lead to instances of passing the Cohen's *d* test.[51] Consequently, SGBC/SKF argues that no ordinary understanding of the word "significant" encompasses differences in price for TRBs of less than one cent, especially because TRBs are not a commodity product and customers are not going to make purchasing decisions based on differences in price of less than a penny. SGBC/SKF maintains that, even if a pattern of prices that differ significantly exists, the Department's differential pricing analysis does not explain why such differences cannot be taken into account using the A-to-A method, as required by section 777A(d)(1)(B)(ii) of the Act. Thus, SGBC/SKF argues that the Department's differential pricing analysis does not comply with the requirements of the statute and, as a result, the Department is required to calculate the weighted-average dumping margin using the A-to-A method in the final determination.

SGBC/SKF argues that the Cohen's *d* analysis is only valid when applied to data sets with normal distributions.[52] According to SGBC/SFK, because the Department has not demonstrated in this review that it is applying the Cohen's *d* test to normal distributions, its differential pricing methodology is statistically invalid.

SGBC/SKF further contends that the thresholds the Department uses in its differential pricing analysis are arbitrary because they have been adopted without any justification.[53] Rather, SGBC/SKF notes that bright-line rules must be promulgated as regulations in accordance with the Administrative Procedures Act (APA). SGBC/SKF argues that, in the absence of properly promulgated regulations, the Department must explain why any application of its differential pricing analysis and the numerical thresholds used in connection with it are appropriate in the context of each specific case.[54] Thus, SGBC/SKF contends that, in order for the Department to apply its differential pricing analysis here, it must: 1) explain why the use of these thresholds is appropriate in this proceeding; and 2) support that explanation with record evidence. Otherwise, SGBC/SKF argues that the Department's analysis is inherently arbitrary and unreasonable.

SGBC/SKF argues that the Department's differential pricing analysis is not in accordance with

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[50] Id., at 18 (citing to Nan Ya Plastics Corp. v. United States, 810 F.3d 1333, 1345 (Fed. Cir. 2016)).

[51] See SGBC/SKF's Case Brief, at Attachment 2.

[52] Id., at 19 (citing J. Cohen, Statistical Power Analysis for the Behavioral Sciences, (2d ed. 1988), at 27).

[53] SGBC/SKF points out that the Department's differential pricing analysis uses various thresholds including: 1) a Cohen's *d* value greater than 0.8, used as evidence of the sale's "passing" the Cohen's *d* test; 2) the 33 and 66 percent ratios of sales passing the Cohen's *d* test to all sales, used to determine which comparison methodology to apply; and 3) a 25 percent relative change in the weighted-average dumping margin between an "alternative" comparison methodology and the A-to-A methodology, used to determine if there is a meaningful difference in the results of the different methodologies.

[54] See SGBC/SKF's Case Brief, at 20 (citing Carlisle Tire v. United States, 634 F. Supp. 419, 423 (CIT 1986) (Carlisle Tire); and Catholic Health Initiatives. v. Sebelius, 617 F. 3d 490, 495 (D.C. Cir. 2010) (Catholic Health Initiatives)).

law and should not be used in the final results. SGBC/SKF argues that a WTO dispute settlement panel recently held that the Department's differential pricing methodology, including the use of zeroing as part of that methodology, is inconsistent with the WTO Antidumping Agreement.[55] Moreover, SGBC/SKF notes that the WTO Appellate Body has consistently found that the Department's use of zeroing violates the United States' obligations under the Antidumping Agreement.[56] Thus, SGBC/SKF contends that the Department should suspend its use of differential pricing now.

In response, the petitioner contends that, contrary to SGBC/SKF's assertion, there is no requirement under U.S. antidumping duty law to consider the motivation for dumping. Rather, the petitioner maintains that the statute only requires a finding of a pattern of prices that differ "significantly" among customers, regions, or time periods without requiring the Department to identify and address casual links or the intent of the exporter.

The petitioner points out the Court of Appeals for the Federal Circuit (CAFC) has explained that the purpose behind an 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.[57] Further, the petitioner maintains that the concept of "statistical significance" is irrelevant when the Cohen's *d* test is applied to a known dataset.[58] The petitioner also notes that SGBC/SKF's argument that the Department's methodology "tends to identify patterns of significant price differences based on random market fluctuations" should be rejected because: 1) there is no data on the record that identify the basis for any observed price differences in the import data; and 2) SGBC/SKF's argument ignores the fact that the differential pricing analysis is being applied to two entirely different populations, U.S. imports of TRBs and imports of other products in other countries. Nonetheless, the petitioner notes that SGBC/SKF's analysis fails to demonstrate that the differences in sales prices of less than one percent lead to instances of findings of differential pricing. According to the petitioner, SGBC/SKF's analysis is flawed because it compares sales prices rather than sales prices for a test group and a comparison group.

