

**Before the United States Department of Commerce
International Trade Administration
Enforcement and Compliance**

**COMMENTS OF THE VIETNAM ASSOCIATION OF SEAFOOD EXPORTERS AND
PRODUCERS**

Differential Pricing Analysis: Request for Comments

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June 23, 2014

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INTRODUCTION

These comments are submitted on behalf of the Vietnam Association of Seafood Exporters and Processors (VASEP) and its member companies exporting frozen warmwater shrimp to the United States to address the issue of the Department's "differential pricing" analysis in response to the request for comments of May 9, 2001 (79 Fed.Reg.26720). This submission complements the Case Brief on behalf of the Minh Phu Group of May 24, 2014 submitted in the 8th Administrative Review of *Frozen Warmwater Shrimp from Vietnam*. The Case Brief is provided as Attachment 1 to these comments. Pages 1-36 of the Case Brief address the issues raised by the Department's "differential pricing" analysis. We urge the Department to read the instant comments in conjunction with these earlier comments to ensure a full understanding of the unlawful nature of the Department's differential pricing analysis as currently applied. We do not repeat those comments in this current submission but incorporate them by reference and expect them to be fully considered by the Department in reviewing its practice of using Cohen's d to determine differential pricing. In this submission, VASEP seeks only to highlight reasons why the Department's differential pricing analysis as currently applied is contrary to U.S. law.

I. COHEN'S D IS NOT A PROPER TEST OF DIFFERENTIAL PRICING, AT LEAST NOT IN THE CONTEXT OF SECTION 777A(D)(B) OF THE LAW WHICH REQUIRES THAT PRICES "DIFFER SIGNIFICANTLY AMONG PURCHASERS, REGIONS, OR PERIODS OF TIME"

While for certain purposes Cohen's d may provide a statistically sound measure of the differences between a primary group and a subsidiary group or between two groups, this will depend on context of what is being measured. While Cohen's d thresholds for interpreting effect

size may be useful in some contexts, it is not so in all contexts. Writing about Cohen's "large" threshold of 0.8 effect size, one author has commented as follows:

These thresholds are simple to grasp and have arguably achieved conventional status. Yet their use in informing judgments about research results is controversial. Noted scholars such as Gene Glass, one of the developers of meta-analysis, have vigorously argued against classifying effects into "t-shirt sizes" of small, medium and large:

There is no wisdom whatsoever in attempting to associate regions of the effect size metric with descriptive adjectives such as "small," "moderate," "large," and the like. Dissociated from a context of decision and comparative value, there is little inherent value to an effect size of 3.5 or .2. Depending on what benefits can be achieved at what cost, an effect size of 2.0 might be "poor" and one of .1 might be "good." (Glass et al. 1981, p.104)

The temptation to plug in a result and whack out a ready-made interpretation based on an arbitrary benchmark may hinder the researcher from thinking about what the results really mean. Cohen himself was not unaware of the "many dangers" associated with benchmarking effect sizes, noting that the conventions were devised "with much diffidence, qualifications, and invitations not to employ them if possible" (1988, pp.12, 532). A similar warning is made here: excessive use of the Result Whacker is bad for your health!

Ideally scholars will interpret the substantive significance of their research results by grounding them in a meaningful context or by assessing their contribution to knowledge. When this is problematic, Cohen's benchmarks may serve as a last resort. The fact that they are used at all – given that they have no *raison d'être* beyond Cohen's own judgment – speaks volumes about the inherent difficulties researchers have in drawing conclusions about the real world significance of their results.¹

The applications of Cohen's benchmarks without further analysis can lead to misinterpretations about the underlying data and its significance. Cohen's benchmarks in fact "have no *raison d'être* beyond Cohen's own judgment" and even Cohen was aware of the "many dangers" associated with benchmarking effect sizes." Thus, as an initial matter, the Department must justify its use of Cohen's *d* to measure whether the export prices differ significantly among purchasers, regions or periods of time and its use of the 0.8 designation of "large" in applying Cohen's *d*. It is our contention that Cohen's *d* does not measure whether

¹ Ellis, Paul D., Thresholds for Interpreting Effect Sizes, http://www.polyu.edu.hk/mm/effectsizefaqs/thresholds_for_interpreting_effect_sizes2.html

prices differ significantly in real terms so as to satisfy the requirements of the law necessary for the Department to depart from an average-to-average or transaction-to-transaction price comparison methodology. This is illustrated by the following examples:

	Case1		Case2		Case3	
	Test	Base	Test	Base	Test	Base
	6.00	7.00	16.00	17.00	116.00	117.00
	6.00	7.00	16.00	17.00	116.00	117.00
	7.00	7.00	17.00	17.00	117.00	117.00
	7.00	7.00	17.00	17.00	117.00	117.00
Mean	6.5	7	16.5	17	116.5	117
Pooled Stan. Dev.	0.57735		0.57735		0.57735	
Percent Difference In Means	7.1%		2.9%		0.4%	
Cohen's	PASS	-0.866	PASS	-0.866	PASS	-0.866

While all three cases pass Cohen's d at the 0.8 "large" threshold being applied by the Department, in fact none can be deemed to be large in practical terms. Indeed, the above demonstrates the fatal weakness of relying on Cohen's d to determine whether prices differ significantly among purchasers, regions or periods of time as required by the statute in order to apply the exception of section 777A(d)(1)(B). *Cohen's d focuses on the differences between the test and base group without regard to those differences relative to the absolute underlying values. In so doing, Cohen's d does not take into account the extent to which prices on an absolute level differ from each other so as to be deemed to "differ significantly" as required by the statute.*

Indeed, the Department has not even attempted to address the extent to which the application of a test which finds prices grouped anywhere from less than 1% to less than 10% of

each other can be deemed to meet the statutory requirement that the prices “differ significantly” by customer, time period, or region. Furthermore, while it might be possible to cure the defects in using Cohen’s d by raising the 0.8 threshold, this still would not take into account the magnitude of the differences in prices relative to the actual prices. In other words, the test would still rely upon only the differences relative to each other and not the absolute level of prices relative to those differences.

II. IF THE DEPARTMENT CONTINUES ITS USE, COHEN’S D SHOULD BE A SUPPLEMENTARY TEST NOT THE PRIMARY TEST OF DIFFERENTIAL PRICING

In view of the limited usefulness of Cohen’s d in identifying differential pricing, the Department should either abandon Cohen’s d as the test for determining the existence of differential pricing or supplement Cohen’s d with an additional test which in fact does identify differential pricing which is “significant.” There is no justification for applying a test which does not determine the existence of anything other than the extent to which prices within a particular base or test group in effect differ from the mean measured against the standard deviation. Given the deficiencies in Cohen’s d in identifying differential pricing which is significant in either common sense terms or relative to statistical significance, the Department may wish to “go back to the drawing board” and develop a methodology which is consistent with the statutory requirements. In the interim, however, the Department cannot use an unlawful test to determine whether or not differential pricing exists. Given that the application of an average-to-transaction comparison is an exception to the norm, until and unless the Department devises a valid test for determining differential pricing and fully explains how the test meets the statutory requirements, the Department should shift the burden of demonstrating the existence of differential pricing to petitioners and require an allegation of differential pricing supported by an

explanation of the methodology used by petitioner and of how that methodology measures significance in a manner consistent with the statute.

III. TO THE EXTENT THAT THE DEPARTMENT CONTINUES TO USE COHEN'S D AS PART OF ANY REVISED METHODOLOGY TO DETERMINE DIFFERENTIAL PRICING, IT SHOULD MAKE SIGNIFICANT CHANGES IN ITS METHOD OF APPLICATION

There are at least three changes which must be made in the application of Cohen's d if it remains a part of the test of differential pricing.

First, the base group against which a particular customer, region or time period is measured must include all of the sales in a particular CONNUM, not all sales in the CONNUM minus the sales to the particular customer, region or time period. The current methodology used by the Department does not measure all prices against the same base group, but changes the base group for each customer, region or time period being measured. The question being examined is not whether prices of one group differ from the prices of another group, but rather whether the prices of one group differ from the prices of the entire group. The current methodology yields the anomalous result that all prices within a particular CONNUM can be differentially priced as illustrated in the discussion in Attachment 1. Such a conclusion is misleading at best and flat out wrong at worst. What is being examined is whether the use of the average price for a CONNUM masks differential pricing and, therefore, dumping. As such, the starting point (or base comparison group), must be that group against which we are testing (the particular customer, time period or region) for the existence of differential pricing in a particular subgroup. It is the average of the entire CONNUM not a portion of the particular CONNUM exclusive of the test group that is purportedly masking the differential pricing and dumping and, therefore, this average should be used as the base group for identifying the existence of differential pricing.

Second, the Department should be using a one tailed not a two tailed test which identifies only sales below the 0.8 Cohen's d threshold as differentially priced. In examining this issue the Department must recognize that in any particular CONNUM only those sales that are differentially priced below the 0.8 threshold can result in dumping that is being masked. Given that the purpose of the test is to determine whether dumping is being masked by using the average-to-average comparison, this purpose is only served by identifying those sales within the CONNUM which are potentially masked, i.e. those below the 0.8 threshold. The fact that differentially priced sales above the 0.8 threshold may contribute to the masking of dumping is: (1) only relevant if there are sales below the 0.8 threshold; and (2) already accounted for by the effect those differentially priced sales above the 0.8 threshold raise the average.

Third, the Department should establish a threshold number of transactions in a given CONNUM which makes the result of the application of Cohen's d a valid result. Applying Cohen's d is a meaningless exercise if the number of sales in a given CONNUM is very small. It is generally recognized in statistics that the reliability of the results will vary substantially depending on the number of data points being used in the application of any given test. Indeed, the t-Test uses a range of threshold from 1.96 standard deviations to as many as 12.706 standard deviations in its application depending on the degree of freedom (*df*) allowed for a given number of data points.² The degree of freedom varies based on the number of data points. Thus, the Department should alter the threshold for passing Cohen's d based on the number of data points or ignore the results of Cohen's d where there are an insufficient number of data points to make the results statistically reliable.

Fourth, the Department must establish a threshold which is based on something other than an arbitrary 0.8. While the use of 0.8 is arguably a convention, Cohen and others have

² See, <http://ichthyosapiens.com/School/Statistics/ttable.jpg>.

warned against its arbitrary application to determine “large.” The Department must determine based on the objectives of the application of Cohen’s d what is “large” in the context of differential pricing and explain the basis of its conclusion. Absent such an explanation, the results of the application of Cohen’s d are nothing short of arbitrary.

IV. APPLICATION OF STUDENT’S T-TEST IS A POSSIBLE APPROACH TO DETERMINING THE EXISTENCE OF DIFFERENTIAL PRICING

The t-Test and Cohen’s d both suffer from the fact that the differences being measured are measured against some standard deviation rather than against the absolute level of prices. This is illustrated by the examples in Section I above. This, in turn, means that what might be a significant difference under either test may not be a significant difference in common sense terms. Significance in common sense terms may also vary depending on a particular industry and the normal pricing practices within that particular industry (e.g. commodity prices behave very differently from consumer product prices). Nevertheless, until another methodology is developed which might measure differences in common sense terms, it is defensible to make a determination based on measures of statistical significance such as the t-Test. The combination of requiring differentially priced sales to pass both Cohen’s d and the t-Test would at least introduce some recognized measure of statistical significance, if not common sense significance, into the determination of the existence of differential pricing. Consistent with the comments in Section III above, this should be a one tailed test. Consistent with the normal application of the t-Test, the threshold for determining differential pricing should increase from the normal 1.96 based on smaller sample sizes. While adding the t-Test to its methodology for determining differential pricing does not solve all of the problems with the current methodology of using Cohen’s d by itself, it at least provides a sounder basis for any underlying determination of

differential pricing and introduces the statutorily required determination of “significance” into the methodology, something which Cohen’s d does not do.

V. THE DEPARTMENT SHOULD ONLY APPLY A DIFFERENTIAL PRICING REMEDY TO THOSE SALES WHICH ARE DIFFERENTIALLY PRICED BELOW THE THRESHOLDS USED IN THE TESTS BEING APPLIED

Under current practice, the Department applies the relevant test and then applies 33% and 66% cut-offs for determining whether none, some, or all of the subject merchandise will be subject to its differential pricing remedy. There is no justification for these arbitrary cut-offs and no legal basis to apply a differential pricing remedy to any sales other than those sales affected by the differential pricing. If the average-to-average comparison for a particular CONNUM is not affected by differential pricing (i.e. there is no finding that sales are priced below the thresholds required to find differential pricing), then differential pricing by definition has not had the effect of masking any dumping. In this situation, it cannot be argued that the “differences cannot be taken into account” using the average-to-average comparison as required by the statute. The statutory exception only applies when the average-to-average or transaction-to-transaction methodology cannot take into account the significant differences in prices; it cannot, therefore, apply when those significant differences do not exist.

