A-475-818
Administrative Review
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DATE: November 29, 2017

MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

FROM: James Maeder
Senior Director
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

RE: Certain Pasta from Italy

SUBJECT: Issues and Decision Memorandum for the Final Results of the 20th Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy; 2015-2016

I. Summary

We analyzed the case and rebuttal briefs submitted by the petitioners[1] and Ghigi 1870 S.p.A. and Pasta Zara S.p.A. (collectively, Ghigi/Zara).[2] Based on our analysis of comments received, these final results differ from the *Preliminary Results*[3] for Ghigi/Zara and the four non-selected companies. We recommend that you approve the positions described in the *Discussion of Interested Party Comments*, section II *infra*.

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[1] The petitioners are New World Pasta Company and Dakota Growers Pasta Company.
[2] *See* Petitioners' case brief, dated September 5, 2017 (Petitioners' Case Brief), Ghigi/Zara's case brief, dated September 5, 2017 (Ghigi/Zara's Case Brief), Petitioners' rebuttal brief, dated September 11, 2017 (Petitioners' Rebuttal Brief), and Ghigi/Zara's rebuttal brief, dated September 11, 2017 (Ghigi/Zara's Rebuttal Brief).
[3] *See Certain Pasta from Italy: Preliminary Results of Antidumping Duty Administrative Review*; 2015–2016, 82 FR 36126 (August 3, 2017) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

II. Background

The Department of Commerce (the Department) initiated this administrative review of the antidumping duty order on certain pasta from Italy on September 12, 2016.[4] On August 3, 2017, the Department published the *Preliminary Results* of this administrative review and invited interested parties to comment.[5] On September 5, 2017, the petitioners and Ghigi/Zara submitted their case briefs. On September 11, 2017, the petitioners and Ghigi/Zara submitted their rebuttal briefs. On September 5, 2017, Ghigi/Zara submitted a request for a hearing, which it withdrew on October 20, 2017.[6]

The period of review (POR) is July 1, 2015, through June 30, 2016.

III. Scope of the Order

Imports covered by this order are shipments of certain non-egg dry pasta in packages of five pounds four ounces or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastasis, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by the scope of the order is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

Excluded from the scope of this order are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. Multicolored pasta, imported in kitchen display bottles of decorative glass that are sealed with cork or paraffin and bound with raffia, is excluded from the scope of the order.[7] Pursuant to the Department's August 14, 2009, changed circumstances review, effective July 1, 2008, gluten free pasta is also excluded from the scope of the order.[8] Effective January 1, 2012, ravioli and tortellini filled with cheese and/or vegetables are also excluded from the scope of the order.[9]

Also excluded are imports of organic pasta from Italy that are certified by an EU authorized body in accordance with the United States Department of Agriculture's National Organic Program for organic products. The organic pasta certification must be retained by exporters and importers and made available to U.S. Customs and Border Protection or the Department of Commerce upon request.

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[4] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 81 FR 62720 (September 12, 2016) (*Initiation Notice*).
[5] *See Preliminary Results*, 82 FR at 36126.
[6] *See* letter titled "Certain Pasta from Italy: Case Brief and Request for Hearing," dated September 5, 2017; *see also* letter titled "Certain Pasta from Italy: Withdrawal of Request for Hearing," dated October 20, 2017.
[7] *See* Memorandum to Richard Moreland, dated August 25, 1997, which is on file in the Central Records Unit.
[8] *See Certain Pasta from Italy: Notice of Final Results of Antidumping Duty Changed Circumstances Review and Revocation, in Part*, 74 FR 41120 (August 14, 2009).
[9] *See Certain Pasta from Italy: Final Results of Antidumping Duty and Countervailing Duty Changed Circumstances Reviews and Revocation, in Part*, 79 FR 58319, 58320 (September 29, 2014).

The merchandise subject to this order is currently classifiable under items 1901.90.90.95 and 1902.19.20 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise subject to the order is dispositive.

IV. List of Comments

Comment 1: Whether to Include Expenses Related to Contract Cancellation Charges in Ghigi's General and Administrative (G&A) Expense Calculation
Comment 2: Whether to Adjust Zara's G&A Expense Calculation to Reclassify Certain Expenses
Comment 3: Whether to Revise Manufacturer Field Coding
Comment 4: Whether to Revise Differential Pricing Methodology

V. Analysis of Comments

Comment 1: Whether to Include Expenses Related to Contract Cancellation Charges In Ghigi's General and Administrative (G&A) Expense Calculation