Further, the petitioner disagrees with SGBC/SKF's argument that the Cohen's *d* analysis produces accurate results only when applied to a data set with normal distribution. The petitioner maintains that the concept of a "normal distribution" is relevant only when working with a sample of a complete data set (i.e., all of SGBC/SKF's U.S. sales of subject merchandise during the period of review) and, thus, the issue of distribution is not relevant to the

[55] See U.S. – Washers, at 122-123.

[56] See United States – Measures Relating to Zeroing and Sunset Reviews, WT/DS322/AB/R (January 9, 2007); and U.S. – Washers, at 122-123.

[57] See Petitioner's Rebuttal Brief, at 4 (citing JBF RAK LLC v. United States, 991 F. Supp. 2d 1343, 1355 (2014), aff'd JBF RAK LLC v. United States, 790 F.3d 1358, 1368 (Fed. Cir. 2015); and Apex Frozen Foods Private Ltd. V. United States, 37 F. Supp. 3d 1286, 1301 (2014) (stating that "the statute does not require Commerce to decide why sales were targeted before imposing the A-T remedy").

[58] See Petitioner's Rebuttal Brief, at 5 (citing Seamless Refined Copper Pipe and Tube from Mexico: Final Results of Antidumping Duty Administrative Review; 2011 – 2012, 79 FR 36719 (June 30, 2014), and Accompanying Issues and Decision Memorandum, at Comment 4).

Department's analysis.[59] The petitioner notes that the Department pointed out in the Preliminary Results that its use of the price differentiation methodology is a work-in-progress that it continues to develop and does not have an obligation to codify as a rule.[60] Lastly, the petitioner disagrees with the respondent's arguments regarding zeroing, noting that, despite the WTO's ruling on zeroing, the CAFC has held that WTO reports are not binding on the United States' law.[61]

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 differ 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 statute[62] here is a gap filling exercise properly conducted by the Department.[63] As explained in the Preliminary Results, as well as in various other proceedings,[64] 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.

[59] See Petitioner's Rebuttal Brief, at 7 (citing Welded Line Pipe From the Republic of Korea: Final Determination of Sales at Less Than Fair Value, 80 FR 61366 (October 13, 2015), and accompanying Issues and Decision Memorandum at Comment 1).

[60] See Preliminary Decision Memo, at 9-12.

[61] See Petitioner's Rebuttal Brief, at 9 (citing Timken Co. v. United States, 354 F.3d 1343, 1349 (Fed. Cir. 2004)). The petitioner further notes that Congress adopted an explicit scheme in the URAA for addressing the implementation of WTO reports. See Petitioner's Rebuttal Brief, at 9 (citing Corus Staal BV v. Dep't of Commerce, 395 F.3d 1343, 1349 (Fed. Cir. 2005), cert. denied 126 S. Ct. 1023 (2006)).

[62] 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)).

[63] See Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc., 467 U.S. 837, 842-43 (1984) (Chevron) (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).

[64] See, e.g., Welded Line Pipe From the Republic of Korea: Final Determination of Sales at Less Than Fair Value, 80 FR 61366 (October 13, 2015) (Line Pipe from Korea) and the accompanying Issues and Decision Memorandum, at comment 1; 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) (CWP from Korea), and the accompanying Issues and Decision Memorandum, at comments 1 and 2, and 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) and the accompanying Issues and Decision Memorandum, 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 Statement of Administrative Action (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 {T-to-T} 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.[65]

The SAA further discusses this new section of the statute and the Department's change in

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

practice to using the A-to-A method:

> 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."[66]

With the enactment of the Uruguay Round Agreements Act (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."[67] The Department now also follows the approach in administrative reviews.[68] 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."[69] 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.[70] While "targeting" and "targeted dumping" may be used as a general expression to denote this provision of the statute,[71] these terms impose no additional requirements beyond those specified

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[66] See SAA, at 842.

[67] See 19 CFR 351.414(c)(1).

[68] See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification, 77 FR 8101 (February 14, 2012) (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").

[69] See SAA, at 843 (emphasis added).

[70] See 19 CFR 351.414(c)(1).

[71] 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.'").

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 sub-group of its U.S. sales. The court has already found that the purpose or intent behind an 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.[72] 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."[73]

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 Results, the differential pricing analysis addresses each of these two statutory requirements.[74] 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.

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[72] See JBF RAK LLC v. United States, 991 F. Supp. 2d 1343, 1355 (CIT 2014); aff'd JBF RAK LLC v. United States, 790 F.3d 1358 (Fed. Cir. 2015) (JBF RAK), see also Borusan Mannesmann Boru Sanayi Ve Ticaret A.S. v. United States, 608 Fed. Appx. 948 (Fed. Cir. 2015).

[73] See JBF RAK, 790 F.3d, at 1368 (internal citations omitted).

[74] See Preliminary Decision Memorandum, at 9-12.

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-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. SGBC/SKF's Argument That the Department's Differential Pricing Analysis Fails to Identify a "Pattern"

As stated in the Preliminary Results, 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."[75] 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.[76]

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

[75] See Preliminary Decision Memorandum, at 9.

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

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 measured 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 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). We add that the CIT recently held that the Department's "reasons for choosing the Cohen's d test suffice to explain why the test is able to identify and discern significant price differences," and that the "use of the Cohen's d test here is reasonable because its use identifies significant price differences."[77]

As explained below, statistical significance is not relevant to the Department's examination of an exporter's U.S. prices when examining whether such prices differ significantly. The question is whether there is a practical significance in the differences found to exist in the exporter's U.S. prices among purchasers, regions or time periods. Such practical significance is quantified by the measure of "effect size."

In the Department's application of the Cohen's *d* test in these final results, the Department based its analysis, including the calculation of effect size, on all of the exporter's prices in the U.S. market – i.e., the entire population of SGBC/SKF's U.S. prices. Accordingly, the measures used to calculate effect size are not estimates but the actual values calculated from the population as a whole, and as such there is no statistical significance associated with the results of the analysis.

Furthermore, even assuming that "significance" could imply statistical significance, as SGBC/SKF suggests,[78] we note that if Congress had intended to require a particular result to ensure the "statistical validity" of price differences that mask dumping as a condition for applying an alternative comparison method, Congress presumably would have used language more precise than "differ significantly." The Department, tasked with implementing the antidumping law, resolving statutory ambiguities, and filling gaps in the statute, does not agree with SGBC/SKF that the term "significantly" in the statute can mean only statistically significant. The law includes no such directive. The analysis employed by the Department, including the use of the Cohen's *d* test, fills the statutory gap as to how to determine whether a

[77] See Tri Union Frozen Prods. v. United States, CIT Slip Op. 16-33, at 78 (April 6, 2016) (Tri-Union).

[78] See SGBC/SKF's Case Brief, at 14-15.

pattern of prices "differ significantly."[79] SGBC/SKF reported all of its sales of subject merchandise in the U.S. market during the POR, and it is these data upon which the Department is basing its analysis consistent with the requirements of section 777A(d)(1)(B) of the Act, just as it has when calculating SGBC/SKF's weighted-average dumping margin. Accordingly, the Department's calculation of the Cohen's *d* coefficient includes no noise or sampling error, as the underlying means and variances used to calculate the Cohen's *d* coefficient are not estimates, but the actual values based on the complete U.S. sales data as reported by SGBC/SKF in this review. Therefore, SGBC/SKF's insistence that the Department first consider the statistical significance of its analysis is misplaced and would be inappropriate. In sum, because the Department's use of the Cohen's *d* test is based on the entire population of U.S. sales by the respondent, there are no estimates involved in the results and, accordingly, "statistical significance" is not a relevant consideration.[80]

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 Results, when 66 percent or more of the U.S. sales value is 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 further consider whether the appropriate 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 whether the appropriate 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.[81]

The Department disagrees with SGBC/SKF 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."[82] 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 an "exporter may sell at a dumped price to particular customers or regions, while selling at higher prices to

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[79] See Apex II, 144 F. Supp. 3d, at 1325 n. 19.

[80] Indeed, the CIT has acknowledged the Department's rationale that "{b}ecause Commerce's {sic} analyzes all sales in identifying significant price differences, 'sampling technique, sample size, and statistical significance are not a relevant consideration in this context,'" and held that a respondent was "unable to show why Commerce's refusal to employ an additional test of statistical significance is unreasonable here." See Tri Union, at 80.

[81] See Preliminary Decision Memorandum, at 11.

[82] See SGBC/SKF's Case Brief, at 18-19.

other customers or regions."[83] 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 time," and the Department "explains why *such differences* cannot be taken into account" using the A-to-A comparison method.[84] 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.[85] 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,"[86] 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.[87]

Further, SGBC/SKF argues that the Department must ensure its methodology accounts for differences in levels of trade. The Department's Cohen's *d* test takes into account each of the factors that are used in the comparison of U.S. price with normal value, including different levels

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[83] See SAA, at 842.

[84] See section 777A(d)(1)(B) of the Act (emphasis added).

[85] See 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) (Plywood) and accompanying Issues and Decision Memorandum, at Comment 5.

[86] See SAA, at 843.