VI. THE USE OF ZEROING AS THE REMEDY FOR DIFFERENTIAL PRICING VIOLATES U.S. WTO OBLIGATIONS

The Department has adopted a practice whereby the existence of differential pricing is remedied by applying the WTO inconsistent practice of zeroing. While the exception for differential pricing (or previously targeted dumping), does allow the Department to apply a different remedy, this different remedy is only permitted to the extent of applying a average-to-transaction comparison in determining the margins of dumping. This exception allows the

Department to determine margins of dumping for a select group of sales (those affected by significant differences in prices), but does not permit the Department to ignore the WTO jurisprudence that the determination of dumping must be made with respect to the product as a whole and that zeroing is inconsistent with determination with respect to determining dumping on the product as a whole. While alternative remedies may be permitted under this provision, such alternative remedies cannot be interpreted as permitting zeroing.

CONCLUSION

The Department's differential pricing test is only the most recent in a series of tests (previously called targeted dumping) to attempt to implement the exception to the normal methods of comparison in determining the existence of dumping and its magnitude. While all of the tests to date have been flawed, the differential pricing test is perhaps the most extreme example of a test which does not determine what it is supposed to determine, namely the existence of significant price difference among customers, regions or time periods. Continued use of this test in its current form is unreasonable and will only contribute to continuing litigation over the issue of how to address the exception for significant price differences. Given the problems the Department has had coming up with a test which accurately and reasonably determines when there are significant price differences among customers, regions and time periods, the Department should immediately halt its practice of applying a flawed test in each and every investigation and review. To the extent that there is a case to be made for the existence of differential pricing, this case should be made by petitioners not the Department.

In addition, the Department should not apply any test for differential pricing until it can demonstrate that the test in fact is consistent with the terms of the exception to the statute. The Department should not be experimenting when those experiments have substantial consequences

and will only lead to recurring litigation. Nor should the Department be experimenting by trying to develop an appropriate test on a case-by-case basis. One approach is to return to the broad principles of the *Withdrawn Regulation* on targeted dumping which at least establishes some protection against arbitrary application of the statutory exception. A second approach would be to seek public comments on any test that the Department proposes to use prior to its application, again to avoid arbitrary application. A third approach would be to retain a group of experts (statisticians, econometricians) to devise alternative tests which meet the statutory criteria, to seek comments on the alternative tests, and to implement the tests based on the comments received.

In any event, the Department should refrain from applying the exception for differential pricing (or targeted dumping) until such time as it has developed a test which is neither arbitrary nor unreasonable.

ATTACHMENT 1

**Comments of the Vietnam Association of Seafood Exporters and Producers on
Differential Pricing**

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Case No.: A-552-802

No. Pages: 56

*Status: Administrative Review
2/1/12-1/31/13*

*This proceeding is conducted by Import
Administration, Office of AD/CVD
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CASE BRIEF

Frozen Warmwater Shrimp from Vietnam: 8th Administrative Review

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I. INTRODUCTION

This case brief is submitted on behalf of mandatory respondent Minh Phu Group (“MPG”) to address certain aspects of the *Preliminary Results* of the eighth administrative review of the antidumping order on frozen warmwater shrimp from Vietnam.¹ Our arguments are set forth below.

II. COMMERCE MUST CHANGE ITS DIFFERENTIAL PRICING ANALYSIS FOR THE FINAL RESULTS

In its preliminary determination the Department applied the “differential pricing” methodology previously used in various final determinations in investigations and reviews beginning in May, 2013. This differential pricing methodology is described in detail in the Department’s “Differential Pricing Analysis: Request for Comments”, 79 F.R. 26720 (May 9, 2014). The mandatory respondents in this review submit that the Department’s preliminary conclusion that both mandatory respondents had engaged in differential pricing during the period of review is premised on an unlawful and unreasonable analysis. Respondents urge the Department to either abandon its differential pricing methodology and revert to the withdrawn regulatory provisions regarding targeted dumping or to make modifications in the application of its differential pricing methodology which would make it a more reasonable and statistically sound measure of the existence of differential pricing in the antidumping context. While any one of the defects discussed below may render the method of application of Cohen’s d unreasonable, in combination they render any findings based on Cohen’s d unusable. Respondents recognize that giving meaning to the statutory language in the case of targeted dumping and/or differential pricing is a gap filling exercise because the statute is silent on how this determination is to be made. The Department must, nevertheless, adopt an approach which is reasonable in the context

¹ *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Preliminary Results of Antidumping Duty Administrative Review*, 79 FR 15310 (March 19, 2014) (“*Preliminary Results*”).

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of the objectives of the provision, reasonable in the broader context of the statute and statistically sound in terms of measuring whether there are patterns of pricing which differ significantly among customers, regions or time periods. As demonstrated below, the gap filling by the Department is not reasonable in light of the objectives of the provision on targeted dumping, is not reasonable in the broader context of the statute, and is not statistically sound.

A. The Department's Justification for Withdrawing the Withdrawn Regulation Was Inadequate and Remains Inadequate Notwithstanding the Non-Application of Previously Withdrawn Provisions Governing Targeted Dumping in Antidumping Investigations: Final Rule

The *Notice of Non-Application of Previously Withdrawn Provisions Governing Targeted Dumping in Antidumping Investigations: Final Rule*² (*Notice of Non-Application*) of the *Withdrawal of Regulatory Provisions Regarding Targeted Dumping for Less Than Fair Value Investigations*³ (*Withdrawn Regulation*) resulted from a finding by the U.S. Court of International Trade in *Gold East*⁴ in which the Court found that the *Withdrawn Regulation* remained operative because it had not been properly withdrawn by the Department.⁵ The Court cited to the relevant U.S. law, the Administrative Procedure Act, which requires the agency withdrawing the regulation to provide notice of its intent to withdraw the regulation, including a reasoned analysis of why the regulation is being withdrawn, and an opportunity for parties to comment on the proposed action.

Before turning to the reasons given by the Department for the *Notice of Non-Application*, we would like to remind the Department of the reasons that it gave for adopting the *Withdrawn Regulation* in 1997. In adopting the *Withdrawn Regulation* the Department cited the need for

² 79 Fed. Reg. 22371 (Dep't of Commerce April 22, 2014)

³ 73 Fed. Reg. 74930 (Dep't of Commerce December 10, 2008)

⁴ *Gold East (Jiangsu) Paper v. United States*, (Ct. No. 10-00371, Slip Op. 13-74 (June 17, 2013).

⁵ *Id.*

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“predictability and transparency”⁶ in support of using statistically valid techniques in determining the existence of targeted dumping and avoiding an “unreasonable and punitive”⁷ approach in limiting the application of the alternative methodology to those sales found to constitute the targeted dumping. In other words, the Department believed that the *Withdrawn Regulation* was essential to ensuring actions which were predictable, transparent, reasonable and remedial rather than punitive.

When the Department determined to withdraw the *Withdrawn Regulation* a decade after its promulgation, it chose not to address any of the rationales for promulgating the regulation originally. Rather, it simply stated that the *Withdrawn Regulation* “may have established thresholds or other criteria which may have prevented the use of this comparison methodology to unmask dumping.”⁸ Did the Department’s concerns about predictability, transparency, reasonableness, and avoidance of punitive actions somehow disappear? Why did the Department not explain how the *Withdrawn Regulation* may have affected its ability to unmask dumping? In withdrawing the *Withdrawn Regulation* was the Department indicating that it would in the future base its determinations of the existence of targeted dumping on techniques which are not statistically valid? Did the Department find statutory authority to apply the average-to-transaction methodology in a punitive manner? While addressing none of these issues in withdrawing the *Withdrawn Regulation*, the Department also failed to explain how the *Withdrawn Regulation* may have been preventing it from the unmasking of dumping (the only rationale offered for withdrawing the *Withdrawn Regulation*).

⁶ 62 Fed. Reg. at 27347 (Dep’t of Commerce, May 19, 1997).

⁷ 62 Fed. Reg. 27375 (Dep’t of Commerce, May 19, 1997).

⁸ *Notice of Non-Application* at footnote 2 *supra*.

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Notwithstanding the inadequacy of the reasons articulated originally for the withdrawal of the *Withdrawn Regulation*, the Department has articulated no additional reasons to support its current *Notice of Non-Application*. Having had five years' experience without the supposed constraints of the *Withdrawn Regulation*, the Department appears to be no more advanced in its ability to apply the targeted dumping provision of the law than it was when it decided to withdraw the *Withdrawn Regulation*. Given this history, as a practical matter the Department has offered no indication that it knows how to apply the targeted dumping provisions of the antidumping law with or without the *Withdrawn Regulation*. In our view, this does not provide a basis to proceed with the non-application of the *Withdrawn Regulation*. Indeed, until and unless the Department can provide a reason why the *Withdrawn Regulation* constrains its ability to unmask a certain form of undefined dumping known as targeted dumping, it does not appear that the proposed *Notice of Non-Application* is sustainable or justifiable, much less consistent with the requirements of the Administrative Procedures Act. For this reason, respondents believe that the Department must continue to apply the *Withdrawn Regulation* until such time as it has provided a reasoned analysis of why the regulation has been withdrawn..

B. The Department Must Perform Its Final Targeted Dumping (Differential Pricing) Analysis In A Manner That Is Consistent With The Statute And True To the Department's Stated Method Of Analysis

Whether or not the Department must adhere to its *Withdrawn Regulation* on targeted dumping and adopt "standard and appropriate statistical techniques" for its targeted dumping analysis, the Department must still reach its final results in compliance with the underlying statute and consistent with the Department's own description of the proper method of analysis. The Department's analysis in the preliminary results failed to do so. Instead the Department's new methodology for determining the existence of targeted dumping suffers several fatal flaws.

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1. The Department incorrectly considers the “Cohen’s d test” a meaningful measure of the difference between two means while ignoring the “t-test” which is actually the recognized measure of statistical significance

In its Preliminary Determination the Department has continued applying its most recent test for determining differential pricing (the replacement term for targeted dumping) first applied in *Xanthan Gum*⁹ which applies “Cohen’s d” as the measure of the existence of differential pricing. The Department characterizes its ongoing differential pricing analysis as a “statistically sound methodology,” and characterizes it as a “generally recognized statistical measure.”¹⁰ Yet, at the same time the Department ignores the t-test not because of any defect in that test but because the Department is not required under the statute to find *statistical* significance just significance. While Cohen’s d is a recognized technique to standardize the measurement of effect size, it was never intended to be applied by itself as a stand-alone test. Rather Cohen’s d was always intended to compliment, not replace, more conventional statistical techniques such as t-tests or other measures of significance. As such, the Department’s refusal to recognize the t-test and the importance of *statistical* significance is troubling.

First, as discussed in detail in section 4 below, because Cohen’s d is not a test of statistical significance, it can result in findings of “large” differences between two means which cannot be considered significant in any meaningful sense of the term significant. Section 4 contains an example where Cohen’s d finds a “large” difference in the means where the actual difference in prices being analyzed in the two groups is less than 2%.

Second, the t-test or a combination of the t-test and Cohen’s d provide a more robust, and, therefore, better, measure of whether the prices differ significantly. It is unreasonable for

⁹ *Xanthan Gum from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 Fed. Reg. 33351 (June 4, 2013) and issues and decision memorandum at comment 3.

¹⁰ Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review at 15-19.

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the Department to use one measure which has obvious weaknesses in determining whether the differences in prices are significant when a more reliable measure is available. To date, the Department has simply explained that it is not required to find statistical significance without addressing the fact that the t-test by itself or in combination with Cohen's d yields a more reliable result. Needless to say, a more reliable result is also a more statistically sound result.

Third, by ignoring the t-test, the Department is never evaluating the extent to which the "difference" found is meaningful in any sense of the word, statistically or otherwise.

Thus, while the argument as characterized by the Department is over whether it is required to find statistical significance, that is not really the issue. The issue is what is the best and most reliable way to identify a significant difference in prices which is meaningful in terms of the purpose of the targeted dumping provision of the statute. The targeted dumping provision, as the Department has stated, is in the statute to allow the Department to determine whether use of the average-to-average comparison is masking or hiding dumping in situations in which prices differ significantly by time period, region, or customer. Cohen's d properly applied in this context is a useful tool. However, Cohen's d does not attempt to measure the reliability of the result. This is the function of the t-test. Because the reliability of the result is dependent and will differ with the size of the populations being examined (i.e. a small population size is less reliable than a large population size), without applying the t-test the Department could be basing its findings of significant differences in prices on results which, simply put, are not reliable or in which one can have little confidence.

The Cohen's d test is not an accepted measure of statistical significance, and no commentator would consider it to be a measure of statistical significance. Rather than test statistical significance – in other words, testing whether the conclusion being drawn is likely, or

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simply reflects the variance or random “noise” in the data – the Cohen’s d test simply measures and standardizes the size of a difference between two mean values. That is what the Department means when it explains the Cohen’s d test is a “measure of the extent of the difference between the mean of a test group and the mean of a comparison group.”¹¹ It measures “the extent of the difference,” and is a common measure of the so-called “effect size”¹² and nothing more notwithstanding the Department’s attempt to cloak this measure with more meaning than it has. Cohen’s d test is unaffected by any measure of whether its results are reliable.

One purpose of the Cohen’s d test is to measure the size of the difference. In other words, this statistic tries to address whether the difference between two mean values is “small” or “large.” Such comparisons depend inherently on having some convention on “small” or “large” relative to what is being measured. The Cohen’s d test simply adopts the convention that “small” or “large” can be measured relative to the standard deviation of the population being studied (or an estimate of that standard deviation for the data being studied). Thus, to say that the Cohen’s d test results in a “large” difference is simply to note that the difference between the two mean values is large relative to the standard deviation (i.e. the spread of prices in each population). This does not mean it is large in any real world sense.

There is nothing magical about the three thresholds of “small,” “medium,” or “large.” Contrary to the Department’s suggestion, these are not thresholds defined for any substantive purpose. Rather, they are simply arbitrary conventions. Cohen himself acknowledged the

¹¹ *Differential Pricing Analysis; Request for Comments*, 79 Fed. Reg. 26720, 26722 (Dep’t of Commerce May 9, 2014).

¹² See generally Coe, “It’s the Effects Size, Stupid: What effect size is and why it is important,” Paper presented at the Annual Conference of British Educational Research Association (September 2002). Available at: <http://www.leeds.ac.uk/educol/documents/00002182.htm>

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“danger of using terms like ‘small’, ‘medium’, and ‘large’ out of context.”¹³ As explained by

Professor David Lane of Rice University:

It is natural to ask what constitutes a large effect. Although there is no objective answer to this question, the guidelines suggested by Cohen (1988) stating that an effect size of 0.2 is a small effect, an effect size of 0.5 is a medium effect, and an effect size of 0.8 is a large effect have been widely adopted. Based on these guidelines, the effect size of 0.87 is a large effect.

It should be noted, however, that these guidelines are somewhat arbitrary and have not been universally accepted. For example, Length (2001) argued that other important factors are ignored if Cohen's definition of effect size is used to choose a sample size to achieve a given level of power.¹⁴

There is thus no reason to consider a difference at 0.8 as “large” other than as an arbitrary convention.

Another way to see the arbitrariness of this characterization of a difference as “large” is to realize a Cohen's *d* test statistic of 0.8 means the difference in means is actually smaller than the standard deviation to which the difference is being compared. The ratio would have to be larger than 1.0 to mean the difference was larger than the standard deviation. Put another way, the cut off at 0.8 is a lower threshold than the old “one-standard deviation” pattern test used by Commerce, which itself has been criticized as too strict (low) a standard. The cut off at 0.8 means that for a normal distribution, 44 percent of the transactions would fall outside the cut-off. Intuitively, it is hard to see how something which happens almost half of the time is in any way unusual, much less “targeted” or “hidden” in the context of dumping. Such a low threshold is simply a way to find targeting where none truly exists, or in statistical terms this creates “error of the first kind” – a false negative.

¹³ See Coe, *supra*, at page 3.

¹⁴ David Lane et al, Chapter 19 “Effect Size”, Section 2 “Difference Between Two Means,” (emphasis added), http://onlinestatbook.com/2/effect_size/two_means.html. David Lane led the project team that developed this on-line text book, and is an associate professor of statistics at Rice University.

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Although these conventions are arbitrary, the real purpose of such a statistic is to standardize the size of the difference. As Professor Lane also explains:

When the scale of a dependent variable is not inherently meaningful, it is common to consider the difference between means in standardized units. That is, effect size is measured in terms of the number of standard deviations the means differ by.”¹⁵

This standardization is useful to provide some context to a variable for which the scale itself is not meaningful. Moreover, such standardization is critical when trying to compare the size of an effect across different studies. Thus effect sizes (as measured by Cohen’s *d*) “provide a standard metric for comparing across studies and thus are critical to meta-analysis ¹⁶{summarizing multiple studies on the same topic}.”

Although it is certainly reasonable for the Department to want to have such a standardized measure of the degree of difference between mean values of its test group and comparison group, the Department needs to recognize the inherent limitations of this particular statistic. The convention on “large” is arbitrary. Moreover, the statistic does not in any way even try to address the more important task of distinguishing the true difference between the means and the statistical “noise” inherent in any set of data that varies. To say that the difference is “large” does not mean that the difference is statistically significant or even significant at all. The Cohen’s *d* test might measure a difference that is greater than the convention of 0.8 as “large,” but that measured difference might be completely unreliable and merely a construct of the small sample size and random noise in the data.

¹⁵ See David Lane et al, Chapter 19 “Effect Size”, Section 2 “Difference Between Two Means,” (emphasis added), http://onlinestatbook.com/2/effect_size/two_means.html.

¹⁶ http://en.wikiversity.org/wiki/Effect_size. See also Coe, *supra*, at page 5 (noting benefit of standardized effects size for combining results from different studies). Indeed, that is one of the primary purposes of Cohen’s *d*, a statistic that is “widely used in meta-analysis.” (http://en.wikiversity.org/wiki/Cohen%27s_d.)

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The Department makes its willingness to consider completely unreliable conclusions in its application of Cohen's *d* obvious when it applies it whenever it has "at least two observations" in its test and comparison groups. It is true that one can calculate a Cohen's *d* test when there are two observations in each group. But that is just another way of saying that whenever you have two numbers, you can calculate the mean and the standard deviation of those two numbers. Having at least two observations in each of two groups does not mean one can say anything meaningful, either statistically or in common sense terms, about the difference between the means of those two groups.

The Cohen's *d* test is therefore not a substitute for the more traditional and widely recognized *t*-test for determining whether the difference between two mean values is truly a statistically significant difference.¹⁷ The Cohen's *d* test is not part of every standard introduction to statistical analysis because it is not a test of statistical significance. Indeed, notwithstanding efforts to report effects size more frequently, commentators have complained that these issues "are seldom taught in standard research methods courses."¹⁸ The Cohen's *d* test serves a narrower and more specialized purpose to standardize a measure of the size of a difference. In contrast, the *t*-test is taught in every introductory statistics course, because the *t*-test is in fact the basic way to measure whether the difference between two means is in fact a meaningful difference ("For differences between the means of two groups, this *p*-value {the probability of the difference between the two means being a number larger than zero} would normally be calculated from a 't-test.'")¹⁹ – that is, a difference that is larger than zero and can be distinguished from the underlying noise in the data.

¹⁷ Coe, *supra*, at page 5 (discussing relationship of effect size and statistical significance)

¹⁸ Coe, *supra*, at page 1.

¹⁹ Coe, *supra*, at page 5.

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Since the t-test and the Cohen's d test address different issues, the Department should report both, and find targeted dumping (or differential pricing) only when both standards have been met. Applying the t-test would allow the Department to determine whether the difference being observed is real, and not just a feature of the random variation in the data itself. Checking the Cohen's d test would then allow the Department to confirm that the difference is large enough to be considered evidence of possible targeted dumping. Indeed, this point has been stressed in discussions of how the Cohen's d test serves as a compliment to, but not a replacement for, traditional tests of statistical significance. "Effect sizes are a useful descriptive statistic and should always accompany inferential tests."²⁰ Reporting either one without the other is to ignore important information. The point is that a measured difference should be both statistically significant (the Department should be confident the difference is real and not an illusion created by the data variability) and economically meaningful (the Department should be confident the difference is large in some meaningful way relative to the data).

While the Department has identified a useful tool that might complement other analysis using the traditional t-test to measure whether the difference between the two mean values is real or not, the Department has not found a proper substitute for conducting a t-test to determine whether the differences being observed are in fact real, and not artificial constructs of the random variations in the data. When alternatives are available to the Department to improve the accuracy and meaning of its findings of significant differences in prices, it is unreasonable for the Department to ignore these alternatives.

²⁰ http://en.wikiversity.org/wiki/Effect_size

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2. The Department should disaggregate the results of application of Cohen's d and make separate and distinct determinations for customer, region, and period.

The statute permits the use of the alternative average-to-transaction methodology in situations in which it is demonstrated that prices differ significantly “among purchasers, regions, or time periods.” In conducting this analysis, the Department does not separately determine whether prices differ significantly by purchaser, by region, or by time period. Rather, the Department aggregates the results of its application of Cohen's d for all three into a single amount and then uses this amount (i.e., the total or aggregate of all three bases allowing for use of the alternative comparison methodology) to determine whether the thresholds the Department has established for application of the alternative methodology are met. This methodology allows the Department to include in its ratio test, for example, sales to customers which pass Cohen's d, even if such sales are trivial, simply because when added to sales by region and time period which pass Cohen's d they are included in the single thresholds (33% and 66%) used to determine whether differential pricing or targeted dumping is occurring. Like the use of both the sales that pass Cohen's d above and below the mean (discussed in the following section), this methodology unreasonable incorporates into the analysis sales which should be excluded from the analysis.

In the instant investigation, the only one of the three fact situations identified as allowing use of the alternative methodology for both mandatory respondents which meets the Department's 33% test is time period. If sales that pass Cohen's d by time period are separated from sales that pass by region and by customer, the combined results of Cohen's d for region and customer constitute only 9% and 27% respectively of the sales of Minh Phu and Stapimex.²¹ Broken down, sales by customer are 32% and 34% for Minh Phu and Stapimex respectively and

²¹ These percentages are determined using the Department's differential pricing program.

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by region 30% and 20%. ²²Using the Department's 33% cut off, neither Minh Phu nor Stapimex is engaged in targeted dumping on the basis of region. Each is at the margins of targeted dumping by customer. The only sales demonstrating a clear pattern of prices which differ significantly -- as defined by the Department's test -- for both respondents are sales by time period. Stapimex sales by customer are just above the 33% threshold and Minh Phu's are just below.

The differential pricing exercise being undertaken by the Department is intended to "unmask" hidden dumping. Ironically, in doing so the Department is *masking* the fact that sales are not differentially priced by region and only marginally differentially priced by customer. This is because when the Department uses an aggregate measure and does not examine customer, region, and time period separately, the results differ. In essence, it captures sales which are not differentially priced (i.e., above the 33% threshold) by ignoring the distinctions made in the statute between three distinct situations: (1) differentially priced sales by customer; (2) differentially priced sales by region; and (3) differentially priced sales by time period. We believe that the Department should conduct its analysis of each category of sales separately and then only add up the categories which individually meet the 33% threshold.

3. In applying Cohen's d, the Department incorrectly considers the absolute value of the difference, and not just positive differences that may suggest "targeting"

Cohen's d is a measure that can be used in a variety of circumstances, although we have not found any examples of it being used with respect to pricing differences. How the results are interpreted will necessarily depend on the objective of its application. Here the issue is whether a one-tailed (one direction only) or a two-tailed (both directions) test should be used. This is the

²² These percentages are determined using the Department's differential pricing program.

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issue when discussing whether the CONNUMs that passed the Cohen's d test passed due to prices above or below the 0.8 threshold or both. Put in the context of unmasking hidden dumping, the question is whether the Department needs to measure the extent to which there are significant differences both in the highest priced sales (i.e. those 0.8 above) and the lowest priced sales (i.e. those 0.8 below) or whether it is sufficient and more accurate to use a one-tailed test of just the lowest price sales. The potential consequences of passing the test are that a different methodology (average normal value compared to each transaction) will be used in determining the margin of dumping which will effectively neutralize the effects of high priced sales (i.e. sales at or above the mean) in raising the average price of a particular CONNUM and allow the low priced sales to be compared separately and individually to average normal value. Since the highest priced sales are already above the mean price, the margins on these sales will remain unchanged or even decline relative to the margins resulting from the average-to-average comparison because a value higher than the average price used in the normal dumping comparison is being compared with the average normal value. In contrast, the lowest priced sales are priced below the average price and will, therefore, experience an increase in the margin of dumping relative to the average-to-average comparison. In a dumping context, these are the sales that are affected by any change in methodology and are the only sales on which the dumping may be hidden as a result of the average-to-average comparison.

Although the Cohen's d might be part of a reasonable approach for analyzing possible targeted dumping, this statistic still needs to be applied properly. Instead, the Department ignores the very context of the analysis and improperly considers the absolute value of the difference, instead of considering only positive values of the Cohen's d test. In other words, the Department's methodology allows higher priced U.S. sales transactions to the alleged target (i.e.

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those above the 0.8 threshold) to provide evidence suggesting possible targeted dumping through lower priced U.S. sales (those below the 0.8 threshold). This approach makes absolutely no sense if, as the Department has stated with respect to both targeted dumping and differential pricing, the objective of the Department's tests are to find hidden dumping which is masked in an average-to-average comparison by the high prices which in such a comparison offset the magnitude of hidden dumping by low priced sales to particular customers or regions or during certain time periods. The hidden dumping is not the result of the high priced sales, but rather of the low priced sales.

Indeed, in applying Cohen's d the Department is already making the assumption that in certain situations (i.e., when the pattern of prices differ significantly) the high priced sales are hiding the dumping of the low priced sales. What the Department is attempting to measure using Cohen's d is whether there is a pattern of prices which differ significantly by customer, time or region such that the dumping of product at these prices is masked by the higher priced sales. .

Prior to application of Cohen's d, the Department's targeted dumping tests all focused only on the low prices. For example, in *Off-The-Road Tires from China* the Department stated:

To implement the statutory provisions on targeted dumping, the Department needs a definition of "pattern" because the statute requires that we identify a pattern of export prices. For this purpose, the Department defines "pattern" as prices that distinguish the alleged target from others and, further, that the prices are "low" on CONNUMs that account for at least 33 percent of sales to the alleged target.²³

Although as a matter of mathematics, a positive or negative number could be considered "large," the mathematics must be grounded in some context of what is being measured. The

²³ Issues and Decision Memorandum for the Antidumping Investigation of Certain New Pneumatic Off-the-Road Tires from the People's Republic of China (July 7, 2008) at71.

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context here is checking for evidence of possible targeted dumping – in other words, looking for evidence that U.S. prices to the alleged target are lower than might otherwise be expected (i.e., outside of a certain range) and, therefore, masked by use of average prices. It makes no sense to look at U.S. prices that are higher than the comparison group, and use those higher prices – no matter how much higher – as evidence that targeted dumping might be taking place. A higher price cannot possibly be evidence of targeted dumping because that means the targeted price is higher than the mean – precisely the opposite of the concern sought to be addressed by the targeted dumping provision of the law.

Indeed, the absurdity of this approach is even more extreme. Under the current SAS code, the Department would consider slightly higher U.S. prices as not providing evidence of a large difference. If the mean U.S. price is somewhat higher, and the Cohen's d test calculates at -0.6 – in other words, the mean of the U.S. prices is 60% of as standard deviation – the Department could find no evidence of a large difference. But if the mean U.S. prices to the alleged target are much higher – 120% higher than the standard deviation – all of a sudden now there is evidence of targeted dumping. The Cohen's d test would be -1.2 – minus because U.S. prices are higher -- and could turn into 1.2 after taking the absolute value. The 1.2 would be larger than 0.8, and the Department's methodology would consider that evidence of a large difference and include it in its evaluation of whether there is a pattern of prices which differ significantly such that they are masked by the offset resulting, in part, from the higher prices that the Department now includes in the determination of the existence of differential pricing.

Taken to its extreme, it is possible that only high priced sales of a particular CONNUM would pass the Cohen's d test at 0.8. In this situation there is no hidden dumping because there are no low prices passing the test. Yet, high priced sales that pass the test would become part of

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the value used to determine whether or not one of the thresholds (33% and 66%) for applying the differential pricing remedy, in this case zeroing, would be applied. In addition, these high priced sales would be considered targeted dumping for purposes of applying the alternative comparison methodology because they have been determined to be differentially priced. While the instant review is not this extreme case, it is close. A majority of the sales of both Minh Phu Group and Stapimex that pass the Cohen's d test pass on the high side not the low side. As shown in Attachment 1, 53 % and 52% respectively of Minh Phu and Stapimex sales passing the Cohen's d test are passing because they are high priced not low priced. The question is how these high priced sales are masking dumping of low priced sales for a particular CONNUM when there are no low priced sales that demonstrate a pattern of prices that are significantly different based on Cohen's d and, therefore, no potential dumping in this CONNUM hidden by the use of the average-to-average comparison? While the high priced sales may or may not be differentially priced, it is impossible to have dumping hidden by using the average-to-average methodology when there are no differentially priced low priced sales.

Use of a one tailed test is not unusual in applications such as Cohen's d or the t test. Whether a one or two tailed test is used depends on whether differences in both directions are relevant to the measurement being undertaken.²⁴ If differences in only one direction are relevant, then a one-tailed test should be used. Put differently, when testing a hypothesis, if the hypothesis does not or cannot stipulate the direction of the relationship between variables, a two-tailed or non-directional test is used. However, when the hypothesis stipulates the direction of the relationship between the variables, a one-tailed or directional test should be used. So the question is what is the Department testing?

²⁴ Stockburger, David W., Introductory Statistics: Concepts, Models and Applications, *One and Two-tailed t-Tests* at www.psychstat.missouristate.edu/introbook/sbk25m.htm.

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We would argue that the Department is testing whether the higher priced sales in the test group are hiding the dumping by the lowest (those passing Cohen's d below the mean) priced sales. The Department is not testing whether the highest (those passing Cohen's d above the mean) priced sales are hiding the dumping by the lowest price sales. Higher priced sales are all those sales that raise the value of the average or mean for purposes of the average-to-average comparison, that is those above the mean. The highest priced sales are a subset of the higher priced sales, a subset that includes only those that are above the mean and pass Cohen's d by 0,8. The lowest priced sales, of course, are only those that are below the mean and pass Cohen's d in the opposite direction.. The Department is not testing to determine the extent to which certain sales affect the mean by raising it, it is concerned with the mean and the extent to which use of the mean is masking dumping of the lowest priced sales. While the highest priced sales may contribute to raising the mean, that effect is already captured in the higher mean. Whether the sales that raise the mean do or do not pass Cohen's d is irrelevant as the concern is whether the mean itself no matter how constituted is hiding the dumping of the lowest priced sales. Thus, for example, if there were no sales above the mean that passed Cohen's d, there could still be hidden dumping if, using the Department's test, there were sufficient lower priced sales that passed Cohen's d below the 0.8 threshold.

Let's take an example, namely there are no prices below the mean that pass Cohen's d at 0.8 but there are prices above the mean that pass Cohen's d at 0.8. Based on the Department's definition of sales that constitute hidden or masked dumping (the prices of those sales passing Cohen's d below the 0.8 threshold), there are no sales which fall into the "hidden" or "masked" dumped category. In this instance, what is the purpose of putting this particular CONNUM in the "hidden" or "masked" dumping category when the Department's test does not find any sales

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on which hidden dumping was possible by virtue of using the average-to-average comparison.?

The purpose cannot be to unmask hidden dumping because there are no such sales in this situation where dumping was masked by use of the average-to-average comparison.

The Department has to date not provided any reasoned explanation either of why the definition of pattern of export prices used in the previous tests has been abandoned (i.e., why it has changed from a one tailed to a two tailed test) or how these highest prices now being included in identifying the existence of targeted dumping or differential pricing are relevant to the existence of hidden dumping. We agree that the statute does not require that the Department consider only lower priced sales in the differential pricing analysis. Nor does the statute require that the Department use both higher and lower priced sales. However, the Department must adopt a test that is reasonable in light of the purpose of the provision when filling the gaps left by the statutory language and that provides the most accurate result. While we agree that both high priced and low priced sales can contribute to a pattern of prices that differ significantly, the question is whether the highest priced sales (i.e. those that pass Cohen's d at 0.8 or above) should be included in the universe of sales used to measure the existence of differential pricing (i.e. the 33% and 66% tests). The fact that higher priced sales implicitly through the calculation of the weighted average price can affect the outcome is already accounted for in using the mean of the weighted average sales prices in the Cohen's d procedure. Thus, the effect of these highest price sales on masking dumping is already reflected in the use of the mean that includes these sales in the Cohen's d procedure. One can only have hidden dumping when there are sales below the Cohen's d threshold regardless of whether there are any sales above the Cohen's d threshold. This renders the inclusion of sales above the Cohen's d threshold a meaningless measure of whether there is targeted dumping or differential pricing.

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Therefore, the Department should adjust its methodology and use a one-tail or directional test in determining the potential existence of targeted dumping or differential pricing and that test should include only those sales that pass Cohen's d below the 0.8 threshold. Sales that pass Cohen's d above the 0.8 threshold are only relevant insofar as they raise the mean in the average-to-average comparison and their effect on the mean is already accounted for in the mean itself and should be ignored for purposes of determining the potential existence of targeted dumping or differential pricing.

4. The Department should use a higher Cohen's threshold than the 0.8 used in the preliminary results for determining "large"

Notwithstanding the warnings from Cohen himself about using 0.8 as a standard for determining "large" effect size, the Department has used this standard and has done so without any explanation of why a different standard should be used in applying Cohen's d than in applying prior tests or why 0.8 is "large" in the context of targeted dumping other than the fact that it is often used in other contexts. Like with the issue of a one-tailed or two-tailed analysis, the use of 0.8 instead of some other figure must have a rational basis related to what is being examined and for what purpose. While a 0.8 threshold may be appropriate in certain circumstances (the Department has never adequately explained why it is reasonable in the differential pricing context), it may be equally inappropriate in other circumstances. We would note in this regard that in previous tests for targeted dumping the Department has used one standard deviation which would correspond to a 1.0 threshold when applying Cohen's d ; meanwhile the normal t-test result is based on two standard deviations.

In statistics the standard deviation is used to measure the variation or dispersion from the average or mean. A low standard deviation indicates that the data points tend to be very close to

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the mean and a higher standard deviation indicates the data points are spread over a larger range. Using a normal distribution as Cohen's d assumes, one would expect 68.2% of the data points to be within one standard deviation (plus or minus) of the mean. Using this same normal distribution, one would expect 57.6% of the data points to be within plus or minus 0.8 standard deviations.²⁵ Thus, in a normal distribution prices would be expected to vary from the standard deviation with 42.4% being outside 0.8 standard deviations and 31.8% being outside of one standard deviation. If the standard deviation is being used to test for whether prices differ significantly, the question is at what point relative to the standard deviation do prices differ significantly?

Because the Cohen's d procedure is comparing two sets of data, and the relative spread of two sets of data, the difference in the spread of the data is slightly different than when one is examining only a single set of data. The Cohen's d result using 0.8 would show 47.4% of the data points fall outside the 0.8 band - slightly less than half. At 1.0 it would show 55.4% outside the band - slightly more than half. The question is whether or not the prices inside and outside the 0.8 or 1.0 bands can as a group be considered to be at prices that are significantly different from each other when they are almost equal in terms of frequency of occurrence and, therefore, likelihood. In particular, keeping in mind that the Department must find a "pattern of prices" that differ significantly, in the case of what is almost a 50-50 distribution it is difficult to argue that there is a pattern of any kind. Indeed, if the prices on both sides of the 0.8 and/or 1.0 are clustered close to the deviation, there would be no pattern of prices that differ significantly. There might be some random variations, but a random variation is not part of a pattern.

²⁵ All calculations of means, standard deviations, and distributions were done using Excel instructions.

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The table below illustrates the percent of non-overlap when applying various effect sizes using Cohen's d ²⁶:

Cohen's Standard	Effect Size	Percent of Non-overlap
	2.0	81.1%
	1.9	79.4%
	1.8	77.4%
	1.7	75.4%
	1.6	73.1%
	1.5	70.7%
	1.4	68.1%
	1.3	65.3%
	1.2	62.2%
	1.1	58.9%
	1.0	55.4%
	0.9	51.6%
Large	0.8	47.4%
	0.7	43.0%
	0.6	38.2%
Medium	0.5	33.0%
	0.4	27.4%
	0.3	21.3%
Small	0.2	14.7%
	0.1	7.7%
	0.0	0.0%

Using either 0.8 or 1.0 as the threshold, the fact that sales are almost equally likely to be inside as outside the threshold makes it difficult to defend the threshold as one of significance. This is not measuring anything extreme in the distribution which would render the sales outside either 0.8 or 1.0 significantly different. The appropriate threshold is the point at that the prices vary from the norm by a large or significant amount. We do not see this until at least an effect size of 1.3 or 1.4²⁷ and it cannot be said to be a clear pattern until the effect size is 1.7.²⁸

²⁶ Effect Size (ES) – Effect Size Calculator (Lee Becker), University of Colorado Springs at Part II (www.uccs.edu/becker/effect-size).