The Petitioners' Arguments

- During the POR, Ghigi incurred penalties because of certain cancelled contracts. These penalties related to an independent project to build a mill at Ghigi's premises. The Department's questionnaire requires respondents to report the per-unit G&A expenses incurred by the company and defines such expenses as "those period expenses which relate indirectly to the general operations of the company rather than directly to the production process."[10] G&A expenses include amounts incurred for general R&D activities, executive salaries and bonuses, litigation expenses, and operations relating to the company's corporate headquarters. In this case, the contract cancellation charges are properly treated as "general expenses" because they relate to the general operations of the company - they are akin to litigation expenses or an idle asset, and therefore, should not be excluded from reported G&A expenses.[11]

Ghigi/Zara Rebuttal

- Ghigi does not have or operate a semolina mill; thus, the canceled contract is unrelated to the company's ongoing operations. Because this expense is not a general expense and is related to a canceled contract and not to the production of merchandise under consideration, the amount is appropriately excluded from the costs of production.
- It is the Department's long-standing practice to exclude from G&A those items that do not relate to the general operations of the company as a whole and also to exclude items

[10] *See* The Department's initial antidumping questionnaire, dated October 19, 2016, at D-18.
[11] *See* Petitioners' case brief at 1-2. Certain account related information is considered "Business Proprietary Information," (BPI). For details, see Memorandum to the File titled, "2015-2016 Antidumping Duty Administrative Review of Certain Pasta from Italy – Final Results: Sales and Cost Analysis Memorandum for Ghigi/Zara," dated December 1, 2017 (Ghigi/Zara Final Calculation Memorandum).

that are investment-related gains, losses and expenses.[12] The penalty incurred by Ghigi is unrelated to the production of merchandise under consideration, unrelated to the ongoing operations of the company, and incurred solely because of an investment activity. Accordingly, Ghigi/Zara properly excluded the expense from the G&A calculation.[13]

Department's Position: During the POR, Ghigi incurred penalities due to the cancellation of certain contracts relating to raw materials used in the production of pasta. We disagree with Ghigi/Zara that the expense at issue was not related to the general operations of the company, and that it was incurred solely because of an investment activity. The Department does not consider a contract to supply a raw material used in the production of the merchandise under consideration "an investment activity" or that it is unrelated to the ongoing operations of a pasta company. Record evidence shows that Ghigi paid "penalties" related to an independent project to build a mill at Ghigi's premises during the POR.[14] This mill project, although cancelled, was related to the production of merchandise under consideration. Ghigi included this expense as "other operating costs" in its normal books and records.[15] The Department's questionnaire requires respondents to report the per-unit G&A expenses incurred by the company and defines such expenses as "those period expenses which relate indirectly to the general operations of the company rather than directly to the production process."[16] It is the Department's well-established practice to include in the G&A expense rate calculation those expenses that relate to the general operations of the company as a whole.[17] Accordingly, consistent with the Department's practice of including those expenses that relate to the general operations of the company, we have included this expense in the G&A expense calculation in the final results.

Comment 2: Whether to Adjust Zara's G&A Expense Calculation to Reclassify Certain Expenses

The Petitioners' Arguments

- The Department should remove certain expenses[18] that Zara reported as G&A expenses and recategorize these expenses as selling expenses.

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[12] *See, e.g., Final Determination of Sales at Less than Fair Value: Oil Country Tubular Goods from Korea*, 60 FR 33561, 33567 (June 28, 1995); *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review, Determination Not To Revoke Antidumping Duty Order in Part; and Final No Shipment Determination*, 76 FR 50176 (August 12, 2011), and accompanying Issues and Decision Memorandum (IDM) at Comment 7, and *Notice of Final Determination of Sales at Less Than Fair Value: Live Cattle from Canada*, 64 FR 56739, 56758 (October 21, 1999).

[13] *See* Ghigi/Zara rebuttal brief at 1-3.

[14] *See* Ghigi/Zara's 2nd A-D supplemental questionnaire response (2nd A-D SQR), dated April 24, 2017 at 15.

[15] *See* Ghigi/Zara Section D questionnaire response, dated December 22, 2016, at Exhibit D-5.

[16] *See* the Department's initial antidumping questionnaire, dated October 19, 2016, at D-18.

[17] *See Magnesium Metal from the Russian Federation: Notice of Final Determination at Less than Fair Value,* 70 FR 9041 (February 24, 2005), and accompanying IDM at Comment 10; *see also Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Carbon-Quality Steel Products from Japan,* 64 FR 24329, 24350 (May 6, 1999); and *U.S. Steel Group v. United States*, 998 F.Supp. 1151, 1154 (CIT 1998).

