

October 8, 2015

PUBLIC VERSION

FINAL RESULTS OF REMAND REDETERMINATION

The Timken Company v. United States

Court No. 14-00155, Slip Op. 15-72 (CIT July 8, 2015)

Summary

These final results of remand redetermination are prepared in accordance with the order of the U.S. Court of International Trade (the Court or CIT) in *The Timken Company v. United States*, Court No. 14-00155, Slip Op. 15-72 (CIT July 8, 2015) (*Remand Order*). The litigation involves challenges to the determination of the U.S. Department of Commerce (the Department) in the administrative reviews of the antidumping duty orders on ball bearings and parts thereof (AFBs) from Japan and the United Kingdom for the period May 1, 2009, through April 30, 2010.¹

In these final results of remand redetermination, the Department has applied the differential pricing analysis and recalculated the weighted-average dumping margin for all respondents.

Background

Final Results

In *AFBs 21*, we determined not to apply the differential pricing analysis to consider whether an alternative comparison method was warranted, and thus calculated weighted-average dumping margins using the average-to-average comparison method.²

¹ See *Ball Bearings and Parts Thereof from Japan and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Review in Part; 2009-2010*, 79 FR 35312 (June 20, 2014) (*AFBs 21*) and accompanying Issues and Decision Memorandum.

² See *AFBs 21* and accompanying Issues and Decision Memorandum at Comment 1.

Court's Remand

Before the Court, the Timken Company (Timken) argued that the Department did not adequately explain its departure from what Timken alleged was a consistent practice of applying the Department's differential pricing analysis in proceedings after March 4, 2013.³ The Court agreed with Timken and remanded *AFBs 21* to the Department to apply the differential pricing analysis.⁴

Draft Results of Redetermination

We released our draft results of redetermination pursuant to remand on August 6, 2015, and solicited comments. On August 20, 2015, Asahi Seiko Co., Ltd.(Asahi), JTEKT Corporation (JTEKT), NSK Ltd. (NSK Japan), NSK Bearings Europe Ltd. (NSK UK), NTN Corporation (NTN), and Timken submitted comments on our draft results of redetermination.

Discussion

In accordance with the *Remand Order*, and under respectful protest,⁵ we have applied the differential pricing analysis for this remand redetermination.

Appropriate Comparison Method

Section 777A(d)(1)(A) of the Tariff Act of 1930, as amended (the Act), states that, for investigations, the Department shall determine a dumping margin by comparing the weighted-average normal value to the weighted-average export price (EP) or constructed export price (CEP) for comparable merchandise or by comparing the normal values of individual transactions to the EPs or CEPs of individual transactions for comparable merchandise. Section 777A(d)(1)(B) of the Act provides for an exception if there is (i) a pattern of EPs or CEPs for comparable merchandise that differ significantly among purchasers, regions, or periods of time

³ See *Remand Order* at 9-10.

⁴ *Id.*, at 10-19.

⁵ See *Viraj Group, Ltd. v. United States*, 343 F.3d 1371 (Fed. Cir. 2003).

and (ii) the Department explains why such differences cannot be taken into account using the average-to-average method or the transaction-to-transaction method. Although section 777A(d)(1)(B) of the Act does not strictly govern the Department's examination of this question in the context of administrative reviews, the Department nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) (2012) in administrative reviews is, in fact, analogous to the issue in antidumping investigations. To determine whether an alternative comparison methodology is appropriate, the Department applies its "differential pricing" analysis described below.

The differential pricing analysis used in this remand redetermination requires a finding of a pattern of EPs or CEPs for comparable merchandise that differs significantly among purchasers, regions, or time periods. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The differential pricing analysis used here evaluates all purchasers, regions, and time periods reported in the U.S. sales data to determine whether a pattern of prices that differ significantly exists. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported consolidated customer codes. Regions are defined using the reported destination code (*e.g.*, zip code) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the period of review (POR) being examined based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is considered using the product control number and any characteristics of the sales, other than purchaser, region and time period, that the Department uses in making comparisons between EP or CEP and NV for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the “Cohen’s *d* test” is applied. The Cohen’s *d* test is a generally recognized statistical measure of the extent of the difference between the mean of a test group and the mean of a comparison group. First, for comparable merchandise, the Cohen’s *d* coefficient is calculated when the test and comparison groups of data each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen’s *d* coefficient is used 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. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen’s *d* test: small, medium or large. Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the means of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference was considered significant, and the sales in the test groups were found to pass the Cohen’s *d* test, if the calculated Cohen’s *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.

Next, the “ratio test” assesses the extent of the significant price differences for all sales as measured by the Cohen’s *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test account for 66 percent or more of the value of total sales, then the identified pattern of EPs that differ significantly supports the consideration of the application of the average-to-transaction method to all sales as an alternative to the average-to-average method. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an average-to-transaction method to those sales identified as

passing the Cohen's *d* test as an alternative to the average-to-average method, and application of the average-to-average method to those sales identified as not passing the Cohen's *d* test. If 33 percent or less of the value of total sales passes the Cohen's *d* test, then the results of the Cohen's *d* test do not support consideration of an alternative to the average-to-average method.

If both tests in the first stage (*i.e.*, the Cohen's *d* test and the ratio test) demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, we examine whether using only the average-to-average method can appropriately account for such differences. In considering this question, the Department tests whether using an alternative method, based on the results of the Cohen's *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the average-to-average method only. If the difference between the two calculations is meaningful, this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis, and, therefore, an alternative method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if 1) there is a 25 percent relative change in the weighted-average dumping margin between the average-to-average method and the appropriate alternative method when both rates are above the *de minimis* threshold, or 2) the resulting weighted-average dumping margin moves across the *de minimis* threshold.

Analysis from the Draft Remand Results and For the Final Remand Results

For Asahi, based on the results of the differential pricing analysis, the Department finds that 47.8 percent of Asahi's export sales confirm the existence of a pattern of prices for comparable merchandise that differ significantly among purchasers, regions, or time periods and support consideration of an alternative to the average-to-average method. Moreover, the

Department determines that the average-to-average method cannot appropriately account for such differences because the resulting weighted-average dumping margins move across the *de minimis* threshold when calculated using the average-to-average method and an alternative method based on the average-to-transaction method applied to the U.S. sales which pass the Cohen's *d* test.⁶ Accordingly, the Department determines to use the average-to-transaction method for U.S. sales passing the Cohen's *d* test and the average-to-average method for U.S. sales not passing the Cohen's *d* test to calculate the weighted-average dumping margin for Asahi.

For Mori Seiki, based on the results of the differential pricing analysis, the Department finds that 51.9 percent of Mori Seiki's export sales confirm the existence of a pattern of prices for comparable merchandise that differ significantly among purchasers, regions, or time periods and support consideration of an alternative to the average-to-average method. Moreover, the Department determines that the average-to-average method cannot appropriately account for such differences because the resulting weighted-average dumping margins move across the *de minimis* threshold when calculated using the average-to-average method and an alternative method based on the average-to-transaction method applied to the U.S. sales which pass the Cohen's *d* test.⁷ Accordingly, the Department determines to use the average-to-transaction method for U.S. sales passing the Cohen's *d* test and the average-to-average method for U.S. sales not passing the Cohen's *d* test to calculate the weighted-average dumping margin for Mori Seiki.

⁶ See Memorandum titled "Analysis Memorandum for Draft Results of Redetermination (Consol. Court No 14-00155) for Asahi Seiko, Co., Ltd. in the 2009-10 Remanded Administrative Review of Ball Bearings and Parts Thereof from Japan" dated August 5, 2015 (Asahi Draft Analysis Memo), at 2.

⁷ See Memorandum titled "Analysis Memorandum for Draft Results of Redetermination (Consol. Court No 14-00155) for Mori Seiki Co., Ltd. in the 2009-10 Remanded Administrative Review of Ball Bearings and Parts Thereof from Japan" dated August 5, 2015, at 2.

For NSK Japan, based on the results of the differential pricing analysis, the Department finds that 34.0 percent of NSK Japan's export sales confirm the existence of a pattern of prices for comparable merchandise that differ significantly among purchasers, regions, or time periods and support consideration of an alternative to the average-to-average method. Moreover, the Department determines that the average-to-average method cannot appropriately account for such differences because the resulting weighted-average dumping margins move across the *de minimis* threshold when calculated using the average-to-average method and an alternative method based on the average-to-transaction method applied to the U.S. sales which pass the Cohen's *d* test.⁸ Accordingly, the Department determines to use the average-to-transaction method for U.S. sales passing the Cohen's *d* test and the average-to-average method for U.S. sales not passing the Cohen's *d* test to calculate the weighted-average dumping margin for NSK Japan.

For NSK UK, based on the results of the differential pricing analysis, the Department finds that 58.8 percent of NSK UK's export sales confirm the existence of a pattern of prices for comparable merchandise that differ significantly among purchasers, regions, or time periods and support consideration of an alternative to the average-to-average method. Moreover, the Department determines that the average-to-average method cannot appropriately account for such differences because the resulting weighted-average dumping margins move across the *de minimis* threshold when calculated using the average-to-average method and an alternative method based on the average-to-transaction method applied to the U.S. sales which pass the

⁸ See Memorandum titled "Analysis Memorandum for Draft Results of Redetermination (Consol. Court No 14-00155) for NSK Ltd. in the 2009-10 Remanded Administrative Review of Ball Bearings and Parts Thereof from Japan" dated August 5, 2015, at 2.

Cohen's *d* test.⁹ Accordingly, the Department determines to use the average-to-transaction method for U.S. sales passing the Cohen's *d* test and the average-to-average method for U.S. sales not passing the Cohen's *d* test to calculate the weighted-average dumping margin for NSK UK.

For NTN, based on the results of the differential pricing analysis, the Department finds that 54.7 percent of NTN's export sales confirm the existence of a pattern of prices for comparable merchandise that differ significantly among purchasers, regions, or time periods and support consideration of an alternative to the average-to-average method. Moreover, the Department determines that the average-to-average method cannot appropriately account for such differences because the resulting weighted-average dumping margins move across the *de minimis* threshold when calculated using the average-to-average method and an alternative method based on the average-to-transaction method applied to the U.S. sales which pass the Cohen's *d* test.¹⁰ Accordingly, the Department determines to use the average-to-transaction method for U.S. sales passing the Cohen's *d* test and the average-to-average method for U.S. sales not passing the Cohen's *d* test to calculate the weighted-average dumping margin for NTN.

Non-Selected Respondents

For the respondents we did not examine individually in the administrative review of the orders on subject merchandise from Japan, we cannot apply our normal methodology of calculating a weighted-average margin using the calculated net U.S. sales values for the two respondents we selected for individual examination because doing so could allow these two

⁹ See Memorandum titled "Analysis Memorandum for Draft Results of Redetermination (Consol. Court No 14-00155) for NSK Bearings Europe Ltd. in the 2009-10 Remanded Administrative Review of Ball Bearings and Parts Thereof from the United Kingdom" dated August 5, 2015, at 2.

¹⁰ See Memorandum titled "Analysis Memorandum for Draft Results of Redetermination (Consol. Court No 14-00155) for NTN Corporation in the 2009-10 Remanded Administrative Review of Ball Bearings and Parts Thereof from Japan" dated August 5, 2015, at 2.

respondents to deduce each other's business-proprietary information. In such situations, it is our normal practice to calculate a weighted-average dumping margin using the publicly available U.S. sales values and antidumping duty margins of the two selected respondents or to use the simple average of their margins, depending on which result is closer to the weighted-average dumping margin calculated using the business proprietary net U.S. sales values.¹¹ However, we cannot follow our normal practice because we do not have publicly available information on U.S. sales value for one of the selected respondents. Accordingly, we have assigned to the non-selected respondents the simple-average of the weighted-average dumping margins of NSK Japan and NTN, the two mandatory respondents selected for individual examination. That rate is 4.58 percent.¹²

With respect to the responding companies which we did not select for individual examination in the review of the order on subject merchandise from the United Kingdom, we have assigned the weighted-average dumping margin which we have calculated for NSK UK of 6.47 percent to these firms because NSK UK was the sole company selected for individual examination that remains subject to the review.¹³

¹¹ See *Ball Bearings and Parts Thereof From France, et al.: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part*, 75 FR 53661 (September 1, 2010), and accompanying Issues and Decision Memorandum at Comment 1.

¹² See *Preliminary Results*, 76 FR at 22373. For the post-preliminary analysis, we changed the rates we applied to respondents not selected for individual examination because “we calculated zero weighted-average dumping margins for all respondents selected for individual examination.” See memorandum from Christian Marsh to Paul Piquado, “Administrative Reviews of the Antidumping Duty Orders on Ball Bearings and Parts Thereof from Japan and the United Kingdom for the 2009-2010 Period: Post-Preliminary Analysis Memorandum and Intent to Rescind a Review in Part” (March 25, 2014) at 2-3. For the final results, we continued to apply the rates we applied to respondents not selected for individual examination in the Post-Preliminary Analysis. See *AFBs 21* and accompanying Issues and Decision Memorandum at “Rates for Non-Selected Companies.” Because the weighted-average dumping margins for the respondents selected for individual examination are no longer *de minimis*, we have reverted to the methodology we used for the *Preliminary Results*.

¹³ *Id.*

Mooted Issues

In the *Remand Order*, the Court noted that we had “declined to address certain issues in the {Issues and Decision} I&D Memo on the grounds that the use of the A-A comparison methodology without a targeted dumping inquiry mooted those issues” and ordered that “Commerce shall identify as early as possible the issues that it will consider on remand and those issues for which it will adopt the analysis contained in the I&D Memo. Commerce shall make clear in the remand results which issues were considered anew and which issues are governed by the analysis in the I&D Memo.”¹⁴

Interested parties were invited to comment on the draft results of redetermination. In the draft results of redetermination, we announced that we will only consider those comments raised in parties’ comments on the draft results of redetermination for the final results of redetermination and that, to the extent a party raised issues during the course of the underlying administrative review that it wishes for us to consider for the final results of redetermination, it must raise those issues anew in its comments on the draft results of redetermination.¹⁵ The Department stated that, parties’ comments on the draft results of redetermination must present all arguments that, in the submitter’s view, are relevant to the Department’s final remand redetermination. We originally set the deadline for comments on the draft results of redetermination to be seven calendar days after the draft results of redetermination were issued (*i.e.*, August 13, 2015), but granted an extension of an additional seven days until August 20, 2015.¹⁶

¹⁴ See *Remand Order* at 9-10.

¹⁵ See Draft Results of Remand Redetermination dated August 5, 2015, at 12.

¹⁶ See letter to all interested parties dated August 13, 2015.

Comments

We received comments from Asahi, JTEKT, NSK Japan, NSK UK, NTN and Timken. JTEKT, NSK Japan, and NSK UK argue that the Department has discretion to apply a particular methodology in any case and that *AFBs 21* was in accordance with this discretion, though JTEKT, NSK Japan, and NSK UK acknowledge the Department's draft results of redetermination were consonant with the court's order. Timken stated only that it supported the Department's draft results of redetermination.¹⁷ Because JTEKT, NSK Japan, and NSK UK acknowledge that our draft results of redetermination were consonant with the court's order, and because Timken supported our draft results of redetermination, these parties' comments are not separately addressed below.

Comment 1: Asahi and NTN argue that the Department improperly applied the Cohen's *d* analysis to only a portion of the total sales during the POR. Asahi and NTN observe that the Department's questionnaire instructed respondents with more than 10,000 CEP sales to report only those CEP sales made during six weeks designated by the Department; this process is known in the proceeding as "sampling." As a result of this instruction, Asahi and NTN contend, the respondents reported CEP sales for only a limited portion of the entire POR.

Asahi and NTN argue that the Department cannot use a differential pricing analysis to establish a pattern of prices in this situation because the Department does not have the universe of sales from which that pattern must be drawn. Asahi asserts that a "proper Cohen's *d* analysis, which involves a calculation involving effect size used to indicate the standardized difference between two means, requires application of a full dataset to be statistically valid."¹⁸ As a result,

¹⁷ See letter from Timken, "Ball Bearings and Parts Thereof From Japan and the United Kingdom (5/1/09-4/30/10): The Timken Company's Comments on the Department's Draft Results of Remand Redetermination, The Timken Company v. United States, Consol. Court No. 14-00155, Slip Op. 15-72" (August 20, 2015) at 2.

¹⁸ See Asahi Case Brief at 4.

Asahi alleges, the Department’s application of a differential-pricing analysis is based on “a sample of a sample”¹⁹ and that the Department “cannot calculate an accurate result since it is subject to statistical bias.”²⁰

In addition, Asahi contends that the sampled weeks in this review were heavily weighted into summer (2 weeks) and autumn (2 weeks) out of a total of 6 weeks. Thus, Asahi argues, any conclusions to be drawn from the analysis of the sample sales, which were both of a small portion of the total and not evenly distributed throughout the period of review, must be suspect; the small size, uneven distribution, and the possibility that the analysis ignores possible seasonal variation in sales make the result unusable in accordance with normal statistical standards.

NTN contends that, although the Department stated that “for comparable merchandise, the Cohen’s *d* test is applied when the test and comparison groups of data each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise,” the Department cannot know if the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise because it does not know the total sales quantity of the comparable merchandise.²¹ Thus, NTN avers, the Department’s own criteria make clear that the differential-pricing analysis cannot be applied to this case.

NTN also contends that the Department stated that it evaluates “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” and that if “the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test account for 66 percent or more of the value

¹⁹ *Id.*

²⁰ *Id.*, at 5.

²¹ See letter from NTN, “Twenty-First Administrative Review of Antifriction Bearings (Other than Tapered Roller Bearings) from Japan; Comments on Remand Redetermination Pursuant to Slip Op. 15-72” (August 20, 2015) (NTN Comments) at 5.

of total sales, then the identified pattern of EPs that differ significantly supports the consideration of the application of the average-to-transaction method to all sales as an alternative to the average-to-average method.”²² NTN asserts that, in this case, the Department does not know the extent to which the net prices to a particular purchaser, region, or time differ significantly from the net prices of all other sales of comparable merchandise because the Department does not have data on all other sales of comparable merchandise. Similarly, NTN avers, it is impossible for the Department to determine if the sales that pass the Cohen’s *d* test account for 66 percent (or 33 percent, or any other percent) of total sales because it does not have data on the total sales during the period of review.

According to NTN, simple logic dictates that a pattern of price differences cannot be established using a subset of sales. NTN asserts that any pattern found could be radically different if all sales were included in the analysis and, in fact, it might not be a pattern at all. Furthermore, NTN alleges, there is no way to claim that a pattern allegedly found in the sample sales could be validly extrapolated to the entire universe of sales. NTN argues that it is fundamentally unfair and an abuse of discretion for the Department to base its pattern analysis on only six weeks of sales data out of 52 weeks in the POR.

Finally, NTN argues that an analysis of the data in this review supports the conclusion that it is inappropriate to apply a differential pricing analysis. According to NTN, it produces many different configurations of bearings, which means that there are a large number of control numbers; there may be many sales of a particular control number, manufacturer, and level of trade (*i.e.*, for NTN, the characteristics which are used to define comparable merchandise²³ (or “merchandise group”)) that were not reported but that should be examined in any valid pattern

²² *Id.*, at 6.

²³ *See* page 3 above.

analysis. According to NTN, more than 37 percent of its merchandise groups have only one observation, which means the Cohen's *d* test cannot be performed for these merchandise groups because there is no comparison group. According to NTN, more than 56 percent of its merchandise groups have one or two observations only, which calls into question the validity of using a differential pricing analysis on such fragmented data and a small number of observations. According to NTN, more than 80 percent of the database has five or fewer observations available for performing the Cohen's *d* test and it is impossible to discern patterns from these tiny numbers of observations in a merchandise group.

Department's Position: We disagree with Asahi and NTN. Section 777A(a)(1) of the Act provides that, for "purposes of determining the EP (or CEP) under section 772 or the normal value under section 773, and in carrying out reviews under section 751, the administering authority may ... use averaging and statistically valid samples, if there is a significant volume of sales of the subject merchandise."

Our sampling methodology with respect to CEP sales²⁴ was developed in the first administrative reviews of these orders, wherein respondents with over 2,000 CEP sales (later increased to 10,000 CEP sales) would submit data for all CEP sales made during a selected sample of six one-week periods.²⁵ The dumping margins calculated for this sample group were then weight-averaged with the dumping margins for EP transactions to calculate each

²⁴ As opposed to sampling relating to the selection of respondents for individual examination pursuant to section 777A(c)(2)(A) of the Act.

²⁵ See *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Japan; Final Results of Antidumping Duty Administrative Reviews*, 56 FR 31754 (July 11, 1991) (*AFBs I*) at the "Reporting Requirements" section. Note that, in these reviews, we applied the sampling methodology only where respondents had over 10,000 home-market sales and/or CEP sales. See, e.g., Appendix V of the questionnaire issued to NTN dated August 19, 2010 at V-12. Note also that the first review covered the period November 9, 1988, through April 30, 1990, a period of roughly 18 months; thus, we selected nine sample weeks in the first review (from nine two-month periods that occurred during the POR) as opposed to six sample weeks in later, and these reviews (from six two-month periods that occurred during the POR).

respondent's overall weighted-average dumping margin.²⁶ Both Asahi and NTN provided data pursuant to this lower reporting burden during the administrative review and, importantly, neither challenges the Department's use of the sampling methodology, in general, for purposes of determining a weighted-average dumping margin. In fact, the CIT has repeatedly found that the Department has broad discretion in its choice of sampling methodology as long as the "results of the sampling have not been shown to be unrepresentative."²⁷ Furthermore, the CIT has upheld the Department's use of a sampling methodology, including in segments of the AFBs proceedings, explaining that "19 U.S.C. § 1677f-1 simply requires 'that sampling be used only if a significant number of transactions (or adjustments) are involved' and 'that the type of sampling employed yield representative results.'"²⁸

The issue NTN and Asahi raise in response to the Department's draft remand is whether it is appropriate for the Department to apply a differential pricing analysis to sampled sales. The court has remanded the case for the the Department to apply a differential pricing analysis for the respondents in these two reviews. For the three respondents which reported limited CEP sales from the POR, the sampled sales are adequate for purposes of calculating weighted-average dumping margins and assessment rates, and, therefore, we find that they are also adequate for determining whether the two requirements described in section 777A(d)(1)(B) of the Act have been met, including whether there is a pattern of prices that differ significantly among purchasers, regions, or periods of time.

With Congress' enactment of the Uruguay Round Agreements Act (URAA), section

²⁶ *Id.*

²⁷ *See Asociacion Colombiana de Exportadores de Flores v. United States*, 704 F. Supp. 1114 (Ct. Int'l Trade 1989), *aff'd* 901 F.2d 1089 (Fed. Cir. 1990). *See also GMN Georg Muller Nurnberg AG v. United States*, 763 F. Supp. 607 (Ct. Int'l Trade 1991); *Floral Trade Council of Davis, California v. United States*, 704 F. Supp. 233 (Ct. Int'l Trade 1988).

²⁸ *See GMN Georg Muller Nurnberg AG v. United States*, 763 F. Supp.607, 612 (Ct. Int'l Trade 1991) (*quoting Asociacion Colombiana de Exportadores de Flores v. United States*, 704 F. Supp. at 1121).

777A(d) of the Act states:

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

(1) Investigations.--

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

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

(ii) by comparing the normal values of individual transactions to the export prices (or constructed export prices) of individual transactions for comparable merchandise.

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

(i) there is a pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or periods of time, and

(ii) the administering authority explains why such differences cannot be taken into account using a method described in paragraph (1)(A)(i) or (ii).

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

The SAA expressly recognizes that:

New section 777A(d)(1)(B) provides for a comparison of average normal values to individual export prices or constructed export prices in situations where an average-to-average or transaction-to-transaction methodology cannot account for a pattern of prices that differ significantly among purchasers, regions, or time periods, i.e., where targeted dumping may be occurring.²⁹

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

In part the reluctance to use the average-to-average 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."³⁰

²⁹ See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316 (1994), reprinted in 1994 U.S.C.A.N. 3773 (SAA) at 843.

³⁰ See SAA at 842.

With the enactment of the URAA, and subsequent *Final Modification for Reviews*,³¹ the Department's standard comparison method is normally the A-A method. This is reiterated in the Department's regulations, which state that "the Secretary will use the A-A method unless the Secretary determines another method is appropriate in a particular case."³² As recognized by the SAA, the application by the Department of the A-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 average-to-transaction (A-T) method, as an alternative comparison method, may respond to such concerns "where targeted dumping *may* be occurring."³³ Neither the statute nor the SAA state that this is the only reason why the Department could resort to the A-T method, simply that this *may* be a situation where the A-T method would be appropriate. As stated in the statute, the requirements for considering whether to apply the A-T method are that there exist a pattern of prices that differ significantly and that the Department explains why either the A-A method or the transaction-to-transaction (T-T) method cannot account for such differences.

Indeed, the Department has stated in many proceedings where it has applied a differential pricing analysis, 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."³⁴ This logic is relevant in this remand redetermination, where the sampled sales are the specific sales upon

³¹ 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) (*Final Modification for Reviews*).

³² See 19 CFR 351.414(c)(1).

³³ See SAA at 843 (emphasis added).

³⁴ See, e.g., *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review, 2013-2014*, 80 FR 55328 (September 15, 2015) (*Shrimp from Vietnam*) and the accompanying Issues and Decision Memorandum at 5, and in general at comment 1.

which we are actually calculating the weighted-average dumping margins and assessment rates. That is, the sampled sales constitute the entire universe of sales upon which we are calculating weighted-average dumping margins and assessment rates. Because of this, it is appropriate to rely on these same sales to discern whether there is a pattern of prices that differ significantly.

Asahi claims that there were two sample weeks in each of summer and autumn, versus one sample week in each of winter and spring. We are not aware of, nor does Asahi cite to, any evidence indicating that the ball bearings industry is subject to seasonal variations. Further, Asahi has never requested that the Department consider seasonal variations in its calculations of Asahi's weighted-average dumping margin, let alone when examining significant differences in U.S. prices over time. Moreover, the sample weeks were chosen at random, one from each two-month interval during the POR (*i.e.*, May-June, July-August, September-October, November-December, January-February, and March-April).³⁵ Because the two month periods from which we selected the sample weeks are evenly distributed throughout the year, we would expect any variations that may occur during the POR would be captured by our sampling methodology. We are not aware of, nor does Asahi provide, any evidence or reason to believe that the sampling methodology is not representative.

NTN argues that our analysis is inconsistent with the description of our approach because we do not have all sales and we do not know the total sales quantity of comparable merchandise. NTN's argument is unavailing. Our use of the words "all" and "total" in our description of our approach refers to the universe of reported sales. As described above, the sampled sales, all U.S. sales during six specifically identified weeks, constitute the universe of sales which we are using to calculate the weighted-average dumping margins and assessment rates. Moreover,

³⁵ Thus, contrary to NTN's assertion, the weeks are selected from two-month periods that are evenly distributed through the POR.

there are other reasons besides permitting a respondent to report U.S. sales for a limited number of weeks where we may not have all of a respondent's sales of subject merchandise. For example, if a respondent qualifies for the special rule for subject merchandise that has been further manufactured after importation into the United States (section 772(e) of the Act),³⁶ we normally do not require respondent to report those sales of such subject merchandise.³⁷ Thus, if we were to adhere to NTN's interpretation of the methodology, we would not be able to perform a differential pricing analysis for companies that qualify for the special rule for subject merchandise that has been further processed in the United States, a result which is neither intended nor implied by our description of our methodology.

Finally, with respect to NTN's arguments regarding merchandise groups with relatively few sales, the Department disagrees, in general, that this fact diminishes the validity of the approach.³⁸ The Department finds unavailing NTN's first point, that the Department has not examined all of NTN's U.S. sales, specifically those which it did not report, as discussed in the preceding paragraph. NTN continues this argument by identifying the frequency of sales with only one, two or five or fewer observations, claiming that with "such fragmented data and small numbers of observations" that it "is impossible to discern 'patterns' from these tiny comparisons."³⁹ First, the percentages which NTN presents in its case brief are somewhat misleading since they are based only on the number of sales and not on the value of those sales which is the basis for the ratio test. We have run an analysis replicating NTN's results and also

³⁶ In these reviews, all of the individually examined respondents, aside from Asahi, qualified for the special rule. *See Preliminary Results*, 76 FR at 22376 (unchanged in *AFBs 21*).

³⁷ *See, e.g., Purified Carboxymethylcellulose From Finland; Preliminary Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 48119 (August 15, 2014) and accompanying Preliminary Decision Memorandum at 9-10 (unchanged in final; 79 FR 76302 (December 22, 2014)).

³⁸ *See* NTN's Case Brief at 7.

³⁹ *Id.*

calculated these figures as a percent of sales value.⁴⁰ For NTN's merchandise groups which have only a single observation (which NTN notes accounts for 37 percent of the number of sales) account for approximately [] percent of NTN's reported sales value in the U.S. market.⁴¹ Likewise, NTN's merchandise groups which have one or two observations (which NTN notes accounts for 56 percent of the number of observations) accounts for approximately [] percent of NTN's reported sales value in the U.S. market.⁴² Therefore, even if the number of groups of comparable merchandise which have one or two (or even three) observations were of concern, the extent of such sales is not as large as NTN asserts.

Second, when the Department conducts an analysis of the information on the record to evaluate whether a pattern exists, the Department is looking for affirmative evidence that such a pattern is present in the respondent's pricing behavior in the U.S. market. Therefore, if the Department is unable to test certain U.S. sales to determine whether they were made at prices which differ significantly from the prices of other sales of comparable merchandise, then these sales would not be able to be a constituent part of a pattern of prices that differ significantly. As a result, if there are more, rather than fewer, U.S. sales which the Department is unable to test and possibly find as part of a pattern, then there will be fewer U.S. sales which will be eligible to demonstrate affirmatively that a pattern exists. The U.S. sales which are not tested cannot be found to be part of a pattern (*i.e.*, the numerator of the ratio test) yet these sales will still be part of the universe of U.S. sales which are examined (*i.e.*, the denominator of the ratio test) since they are part of the calculation of the respondent's weighted-average dumping margin.

⁴⁰ See Memorandum to File, "Analysis of NTN's Data" (October 8, 2015).

⁴¹ *Id.* We also note that, as we described above, the Cohen's *d* coefficient is calculated when the test and comparison groups of data each have at least two observations. As a result, all of merchandise groups which only have a single observation are not included in the value of sales which contribute to the pattern (although they are included in the denominator when calculating the percent of sales by value which contribute to the pattern).

⁴² *Id.*

Accordingly, it may be less likely that the pattern element required in order for the Department to apply an alternative comparison method and thereby address possible masked dumping would be satisfied.

In sum, the purpose of a differential pricing analysis is to examine whether the A-A method is an appropriate tool, pursuant to 19 CFR 351.414(c)(1), to measure the extent of a respondent's dumping in the U.S. market. When NTN and Asahi limited their CEP sales to the specified six weeks (*i.e.*, one week within six two month periods over the span of the POR), these sales are the basis for calculating NTN's and Asahi's weighted-average dumping margin. No party, including NTN or Asahi, has argued that this approach is distorted or is otherwise unrepresentative of NTN's or Asahi's behavior during the entire 52-week period of the POR. Likewise, then, an analysis under the Cohen's *d* and ratio tests based on this same six weeks of U.S. sale data is not unrepresentative of all 52 weeks of the POR since this analysis is directly linked to the calculation of NTN's weighted-average dumping margin. Therefore, for the reasons described above, the Department continues to find meritless both NTN's and Asahi's arguments that using the complete six weeks of U.S. sales data as the basis for a differential pricing analysis to identify the appropriate comparison method was improper.

Comment 2: NTN argues that, even if a differential pricing analysis could lawfully be applied to this review, the approach is fatally flawed.

A. The Cohen's *d* Test Double Counts Sales As Passing the Test

First, NTN contends that, if there are two customers (A and B) for a CONNUM, the Department compares sales to each customer. According to NTN, if sales to A differ significantly from sales to B, sales to A pass the Cohen's *d* test; however, the Department examines sales to B, which, because they differ significantly from sales to A, will also pass the

test. NTN asserts that this effectively applies the test to the same sales twice (one with a positive Cohen's d and one with the negative Cohen's d of the same value) and that this "double counting" of both sides of the same comparison unfairly inflates the number of sales that pass the Cohen's d test.

B. Affirmative Findings Exist Which Are Not Reflective of the Respondent's Price Setting Behavior

Second, NTN argues that the differential pricing methodology unlawfully captures differences in prices that were not the result of any price setting on the part of NTN. NTN gives an example where only changes in the exchange rate results in an affirmative determination of finding a pattern of prices that differ significantly. Therefore, NTN alleges that factors, such as exchange rates, over which NTN has no control, skew the differential pricing results and the entire differential pricing analysis.

C. The Cohen's d Test Focuses On the Product Control Number and Not On Purchaser, Region or Time Period

Third, NTN asserts that the differential pricing methodology examines differences in prices between control numbers; the methodology looks at prices for a control number to one purchaser and prices for that same control number to all other purchasers. But, NTN avers, the statute provides that "targeted dumping" relates to prices to a particular purchaser, region, or time period, and not to a particular control number. Therefore, NTN claims, the differential pricing methodology violates the statute and is unlawful.

D. Zeroing Is Unlawful in Administrative Reviews

Fourth, NTN contends that the purpose of a differential pricing analysis is to continue the unlawful practice of zeroing in administrative reviews. According to NTN the United States is in violation of WTO agreements when it uses the zeroing methodology in an administrative

review. The Department's differential pricing methodology is therefore a violation of WTO commitments and the Department should eliminate the practice of zeroing from any antidumping duty calculations.

E. Failure To Explain Why the A-A Method Cannot Account For Such Differences

Fifth, NTN argues that the Department failed to explain why price differences cannot be taken into account using the standard A-A method. According to NTN, the statute requires that the Department explain why such differences cannot be taken into account using a standard comparison method. The Department merely describes an automatic test comparing the results of the standard comparison method with the results of an alternative comparison method. NTN claims that a comparison between the weighted-average dumping margins under the two methods is an apples-to-oranges comparison because one methodology uses zeroing and the other does not. NTN contends that the use of zeroing results in dramatically different, and higher, weighted-average dumping margins than when zeroing is not used, which means that the test does not provide a meaningful comparison. NTN also claims that the test does not explain why any price differences cannot be accounted for by the standard comparison method but is simply an expression of the difference in two of the Department's methods for calculating weighted-average dumping margins.

F. The Basis of the Cohen's *d* Test Is Not Appropriate and Does Not Measure Statistical Significance

Finally, NTN contends that the Cohen's *d* test is a comparison between two means. Thus, NTN claims, the test simply measures the differences in two means and then characterizes the difference as small, medium, or large. However, NTN asserts, the Department has reviewed the comments of many statistical experts who warn that these characterizations should be used cautiously because whether there is a large or small or other effect is highly dependent on the

specific data that is being studied. In some cases, NTN claims, “very small effects” can be meaningful and, in other cases, even “large effects” may not be meaningful. According to NTN, the Cohen’s *d* test just examines the effect of the independent variable in terms of standard deviations. In particular, NTN avers, the Cohen’s *d* test can identify even tiny differences as having a large effect size. NTN contends that the Cohen’s *d* test does not measure statistical significance and the Department should not use it for that purpose, especially when the underlying data does not follow a normal distribution or is a non-random, non-statistically significant sample.

Department’s Position: The Department disagrees with NTN that its approach in applying a differential pricing analysis in the remand redetermination is invalid.

The purpose of section 777A(d)(1)(B) of the Act is to evaluate whether the A-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.⁴³ While the SAA states that “targeting” or “targeted dumping” may be occurring with respect to an exporter’s U.S. sales, it is neither a requirement nor a pre-condition for the Department to otherwise determine that the A-A method is not appropriate based upon a finding that the two statutory requirements have been satisfied. Furthermore, “targeting” implies an intent on behalf of the exporter. 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.⁴⁴ The Court of Appeals for the Federal Circuit (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

⁴³ See 19 CFR 351.414(c)(1).

⁴⁴ See *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*, 2015 U.S. App. LEXIS 10653 (Fed. Cir. 2015) (non-precedential) (*Borusan*).

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 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.” JB F RAK, 991 F. Supp. 2d at 1355 (internal quotation marks and citation omitted).⁴⁵

As stated in section 777A(d)(1)(B) of the Act, the requirements for considering whether to apply the A-T method are that there exists a pattern of prices that differ significantly and that the Department explains why either the A-A method or the T-T method cannot account for such differences. The Department’s application of a differential pricing analysis 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 normal A-A method, and it provides a remedy for masked dumping when the conditions exist.

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. 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 evaluates 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 hidden or masked dumping.

⁴⁵ See JB F RAK, 790 F.3d at 1368.

When the respondent's pricing behavior exhibits conditions in which masked dumping may be occurring – that is where there exists a pattern of prices that differ significantly – then the Department considers whether the standard A-A method can account for “such differences” – *i.e.*, the pattern or 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-A method and that calculated using the appropriate alternative comparison method based on the A-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-A method) as opposed to when normal values are compared with sale-specific U.S. prices (the A-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.

A. The Cohen's *d* Test Double Counts Sales As Passing the Test

Contrary to NTN's assertion, there is no double counting. To rely on the general example provided by NTN, there are two purchasers, A and B, in the U.S. market. NTN states, and provides examples from the Draft Remand, that if the prices to purchaser A are found to be significantly different than the prices to purchaser B, then the opposite will also be true that the prices to purchaser B will also be found to be significantly different than the prices to purchaser A. The Department agrees and finds that this is a reasonable outcome.