²⁷ With non-overlap at between 1.3 and 1.4 the Department would also be using a threshold consistent with its determination that a 66% ratio is sufficiently large to apply the alternative methodology to all sales.

²⁸ At 1.7 the variation reaches 75%.

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To illustrate, we start with two datasets.²⁹

Data	Dataset 1	Dataset 2
OBS1	116.0	111.0
OBS2	116.0	114.0
OBS3	118.0	113.0
OBS4	118.0	114.0
OBS5		113.0
OBS6		114.0
OBS7		113.0
OBS8		113.0
OBS9		128.0
Mean	117.0	114.78
Standard Deviation	1.0	4.76

In dataset 1 (the test set), all observations are clustered around the mean but are 1.0 standard deviation from the mean. One could hardly characterize this as a pattern of pricing which differs significantly given that all observations despite being 1 standard deviation from the mean are within less than 2% of each other. Nor could one conclude that there is hidden dumping given the symmetry of the pricing pattern in data set 1 and the fact that all prices are equidistant from the mean. Yet, when compared with data set 2 (the base set) this passes the 0.8 threshold for “large” used by the Department.

While the above discussion simply demonstrates that use of 0.8 standard deviations can distort results when it is being used as a benchmark to determine whether differences are “large,” we now turn to the application of Cohen’s d. Here we use the same numbers as in dataset 1 for the test group and apply Cohen’s d to a base data set without the anomalies in data set 2 above. When combined, the two datasets would make up all prices in one CONNUM; the test set represents sales in the CONNUM to a particular customer, region or during a period of time.

²⁹ All calculations of means and standard deviations were done using Excel instructions.

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Data	Test	Base
OBS1	116	118
OBS2	116	117
OBS3	118	118
OBS4	118	117
OBS5		118
OBS6		118
OBS7		118
OBS8		
OBS9		
OBS10		
OBS11		
Mean	117.0	117.71
Standard Deviation	1.0	0.45
Cohen's d		0.871

What is evident above is that a test group with a 50% overlap with the base group (OBS3 and OBS4) and whose lowest priced observation is 1 unit of measurement below the lowest price in the base group and less than 1% lower than that lowest price in the CONNUM is deemed to represent a pattern of prices which differ significantly by the Department when it applies Cohen's d using 0.8 as the standard of "large". In common sense terms the conclusion that the pattern of pricing in the test case differs significantly from the base is absurd notwithstanding that the difference between the two is considered "large" if the Department adopts the arbitrary standard of 0.8. Cohen himself has stressed that his definitions of "small", "medium", and "large" must be used with caution. This example illustrates why such caution is necessary and why the use of 0.8 has the potential of finding "large" differences when there are not large differences in common sense terms. This, in turn, leads one to question whether or not use of Cohen's d with a 0.8 threshold is statistically as sound as the Department claims.

While one can likely also construct an example where Cohen's d might reveal a meaningful difference in prices sufficient to be "significant" in common sense terms, what is

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obvious from the above example is that Cohen's d cannot be relied upon to reveal a meaningful difference sufficient to be "significant." This, in turn, leads to a number of possible conclusions: (1) that the threshold for "large" should be significantly higher than 0.8; (2) that Cohen's d with a higher threshold should be used in combination with the t-test to ensure that the Department is, in fact, making a determination of significance which is meaningful in a real sense; or (3) that Cohen's d is not a proper procedure to determine differential pricing. In the event that the Department continues to use Cohen's d either by itself or in combination with the t-test, the Department should abandon the 0.8 threshold and move to a higher threshold, keeping in mind that it used 1.0 in its previous tests and the t-test uses 2.0. These should be the parameters within which "large" should be defined in order to determine significance.

5. The Department should not exclude the test sales from the base sales used in calculating differential pricing

The most frequent use of Cohen's d is to compare various types of treatments, as well as various levels of treatment, and the effect of those treatments on the same group (before and after) or two different groups (that is, one control and one experimental). For example, Cohen's d would be used to answer the question: "what is the relative size of the effect of taking aspirin on a regular basis with respect to the incidence of heart attacks?" In this classic two group case, the comparison would be between one group taking the aspirin (experimental or test group) and another group taking a placebo (the control group). Another example would be what is the effect size of eliminating starches from a person's diet on that person's weight. In this case, the same group would be compared before eliminating starches and after eliminating starches to determine the effect size of eliminating starches. These cases involve external treatments and the same test

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group before and after the treatment or different groups with one subject to the treatment and the other controlled.

In the case of differential pricing, the Department is not attempting to measure the effect size of an external treatment but rather how the behavior of one group (the sales to a specific customer or the sales to a specific region or the sales during a specific time period) differs from the norm. Specifically, it is attempting to determine whether there is a pattern of pricing in a subset of sales which differs from the overall pattern of pricing. While it is clear what constitutes the test group (sales to a particular customer or region or during a particular period), it is less clear what constitutes the base group against which the test group should be measured, called the “control” group above.

The Department has chosen, without any detailed explanation of why, the base group as the universe of all sales (i.e., all sales in a particular CONNUM) minus those sales contained within the individual test group being tested. For example, in determining whether there is differential pricing in a particular period, the Department compares sales in one period (i.e. a specific quarter) with sales in all of the other periods (i.e., those quarters other than the one being tested). The question is: should the base group include or exclude the period being tested when being compared? This same question applies equally when testing by customer and region.

The purpose of determining whether there are patterns of prices that differ significantly, is to determine whether or not the variation in price to certain groups differs from the normal pattern of prices so significantly as to allow normal comparisons to mask deviations in the test group pattern of pricing from normal pattern of pricing. The normal pattern of pricing by definition must include all the prices including those for which a variation is being tested. The only legal basis for abandoning the average-to-average comparison is if there is a pattern of

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pricing that differs significantly from the pattern of pricing used in the average-to-average comparison. By excluding from the base group the sales to the test group, the Department is not comparing the pattern of pricing in the normal average-to-average comparison with the test group, but is comparing one test group (the mean of the prices of all sales excluding the prices from the test region, time period or customer) with another test group (the prices to a particular customer, region, or during a specific time period). The Department is not measuring variation of the sales in a particular test group from the mean of all sales (of a particular CONNUM, for a particular basis), but is measuring the differences in the variation of sales from one test group (the mean of all sales in a CONNUM minus the sales to a particular customer, region or period) to another test group (the particular customer, region, or period of the test group). The determination of whether prices differ significantly is only being measured as to two sub groups and not against the totality of prices used in the average-to-average comparison.

As an example, let's assume that an exporter has two customers. One accounts for 90% of the sales. The Department's methodology would apply Cohen's d by comparing those 90% of the sales with the other 10% of the sales and whether the mean for the 90% differs significantly from the other 10% of the sales. What if the 90% of the sales do pass Cohen's d and the difference is "large"? The 90% of the sales is the predominant factor in what the average prices are that are used in the average-to-average comparison. Why is the fact that these sales "pass" Cohen's d an indicator that there are significant differences in the prices that are somehow masking dumping? Since Cohen's d will also find a "large" difference when the 10% is measured, all of the sales in this CONNUM would pass Cohen's d and be deemed to represent differential pricing. By virtue of excluding the sales of the test customer from the base the

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Department ends up finding all sales in this particular CONNUM to be differentially priced. In short, using a base group that excludes the test group automatically skews the results.

The additional problem of excluding the test group from the base group is that the base group means being used in applying Cohen's d changes the bar for what is considered "normal" in each analysis. In the above example, the base group for determining the mean for one customer (e.g., the mean of the 90% of sales) is entirely different than the base group for determining the mean for the second customer (e.g., the mean of the 10% of sales). This means, for example, that in testing for whether or not prices differ significantly by time period, each time period is measured against a different base period (i.e., quarter 1 is measured against the means of quarters 2, 3, and 4, quarter 2 is measured against quarters 1, 3 and 4, etc.).

Let's assume that we are attempting to determine whether or not a given basketball team (the Miami Heat) is taller on average than the average NBA team and whether that difference is large. The height of the average NBA team must include the Heat or the measurement being tested is not whether the Heat are taller than the average NBA team but whether the Heat are taller than all other NBA teams except the Heat. The differential pricing test should be testing whether prices to a given customer, region or during a particular time period are significantly different from the average price and, therefore, hide dumping. The average price necessarily must include the test group.

The average price should also be used because it is the average price, not the average price minus the test group, which is supposed to be distorting the results of the dumping comparison. The test conducted must relate to its objective. The objective is to determine whether the average price should or should not be used in the dumping comparison. The alternative is to use individual prices. As such, the question being answered by application of

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Cohen's d is whether there are significant differences in prices by region, customer, or time period which are hidden by use of the average price of the CONNUM as a whole. The fact that the mean of two sub-groups of one CONNUM (i.e. one customer versus all other customers) differ significantly does not tell us whether this difference is hiding dumping because the mean of each of the two subgroups is not what is potentially hiding dumping. What is potentially hiding dumping is using the mean of the CONNUM. If there is not a "large" difference in the mean of each subgroup compared with the mean of the entire CONNUM, then the use of average-to-average is not masking anything because each subgroup mean is close to the mean being used in the average-to-average dumping comparison. This is true whether or not the difference of the means of the two subgroups is "large".

As a general concept, it is statistically more sound to measure a subset of a larger group against its corresponding population. In particular, when conducting multiple tests (in the case of measuring differential pricing each customer, time period and region are being tested) each should be measured against the same population (i.e. all sales in a given CONNUM for a given basis) such that the results of the test do not depend on the variability of the base group - but are measured more reliably against the realized norm. Less variability in the base group results in a more accurate result across the various tests. For example, the extent to which prices to each of the customers buying a product designated under a given CONNUM differ significantly should not be determined based on a variable base group mean for each customer, but should be determined against the same base group mean for each customer. There is no justification either in the targeted dumping provision of the law or in statistics for using a variable mean when testing for differences.

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Based on the above, we believe that the correct d construction would be:

$$\frac{\bar{x}_{CONNUM-basis} - \bar{x}_{test}}{\sigma_{pooled}} = d$$

Where:

- \bar{x}_{test} Is defined as the mean net price of the test group for some basis and CONNUM.
- $\bar{x}_{CONNUM-basis}$ Is defined as the mean net price of the CONNUM-basis combination.
- σ_{pooled} Is defined as the standard deviation of the pooled group.

6. The Department incorrectly determines the variance based on a simple average rather than a weighted average, and thus biases the results

Beyond improperly considering the absolute value of the Cohen's d test, the Department makes another basic mistake by calculating a simple average of the variance rather than a weighted average.

The SAS code makes clear that Commerce is using a simple average. The Department has two samples – the target and the non-target (or what the Commerce SAS code calls the “base group”). On line 2019 of the SAS code the Department calculates the pooled standard deviation as

$$\sigma_{DOC} = \sqrt{\frac{\sigma_{base}^2 + \sigma_{target}^2}{2}}$$

But this formula represents a simple average, which treats the variance from the base group and the target group as equal, even when the two variances might be of very different sizes. Indeed, the Department's post-preliminary memo in *Xanthan Gum* makes clear it will apply this test as long as the comparison group “accounts for at least five percent of the total sales quantity of the comparable merchandise.”³⁰ In other words, the Department contemplates using variances from

³⁰ *Xanthan Gum* note 9 supra, Post-Preliminary Analysis Memorandum at 3.

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samples of very different sizes. The formula for a weighted average that should be used in such a situation is:³¹

$$\sigma_{correct} = \sqrt{\frac{(N_{base} - 1)\sigma_{base}^2 + (N_{target} - 1)\sigma_{target}^2}{N_{base} + N_{target} - 2}}$$

Where N_i is the total quantity sold to each group (i =target or base). The weighted average recognizes that the variance from two different samples of different sizes should have a different impact on the overall average variance.

Consider for example that a respondent sells widgets to one “targeted” company. That company has 100 units purchased at an average price of \$290. The non-targeted group has 900 transactions at an average price of \$295. Is this \$5 price difference large? Suppose further the standard deviation of the target group is \$1 and for the non-target is \$7.

Company	Volume	Avg. Price	Std. Dev.
Target	100	\$290	\$1
Non-target (base)	900	\$295	\$7

Using the Department’s method the pooled standard deviation is calculated as:

$$\sigma_{Doc} = \sqrt{\frac{7^2 + 1^2}{2}} = \sqrt{50/2} = 5$$

However, the correct pooled standard deviation is:

$$\sigma_{correct} = \sqrt{\frac{(900 - 1)7^2 + (100 - 1)1^2}{900 + 100 - 2}} = \sqrt{\frac{(44051) + (99)}{998}} = 6.65$$

³¹ Coe, supra, at page 6 (reporting the formula for properly pooled estimate of standard deviation).

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Using the correct pooled standard deviation, we can see in this example that the Department's methodology has exaggerated the size of the difference:

Method	Difference in Means	Std. Dev.	Cohen's d
DOC current method	5	5	1
Correct method)	5	6.65	0.75

In this example, the Department's "over weighing" of the target group (treating the 100 quantity as the same as the 900 quantity of the base) causes the Cohen d test to exceed the Department's cutoff of 0.8. In fact, the correct Cohen d test statistic is only 0.75 (which is less than the current Department cutoff of 0.8).

The use of a simple average is thus distorting, and gives too much weight to the variance from the target groups, which are often going to be smaller and with lower variance. In any event, whichever group is larger than the other, the correct approach is a weighted average that adjusts for differences in the sizes of the groups being compared.

III. SHOULD THE DEPARTMENT CONTINUE TO FIND THE EXISTENCE OF TARGETED DUMPING (OR DIFFERENTIAL PRICING), IT SHOULD NOT APPLY THE ALTERNATIVE REMEDY TO ALL TRANSACTIONS, BUT RATHER LIMIT APPLICATION OF THE ALTERNATIVE REMEDY TO ONLY THOSE TRANSACTIONS THAT MEET THE DEFINITION OF TARGETED DUMPING (DIFFERENTIAL PRICING)

In past cases in which the Department found the existence of targeted dumping the Department applied its remedy for targeted dumping— using the average-to-transaction calculation methodology – to *all* of the respondent's U.S. sales transactions, instead of only to those U.S. sales transactions that satisfied the targeted dumping test. The Department's new differential pricing methodology continues to do so above an arbitrary 66% cutoff. An approach

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which applies the alternative remedy to any U.S. sales that have not been found to meet the test for differential pricing cannot be sustained.

The statute -- 19 U.S.C. § 1677f-1(d) -- specifies the methodology for calculating dumping margins, and requires the Department to apply the exception only to those sales found to qualify for the exception. This provision has several key elements that the Department has ignored in past cases when applying the exception to all sales.

First, the Department has allowed the discretionary to trump the mandatory. The statute provides that the Department “shall determine” the dumping margin based on a comparison of either (1) weighted averages, or (2) specific transactions. 19 U.S.C. § 1677f-1(d)(1)(A)(emphasis added). The statute thus creates a strong presumption in favor of using one of these two methods. The statute provides a limited exception: the Department “may determine” dumping through comparison of the weighted average of the normal values with individual transactions for comparable merchandise, but only under certain specific circumstances. 19 U.S.C. § 1677f-1(d)(1)(B)(emphasis added). The statute is neutral as between using average-to-average or transaction-to-transaction comparisons; the statute is not neutral as between those primary methods and using the exceptional average-to-transaction method. The Department can only apply the exception when the conditions for applying the exception are met.

Second, the Department’s past approach ignores the key statutory language “such differences.” The exception has two elements:

- (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**

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

19 U.S.C. § 1677f-1(d)(1)(B)(emphasis added). The statute thus focuses specifically on those transactions that have been found to be a “pattern” and that “differ significantly.” These two statutory requirements – and both must be met -- relate to the sub-set of transactions alleged to be targeted, not the entire universe of transactions.

Third, the Department’s past approach failed to explain why any differences cannot be taken into account. Even if the Department explained why the transactions with “such differences” that meet the “pattern” and “differ significantly” requirements cannot be taken into account, that does not explain why other transactions without “such differences” cannot be taken into account. In fact, it is hard to imagine any justification to explain why transactions without “such differences” need a special method to address the very differences that do not exist.

The plain meaning of this statutory language is quite clear on its face. Indeed, the Department previously agreed with this interpretation. When drafting its prior regulation, the Department used this statutory language as one of the main reasons to conclude it would “apply the average-to-transaction approach solely to address the practice of targeted dumping,” and apply the exception “exclusively to those sales in which the criteria for determining targeted dumping are satisfied.” 62 Fed. Reg. 27296, 27375 (May 19, 1997). Indeed, after much debate and discussion, the Department enshrined this policy in the language of the regulation itself:

(2) Limitation of average-to-transaction method to target dumping. Where the criteria for identifying targeted dumping under paragraph (f)(1) of this section are satisfied, the Secretary normally will limit the application of the average-to-transaction method to those sales that constitute targeted dumping under paragraph (f)(1)(i) of this section.

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Thus, the Department adopted a specific regulatory requirement to apply targeted dumping only to those sales that met the requirements for the exception, unless the Department explained (based on substantial evidence) why this “normally” applicable rule did not apply in a particular case.

Moreover, when adopting this regulation, the Department specifically addressed the suggestion that the exception should be applied to all sales, not just those sales found to meet the statutory requirement. the Department specifically rejected this suggestion:

... because in many instances this approach would be unreasonable and unduly punitive. For example, if targeted dumping accounted for only 1 percent of a firm’s total sales, there would not appear to be any basis for applying the average-to-transaction method to those sales accounting for the remaining 99 percent.

61 Fed. Reg. 7308, 7350 (Feb. 27, 1996). The policy of applying the exception only to those transactions that had met the required elements of the exception thus rested on both statutory interpretation and sound policy considerations.

And so, the Department’s approach ignores the statute and instead imposes, in the Department’s own words, a potentially “unreasonable and unduly punitive” methodology. The statute, 19 U.S.C. § 1677f-1(d)(1)(B)(ii), requires the Department to explain why “such differences” cannot be taken into account. The phrase “such differences” refers to those transactions that constitute a “pattern” and that “differ significantly.” The phrase “such differences” does not apply to those other transactions that do not have such differences. The second criteria, therefore, by definition, can apply only to those transactions that have been found to be targeted, or that have been explained in some other way.

Moreover, the Department has never provided any explanation as to why an approach to apply the remedy to all transactions is reasonable.. The Department’s old logic appeared to be

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that if the exception applied to any of the transactions, then it should apply to all of the transactions. And, under the new methodology the same conclusion is drawn if the exception applies to an arbitrary cutoff of 66% of the value of sales; then it should apply to all sales. This logic is bizarre on its face. But regardless of the merits of the logic, it cannot override the statutory requirement that the exception only apply to those transactions that qualify for the exception. And, it cannot override the necessity for adopting a reasonable approach in cases in which the Department must fill the gaps in the statutory language.

As noted earlier, the Department's 1997 regulation used the qualifier "normally." When addressing comments on its basic policy of applying targeted dumping only to those transactions found to be targeted, the Department explained why it used this term "normally" and reserved the right to consider special cases. The Department cited two specific circumstances: (1) where targeting is "so widespread it may be administratively impractical to segregate targeted dumping pricing;" and (2) where a firm "engages extensively in the practice of targeted dumping." 62 Fed. Reg. at 27375 (May 19, 1997). Neither of these circumstances would appear to apply to this case. And, indeed, if the Department can segregate to test the percentage of sales, there is no reason the Department cannot also segregate in the application of the remedy to a subset.

IV. THE DEPARTMENT SHOULD CONTINUE TO USE BANGLADESH AS THE SURROGATE COUNTRY IN THE FINAL DETERMINATION

A. Bangladesh Meets All of the Department's Criteria to Qualify As the Surrogate Country In This Review

In the preliminary results, the Department determined to use Bangladesh as the surrogate country in this investigation. In so doing, the Department stated:

The Department finds Bangladesh to be a reliable source for SVs because Bangladesh is at a comparable level of economic development pursuant to 773(c)(4) of the Act, is a significant producer of comparable merchandise, and has publicly available

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and reliable data. Give the above facts, the Department selected Bangladesh as the primary surrogate country for this review.³²

Since the preliminary results there has been no evidence placed on the record that would alter this finding in the preliminary results and, therefore, there is no factual basis to reverse the choice of Bangladesh in the preliminary results when the Department issues its final results.

B. There Is No Other Country Which Meets The Criteria to Qualify As the Surrogate Country

Besides Bangladesh, the Department only has usable surrogate value information for India and Indonesia. Indonesia was not among the countries the Department determined to have comparable per capita gross national incomes and to be at a comparable level of economic development as Vietnam.³³ While Indonesia has been designated as the primary surrogate country in other proceedings involving Vietnam, this designation has usually been in circumstances where there was a clear superiority of the Indonesian data available and that from the countries which the Department had designated initially as being at a comparable level of economic development. As discussed below, the data for Bangladesh is clearly equal to or better than the data for Indonesia. Similarly, while the Department has designated India as being at a comparable level of economic development to Vietnam, the data for India is inferior to the data for Bangladesh.

The vast majority of the NME normal value for frozen warmwater shrimp is derived from the surrogate value for shrimp and the financial ratios of market economy producers of the subject merchandise. While surrogate values for other FOPs do affect the normal value, the effect of these other values is marginal when compared with shrimp and the financial ratios. While other input and consumable values may affect the normal value, an erroneous shrimp or

³² Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review: Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: 2012-2013, at 15.

³³ Id. at 11.

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financial ratio value can completely distort the normal value used in the comparison with export prices. Consequently, we believe that the Department should focus on these two factors in determining the relative merits of the surrogate values from other countries compared to Bangladesh.

With respect to India, there is not reliable or usable data on the record with respect to either the value of shrimp or the financial ratios. In addressing the shrimp surrogate value proposed by petitioner in the preliminary results, the Department stated:

Specifically, we note that the AQUA Culture data do not contain count-size specific ranges (e. 31-35 pieces per pound, etc.) omitting substantial portions of the range of sizes of shrimp sold by respondents. Additionally, the AQUA Culture data do not provide any information on how the price was derived.

The absence of Indian shrimp values that meet the Department's selection criteria is, in our view, dispositive of the issue of whether India should be the primary surrogate country because shrimp is by far the largest portion of the value of subject merchandise. However, India has the additional problem of not having an appropriate surrogate company whose financial ratios would be representative of the financial ratios of the shrimp processors in Vietnam. The Vietnamese respondents provided a detailed submission on this issue on February 26, 2014.³⁴

This submission established the following:

1. That the finding that Indian producers of frozen warmwater shrimp are receiving substantial subsidies disqualifies these companies as surrogate companies under the Department's normal practice;
2. That the surrogate company proposed by petitioners has financial statements that are unusable because Uniroyal Marine: (1) was not a profitable company during the period of review; (2) produces products that are not produced by either Minh Phu or Stapimex; (3) produces relatively small

³⁴ *Vietnam Respondents' Additional Comments for the Preliminary Results of the Eighth Administrative Review: Certain Frozen Warmwater Shrimp from Vietnam.*

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quantities of warmwater shrimp relative to total production; and (4) is not sourcing farm grown products for processing but wild caught products.

Based on the above, the Department does not have usable information for either the raw shrimp inputs or for calculating the financial ratios in India. Thus, as a practical matter, the Department would have to rely on non-Indian sources of information for most of the normal value based on surrogate country inputs and financial ratios.

Finally, as regards Indonesia, we would note that when the Department has used Indonesia as a surrogate country in the past it has relied upon a Bangladesh shrimp producer, Gemini, for its surrogate financial ratios. Combined with the question of economic comparability raised by the Department's exclusion of Indonesia from the list of countries at comparable levels of economic development as Vietnam, we believe that this renders Indonesia also to be a less attractive surrogate country than Bangladesh.

V. IF THE DEPARTMENT CONTINUES TO USE BANGLADESH, IT SHOULD MAKE CERTAIN ADJUSTMENTS TO THE VALUES IT USED IN THE PRELIMINARY RESULTS

In the *Preliminary Results*, the Department utilized Bangladesh as the surrogate country for valuing the Vietnamese Respondents' factors of production for producing the subject merchandise. If the Department continues to utilize Bangladesh as the surrogate country for the Final Results, the Department must, consistent with its past practice, make certain changes to the calculations for the Vietnamese Respondents.