[18] Ghigi/Zara bracketed the named expense as "Business Proprietary Information," (BPI). For details, see Memorandum to the File titled, "2015-2016 Antidumping Duty Administrative Review of Certain Pasta from Italy – Final Results: Sales and Cost Analysis Memorandum for Ghigi/Zara, dated concurrently with this memorandum (Ghigi/Zara Final Calculation Memorandum).

- While Zara claims that the expenses in question are not a direct financial expense and are more appropriately categorized as relating to the general operations of the company as a whole, treating the expenses as G&A expenses is not supported by any facts on the record or the Department's long-standing practice.
- Thus, in the final results, the Department should remove the expenses in question from the G&A expense ratio calculation and instead re-classify them as direct selling expenses.
- Zara's claims that the expenses in question "reflect a general agreement on a corporate brand, and cannot be linked to specific brands," and thus should be included as part of the G&A calculation are contradicted by proprietary information contained in its questionnaire responses.[19]
- For purposes of reclassifying the expenses in question, the Department should use information from Zara's questionnaire responses to apply a straight percentage to be deducted from U.S. sales.[20]

Ghigi/Zara's Rebuttal

- As explained in Ghigi/Zara's April 24, 2017 supplemental questionnaire response, Ghigi/Zara reported the expenses included in the G&A expense calculation based on a general agreement on a corporate brand. The named payments were internal transfers to an affiliated corporate parent and were not selling expenses, regardless of their nominal designation.
- The Department should decline to make any adjustment in the final results because the record evidence does not permit a proper adjustment. Because any payment to the affiliated corporate parent is based on worldwide sales, while the record contains only U.S. and home market sales and only sales of subject merchandise, it is impossible to separate any amounts associated with the reported sales from the total payments to the holding company.[21] In addition, the amount included in G&A represents an actual expense incurred in the fiscal year, whereas the amount that petitioner would apply to the Zara brand would be applied on an accrual basis as a percentage of the sales price. This mismatch would cause inaccuracy and distortion.

Department's Position: Even if we were to accept the petitioners' argument that the expenses in question are more properly categorized as selling expenses (rather than G&A expenses), we are unable to make the adjustments requested by petitioners.[22] The petitioners did not raise this aspect of Ghigi/Zara's reporting methodology to the Department's attention until the case brief phase of the review and, thus, as a practical matter it is too late in the proceeding for the

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[19] *See* the Petitioners Case Brief at 3-4.

[20] The nature of the percentage proposed by the petitioner is business proprietary.

[21] *See* Ghigi/Zara rebuttal brief at 4-7, citing *Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea*, 79 FR 17503 (March 28, 2014), and accompanying I&D Memo at Comment 1, and *Certain Oil Country Tubular Goods from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances, in Part*, 79 FR 41971 (July 18, 2014), and accompanying I&D Memo at Comment 4.

[22] Our basis for determining that the expenses in question reflect selling expenses is discussed in the Memorandum to the File, "Comment 2 of Final Results," a proprietary document dated concurrently with this decision memorandum.

Department to gather the necessary information from Ghigi/Zara that would enable the Department to reclassify these expenses.[23]

Under the petitioners' proposed approach, the Department should remove the expenses in question from the G&A expense calculation and apply a straight percentage that would be deducted from Ghigi/Zara's U.S. price.[24] We find that we lack the necessary information to justify this approach. The petitioners' approach essentially treats the expenses in question as direct selling expenses that are solely attributable to U.S. sales. We find there is no information to support a conclusion that the expenses in question are solely attributable to U.S. sales.

In addition, given the evidence on this administrative record, we find that it is not appropriate to remove the expenses in question from the G&A calculation and treat them as expenses to be deducted from the home and U.S. market prices. As Ghigi/Zara explain, values in the G&A expense calculation reflect a fiscal year, whereas sales expense fields reflect a time period corresponding to the POR. Thus, removing the payment amount at issue from the G&A expense calculation and deducting it from the prices in the sales databases would result in a mismatch and distort our calculations. Accordingly, lacking the necessary information, we have not adjusted the G&A expense ratio in the manner requested by the petitioners. We will continue to examine the treatment of the expensnes in question in the next administrative review in which Ghigi/Zara is a mandatory respondent.

Comment 3: Whether to Revise Manufacturer Field Coding

Ghigi/Zara's Arguments

- In the *Preliminary Results*, the Department activated the manufacturer macro in the home market and margin programs by including the manufacturer field names reported in the home market and U.S. sales databases (MFRH and MFRU, respectively) in the manufacturer macro.[25] The result of activating the manufacturer macro was that Zara's U.S. sales were matched only to Zara's home market sales and Ghigi's U.S. sales were matched only to Ghigi's home market sales.
- This approach is incorrect in this case because it does not reflect the Department's decision to treat Zara and Ghigi as a single entity as a result of collapsing the affiliated producers.[26] Therefore, the Department should correct the manufacturer designation in the SAS home market and margin programs.