[87] 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").

of trade.[88] Further, we note that the U.S. price used to analyze U.S. sales for differential pricing is, among other things, net of selling expenses. Thus, in comparing U.S. sales to original equipment manufacturer (OEM) customers with U.S. sales to non-OEM customers, the net price accounts for differences in warranty coverage and other differences in selling expenses and sales terms.[89]

Therefore, contrary to the arguments submitted by SGBC/SKF, 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.[90]

2. SGBC/SKF's Argument That the Department's Differential Pricing Analysis Fails to Address Why the A-to-A Method Cannot Account for Such Differences

The Department disagrees with SGBC/SKF's reliance on Beijing Tianhai that we have not provided an 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 judgment has been issued on this question; therefore, SGBC/SKF'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

[88] See Polyethylene Terephthalate Film, Sheet, and Strip From India: Final Results of Antidumping Duty Administrative Review; 2013-2014, 81 FR 7750 (February 16, 2016), and accompanying Issues and Decision Memorandum, at Comment 4 ("the Department does use adjusted prices from its dumping calculations in its differential pricing analysis to ensure that its analyses are not affected by such elements as differences in the level of trade").

[89] See Large Residential Washers From the Republic of Korea: Final Results of the Antidumping Duty Administrative Review; 2014-2015, 81 62715 (September 12, 2016), and accompanying Issues and Decision Memorandum, at Comment 5.

[90] 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").

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."[91] 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. sales[92] remain constant whether weighted-average U.S. prices or individual U.S. prices are used in the analysis.

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. 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;[93]
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 of dumping and a significant amount of offsets generated from non-dumped sales.

[91] See SAA, at 842.

[92] 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.

[93] 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.

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.

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 SGBC/SKF, based on the results of the differential pricing analysis, the Department finds that at least 47 percent of the value of U.S. sales pass the Cohen's *d* test,[94] and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Therefore, we consider whether to apply the "mixed alternative" methodology (i.e., applying the average to transaction method for U.S. sales which pass the Cohen's *d* test, and the average-to-average method for sales which do not pass). When comparing the weighted-average dumping margins calculated using the average-to-average method for all U.S. sales with the mixed alternative comparison method, we find that A-to-A method cannot account for such differences because the weighted-average dumping margin crosses the de minimis threshold when calculated using the A-to-A method and when calculated using an alternative comparison method based on applying the mixed alternative comparison method. Thus, for these final results, the Department is 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 to calculate the weighted-average dumping margin for SGBC/SKF.

3. The Department's Differential Pricing Rulemaking

We disagree with SGBC/SKF'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.[95] The notice and comment requirements of the APA do not apply "to interpretative rules, general statements of policy, or

[94] See SGBC/SKF's Final Calc Memo.

[95] See SGBC/SKF's Case Brief, at 20 (citing Carlisle Tire, 643 F. Supp., at 423).

rules of agency organization, procedure, or practice,"[96] and thus SGBC's argument citing Catholic Health Initiatives is inapposite. 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.[97] 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.[98] 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, 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.[99]

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."[100] 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. SGBC/SKF's Argument That the WTO Antidumping Agreement Prohibits the Application of

[96] See 5 U.S.C. § 553(b)(3)(A).

[97] See Differential Pricing Analysis; Request for Comments, 79 FR 26720, 26722 (May 9, 2014) (Differential Pricing Comment Request).

[98] 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).

[99] See Apex II, 144 F. Supp. 3d, at 1322.

[100] See Differential Pricing Comment Request, 79 FR at 26722.

the A-to-T Method to All U.S. Sales and the Use of Zeroing

SGBC/SKF argues that the Department's differential pricing methodology is contrary to law because the Department applies zeroing to the sales to which it applies the A-to-T method, and the WTO has made clear on numerous occasions that the "fair comparison" requirement in the WTO Antidumping Agreement (included also in U.S. law) does not permit the use of zeroing because zeroing artificially inflates the magnitude of dumping margin.[101] The Department disagrees with SGBC/SKF. 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.[102] In fact, Congress adopted an explicit statutory scheme in the URAA for addressing the implementation of WTO reports.[103] 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.[104] 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.

5. SGBC/SKF's Argument 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.

SGBC/SKF 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.[105] We disagree. SGBC/SKF'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 valid. As such, we find SGBC/SKF's claim lacks merit and continue to find that the Department's differential pricing methodology is statistically valid.

6. 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.

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[101] See SGBC/SKF's Case Brief, at 21.

[102] See Corus Staal BV v. Dep't of Commerce, 395 F.3d 1343, 1349 (Fed. Cir. 2005)

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

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

[105] See SGBC/SKF's Case Brief, at 19-20.

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 results of this changed circumstances review and the final weighted-average dumping margin for SGBC/SKF in the Federal Register.

☒	☐
_____	_____
Agree	Disagree

1/10/2017

X 

Signed by: PAUL PIQUADO