1. The Department incorrectly utilized a Bangladeshi inflator to inflate U.S. dollar denominated surrogate values

In its *Preliminary Results*, the Department utilized UN COMTRADE data from Bangladesh with which to value the Vietnamese Respondents' factors of production ("FOPs") for purposes of the antidumping calculation. However, in doing so, the Department failed to take

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into account its own past practice with respect to the use of U.S. dollar denominated surrogate values. Specifically, the Department utilized the UN COMTRADE data, which was downloaded in U.S. dollars, from 2007. However, even though these data were denominated in USD, the Department used a Bangladeshi inflation rate to inflate these data to present value, a rate of 46.77%. There is a significant body of precedent in Department proceedings that document that this is incorrect, and the Department should have instead used the U.S. inflation rate of 10.9%, placed on the record by the Vietnamese Respondents on April 28, 2014.³⁵

The use of U.S. inflation rates when a surrogate value is denominated in U.S. dollars is a well-established practice followed by the Department, dating back more than 15 years. In its 1997 decision on *Cut-To-Length-Plate from China*,³⁶ the Department used “a U.S. index for those values denominated in U.S. dollars, because the price indices in the United States would directly impact those prices denominated in the U.S. dollars.” This decision was followed in 1999 in *Creatine Monohydrate*³⁷ with a further reinforcement of the policy with respect to Indonesian values. And in *Tapered Roller Bearings from China*³⁸ the Department expressly stated that it only relied on inflators in the surrogate country when those values are expressed in the surrogate country currency: “we only use the RBI, consistent with Department practice, to inflate Indian electricity prices reported in Indian Rupees, not to inflate Indian electricity prices reported in U.S. dollars...to use an Indian price index to inflate prices reported in US dollars would be mixing apples and oranges.” Thus, consistent with the Department’s long-standing policy, the Department should modify the inflator used for Bangladeshi surrogate values

³⁵ See Vietnamese Respondents’ Post-Preliminary Results Surrogate Value Submission at Exhibit SSV-1.

³⁶ See *Final Determination of Sales at Less than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the People’s Republic of China*, 62 FR 61964, 61987 (November 20, 1997)

³⁷ See *Final Determination of Sales at Less than Fair Value: Creatine Monohydrate from the People’s Republic of China*, 64 FR 71104, 71110 (December 20, 1999)

³⁸ See Issues and Decision Memorandum for the 2002-2003 Administrative Review of Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People’s Republic of China; Final Results, dated July 13, 2004, at Comment 3

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denominated in U.S. dollars to utilize the U.S. dollar inflation rate placed on the record by the Vietnamese Respondents in their April 28, 2014, submission.

2. The Department must properly classify certain expenses in its calculation of surrogate financial ratios

In the *Preliminary Results*, the Department recalculated the surrogate financial ratios for Gemini Sea Food Limited (“Gemini”), placed on the record by the Vietnamese Respondents.³⁹ In this recalculation, the Department made certain errors when classifying 1) traded and finished goods; and 2) consumables.

(a) Classification of Traded/Finished Goods

It is the Department’s long-held practice to classify the opening and closing stock of finished goods (otherwise known as traded and finished goods or change in inventory) in the denominator of sales, general, and administrative (“SG&A”) expenses. For instance, in the *Small Diameter Graphite Electrodes case*, the Department explained that because SG&A expenses for a given period were incurred for all products sold during the period, it was more appropriate to use the COGS (cost of goods sold) value than the COMS (cost of goods produced) value. The Department further explained that the same rationale relates to the profit ratio. As such the Department stated that “our practice supports the inclusion of the value associated with the change in finished goods inventory in the calculation of SG&A and profit ratios.”⁴⁰ Another example of this long-held practice of the Department can be found in the *Wooden Bedroom Furniture case*. In this case the Department stated the following:

“we agree that SG&A expenses for a given period are incurred for all products sold during that period. Moreover, that same rationale

³⁹ See Vietnamese Respondent’s Surrogate Value Comments, dated October 28, 2013

⁴⁰ See Issues and Decision Memorandum for the Final Results of Antidumping Duty Administrative Review of Small Diameter Graphite Electrodes from the People’s Republic of China; from Christian Marsh to Paul Piquado (September 4, 2013) at comment 6, page 22.

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applies to the calculation of the profit ratio, as the profit realized during a certain period also relates to the sales incurred during that period. Further, as explained above, this is consistent with our treatment of these items in market economy cases, and there is no compelling reason to treat these costs differently in NME proceedings than in market economy proceedings. Accordingly, for these final results, we have included the changes in finished goods inventory in the denominator of the SG&A and profit surrogate ratios for each surrogate financial statement that included this item.”⁴¹

Additionally, this practice can also be seen in Polyethylene Terephthalate Film, Sheet, and Strip case where the Department included the finished goods inventory balance in the denominator when calculating the SG&A and profit ratios.⁴² Finally, in *ISOS*, the Department stated that it “will normally include the purchase of traded goods in the denominator to calculate SG&A and profit ratios because a company does incur SG&A expenses and realize profit on traded goods.”⁴³

Pursuant to the Department’s past practice, the Vietnamese Respondents calculated the surrogate financial ratios of Gemini appropriately including the difference between opening stock of finished goods and closing stock of finished goods in the denominator of SG&A expenses. However, without explanation or justification for this significant change from precedent, in the *Preliminary Results*, the Department excluded the change in inventory entirely from its calculation. Thus, the Department must, in the *Final Results*, include the change in inventory of 72,338,399 in the denominator of SG&A expenses.

⁴¹ See *Antidumping Duty Administrative and New Shipper Reviews of Wooden Bedroom Furniture from the People's Republic of China: Issues and Decision Memorandum for the Final Results of the 2007 Antidumping Duty Administrative and New Shipper Reviews* from John M. Anderson to Carole Showers (August 10, 2009) at comment 15, page 48.

⁴² See *Issues and Decision Memorandum for the Final Determination of Sales at Less than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China* from Stephen J. Claeys to David M. Spooner (September 17, 2008) at comment 3, page 10.

⁴³ See *Chlorinated Isocyanurates from the People's Republic of China: Issues and Decision Memorandum for the Final Determination* from Barbara E. Tillman to Joseph A. Spetrini (May 10, 2005) at comment 7, page 38.

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(b) *Classification of Packing Materials & Consumables*

In the *Preliminary Results*, the Department excluded the line item in Gemini's financial statements for "Packing Materials and Consumable Stores." However, the Department normally, when consumables cannot be separated from raw materials, includes such expenses as a direct material. For instance in *Laminated Woven Sacks*, the Department stated that the stores and spares line item is included in the FOH calculation for the surrogate financial ratios.⁴⁴

Furthermore, this practice was defined in *Hand Trucks*, in which the Department states "that because 'consumable stores and packing material,' are listed on Rexello's financial statement under 'Manufacturing Expenses,' they should be included in manufacturing overhead."⁴⁵ Finally, in *Activated Carbon* the Department stated that "packing materials" should be included in the surrogate SG&A calculation. In this case packing charges were listed under administrative expenses and could not be traced to a particular non-general operation of the company; thus they were included in the SG&A expense ratio.⁴⁶

Nevertheless, in the *Preliminary Results*, the Department excluded this line item from direct materials. As made clear by past precedent, the Department will include line items identified as consumables in direct material calculations. Thus, the Department should include this line item of 30,908,382 in its direct material denominator.

⁴⁴ See *Antidumping Duty Investigation of Laminated Woven Sacks from the People's Republic of China: Issues and Decision Memorandum* from Stephen J. Claeys to David M. Spooner (June 16, 2008) at comment 1, page 4.

⁴⁵ See *Issues and Decision Memorandum for the Final Results in the Administrative Review of Hand Trucks and Certain Parts Thereof from the People's Republic of China* from Christian Marsh to Ronald K. Lorentzen (June 21, 2011) at comment 2, page 12.

⁴⁶ See *Certain Activated Carbon from the People's Republic of China: Issues and Decision Memorandum for the Final Results of the Third Antidumping Duty Administrative Review* from Christian Marsh to Ronald K. Lorentzen (October 24, 2011) at comment 4.c.

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3. The Department must disregard aberrational surrogate values

The plain language of the antidumping statute requires that “the valuation of the factors of production shall be based on the *best* available information regarding the values of such factors in a market economy country or countries considered to be appropriate by the administering authority.”⁴⁷ The Court of International Trade and the Court of Appeals for the Federal Circuit have interpreted this statutory provision as requiring Commerce to compare the different sources of data in the evidentiary record and select the *best* source among the options, looking at the quality, specificity and contemporaneity of the data. *See Ningbo Dafa Chemical Fiber Co., Ltd. Consolidated Fibers, Inc., et. al. v. United States*, 580 F.3d 1247, 1257 (Fed. Cir. 2009) (emphases added) (*quoting Shakeproof*, 268 F.3d at 1382) (internal quotation marks omitted) (“In determining the valuation of . . . factors of production, the critical question is whether the methodology used by Commerce is based on *the best available information* and establishes antidumping margins *as accurately as possible*.”). *See also* 19 U.S.C. § 1677b(c)(1); *Dorbest Ltd. v. United States*, 30 CIT 1671, 1675, 462 F. Supp. 2d 1262, 1268 (2006) (stating that the “term ‘best available’ is one of comparison, *i.e.*, the statute requires Commerce to select, from the information before it, the best data for calculating an accurate dumping margin”).

Reflecting this statutory mandate, reviewing courts have remanded the Department’s surrogate value determinations when the Department did not have substantial evidence to demonstrate that it used the best available information in selecting surrogate values and calculating AUVs. For example, in *Zhengzhou Harmoni Spice Co., Ltd. v. United States*, the CIT remanded Commerce’s surrogate value finding that “higher-price-equals-bigger-bulb” for

⁴⁷ 19 U.S.C. § 1677b(c)(1) (emphasis added).

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the garlic bulb raw material input.⁴⁸ Finding that the Department's conclusion was not based on substantial evidence, the Court stated explicitly that:

The statutory objective of calculating dumping margins as accurately as possible can be achieved only when Commerce's choice as to what constitutes the best available information evidences a rational and reasonable relationship to the factor of production that it represents.⁴⁹

However, with respect to certain inputs for both respondents in this case, the data utilized by the Department in the *Preliminary Results* is not only grossly aberrational when compared to all other data on the record, but often in such small quantities that logic would dictate that this is simply not the same material as consumed by either Minh Phu or Stapimex in the production of the subject merchandise.

(a) *Chlorine and Birlox*

With respect to the raw materials of Chlorine and Birlox, the Department utilized import data of HTS code 2801.10 from Bangladesh to represent the cost of these two inputs as experienced by the respondents in this case. The raw data from UN COMTRADE from 2007 reports a unit cost of \$12.83 per kilogram. The idea that any respondent paid \$12.83 per kg for chlorine is not only absurd on its face; it is demonstrably aberrational when compared to all other values on the record for this proceeding.

First, we note that Minh Phu reported both CHLORINE and BIRLOX, and Stapimex reported CHLORINE. As documented in Minh Phu's Section D response,⁵⁰ and Stapimex's Supplemental Section D response,⁵¹ the actual purchase price of chlorine and birlox for the two mandatory respondents in this case was a weighted average of only \$[]. Thus, when inflated

⁴⁸ *Zhengzhou Harmoni Spice Co., Ltd. v. United States*, 617 F. Supp. 2d 1281 (Ct. Int'l Trade 2009).

⁴⁹ *Zhengzhou Harmoni Spice Co., Ltd.*, 617 F. Supp. 2d at 1297 (emphasis added).