However, and more importantly to the claim by NTN, when the sales to purchaser A are found to differ significantly, then the value of those sales to purchaser A is flagged as passing the

Cohen's *d* test and will be included in the numerator and denominator of the ratio test.

Likewise, when the sales to purchaser B are found to differ significantly, then the value of those sales to purchaser B are also flagged as passing the Cohen's *d* test and will be included in the numerator and denominator of the ratio test. When sales to both purchaser A and purchaser B are found to be at prices that differ significantly, the value of the sales to purchaser A and the value of the sales to purchaser B are counted only once, and not twice, as passing the Cohen's *d* test and being included in the numerator of the ratio test.⁴⁶

Moreover, the same phenomenon NTN describes also occurs where the Department does not find that prices to two groups differ significantly. For example, if sales to purchaser C are not at prices that differ significantly from the prices for sales to purchaser D, then the sales to purchaser D will not be at prices that differ significantly from the prices for sales to purchaser C. Under such a scenario, the sales to both purchaser C and to purchaser D do not pass the Cohen's *d* test. The value of the sales to both purchaser C and purchaser D will be excluded from the numerator of the ratio test but will be included in the denominator of the ratio test. Thus, there is no disparate treatment of sales that pass the Cohen's *d* test relative to sales that do not pass the Cohen's *d* test, and there is no "double counting" of the value of the sales that pass the Cohen's *d* test relative to those that do not pass.

B. Affirmative Findings Exist Which Are Not Reflective of the Respondent's Price Setting Behavior

The Department disagrees with NTN's claims that the differential pricing methodology unlawfully captures differences in prices that were not the result of any price-setting on the part of NTN. When the Department considers whether there exists a pattern of prices that differ significantly, it does not need to take into account the intent of the exporter or any "causal links"

⁴⁶ For both purchaser A and purchaser B, the value of the sales to each purchaser will also be included once in the denominator of the ratio test, whether or not these sales pass the Cohen's *d* test.

to explain why there exists prices that differ significantly. There is no requirement, even in an investigation, pursuant to section 777A(d)(1)(B)(i) of the Act, that the Department account for some kind of causality for an observed pattern of prices that differ significantly, such as differences in market factors, production costs, or material inputs. Congress did not speak to the intent of the producers or exporters in setting export prices that exhibit a pattern of significant differences. Nor is an intent-based analysis consistent with the purpose of the statutory provision, which, as noted above, is to determine whether the average-to-average method is a meaningful tool to measure whether, and if so, to what extent, dumping is occurring. Consistent with the statute and the SAA, we determined whether a pattern of significant price differences exists. Neither the statute nor the SAA requires us to conduct an additional analysis to account for potential reasons for the observed pattern of prices that differ significantly. The CAFC has affirmed this view, holding that section 777A(d)(1)(B) of the Act “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” albeit in the context of cases in which the Department applied the *Nails* test.⁴⁷

C. The Cohen’s *d* Test Focuses On the Product Control Number and Not On Purchaser, Region or Time Period

NTN states:

The DP methodology examines differences in prices between CONNUMS; the methodology looks at prices for a CONNUM to one customer and prices for that same CONNUM to other customers.⁴⁸

The Department finds these statements to be contradictory; it disagrees with the first statement and agrees with the second statement. The pattern described in section

⁴⁷ See *JBF RAK LLC v. United States*, 790 F.3d 1358 (Fed. Cir. 2015), aff’d again in *Borusan Mannesmann Boru Sanayi Ve Ticaret A.S. v. United States*, 2015 U.S. App. LEXIS 10653 (Fed. Cir. 2015) (non-precedential).

⁴⁸ See NTN Case Brief at 9.

777A(d)(1)(B)(i) of the Act relates to a pattern of export or constructed export prices “for comparable merchandise” “among purchasers, regions, or periods of time.” Comparable merchandise, as described above, “is considered using the product control number and any characteristics of the sales, other than purchaser, region and time period, that the Department uses in making comparisons between EP or CEP and NV for the individual dumping margins.”⁴⁹ When the Department compares the average price to a given purchaser, region or time period to the average price to all other purchasers, regions or time periods, respectively, the average prices are for comparable merchandise. Thus, NTN’s first claim, that the “DP methodology examines differences in prices between CONNUMS” is incorrect.

NTN argues that the statute provides that targeted dumping relates to prices to a particular customer, region, or time period, and not to a particular control number. The Department agrees. Section 777A(d)(1)(B) of the Act specifies that the Department may use an alternate methodology only if “there is a pattern of export prices or constructed export prices for *comparable merchandise* that differ significantly among purchasers, regions, or periods of time” (emphasis added). The Department states that “comparable merchandise” “is considered using the {CONNUM} and any characteristics of the sales, other than purchaser, region and time period, that the Department uses in making comparisons between EP or CEP and NV for the individual dumping margins.”⁵⁰ The weighted-average price of comparable merchandise to a given purchaser, region or time period is then compared to the weighted-average price to all other purchasers, regions or time periods, respectively. Thus the Department is consistent with the statute’s requirement to identify whether a pattern of prices for comparable merchandise exists by examining each CONNUM as it relates to purchaser, region, or time period.

⁴⁹ See page 3 above.

⁵⁰ *Id.*

D. Zeroing Is Unlawful in Administrative Reviews

The Department disagrees with NTN that the Department must amend its Draft Remand because of an inferred requirement imposed by the WTO Antidumping Agreement or an adverse WTO panel report. As an initial matter, the Court ordered the Department to apply the differential pricing analysis in this case. The Department has done so in accordance with the Court's order.

Moreover, the denial of offsets for non-dumped sales, *i.e.*, zeroing, when using the average-to-transaction method is fully consistent with U.S. law. The Court of Appeals for the Federal Circuit has affirmed that Department's practice of denying offsets for non-dumped sales when using the average-to-transaction method.⁵¹

In addition, U.S. law is consistent with our international obligations. Further, no WTO panel or appellate body determination has addressed the use of an alternative comparison methodology or the denial of offsets for non-dumped sales pursuant to section 777A(d)(1)(B) or the second sentence of Article 2.4.2 of the Antidumping Agreement. Each of the WTO panel reports in which it found that the United States had not fulfilled its obligations under the Antidumping Agreement by denying offsets for non-dumped sales involved the first sentence of Article 2.4.2. The United States has fully implemented these decisions pursuant to the requirements established by the Uruguay Round Agreements Act (URAA).⁵²

E. Failure To Explain Why the A-A Method Cannot Account For Such Differences

The Department disagrees with NTN's argument that the Department did not explain why "such differences" cannot be taken into account using the A-A method. When the "pattern"

⁵¹ See *Union Steel v. United States*, 713 F.3d 1101, 1103 (Fed. Cir. 2013).

⁵² See *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification*, 71 FR 77722 (December 27, 2006); and *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).

requirement has been satisfied, conditions exist in which dumping may be hidden or masked – *i.e.*, there are prices which differ significantly. When one compares the calculated results of the A-A method and an alternative comparison method based on the A-T method, the comparison of these results may appear simplistic, however, this comparison incorporates all of the complexities of calculating and aggregating individual dumping margins. It is the interaction of these many comparisons of export or constructed export prices with normal values which determine whether there is a meaningful difference in these results.

When using the A-A method, lower-priced U.S. sales (*i.e.*, sales which may be dumped) are offset by higher priced U.S. sales. This 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.”⁵³ The comparison of a dumping margin based on a weighted-average U.S. price with a dumping margin based on the individual, constituent transaction-specific U.S. prices precisely examines the impact on the amount of dumping which is hidden or masked. Both the weighted-average U.S. price and the individual U.S. prices are compared to a normal value that is independent and constant because the characteristics of the individual U.S. sales remain constant whether a weighted-average U.S. price or individual U.S. prices are used in the analysis. Consider the simple situation where there is a single weighted-average U.S. price, 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-A method and the A-T method. The normal value used to calculate a dumping margin for these sales may fall into one of five scenarios with respect to the range of these different, individual U.S. sale prices:

- 1) the normal value is less than all of the U.S. prices and there is no dumping;

⁵³ See SAA at 842.

- 2) the normal value is greater than all of the U.S. prices and all sales are dumped;
- 3) the normal value is nominally greater than the U.S. prices such that there is a minimal amount of dumping and a significant amount of offsets from non-dumped sales;
- 4) the normal value is nominally less than the U.S. prices such that there is a significant amount of dumping and a minimal amount of offsets generated from non-dumped sales;
- 5) the normal value is in the middle of the range of individual U.S. prices such that there is both a significant amount dumping and a significant amount of offsets generated from non-dumped sales.

Under scenarios (1) and (2), either there is no dumping or all U.S. sales are dumped such that there is no difference between the A-A method with offsets and the A-T method with zeroing – *i.e.*, there is no meaningful difference. Under scenario (3), there is a minimal (*i.e.*, *de minimis*) amount of dumping, such that the A-A method and the A-T method result in either a zero or *de minimis* weighted-average dumping margins which also does not constitute a meaningful difference. 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 there is not a meaningful difference in the weighted-average dumping margins (*i.e.*, less than a 25 percent relative change or no change from *de minimis* to non-*de minimis*) calculated using offsets or zeroing. 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 (*i.e.*, there is at least a 25 percent relative change in the dumping margin or there is a change from *de minimis* to non-*de minimis*).

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 have no impact on this 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 change by at least 25 percent or the weighted-average dumping margin will change to be *de minimis*.

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 that there also is a meaningful amount of offsets to impact the identified amount of dumping. 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 the limiting circumstances are present (*i.e.*, scenario (5) above). This required fact pattern must then be repeated across averaging groups in the calculation of the weighted-average dumping margin in order to result in an overall weighted-average dumping margins which changes to a meaningful extent. Further, for each individual dumping margin which does not result in this set of circumstances, the “meaningfulness” of the difference in the weighted-average dumping margins between the two comparison methods will be diluted. Thus, the Department disagrees with NTN claim that the comparison of the results of the A-A method and an alternative comparison method is “automatic,” “apples-to-oranges” or “does not provide a meaningful comparison.”

Further, 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 differential pricing analysis accounts for the difference in the U.S. prices relative to the absolute price level of the subject merchandise. Only under scenario (5) will the Department find that the A-A method is not appropriate – where

there is an above *de minimis* amount of dumping along with an amount of potential offsets generated from non-dumped sales such that the amount of dumping is changed by a meaningful amount. 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.

Lastly, for each respondent in this litigation, the standard A-A method results in a weighted-average dumping margin that is either zero or *de minimis*. When an alternative comparison method is used to measure the extent of dumping by each respondent, the weighted-average dumping margin is above the *de minimis* threshold. This standard for finding a “meaningful difference” in the results such that the A-A method cannot account for such differences has been affirmed previously by the court.⁵⁴

F. Basis of the Cohen’s *d* Test Is Not Appropriate and Does Not Measure Statistical Significance

Finally, NTN argues that the Cohen’s *d* test does not measure statistical significance and that the Department should not use it for that purpose. The statute leaves to our discretion how to determine the existence of a pattern even in the context of an investigation under section 777A(d)(1)(B) of the Act and does not provide a specific direction on how to make such determination. The statute simply requires that we find the existence of a pattern of prices that “differ significantly.” We reasonably demonstrated that such a pattern exists in this remand redetermination.

The Cohen’s *d* coefficient is a statistical measure which gauges the extent (or “effect size”) of the difference between the means of two groups. “Effect size is a simple way of

⁵⁴ See *Beijing Tianhai Indus. Co. v. United States*, 7 F. Supp. 3d 1318, (Ct. Int’l Trade 2014); and *Apex Frozen Foods Private Ltd., et al. v. United States*, 37 F. Supp. 3d 1286 (Ct. Int’l Trade 2014).

quantifying the difference between two groups and has many advantages over the use of tests of statistical significance alone.”⁵⁵ In *Xanthan Gum*, we stated as follows:

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 Cohen’s *d* test to satisfy the statutory language, to measure whether a difference is significant.⁵⁶

Accordingly, the Cohen’s *d* test is an appropriate and reasonable approach to examine whether there prices among purchasers, regions or time periods differ significantly.

The statute only requires a finding of a pattern of prices that differ “significantly.”

From Merriam-Webster’s dictionary,⁵⁷ “significant” has the following meanings:

1. having meaning;
2. a. having or likely to have influence or effect, of a noticeably or measurably large amount;
b. probably caused by something other than mere chance.

Thus, the term “prices that differ significantly” connotes different prices where the difference has meaning, where it has or may have influence or effect, where it is noticeably or measurably large, and where it may be beyond something that occurs by chance. Furthermore, Dr. Cohen’s established three thresholds to qualify the significance of the differences measured with his *d* coefficient: small, medium and large. In *Shrimp from Vietnam*, the Department described the meaning of these three levels of difference in Dr. Cohen’s own words:

The effect size at the small threshold “is the order of magnitude of the difference in mean IQ between twins and nontwins, the latter being the larger. It is also approximately the size of the difference in mean height between 15- and 16-year-old girls.” For the

⁵⁵ See *Xanthan Gum From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013) (*Xanthan Gum*) and the accompanying I&D Memo at Comment 3, quoting from Coe, Robert, “It’s The Effects Size, Stupid: What effect size is and why it is important,” presented at the Annual Conference of British Educational Research Association (September 12-14, 2002).

⁵⁶ *Id.* Footnote omitted and emphasis originally included.

⁵⁷ See Memorandum to File, “Placing Definition on Record” (October 8, 2015).

medium threshold, the “effect size is conceived as one large enough to be visible to the naked eye. That is, in the course of normal experience, one would become aware of an average difference in IQ between clerical and semiskilled workers or between members of professional and managerial occupational groups” or “the magnitude of the difference in height between 14- and 18-year-old girls.” For the large threshold, the difference “is represented by the mean IQ difference estimated between holders of the Ph.D. degree and typical college freshmen, or between college graduates and persons with only a 50-50 chance of passing an academic high school curriculum. These seem like grossly perceptible and therefore large differences, as does the mean difference in height between 13- and 18-year-old girls...”⁵⁸

In describing its differential pricing analysis in this remand redetermination, the

Department states:

Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the means of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference was considered significant, and the sales in the test groups were found to pass the Cohen’s *d* test, if the calculated Cohen’s *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.⁵⁹

Accordingly, the Department finds that its use of a Cohen’s *d* analysis with Dr. Cohen’s “large” threshold for effect size reasonably and logically fulfills the language and meaning of the statute in that it identifies price differences that have meaning, where these differences have or may have influence or effect, where they are noticeably or measurably large, and where they may be beyond something that occurs by chance.

The Department finds misplaced NTN’s statement that “{i}n some cases, very small effects may be meaningful and, in other cases, even large effects may not be meaningful.”⁶⁰ This contradicts the meaning of effect size noted above. The Department interprets NTN’s statement to mean that small differences may be meaningful, whereas large differences may not be

⁵⁸ See Shrimp from Vietnam, Issues and Decisions Memorandum at 10 (citations omitted); quoting from Cohen, Jacob, *Statistical Power Analysis for the Behavioral Sciences*, Lawrence Erlbaum Associates, Publishers (1988).

⁵⁹ See page 4 above.

⁶⁰ See NTN Case Brief at 13.

meaningful.⁶¹ This is precisely what using a measure of effect size, such as the Cohen's *d* coefficient, affords this analysis where the difference in the mean prices is measured relative to the variation in prices within the test and comparison groups. When the variation in prices within these two groups is small, then only a small difference in the means is necessary to produce a meaningful or significant effect. On the other hand, when the variation in prices within these two groups is large, then the difference in the means must be much greater in order to demonstrate the same meaningful or significant effect. Thus, the Cohen's *d* coefficient, as a measure of effect size, fulfills this concept in the analysis where the difference in prices is measured relative, on a case-by-case basis, to the pricing behavior of the respondent.

The statute does not require that the difference be "statistically significant." NTN does not demonstrate that our reliance on the Cohen's *d* test, which is a generally recognized statistical measure of effect size, is unreasonable. Further, as discussed above, the Cohen's *d* test is a generally recognized measure of the significance of the differences of two means, and we set a threshold of "large" to provide the strongest indication that there is a significant difference between the means of the test and comparison groups.

If Congress intended to require a particular result be obtained, with a level of "statistical significance" of price differences as a condition for finding that there exists a pattern of prices that differ significantly, then Congress presumably would have used language beyond the stated requirement and more precise than "differ significantly." This is what Congress did, for example, with respect to enacting the sampling provision for respondent selection in section 777A(c)(2)(A) of the Act. But it did not do so with respect to the determination of the existence of a pattern in section 777A(d)(1)(B)(i) of the Act. As the executive agency tasked

⁶¹ See also the SAA at 843 ("Commerce will proceed on a case-by-case basis, because small differences may be significant for one industry or one type of product, but not for another.").

with implementing the antidumping law, resolving statutory ambiguities, and filling gaps in the statute, we do not find that the term “significantly” in the statute can mean only “statistically significant.” The law includes no such directive. Our analysis, including the use of the Cohen’s *d* test, reasonably fills the statutory gap as to how to determine whether a pattern of prices “differ significantly.”

Comment 3: Asahi argues that the Department failed to appropriately adjust its analysis for channels of distribution or levels of trade. Asahi asserts that the Department required respondents to report its channels of distribution and how sales are differentiated by these channels and by level of trade. Asahi states that the Department made no adjustment to its differential pricing analysis to account for the different channels of distribution. Asahi avers that, to the extent that the Department did not adjust its analysis for the different channels of distribution or level of trade, the Department’s analysis was flawed.

Department’s Position: We agree, in part, and disagree, in part, with Asahi’s arguments. As stated above, the purpose of considering an alternative comparison method is to consider whether the A-A method is an appropriate basis with which to measure the extent of a respondent’s dumping in the U.S. market. Therefore, the differential pricing analysis is structured to follow the statutory framework for making comparisons of U.S. prices with normal values (*i.e.*, to calculate dumping margins). As such, groups of comparison merchandise in the Cohen’s *d* test are defined by “the product control number and any characteristics of the sales, other than purchaser, region and time period, that the Department uses in making comparisons between EP or CEP and NV for the individual dumping margins.”⁶² Accordingly, the differential pricing analysis applied in these final remand results accounts for levels of trade when defining the groups of comparable merchandise when level of trade is also used for

⁶² See page 3 above.

defining averaging groups in the calculation of a respondent's weighted-average dumping margin. For Asahi, in section US-13-D-ii-e of the program, we match the group being tested with the base group by level of trade (as well as, *e.g.*, manufacturer, control number).⁶³ Thus, we account for levels of trade in our differential pricing analysis for Asahi.

With respect to channels of distribution, we defined Asahi's levels of trade on the basis of its channels of distribution.⁶⁴ However, the channel of distribution is not a sale characteristic used in the calculation of dumping margins (except to the extent that it is used, as for Asahi, to define the level of trade). Thus, the Department finds that the channel of distribution, in and of itself, is not an appropriate factor to consider in a differential pricing analysis.

Comment 4: Asahi observes that the Department stated that it has acted in accordance with the Court's order under respectful protest. However, Asahi contends, the Department did not state any basis for its protest. Asahi submits that the Department should explain to the Court in the remand determination the basis for its protest; otherwise the protest would simply be an empty claim. Asahi further submits that a valid basis for such protest is the lack of a full sales database on the record for applying a differential pricing analysis. See Comment 1, above. Asahi argues that the Department should present to the court that the use of a differential pricing analysis on a database which does not include all sales for the period of review cannot be valid for making a statistical conclusion.

Department's Position: We applied a differential pricing analysis for this remand redetermination under respectful protest because we maintain that a differential pricing methodology should be applied only in cases where the preliminary results were published after March 4, 2013. As described in our position on Comment 1, above, the Department disagrees

⁶³ See Asahi Draft Analysis Memo at section US-13-D-ii-e of the program log.

⁶⁴ See Asahi Draft Analysis Memo at lines 5800-5801 of the program log.

with respondents' arguments that a differential pricing analysis is invalid in the situation presented in this review where for some respondents U.S. sales have been reported for a limited portion of the POR. Thus, Asahi's suggestion is unavailing.

Final Results of Redetermination

The Department recalculated the weighted-average dumping margin for each respondent. In these final remand results we determine that the weighted-average dumping margins on ball bearings and parts thereof exist for the period May 1, 2009, through April 30, 2010, at the following rates:

JAPAN

<u>Company</u>	<u>Rate (percent)</u>
Asahi Seiko Co., Ltd.	1.33
Audi AG	4.58
Bosch Corporation	4.58
Bosch Packaging Technology K.K.	4.58
Bosch Rexroth Corporation	4.58
Caterpillar Japan Ltd.	4.58
Caterpillar Overseas S.A.R.L.	4.58
Caterpillar Group Services S.A.	4.58
Caterpillar Brazil Ltd.	4.58
Caterpillar Africa Pty. Ltd.	4.58
Caterpillar of Australia Pty. Ltd.	4.58
Caterpillar S.A.R.L.	4.58
Caterpillar Americas Mexico, S. de R.L. de C.V.	4.58


Caterpillar Logistics Services China Ltd.	4.58
Caterpillar Mexico, S.A. de C.V.	4.58
Hagglunds Ltd.	4.58
Hino Motors Ltd.	4.58
JTEKT Corporation (formerly known as Koyo Seiko Co., Ltd.)	4.58
Kongskilde Limited	4.58
Mazda Motor Corporation	4.58
Mori Seiki Co., Ltd.	0.65
Nachi-Fujikoshi Corporation	4.58
Nissan Motor Company, Ltd.	4.58
NSK Japan	2.79
NTN Corporation and NTN Kongo Corporation	6.37
Perkins Engines Company Limited	4.58
Volkswagen AG	4.58
Volkswagen Zubehor GmbH	4.58
Yamazaki Mazak Trading Corporation	4.58

UNITED KINGDOM

<u>Company</u>	<u>Rate (percent)</u>
Alcatel Vacuum Technology	6.47
Bosch Rexroth Ltd.	6.47
Caterpillar S.A.R.L.	6.47
Caterpillar Group Services S.A.	6.47
Caterpillar of Australia Pty Ltd.	6.47

Caterpillar Overseas S.A.R.L.	6.47
Caterpillar Marine Power UK	6.47
NSK UK	6.47
Perkins Engines Company Ltd.	6.47
SKF (U.K.) Limited and SKF Aeroengine Bearings U.K.	6.47

This redetermination is pursuant to the remand order of the CIT in *The Timken Company v. United States*, Court No. 14-00155, Slip Op. 15-72 (CIT July 8, 2015).



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

8 OCTOBER 2015
Date