The petitioners did not comment on this issue.

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[23] *See Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea*, 79 FR 17503 (March 28, 2014) and accompanying IDM at Comment 1, *see also Certain Oil Country Tubular Goods from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances, in Part*, 79 FR 41971 (July 18, 2014), and accompanying IDM at Comment 4.
[24] The nature and amount of the percentage proposed by the petitioners is proprietary.
[25] *See* Ghigi/Zara Case Brief at 1.
[26] *Id.* at 1-2.

Department's Position: We agree with Ghigi/Zara that in the *Preliminary Results*, we inadvertently used the manufacturer designation in the SAS comparison and margin programs. By doing so, it did not reflect the Department's decision to treat Ghigi/Zara as a single entity as a result of collapsing the affiliated producers.[27] We have corrected the SAS language in a manner that treats Zara's and Ghigi's sales as sales of a single entity; thus, the final results calculation reflects the Department's determination to collapse and treat Ghigi and Zara as a single entity.

Comment 4: Whether to Revise the Differential Pricing (DP) Methodology

Ghigi/Zara's Arguments

- In the final results, the Department should abandon its differential pricing methodology because such a methodology is unlawful under Articles 2.4 and 2.4.2 of the WTO Antidumping Agreement.
- The WTO Appellate Body has found that the Department's use of its "zeroing" practice when making the average-to-transaction (A-to-T) comparisons violates the United States' obligations under the Antidumping Agreement, citing the WTO appellate body report in *US-Washers.*[28]
- If the Department cannot provide a reasonable and explained basis for the various thresholds (*e.g.*, those related to passing the Cohen's *d* test, for determining the cut-offs for selecting an alternate comparison methodology, and the change test for "meaningfulness") in its differential pricing analysis, then the Department should not conduct a differential pricing analysis at all.[29]

The Petitioners' Rebuttal

- As a matter of law, the Department is permitted to use zeroing in the context of applying the A-to-T methodology. Both the Department and the Court of International Trade have confirmed that the denial of offsets for negative margins (zeroing) with regard to the A-to-T method is consistent with the United States' international obligations.
- Substantial record evidence supports the Department's use of differential pricing in this case, including the specific use of the Cohen's *d* test and the ratio test parameters.
- The Department's application of the alternative A-to-T methodology in the *Preliminary Results* is consistent with the statute and agency practice, and Ghigi's arguments against use of the differential pricing analysis in the final should be dismissed.

Department's Position: We disagree with the arguments made by Ghigi/Zara. There is nothing in section 777A(d) of the Tariff Act of 1930, as amended (the Act) that mandates how the Department measures whether there is a pattern of prices that differs significantly or explains why the average to average (A-to-A) method or the transaction-to-transaction (T-to-T) method cannot account for such differences. On the contrary, the Department has carried out the purpose

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[27] *See* Memorandum titled "2015-2016 Antidumping Duty Administrative Review of Certain Pasta from Italy: Ghigi and Zara Collapsing Memorandum," dated July 31, 2017.
[28] *See* Ghigi/Zara case brief at 5-7 citing *United States - Antidumping and Countervailing Measures on Large Residential Washers from Korea, Report of the Panel,* WT/DS464/R (Mar. 11, 2016) (*U.S.-Washers*).
[29] *See* Ghigi/Zara Case Brief at 8-13.

of the statute[30] through a gap filling exercise which has been upheld by the Court of Appeals for the Federal Circuit (CAFC) as reasonable and in accordance with law.[31] As explained in the *Preliminary Results*, as well as in various other proceedings,[32] the Department's differential pricing analysis, including the use of the Cohen's *d* test as a component in this analysis, is therefore lawful. Ghigi/Zara are mistaken in their argument that the Department's differential pricing analysis violates section 777A(d)(1)(B) of the Act.

With regard to arguments concerning the Department's DP analysis and U.S. obligations under the WTO Antidumping Agreement and the Appellate Body report in *US – Washers*, we note that WTO findings are not self-executing under U.S. law.[33] 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 Uruguay Round Agreements Act (URAA).[34] The Department has not revised or changed its use of the differential pricing methodology, nor has the United States adopted changes to its methodology pursuant to Sections 123[35] or 129[36] of the URAA's implementation procedures. Accordingly, Ghigi/Zara's citation to the WTO's conclusions in *US – Washers* does not undermine the adherence of the differential pricing methodology to U.S. law.