⁵⁰ See Minh Phu's Section D Questionnaire Response dated July 22, 2013, at Exhibit D-7

⁵¹ See Stapimex's Supplemental Section D Questionnaire Response dated November 15, 2013, at Exhibit SACD-14

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by the Department in the *Preliminary Results* to \$18.83 per kg (using the incorrect inflator as discussed above), the surrogate value used by the Department was []% **higher** in price than the actual experience of the mandatory respondents in this case. No reasonable person could look at this statistic and state that this reflects valuation “*as accurately as possible.*”⁵² The use of surrogate values is intended to provide an accurate proxy for the prices and costs actually experienced by respondents in a dumping proceeding. The Bangladeshi value does not in any way represent the price experienced by the Vietnamese Respondents. Furthermore, the value from Bangladesh is also aberrational when compared to all other data on the record of this proceeding: more than 400% higher than the value from India and more than 800% than the value from Indonesia. We provide a table below summarizing these data:

	Vietnamese Respondents ⁵³	Bangladesh	India	Indonesia
Quantity	[]	29	9,197	2,541,077
Per-Kg Value	\$([])	\$18.83	\$4.34	\$0.50

Indeed, not only is the Bangladeshi value aberrational by value, the imports into Bangladesh as reported by UN COMTRADE in 2007 simply cannot be the type of chlorine used by the Vietnamese Respondents. As the Department can see from the above table, the Vietnamese respondents consumed more than 150,000 kilograms of chlorine during the POR. In contrast, the total imports into Bangladesh in 2007 were only 29 kilograms. Assuming Minh Phu and Stapimex produced every day for a year, the daily consumption of chlorine by Minh Phu and Stapimex is more than 400kg, whereas the total imports into Bangladesh for **an entire year** is not even sufficient to account for a **single day's** production at either company. Thus, the Department must not only adjust the inflation rate for Bangladesh, the Department cannot use the

⁵² See *Ningbo Dafa Chemical Fiber Co., Ltd. Consolidated Fibers, Inc., et. al. v. United States*, 580 F.3d 1247, 1257 (Fed. Cir. 2009), quoting *Shakeproof*, 268 F.3d at 1382).

⁵³ Conversion to USD using 0.000047 Dong/USD, the rate in effect during 2012.

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Bangladeshi surrogate value of HTS 2801.10 because it is grossly aberrational and not in line with either market prices or the type of chlorine purchased by the Vietnamese respondents. Accordingly, the Department should use a weighted average of the other values on the record of this proceeding (e.g., that of India and Indonesia) to derive a market price of chlorine of \$0.51 per kilogram.

(b) Salt

Similar to chlorine and birlox, both Minh Phu and Stapimex have reported consumption of salt in the production of subject merchandise. In the *Preliminary Results*, the Department utilized import data of HTS code 2501.00 from Bangladesh to represent the cost of salt as experienced by the respondents in this case. The raw data from UN COMTRADE from 2007 reports a unit cost of \$0.41 per kilogram. This value is simply not representative of the costs incurred by respondents in this case and is simply out of line with all other record evidence regarding the price of salt during the POR.

As documented in Minh Phu's Section D response,⁵⁴ and Stapimex's Supplemental Section D response,⁵⁵ the actual purchase price of salt for the two mandatory respondents in this case was a weighted average of only \$[]. Thus, when inflated by the Department in the *Preliminary Results* to \$0.60 per kg (using the incorrect inflator as discussed above), the surrogate value used by the Department was []% **higher** in price than the actual experience of the mandatory respondents in this case. In this case, the Department has simply failed to assign surrogate values "*as accurately as possible*."⁵⁶ The use of surrogate values is intended to provide an accurate proxy for the prices and costs actually experienced by respondents in a

⁵⁴ See Minh Phu's Section D Questionnaire Response dated July 22, 2013, at Exhibit D-7

⁵⁵ See Stapimex's Supplemental Section D Questionnaire Response dated November 15, 2013, at Exhibit SACD-14

⁵⁶ See *Ningbo Dafa Chemical Fiber Co., Ltd. Consolidated Fibers, Inc., et. al. v. United States*, 580 F.3d 1247, 1257 (Fed. Cir. 2009), quoting *Shakeproof*, 268 F.3d at 1382).

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dumping proceeding. The Bangladeshi value does not in any way represent the price experienced by the Vietnamese Respondents. Furthermore, the value from Bangladesh is also aberrational when compared to all other data on the record of this proceeding – between 1000% and 1200% greater when compared to both India and Indonesia. We provide a table below summarizing these data:

	Vietnamese Respondents ⁵⁷	Bangladesh	India	Indonesia
Quantity	[]	129,228	40,506,042	2,211,048,733
Per-Kg Value	[\$]	\$0.60	\$0.06	\$0.05
% of All Imports		0.2%	86%	78%

In addition, as the Department can see from the above data, the data being utilized from Bangladesh is only 0.2% of the total imports into Bangladesh. Surrogate values are intended to represent the price of a given input in a surrogate country. The Department commonly uses import data to represent these market prices. However, when the import data covers such an insignificant portion of the market, coupled with the aberrational nature of the data, these data cannot be said to be representative of the market as a whole. To highlight this concern, even the Department refuses to use a respondent's market economy purchases as representative of the actual price paid (in lieu of a surrogate value) unless those market economy purchases account for more than 85% of total purchases. To then turn around and state that 0.2% is representative is disingenuous at best, and results driven at the worst. In contrast, the values on the record from India and Indonesia are both representative of the market as a whole, and in line with all other prices on the record. Therefore, for the Final Results, the Department should use a weighted

⁵⁷ Conversion to USD using 0.000047 Dong/USD, the rate in effect during 2012.

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average of the other two prices on the record of this proceeding to value the Vietnamese Respondent's consumption of salt.

(c) Skewer

With respect to skewers, we note that shrimp skewers are small pieces of wood that we are all familiar with and have used while barbecuing or at restaurants. These are not facts in dispute, and wood skewers are not complicated products. However, the value used by the Department in its *Preliminary Results* is the single highest per-kilogram surrogate value used. To reiterate, according to the Department, wooden skewers that are thrown away and used simply to present the shrimp in a tray, are being assessed a surrogate value of \$21.10 per kilogram. This amount is 244% higher than the price used for the largest count size of shrimp, 1804% higher than the RM15 count size shrimp. This is not surprising when you consider that the Department is only using 7% of the total imports of skewers during 2007, and then inflating these data to the POR using an incorrect inflator. We note that the Japanese skewers being imported into Bangladesh are more than \$600 per kilogram, the China/Hong Kong SAR value used by the Department is nearly \$30, and the South African value is more than \$60 per kilogram. All other sources of the import prices used by the Department in its calculation are between \$1-\$3, which is not only consistent with the overall weighted average price of all imports into Bangladesh, but also consistent with the other import data on the record from India and Indonesia as noted below:

	Bangladesh	India	Indonesia
Quantity	10,131	8,344,928	462,623
Per-Kg Value	\$21.10	\$2.14	\$5.32

Thus, at the very least, the Department should disregard the imports from Japan, China/Hong Kong SAR, and South Africa in its calculation of a Bangladeshi surrogate price

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from UN COMTRADE data. Alternatively, if the Department does not want to find individual countries to be aberrational, the Department should use a weighted average price of the other data on the record, namely prices from India and Indonesia.

4. The Department should correct the denominator used in the calculation of export expenses

In the Department's preliminary results, it calculated a per kg surrogate value for lift and containerization charges by dividing total per-container charges by 10,000 kg.⁵⁸ However, contrary to the Department's calculation, all information currently on the record of the proceeding indicates that Minh Phu or Stapimex ships subject merchandise in containers that only hold 10,000 kg, and in fact, all documentary evidence on the record indicates that both Minh Phu and Stapimex actually ship their merchandise in significantly larger quantities than 10,000 kg.⁵⁹ Furthermore, page 74 of *Doing Business in Bangladesh* (incorporated as Exhibit 8 of the Department's Surrogate Value Memorandum), expressly states that for the purposes of trading across borders, the expenses assume that the merchandise is "transported in a dry-cargo, 20-foot **full container load**," and not 10,000 kg.

In fact, the Department's own documentation indicates that the proper weight of a 20 ft. container is at least double this amount. We note that this issue arose in a prior review of this order (POR6), and the Department specifically chose to use a denominator that was in accord with industry standards:

"With respect to the weight of the container used, the Department's practice has been to use the maximum container weight for a 40 foot reefer, published at http://www.srinternational.com/standard_containers.htm. {FN omitted} Unlike *Doing Business 2011: India*, *Doing Business 2012: Indonesia* does not indicate a specific weight for the

⁵⁸ See AR8 Prelim SV Excel file accompanying the Surrogate Value Memo.

⁵⁹ For Minh Phu, see, e.g., Supplemental Section C Response at Exhibits SC-9 and SC-12; for Stapimex, see, e.g., Supplemental Section A,C, and D response at Exhibit SACD-12

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container, just that it is “full.” {FN omitted} Therefore, it is the Department’s position that the fees for brokerage and handling, including document preparation, are based on one container of product, and the weight of the container used should reflect industry standards. Therefore it is appropriate to apply this value using the average weight of a full container, as indicated in the survey’s methodology.”⁶⁰

In the instant review we are under the exact same scenario as existed in POR6: namely that the actual source for the surrogate value identifies only that the trading across borders values are for a full container load. The Department should not, and cannot, therefore deviate from industry standards, and from all other data on the record, including the actual experience of respondents regarding the quantity of material shipped in a given container.

Indeed, even a simple search on Google provides an industry standard of 20,000 kg or more as the full container weight of a 20’ container.⁶¹ Thus, every single source, whether it be general trade information, information utilized by the Department in the past, freight companies, or most importantly the experience of the respondents themselves, agrees that a 10,000 kg weight for a 20-foot container is unsupported by the facts, and should instead be closer to 20,000kg (which is the low-end of the quantities shipped by the mandatory respondents in this case).

Irrespective of the Department’s decision on this issue in the prior period of review, the Department cannot justify using an artificially depressed quantity in the denominator, which subsequently increases the surrogate value in a manner inconsistent with the data on the record. As such, the surrogate value for lift and containerization charges should be recalculated by

⁶⁰ See Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Issues and Decision Memorandum for the Final Results of the 2010-2011 Administrative Review from Christian Marsh to Ronald K. Lorentzen (September 4, 2012) at Comment 2D.

⁶¹ See, e.g., <http://www.foreign-trade.com/reference/ocean.cfm>; <http://wifc.ge/documents/1.html>; http://www.msgva.ch/containers_specifications.html; http://www.evergreen-marine.com/tei1/jsp/TEI1_Containers.jsp; http://aplinfo.apl.com/equipment/html/equipment_specs_standard.html; <http://www.maerskline.com/en-us/shipping-services/dry-cargo/equipment-and-services/specifications>

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dividing by the container weight used by the Department in POR6, which is the SR International weight of 20,800 kg for the Final Results.

VI. CORRECTIONS TO SEPARATE RATE STATUS FOR MINH PHU HAU GIANG (PART OF MINH PHU GROUP)

In the Preliminary Results of the review, the Department granted separate rate status for Minh Phu Hau Giang Seafood Co., Ltd. However, the following names were not included:

- Minh Phu-Hau Giang Seafood Corp.
- Minh Phu-Hau Giang Seafood Processing Co., Ltd.
- Minh Phu-Hau Giang Seafood Processing Corporation

Each of these names were requested in Minh Phu Hau Giang Seafood Co., Ltd.'s May 28, 2013 Separate Rate Application. The abbreviated name, Minh Phu-Hau Giang Seafood Corp. is listed on Minh Phu Hau Giang Seafood Co., Ltd.'s business registration certificate No. 642021000003 dated July 25, 2011 and March 28, 2011, included in Exhibit 1 of Section D of the Separate Rate Application⁶².

Minh Phu-Hau Giang Seafood Processing Co., Ltd. is an abbreviated version of the full named listed on business registration certificate No. 642021000003 dated July 25, 2011, March 28, 2011, November 22, 2010, October 7, 2010, June 18, 2010, June 1, 2010, February 10, 2010, August 5, 2009, and April 29, 2008 included in Exhibit 1 of Section D of the Minh Phu Group Separate Rate Certification.

Minh Phu-Hau Giang Seafood Processing Corporation is listed as the direct translation of the company name on business registration certificate No. 642021000003 dated July 25, 2011 and March 28, 2011, included in Exhibit 1 of Section D of the Minh Phu Group Separate Rate Certification.

⁶² Letter from Hughes, Hubbard, and Reed to the Department of Commerce, Response to the Department's Separate Rate Application, Case No. A-552-802, AR8 (May 28, 2013) "Minh Phu Group Separate Rate Certification"

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To conclude, we ask that the Department grant separate rate status in the Final Results to the following additional name:

- Minh Phu-Hau Giang Seafood Corp.
- Minh Phu-Hau Giang Seafood Processing Co., Ltd.
- Minh Phu-Hau Giang Seafood Processing Corporation

VII. CONCLUSION

Based on the above, we request the Department to make changes in its final results which reflect the comments in this Case Brief. In particular, the Department should make changes in its differential pricing tests which reflect a reasonable interpretation of the statutory language in light of the purpose of the relevant provision of the law and the context in which this test is being applied. The Department should use Bangladesh as the surrogate country with the changes and corrections proposed herein.

Respectfully submitted,

/s/ William H. Barringer
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Paul Casas (Advisor/Quantitative Analyst)

ATTACHMENT 1

NOT CAPABLE OF SUMMARY