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.[37] While "targeting" and "targeted dumping" may be used as a general expression to denote this provision of the

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[30] *See Koyo Seiko Co., Ltd. v. United States*, 20 F.3d 1156, 1159 (Fed. Cir. 1994) (*Koyo Seiko*) ("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).

[31] *See Apex Frozen Foods Pvt. Ltd. v. United States*, 37 F. Supp. 3d 1286, 1302 (CIT 2014) (applying *Chevron* deference in the context of the Department's interpretation of section 777A(d)(1) of the Act) (*Apex I*), *aff'd Apex Frozen Foods Pvt. Ltd. v. United States*, 862 F.3d 1332, 1346 (Fed. Cir. 2017) (*Apex CAFC I*); *see also 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).

[32] *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 IDM 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 accompanying IDM at Comments 1 and 2; *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 accompanying IDM at Comment 4.

[33] *See, e.g.*, SAA at 659 ("WTO dispute settlement panels will have no power to change U.S. law or order such a change. Only Congress and the Administration can decide whether to implement a WTO panel recommendation and, if so, how to implement it."); *see also Corus Staal BV v. United States*, 395 F.3d 1343, 1349 (Fed. Cir. 2005).

[34] *See Corus Staal BV v. United States*, 502 F.3d 1370 (Fed. Cir. 2007); *United States – Antidumping and Countervailing Measures on Large Residential Washers from Korea*, WT/DS464/AB/R (7 Sept. 2016).

[35] 19 U.S.C. § 3533.

[36] 19 U.S.C. § 3538.

[37] *See* 19 CFR 351.414(c)(1).

statute,[38] these terms impose no additional requirements beyond those specified in the statute for the Department to determine that the A-to-A method is not an appropriate comparison methodology. Furthermore, although "targeting" implies a purpose or intent on behalf of the exporter to focus on a sub-group of its U.S. sales, the CIT and CAFC have found that the purpose or intent behind an exporter's pricing behavior in the U.S. market is irrelevant to the Department's analysis of the statutory provisions of section 777A(d)(1)(B) of the Act.[39] The CAFC held that:

> 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."[40]

As stated in section 777A(d)(1)(B) of the Act, the requirements for considering whether to apply the A-to-T method are: 1) there exists a pattern of prices that differ significantly and 2) the Department explains why either the A-to-A method or the T-to-T method cannot account for such differences. As upheld by the CAFC, the Department's application of the differential pricing methodology constitutes a complete and reasonable interpretation of the language of the statute, regulations, and SAA in identifying when pricing cannot be appropriately taken into account using the A-to-A method, and thus provides a lawful remedy to combat masked dumping.[41]

As described in the *Preliminary Results*, the differential pricing analysis addresses each of these two statutory requirements. The first requirement, the "pattern requirement," is addressed using the Cohen's *d* test and the ratio test. Satisfying the pattern requirement will establish that conditions exist in the pricing behavior of the respondent in the U.S. market such that dumping may be masked or hidden (*i.e.*, 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

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[38] *See*, *e.g.*, *Samsung v. United States*, 72 F. Supp. 3d 1359, 1364 (CIT 2015) ("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.'").

[39] *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, 1368 (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) (*Borusan*).

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

[41] *See Apex CAFC I*, 862 F.3d at 1346.

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 satisfy the pattern requirement, meaning that conditions exist which may result in masked dumping.

The Department disagrees with Ghigi/Zara's claim that the Cohen's *d* test's thresholds are "arbitrary." We chose certain numeric thresholds because they are generally accepted thresholds for the Cohen's *d* test. Despite Ghigi/Zara's contention, the Department finds the Cohen's *d* test is a reasonable tool for use as part of an analysis to determine whether a pattern of prices differs significantly.[42]

Based on our analysis and in accordance with the Department's practice, we find that the Department's application of the alternative A-to-T methodology in the *Preliminary Results* is consistent with the statute and agency practice.[43] Accordingly, we continue to apply the A-to-T methodology in the margin calculations for Ghigi/Zara for these final results.

[42] *See Certain Steel Nails from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 18816 (April 8, 2015) and accompanying IDM at Comment 9.
[43] *See e.g., Certain Frozen Warmwater Shrimp from India: Final Results of Antidumping Duty Administrative Review; 2015-2016*, 82 FR 43517 (September 18, 2017) and accompanying IDM, at Comment 2.

VI. Recommendation

Based on our analysis of the comments received, we recommend adopting the above positions. If these recommendations are accepted, we will publish the final results of this review and the final weighted-average dumping margins in the *Federal Register*.

☒	☐
Agree	Disagree

11/29/2017

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Signed by: GARY TAVERMAN

Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance