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Administrative Review
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August 12, 2024

MEMORANDUM TO: Ryan Majerus
Deputy Assistant Secretary
for Policy and Negotiations
performing the non-seclusive functions and duties
of the Assistant Secretary for Enforcement and Compliance

FROM: Scot Fullerton
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of the 2022 Administrative Review of the Antidumping Duty Order on Certain Softwood Lumber Products from Canada

I. SUMMARY

The U.S. Department of Commerce (Commerce) analyzed the case and rebuttal briefs submitted by interested parties following the preliminary results of the 2022 administrative review of the antidumping duty (AD) order of certain softwood lumber products (softwood lumber) from Canada.[1] The period of review (POR) is January 1, 2022, through December 31, 2022. This administrative review covers two mandatory respondents, Canfor[2] and West Fraser,[3] and 241 non-selected producers/exporters that we did not individually examine.[4] Based on our analysis of the comments received, we made certain changes to our dumping margin calculations for Canfor, West Fraser and the non-selected producers/exporters. We recommend that you approve

[1] *See Certain Softwood Lumber Products from Canada: Preliminary Results of Antidumping Duty Administrative Review*, 89 FR 8156 (February 6, 2024) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).
[2] As described in the *Preliminary Results* PDM at 5-6, we have treated Canfor Corporation, Canadian Forest Products Ltd. (CFP), and Canfor Wood Products Marketing Ltd. (CWPM) (collectively, Canfor) as a single entity.
[3] As described in the *Preliminary Results* PDM at 6-7, we have treated West Fraser Mills Ltd., Blue Ridge Lumber Inc., Manning Forest Products Ltd., and Sundre Forest Products Inc. (collectively, West Fraser) as a single entity.
[4] The Preliminary Results identified 309 respondents (this total did not include Smartlam LLC for which we preliminary rescinded the review). However, as detailed below, this number included two separate respondents (Produits Matra Inc. and Sechoirs de Beauce Inc.) mistakenly identified as one respondent, one respondent mistakenly stated as two respondents (Interfor Corporation; Interfor Sales & Marketing Ltd.), and 66 respondents for which all review requests had been withdrawn. *See* Appendix II of the accompanying *Federal Register* notice for a detailed explanation of the treatment of these companies. Thus, 243 companies remain under review for these final results.

the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues for which we received comments:

Comment 1: Whether Commerce Used the Proper Market Price for Canfor's Wood Chip Sales
Comment 2: Whether Commerce Should Adjust the Reported Cost of Electricity at Canfor's Grand Prairie (PG) Sawmill
Comment 3: Whether Commerce Should Adjust the Reported Cost of Electricity at Canfor's Prince George Sawmill
Comment 4: Whether Commerce Properly Determined Canfor's General and Administrative (G&A) Expense Ratio
Comment 5: Whether Commerce Should Apply the Transactions Disregarded Provision to Canfor's Transactions With Affiliated Seed Suppliers
Comment 6: Whether Commerce Should Include Restructuring Costs Associated with the Mackenzie Mill
Comment 7: Whether Commerce Should Include Devaluation Losses in Canfor's G&A Calculation
Comment 8: Whether Commerce Should Deduct Countervailing Duties (CVD) from U.S. Price
Comment 9: Whether Commerce Should Rescind the Review of Companies for which all Review Requests Were Withdrawn
Comment 10: Whether Commerce Should Revise the Names of Certain Respondents
Comment 11: Whether Commerce Should Revise the Application of West Fraser's By-Product Offset
Comment 12: Whether Commerce Should Adjust West Fraser's Log Prices
Comment 13: Whether Commerce Should Adjust West Fraser's G&A Expenses for Inventory Valuation Loss
Comment 14: Whether Commerce Double Counted Billing Adjustments
Comment 15: Whether Commerce Correctly Applied Surrogate Costs
Comment 16: Whether Commerce's Application of the Differential Pricing Analysis Is Contrary to Law and in Violation of the Assumptions Articulated in *Stupp*
Comment 17: Whether West Fraser's Pricing Over the POR Was Inconsistent with the Targeted Dumping for Which Congress Authorized Commerce to Utilize the Average-to-Transaction (A-T) Method
Comment 18: Whether Commerce Improperly Applied the A-T Methodology with Zeroing
Comment 19: Whether Commerce Properly Applied its Differential Pricing Methodology to Address Targeted Dumping
Comment 20: Whether Commerce's Use of Simple Average Standard Deviations in the Cohen's *d* Denominator Disregards Comparative Sizes of Test and Control Groups
Comment 21: Whether Commerce's Methodology and Explanation for Calculating the Denominator of the *d* Coefficient Are Unreasonable
Comment 22: Whether Commerce Erred in Finding a Pattern of U.S. Prices That Differ Significantly Among Purchasers, Regions, or Periods of Time

Comment 23: Whether Commerce Failed to Consider Qualitative Factors in Determining Whether Prices Were Significant

II. BACKGROUND

On February 6, 2024, Commerce published its *Preliminary Results*.[5] On May 4, 2024, Commerce extended the deadline of these final results until August 2, 2024.[6] On July 22, 2024, Commerce tolled certain deadlines in this administrative proceeding by seven days.[7] On August 7, 2024, Commerce extended the deadline of these final results until August 12, 2024.[8]

Between February 26 and March 18, 2024, numerous parties submitted letters in lieu of case briefs requesting that Commerce follow its practice of applying the average of the margins applied to the mandatory respondents or as otherwise specified by section 735(c)(5)(A) of the Tariff Act of 1930, as amended (the Act) to the non-selected respondents, which we have done. Only the petitioner, Canfor, West Fraser, the Canadian Parties, Central Canada, and Sierra Pacific submitted case briefs.[9] On March 27, 2024, the petitioner, Canfor, West Fraser, Canadian Parties, and Sierra Pacific also submitted rebuttal briefs, while Fontaine Inc., Olympic, and Carrier submitted letters in lieu of rebuttal briefs.[10] The Government of Canada, Canfor, West Fraser, the Conseil de l'Industrie forestière du Québec, the Ontario Forest Industries

[5] *See Preliminary Results*.
[6] *See* Memorandum, "Extension of Deadline for Final Results of Antidumping Duty Administrative Review; 2022," dated May 21, 2024.
[7] *See* Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings," dated July 22, 2024.
[8] *See* Memorandum, "Second Extension of Deadline for Final Results of Antidumping Duty Administrative Review; 2022," dated August 7, 2024.
[9] *See* Canfor's Letter, "Canfor's Case Brief," dated March 18, 2024 (Canfor's Case Brief); *see also* Governments of Alberta, British Columbia (BC), Ontario, and Québec, as well as the Alberta Softwood Lumber Trade Council and the British Columbia Lumber Trade Council's (collectively, the Canadian Parties) Letter, "Canadian Parties' Case Brief," dated March 18, 2024 (Canadian Parties' Case Brief); Committee Overseeing Action for Lumber International Trade Investigations or Negotiations' (the petitioner) Letter, "Case Brief," dated March 18, 2024 (Petitioner's Case Brief); Conseil de l'Industrie forestière du Québec, the Ontario Forest Industries Association, and the individual members of the two Associations' (Central Canada) Letter, "Central Canada's Case Brief," dated March 18, 2024 (Central Canada's Case Brief)' Sierra Pacific Industries' (Sierra Pacific) Letter, "Case Brief," dated March 18, 2024 (Sierra Pacific's Case Brief); West Fraser's Letter, "Case Brief of West Fraser Mills Ltd.," dated March 18, 2024 (West Fraser's Case Brief).
[10] *See* Canfor's Letter, "Rebuttal Brief of Canfor Corporation," dated March 27, 2024 (Canfor's Rebuttal Brief); Carrier's Letter, "Letter in Lieu of Rebuttal Brief," dated March 27, 2024 (Carrier's Rebuttal Brief); Central Canada's Letter, "Central Canada's Rebuttal Brief," dated March 27, 2024 (Central Canada's Rebuttal Brief); Government of Canada (GOC) and the Governments of Alberta, British Columbia, Ontario and Québec, and the British Columbia Lumber Trade Council's (collectively, Canadian Parties) Letter, "Rebuttal Brief of the Canadian Parties," dated March 27, 2024 (Canadian Parties' Rebuttal Brief); Fontaine Inc.'s Letter, "Letter in Lieu of Rebuttal Brief," dated March 27, 2024; Olympic's Letter, "Letter in Lieu of Rebuttal Brief," dated March 27, 2024; Carrier's Letter, "Letter in Lieu of Rebuttal Brief," dated March 27, 2024; Petitioner's Letter, "Rebuttal Brief," dated March 27, 2024 (Petitioner's Rebuttal Brief); Sierra Pacific's Letter, "Rebuttal Brief," dated March 27, 2024 (Sierra Pacific's Rebuttal Brief); and West Fraser's Letter, "West Fraser Mills Ltd. Rebuttal Brief," dated March 27, 2024 (West Fraser's Rebuttal Brief).

Association, and Resoluterequested and then withdrew their request for a hearing.[11] No other party requested a hearing.

III. SCOPE OF THE ORDER

The merchandise covered by this order is softwood lumber, siding, flooring and certain other coniferous wood (softwood lumber products). The scope includes:

- Coniferous wood, sawn, or chipped lengthwise, sliced or peeled, whether or not planed, whether or not sanded, or whether or not finger-jointed, of an actual thickness exceeding six millimeters.
- Coniferous wood siding, flooring, and other coniferous wood (other than moldings and dowel rods), including strips and friezes for parquet flooring, that is continuously shaped (including, but not limited to, tongued, grooved, rebated, chamfered, V-jointed, beaded, molded, rounded) along any of its edges, ends, or faces, whether or not planed, whether or not sanded, or whether or not end-jointed.
- Coniferous drilled and notched lumber and angle cut lumber.
- Coniferous lumber stacked on edge and fastened together with nails, whether or not with plywood sheathing.
- Components or parts of semi-finished or unassembled finished products made from subject merchandise that would otherwise meet the definition of the scope above.

Finished products are not covered by the scope of this order. For the purposes of this scope, finished products contain, or are comprised of, subject merchandise and have undergone sufficient processing such that they can no longer be considered intermediate products, and such products can be readily differentiated from merchandise subject to this order at the time of importation. Such differentiation may, for example, be shown through marks of special adaptation as a particular product. The following products are illustrative of the type of merchandise that is considered "finished" for the purpose of this scope: I-joists; assembled pallets; cutting boards; assembled picture frames; garage doors.

The following items are excluded from the scope of this order:

- Softwood lumber products certified by the Atlantic Lumber Board as being first produced in the Provinces of Newfoundland and Labrador, Nova Scotia, or Prince Edward Island from logs harvested in Newfoundland and Labrador, Nova Scotia, or Prince Edward Island.
- U.S.-origin lumber shipped to Canada for processing and imported into the United States if the processing occurring in Canada is limited to one or more of the following: (1) Kiln drying; (2) planing to create smooth-to-size board; or (3) sanding.
- Box-spring frame kits if they contain the following wooden pieces--two side rails, two end (or top) rails and varying numbers of slats. The side rails and the end rails must be

[11] *See* GOC, Canfor, West Fraser, the Conseil de l'Industrie forestière du Québec, the Ontario Forest Industries Association, and Resolute's Letters, "Request for Hearing," dated March 7, 2024; and "Withdrawal of Request for Hearing," dated May 20, 2024.

radius-cut at both ends. The kits must be individually packaged and must contain the exact number of wooden components needed to make a particular box-spring frame, with no further processing required. None of the components exceeds 1" in actual thickness or 83" in length.

- Radius-cut box-spring-frame components, not exceeding 1" in actual thickness or 83" in length, ready for assembly without further processing. The radius cuts must be present on both ends of the boards and must be substantially cut so as to completely round one corner.

Softwood lumber product imports are generally entered under Chapter 44 of the Harmonized Tariff Schedule of the United States (HTSUS). This chapter of the HTSUS covers "Wood and articles of wood." Softwood lumber products that are subject to this order are currently classifiable under the following ten-digit HTSUS subheadings in Chapter 44:

4406.11.0000; 4406.91.0000; 4407.10.0101; 4407.10.0102; 4407.10.0115; 4407.10.0116; 4407.10.0117; 4407.10.0118; 4407.10.0119; 4407.10.0120; 4407.10.0142; 4407.10.0143; 4407.10.0144; 4407.10.0145; 4407.10.0146; 4407.10.0147; 4407.10.0148; 4407.10.0149; 4407.10.0152; 4407.10.0153; 4407.10.0154; 4407.10.0155; 4407.10.0156; 4407.10.0157; 4407.10.0158; 4407.10.0159; 4407.10.0164; 4407.10.0165; 4407.10.0166; 4407.10.0167; 4407.10.0168; 4407.10.0169; 4407.10.0174; 4407.10.0175; 4407.10.0176; 4407.10.0177; 4407.10.0182; 4407.10.0183; 4407.10.0192; 4407.10.0193; 4407.11.0001; 4407.11.0002; 4407.11.0042; 4407.11.0043; 4407.11.0044; 4407.11.0045; 4407.11.0046; 4407.11.0047; 4407.11.0048; 4407.11.0049; 4407.11.0052; 4407.11.0053; 4407.12.0001; 4407.12.0002; 4407.12.0017; 4407.12.0018; 4407.12.0019; 4407.12.0020; 4407.12.0058; 4407.12.0059; 4407.19.0500; 4407.19.0600; 4407.19.1001; 4407.19.1002; 4407.19.1054; 4407.19.1055; 4407.19.1056; 4407.19.1057; 4407.19.1064; 4407.19.1065; 4407.19.1066; 4407.19.1067; 4407.19.1068; 4407.19.1069; 4407.19.1074; 4407.19.1075; 4407.19.1076; 4407.19.1077; 4407.19.1082; 4407.19.1083; 4407.19.1092; 4407.19.1093; 4409.10.0500; 4409.10.1020; 4409.10.1040; 4409.10.1060; 4409.10.1080; 4409.10.2000; 4409.10.9020; 4409.10.9040; 4418.50.0010; 4418.50.0030; 4418.50.0050 and 4418.99.1000.

Subject merchandise as described above might be identified on entry documentation as stringers, square cut box-spring-frame components, fence pickets, truss components, pallet components, flooring, and door and window frame parts. Items so identified might be entered under the following ten-digit HTSUS subheadings in Chapter 44:

4415.20.4000; 4415.20.8000; 4418.99.9005; 4418.99.9020; 4418.99.9040; 4418.99.9095; 4421.99.7040; and 4421.99.9780.

Although these HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

IV. CHANGES SINCE THE *PRELIMINARY RESULTS*

Based on our review of the record and comments received from interested parties, we made the following changes to the *Preliminary Results*. For further details, *see* the final analysis memoranda.[12]

- We have rescinded this review with regard to 66 companies for which all review requests were withdrawn, and have rescinded the review of Smartlam LLC, as we stated was our intent in the *Preliminary Results*. For further details, *see* the accompanying *Federal Register* notice.
- We have revised the names of certain respondents as identified in the *Preliminary Results*. For further details, *see* the accompanying *Federal Register* notice.
- We adjusted for an error in our calculation of Canfor's reported electricity costs at its Grand Prairie sawmill.
- We have removed certain of Canfor's indirect sales expenses in our calculation of its G&A cost ratio.
- We adjusted Canfor's G&A ratio to reflect devaluation losses reflected and recognized in Canfor's 2022 costs.
- We adjusted Canfor's purchases of seeds from its affiliated seed suppliers based on the transactions disregarded provision.
- We corrected for Canfor affiliate's "Manufacturing and Product Costs."
- We adjusted West Fraser's byproduct offset to make it province specific.
- We adjusted the recalculation of West Fraser's log price to make it province specific.
- We are not deducting billing adjustments for West Fraser to avoid double counting.
- We are not making an adjustment for surrogate costs.

V. DISCUSSION OF THE ISSUES

Comment 1: Whether Commerce Used the Proper Market Price for Canfor's Wood Chip Sales

Canfor's Comments

The following is a verbatim summary of argument submitted by Canfor. For further details, *see* Canfor's Case Brief at 2-3 and 5-11.

> Commerce has ignored evidence in the record establishing unusual circumstances in byproduct sales made by Canfor to unaffiliated parties that render these

[12] *See* Memoranda, "Analysis for the Final Results of the Fifth Antidumping Duty Administrative Review: Certain Softwood Lumber Products from Canada – West Fraser Mills Ltd.," dated concurrently with this memorandum (West Fraser Final Results Analysis Memorandum); "Cost of Production and Constructed Value Calculation Adjustments for the Final Results," dated concurrently with this memorandum (Canfor Final Cost Analysis Memorandum); and "Analysis for the Final Results of the Fifth Antidumping Duty Administrative Review: Certain Softwood Lumber Products from Canada: Canfor Corporation, Canadian Forest Products Ltd., Canfor Wood Products Marketing Ltd., Canfor Fox Creek Ltd. and Canfor Whitecourt Ltd." dated concurrently with this memorandum.

byproduct (chip) sales unreflective of market prices during the POR. When Canfor purchased the Elko and Canal Flats sawmills from an unaffiliated company[13] in 2012, a stipulation of the sale agreement obligated these two sawmills, along with the Radium sawmill, to supply chips to an unaffiliated pulp mill[14] under a long-term supply contract. The agreement established chip prices based on a schedule established 12 years ago, at the time of the agreement, and therefore those chip prices do not reflect current market conditions for sales of chips in British Columbia. The record evidence demonstrates this lack of market comparability based on the contemporaneous chip prices for sales of chips in British Columbia by other Canfor mills not subject to the supply contract and by another respondent, West Fraser. Chip prices reported by these other mills are significantly higher than the prices for chips sold by Elko and Radium. Accordingly, Commerce should either exclude the prices at which Canfor's Elko and Radium sawmills sold wood chips from the unaffiliated pulp mill from the calculation of market value under the arm's-length test or, alternatively, adjust the Radium and Elko chip prices to account for the fact that the current supply contract is not indicative of prevailing chip market conditions.

Petitioner's Comments

The following is a verbatim summary of argument submitted by the petitioner. For further details, *see* the Petitioner's Rebuttal Brief at 2 and 6-11.

> Commerce reasonably included the prices of wood chips sold by Canfor to an unaffiliated purchaser pursuant to a long-term contract in determining the market price. "{A}bsent evidence of unusual circumstances," Commerce's preference is to use a respondent's own sales to unaffiliated parties to determine market price.[15] Nothing on the record supports a conclusion that there are any unusual circumstances surrounding the terms of the contract between Canfor and its unaffiliated customer. Accordingly, consistent with prior segments of this proceeding,[16] Commerce should reject Canfor's argument and maintain its calculation of a market price for wood chips.

[13] The identity of the unaffiliated seller of the Elko and Canal Flats sawmills is proprietary information and is disclosed in Canfor's Case Brief at 2.
[14] The identity of the unaffiliated purchaser of the Elko, Canal Flats, and Radium sawmills is proprietary information and is disclosed in Canfor's Case Brief at 2.
[15] *Id*. at 2 (citing *Certain Hot-Rolled Steel Flat Products from Brazil: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part*, 81 FR 53424 (August 12, 2016), and accompanying Issues and Decision Memorandum (IDM) at Comment 7).
[16] *Id.* at 2 (citing *Certain Softwood Lumber Products from Canada: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2021*, 88 FR 50106 (August 1, 2023) (*Lumber from Canada AR4 Final Results*), and accompanying IDM at Comment 13; *Certain Softwood Lumber Products from Canada: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2020*, 87 FR 48465 (August 9, 2022) (*Lumber from Canada AR3 Final Results*), and accompanying IDM at Comment 16; *Certain Softwood Lumber Products from Canada: Final Results of Antidumping Duty Administrative Review; 2019*, 86 FR 68471 (December 2, 2021) (*Lumber from Canada AR2 Final Results*), and accompanying IDM at Comment 11).

Commerce's Position: For the final results, Commerce continues to find that an adjustment of Canfor's reported costs is necessary to reflect the market price of wood chips in BC sold to an affiliate. As an initial matter, we note that the underlying facts, our analysis, and our conclusions here are consistent with those in the second, third, and fourth administrative reviews of this proceeding, wherein Canfor raised these precise arguments.[17]

In the *Preliminary Results*, Commerce adjusted Canfor's wood chip revenue received from sales to prices that reflect market value.[18] According to section 773(f)(2) of the Act, Commerce may disregard transactions between affiliated persons if those transactions do not fairly reflect the value in the market under consideration (*i.e.*, if they are not made on an arm's-length basis). In applying the "transactions disregarded" provision of the statue, Commerce compares the average transfer price for an input or service paid to an affiliated supplier with the market price for that input or service.[19] Here, because the sales revenue of wood chips is used as an offset to cost, Commerce seeks to ensure that the offset is valued at the lower of the transfer or market price.

At issue is the calculation of the market price to be used in the comparison. In analyzing whether Canfor's transactions with affiliated parties were at arm's length, at the preliminary stage, we included in our analysis wood chips sold by Canfor's Elko and Radium sawmills as well as sales from other Canfor sawmills to unaffiliated purchasers. Canfor argues that Commerce should not consider the sales of wood chips from its Elko and Radium mills to the unaffiliated pulp mill for purpose of evaluating whether its by-product sales with affiliated parties were made at arm's length, because the value of these sales does not reflect market conditions during the POR because they were made pursuant to a long-term contract entered into in 2012.[20] Canfor argues that the terms of this contract are no longer relevant because the market conditions during the POR did not reflect those conditions when it entered into the contract.[21]

We disagree with Canfor that the prices paid to the unaffiliated pulp mill are not appropriate for use in our comparison. Canfor suggests that the chip prices set in the agreement represent unusual circumstances by virtue of the fact that it was negotiated several years prior to the POR in a period experiencing unique market factors that are unlike now. In analyzing the record, however, the contract appears to allow for periodic adjustments to the wood chip prices by reference to industry publications.[22] Therefore, even if the contract was executed in 2012, the

[17] *See Lumber from Canada AR2 Final Results* IDM at Comment 11; *Lumber from Canada AR3 Final Results* IDM at Comment 16; and *Lumber from Canada AR4 Final Results* IDM at Comment 13.
[18] *See* Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results – Canfor Corporation, Canadian Forest Products Ltd., and Canfor Wood Products Marketing Ltd.," dated January 31, 2024 (Canfor Preliminary Cost Analysis Memorandum), at 1.
[19] Commerce's preference for establishing a market value is a respondent's own purchases of the input or service from unaffiliated suppliers, and when no such purchases are available, Commerce looks to the affiliated supplier's sales to unaffiliated parties. *See, e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value and Negative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea*, 77 FR 17413 (March 26, 2012) (*Refrigerator-Freezers from Korea*), and accompanying IDM at Comment 17.
[20] *Id.* at 5-12.
[21] *Id* at 10-12.
[22] *See* Canfor's Letter, "Section D Initial Questionnaire Response," dated June 4, 2023, at Exhibit D-14.

provisions permit revisions in response to changes in market conditions.[23] As such, the sales made to an unaffiliated pulp mill pursuant to the contract are a reasonable basis for a market price for wood chips. Additionally, we do not consider the sales at issue to be unrepresentative of a market price for purposes of our transactions disregarded analysis, and we continue to find that an adjustment of Canfor's reported costs is necessary to reflect the market price of wood chips including the sales from its Elko and Radium mills. Therefore, for the final results, we continue to find that an adjustment of Canfor's reported costs is necessary to reflect the market price of wood chips in BC sold to an affiliate.

Comment 2: Whether Commerce Should Adjust the Reported Cost of Electricity at Canfor's PG Sawmill[24]

Canfor's Comments

The following is a verbatim summary of argument submitted by Canfor. For further details, *see* Canfor's Case Brief at 3 and 12-15.

> Commerce should value the electricity used to value certain proprietary transactions using market prices in both Alberta and BC. Consistent with how Commerce has valued electricity in prior segments of this proceeding, Canfor used market prices from both Canadian provinces when determining the value of electricity to report in this review. In the 2019 and 2020 administrative reviews, Commerce expressly rejected a province-specific approach to calculating the market value of electricity and, used both Alberta prices and BC prices to value the electricity in Canfor's affiliated electricity transaction in Alberta. There are now changed facts that warrant a change in methodology in this review.
>
> Further, when valuing the cost of the electricity and by-products involving transactions at a certain Canfor sawmill, Commerce did not include the transactions from Spruceland,[25] but when it revalued these same transactions, Commerce failed to exclude the transactions from Spruceland. Additionally, Commerce used an

[23] While Canfor cited an incident in the previous lumber proceeding occurring 22 years ago where Commerce did not rely on sales of wood chips to unaffiliated purchasers that were clearly distorted due to its contractual agreements, Canfor provided no information regarding the nature of the contractual agreements found to be clearly distorted. *See* Canfor's Case Brief at 9-10 (citing *Notice of Final Determination of Sales at Less Than Fair Value: Certain Softwood Lumber Products from Canada*, 67 FR 15539 (April 2, 2002), and accompanying IDM at Comment 11). Lacking any specific information from this proceeding, we have not relied on it as a basis for our decision here.

[24] While also treated as proprietary information, the Grand Prairie sawmill's participation in this transaction has been disclosed publicly in Canfor's Letter, "Canfor's Sections B-D Questionnaire Response," dated June 5, 2023 (Canfor's B-D QR), at Exhibit D-18: "No sales values as it is a swap between Grand Prairie Sawmill and (name bracketed)." Also, in Canfor's Letter, "Canfor's Section D Supplemental Questionnaire Response," dated October 18, 2023 (Canfor's SDR), at footnote 2 Canfor noted that "Canfor moved the electricity purchase data to the exhibit on the swap transaction between Grand Prairie Sawmill and Green Energy (Exhibit D-16) because the purchase data are used to measure the cost of electricity from unaffiliated suppliers." Additionally, Canfor identified Canfor's SDR the "TOTAL SALES & PURCHASES USED TO VALUE ELECTRICITY IN SWAP." Thus, we have identified publicly Grand Prairie sawmill's participation in this transaction.

[25] "Spruceland" is a reference to Canfor's Spruceland sawmill.

> electricity quantity in making this calculation and should rely on an electricity quantity that ties to Exhibit D-43 of Canfor's DQR.[26] Commerce should exclude the Spruceland transactions from the calculation of the market price so that electricity is measured on a consistent basis and correct for the error in electricity quantity.

Petitioner's Comments

The following is a verbatim summary of argument submitted by the petitioner. For further details, *see* the Petitioner's Rebuttal Brief at 3 and 11-15.

> In analyzing the transactions Commerce reasonably calculated a market price for electricity using only electricity purchases/sales in Alberta. Unlike prior reviews, the record in this segment includes information regarding Canfor's purchases of electricity from unaffiliated providers in Alberta during the POR. Because it was reasonable for Commerce to determine the market value for electricity in Alberta using prices specific to that market, Commerce should reject Canfor's challenge to the agency's determination of a market value for electricity and maintain its transactions disregarded adjustment to Canfor's cost of manufacturing (COM).
>
> Regarding Canfor's arguments for correcting the calculation error relying on a calculation to one of its submissions, Commerce can simply rely on the quantities reported in the Canfor Preliminary Cost Analysis Memorandum.[27]

Commerce's Position: For the final results, Commerce has evaluated whether the provision of electricity by an Alberta electricity supplier to Canfor's Grand Prairie sawmill reflect the market price of electricity based solely on electricity purchases made in Alberta. The transactions for which we are determining whether they were made a market price involve electricity being provided by an Alberta electricity factory.[28] As opposed to this review, in the third administrative review of this proceeding, the only electricity transactions on the record involving an Alberta electricity factory were sales by Canfor to the Alberta electricity factory.[29] Thus, because the transactions involving the Alberta electricity factory were sales as opposed to the electricity purchases being valued and were within Alberta, while the transactions involving BC were electricity purchases but not within Alberta, we relied on purchases of electricity from unaffiliated suppliers in BC, because the electricity sales in Alberta and electricity purchases in BC were equally similar (or dissimilar) to the purchases of electricity being evaluated. However, the facts have changed this POR and now electricity purchases from an Alberta electricity factory are on the record and, as even Canfor noted, throughout this case and in the previous softwood lumber proceedings, Commerce has consistently determined that input and by-product prices in different provinces are not comparable.[30] Also, Commerce has previously explained its view that electricity is not available, marketable, or transportable from one province to another

[26] *See* Canfor's Case Brief at 14 (citing Canfor's B-D QR at Exhibit D-43).
[27] *Id*. at 14 (citing Canfor Preliminary Cost Analysis Memorandum at Attachment 3).
[28] *See* Canfor's Case Brief at 12-13.
[29] *See Lumber from Canada AR3 Final Results* IDM at Comment 18.
[30] *Id*.

except in limited circumstances.[31] In the instant case, because the electricity purchases from the Alberta are more similar to the electricity being provided by an Alberta supplier, we have relied solely on the electricity purchases in Alberta to determine whether the transactions were made at market prices.

Regarding the calculation of the market price of electricity in Alberta, we agree with Canfor that we incorrectly included the electricity purchases by Spruceland in the calculation of Canfor's market electricity costs. We made this inadvertent error because we did not include Spruceland's sales or costs of subject merchandise in calculating Canfor's margin,[32] and should not have included it in the calculation of the market cost of electricity in Alberta. Accordingly, we have not considered the electricity purchases by Spruceland in the calculation of Canfor's market electricity costs.

We also inadvertently included sales to, as well as purchases from, an Alberta electricity supplier in determining the market price of electricity purchases in Alberta.[33] Therefore, because we are valuing electricity purchases in Alberta, rather than sales, for these final results, using the same logic as specified above (*i.e.*, we find purchases more similar to purchases of electricity than sales of electricity) we have relied solely on Canfor's purchases from Alberta electricity suppliers in determining the market price of electricity purchases in Alberta.[34]

Comment 3: Whether Commerce Should Adjust the Reported Cost of Electricity at Canfor's Prince George Sawmill

Canfor's Comments

The following is a verbatim summary of argument submitted by Canfor. For further details, *see* Canfor's Case Brief at 3-4 and 15-21.

> Commerce made an adjustment to Canfor's total cost of manufacturing (TOTCOM) to account for what Commerce erroneously characterizes as purchases of electricity by Canfor's Prince George (PG) Sawmill from Canfor's affiliated pulp manufacturer, Canfor Pulp Products Inc. (CPPI). In fact, however, there are no purchases of electricity from CPPI, which neither generates nor supplies electricity. All electricity purchased by the PG Sawmill is supplied by BC Hydro the electric utility in BC, which is unaffiliated with Canfor. Commerce should therefore eliminate this adjustment in the final results.
>
> As Canfor has explained, Canfor operates four different facilities on contiguous land located in Prince George, BC, including the PG Sawmill and the Northwood Pulp Mill (part of CPPI). BC Hydro supplies electrical power to all four of these facilities via a single transmission line. CPPI merely separates the charges for each

[31] *See Supercalendered Paper from Canada: Final Affirmative Countervailing Duty Determination*, 80 FR 63535 (October 20, 2015), and accompanying IDM at 42.
[32] *See* Memorandum, "Response to Requests Not to Report Certain Sales and Cost Data," dated May 24, 2023.
[33] *See* Canfor Preliminary Cost Analysis Memorandum at Attachment 3.
[34] *See* Canfor Final Cost Analysis Memorandum.

entity based on the electricity consumed by each individual facility, including PG Sawmill. PG Sawmill pays its share to CPPI, which pays the final bill to BC Hydro.

The purpose of the statutory transactions disregarded rule is to ensure that actual costs are not understated by less than arm's-length dealing among affiliated parties. Here, Commerce has treated a bookkeeping convenience as a transaction even though there is no actual exchange of money for goods or services. It is BC Hydro, not CPPI, that supplies electric power to the PG Sawmill, and the price the PG Sawmill paid for the electricity is the market price set by BC Hydro. Commerce should make no adjustment to PG Sawmill's manufacturing costs, and it should use the TOTCOM as reported by Canfor.

In the alternative, should Commerce continue to adjust PG Sawmill's purchases of electricity from BC Hydro by CPPI's selling, general and administrative (SG&A) expenses, Commerce should, as it has done before, modify the adjustment to account for the ministerial nature of the activity being performed by CPPI. For instance, in *Bottom Mount Refrigerator-Freezers from Mexico*, where Commerce adjusted the price of inputs purchased from an affiliate, Commerce found that it was "not appropriate to increase the cost of {} inputs by the amount of the affiliate's overall SG&A expense ratio."[35] Instead, Commerce used the actual costs incurred for providing the services plus an amount for the affiliate's general and administrative (G&A) expenses.[36] Just as in *Bottom Mount Refrigerator-Freezers from Mexico*, the *overall* SG&A expense ratio for CPPI should not be included in the adjustment. Commerce should not adjust the price of electricity from BC Hydro by costs that cannot possibly be related to the purported electricity transaction, specifically intangible asset amortization. Finally, Commerce used the wrong value for the affiliate's "Manufacturing and Product Costs."[37] Commerce used 862.1, but the correct amount for the 2022 POR is 866.8.[38]

Petitioner's Comments

The following is a verbatim summary of argument submitted by the petitioner. For further details, *see* the Petitioner's Rebuttal Brief at 3-4 and 15-21.

Commerce should continue to find that transactions between the PG sawmill and CPPI should be subject to an analysis under section 773(f)(2) of the Act. The record demonstrates that a transaction for electricity took place between the PG sawmill and CPPI, an affiliate of Canfor. The PG sawmill remitted payment to CPPI for electricity consumed by the PG sawmill. Accordingly, consistent with its

[35] *See* Canfor's Case Brief at 20 (citing *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers from Mexico*, 77 FR 17422 (March 26, 2012) (*Bottom Mount Refrigerator-Freezers from Mexico*), and accompanying IDM at Comment 28.
[36] *Id.*
[37] *Id.* (citing Canfor Preliminary Cost Analysis Memorandum at Attachment 4).
[38] *See* Canfor's Case Brief at 20 (citing Canfor's Letter, "Section A Questionnaire Response," dated May 9, 2023 (Canfor's AQR), at Exhibit A-10 (page 8)).

determinations in prior segments of this proceeding,[39] Commerce should continue to compare the market value to the transfer price and adjust Canfor's reported COM to reflect market prices.

Commerce also reasonably included CPPI's "Intangible Asset Amortization" in calculating a SG&A rate to use in determining a cost of production (COP) for the electricity sold by CPPI to the PG sawmill. Commerce's calculation of CPPI's COP in this proceeding is consistent with its policy of valuing a respondent's purchases of inputs from an affiliated reseller at the higher of the transfer price or the adjusted market price for the input (i.e., the affiliate's average acquisition cost plus the affiliate's SG&A costs).[40] Inclusion of the "intangible asset amortization" was appropriate, as SG&A expenses, by definition, relate to the general operations of a company. Moreover, as in prior reviews, Canfor has provided no evidence that these software systems are unrelated to CPPI's SG&A activities.[41]

Commerce's Position: For the final results, we continue to find that transactions between the PG sawmill and its affiliate should be subject to an analysis under section 773(f)(2) of the Act (the transactions disregarded rule), consistent with our decisions in all administrative reviews and the underlying investigation of this proceeding.[42] For purposes of the transactions disregarded rule, when the respondent purchases inputs from an affiliated supplier, we test the transfer price between the affiliated supplier and the respondent with the available market prices for the input.[43] Available market prices may relate to a respondent's purchases of the same input directly from unaffiliated suppliers, and/or an affiliated reseller's average acquisition price plus the affiliated reseller's selling, general, and administrative (SG&A) expenses.[44]

Commerce's established practice when the respondent purchases inputs from an affiliated reseller is to value the input at the higher of the transfer price or the adjusted market price for the input (*i.e.*, the affiliate's average acquisition cost plus the affiliate's expenses).[45] Commerce has explained that the inclusion of the affiliate's SG&A expenses ensures that the adjusted market price reflects the affiliates' cost of providing the services.[46] Further, Commerce has applied the

[39] *Id.* at 4 (citing *Lumber from Canada AR4 Final Results* IDM at Comment 14; *Lumber from Canada AR2 Final Results* IDM at Comment 13; *see also Certain Softwood Lumber Products from Canada*: *Final Results of Antidumping Duty Administrative Review; 2017–2018*, 85 FR 76519 (November 30, 2020) (*Lumber from Canada AR1 Final Results*), and accompanying IDM at Comment 6).
[40] *Id.* at 21 (citing *Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Retail Carrier Bags from Thailand*, 69 FR 34122 (June 18, 2004), and accompanying IDM at Comment 5).
[41] *Id.* (citing, *e.g.*, *Lumber from Canada AR4 Final Results* IDM at 58-59).
[42] *See Certain Softwood Lumber Products from Canada: Final Affirmative Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances,* 82 FR 51806 (November 8, 2017) (*Lumber from Canada Investigation*), and accompanying IDM at Comment 27; *see also Lumber from Canada AR1 Final Results* IDM at Comment 6; *Lumber from Canada AR2 Final Results* IDM at Comment 13; *Lumber from Canada AR3 Final Results* IDM at Comment 19.
[43] *Id.*
[44] *Id.*
[45] *Id.*
[46] *Id.*

transactions disregarded rule in instances where the affiliated services were limited to document handling and acting as the payment intermediary, as is the case here.[47]

In the instant case, the record demonstrates that a transaction for electricity took place between the PG sawmill and CPPI rather than directly between the sawmill and the unaffiliated electricity supplier.[48] Based on record evidence, CPPI acts as an affiliated reseller of electricity from an unaffiliated supplier to the PG sawmill, and the analysis of the transactions is between the mill and its affiliate is appropriate. In the current proceeding, Canadian Forest Products (CFP, of which the PG sawmill is part) and CPPI are separate legal entities and both manufacture lumber products (CPPI produces non-subject merchandise).[49] CPPI also functions as a middleman between all the facilities in what it terms the Northwood area (the entities in this area include Canfor's PG sawmill) and BC Hydro.[50] CPPI does not generate the electricity; rather, it is the payment intermediary. While Canfor may consider these transactions to be only a pass-through to its affiliated Northwood area facilities, evidence shows that CPPI provided services to the Northwood area facilities by acting as the document handler (*e.g.*, providing documentation for allocating the costs to the different facilities, invoicing each of the Northwood area facilities, processing the receipt of payments from the Northwood area facilities, *etc.*) and acting as the payment intermediary.[51] Accordingly, for the final results, we have continued to include CPPI's SG&A expenses in the electricity market price computation to account for the services CPPI is providing. As noted above, our approach here is consistent with our treatment of the payments in the underlying investigation and previous administrative reviews of this proceeding.[52]

Further, Canfor argues that if we continue to make this adjustment, we should, consistent with *Bottom Mount Refrigerator-Freezers from Mexico,* revise the calculation of CPPI's SG&A rate to exclude certain amortization expenses (*e.g.*, intangible assets) because they are unrelated to the electricity purchases. CPPI's financial statements identify its intangible assets as "{s}oftware development costs relate to major software systems purchased or developed by the Company."[53] In the instant case, Canfor has provided no evidence that these software systems are not related to CPPI's general and administrative activities. Therefore, Commerce's adjustment to certain prices paid in *Bottom Mount Refrigerator-Freezers from Mexico* does not apply to the facts of this record, and for the final results we will continue to include these amortization expenses in the SG&A expense calculation for CPPI, as we did in the previous

[47] *Id.*
[48] *See* Canfor's AQR at 19.
[49] *Id.*
[50] *Id.*
[51] The situation here where CPPI performs numerous tangible services for the transaction in question contrasts with the transaction in *Chlorinated Isocyanurates from Japan* cited by Canfor where Commerce determined not to apply the transactions disregarded rule because the transaction involved an affiliated commission agent for which Commerce determined it had no meaningful role. Thus, Commerce determined the purchases in question "to be transactions between {the respondent} and unaffiliated suppliers, rather than transactions with {the affiliated commission agent}." *See Chlorinated Iscoyanurates from Japan: Final Determination of Sales at Less Than Fair Value*, 79 FR 56059 (September 18, 2014) (*Chlorinated Isocyanurates from Japan*), and accompanying IDM at Comment 4.
[52] *See Lumber from Canada Investigation* IDM at Comment 27; *see also Lumber from Canada AR1 Final Results* IDM at Comment 6; *Lumber from Canada AR2 Final Results* IDM at Comment 13; *Lumber from Canada AR3 Results Final Results* IDM at Comment 19.
[53] *See* Canfor's AQR at Exhibit A-10, page 14.

review addressing the identical fact pattern.[54] Finally, we agree with Canfor that Commerce used the wrong value for the affiliate's "Manufacturing and Product Costs.[55] Commerce used 862.1, but the correct amount for the 2022 POR is 866.8. We have corrected for this error.[56]

Comment 4: Whether Commerce Properly Determined Canfor's G&A Expense Ratio

Canfor's Comments

The following is a verbatim summary of argument submitted by Canfor. For further details, *see* Canfor's Case Brief at 4 and 21-27.

> Commerce should not include in Canfor's general and administrative (G&A) expense ratio indirect selling expenses incurred by Canfor's U.S. and European sales affiliates related to sales of non-subject merchandise. Section 773(b)(3) of the Act defines "cost of production" as inclusive of "an amount for selling, general, and administrative expenses based on actual data pertaining to production and sales of the foreign like product." Yet, in the *Preliminary Results*, in a departure from past segments of this proceeding, Commerce included in Canfor's G&A ratio the selling expenses of Canfor's U.S. subsidiary, Canfor Southern Pine (CSP), which sells only U.S.-produced lumber in the United States, and Canfor Sweden, which sells only European-produced lumber in Europe. Canfor's reported G&A expenses, which properly reflect the general expense associated with the production of softwood lumber in Canada, correctly did not include these expenses. The G&A expense ratio reported in this review is consistent with Commerce's practice over the history of this proceeding and with the statute.

Petitioner's Comments

The following is a verbatim summary of argument submitted by the petitioner. For further details, *see* the Petitioner's Rebuttal Brief at 4 and 21-25.

> Commerce properly based its G&A expense ratio calculation on the G&A expenses related to the 'CFP Legal' entity as a whole. Because the G&A expenses of CSP and Canfor Sweden pertained to the general operations of the 'CFP Legal' entity as a whole,[57] they were properly included in calculating the respondent's G&A expense ratio. Moreover, the record does not support Canfor's claim that Commerce improperly included selling expenses unrelated to the foreign like product in its calculation of 'CFP Legal's' G&A expenses.

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[54] *See Lumber from Canada AR4 Final Results* IDM at Comment 14.
[55] *See* Canfor Preliminary Cost Analysis Memorandum Memo at Attachment 4.
[56] *Id.*
[57] *Id.* at 4 (citing *Magnesium Metal from the Russian Federation: Notice of Final Determination of Sales at Less Than Fair Value*, 70 FR 9041 (February 24, 2005), and accompanying IDM at Comment 10 (explaining Commerce's established practice of "include{ing} in the G&A ratio calculation all revenues and expenses that relate to the general operations of the company as a whole") (citations omitted)).

Commerce's Position: We disagree with Canfor insofar as it argues that in the calculation of the G&A ratio, in which we intended to divide Canfor consolidated's (Canfor consolidated are the Canfor Corporation's consolidated financial statements that consist of Canfor, Canfor Corporation, CWPM, CSP, Canfor Sweden and CPPI[58]) non-CPPI G&A expenses by the total costs of Canfor consolidated, less CPPI, we should exclude from the numerator of our calculation the G&A expenses of CSP and Canfor Sweden, but continue to include all of Canfor consolidated's non-CPPI costs in the denominator, including those of CSP and Canfor Sweden. If we followed Canfor's proposal, it would create an "apples and oranges" situation where the items in the numerator do not correspond to the items in denominator, as it would exclude the G&A costs of CSP and Canfor Sweden in the numerator but include their total costs in the denominator. While Canfor has argued that the costs of CSP and Canfor Sweden do not relate to the expenses and costs of softwood lumber produced in Canfor, it has provided no means for removing CSP and Canfor Sweden's costs from the denominator and we know of no way to do so. Thus, for the final results, we have continued to include the G&A expenses of CSP and Canfor Sweden in the numerator, as well as to include all of the CSP and Canfor Sweden costs in the denominator, along with the G&A expenses and total costs of Canfor consolidated less CPPI in the numerator and denominator of the G&A expense ratio, respectively.

However, we acknowledge that we inadvertently requested that Canfor report all of its indirect selling expenses in addition to all of its G&A expenses.[59] We made this request as Canfor had failed previously to include in the numerator the G&A costs of CSP and Canfor Sweden in reporting its G&A ratio.[60] However, it was our intent to only request the addition of the G&A costs of CSP and Canfor Sweden to the already reported Canfor consolidated's G&A costs less those of CPPI in the numerator. Canfor appears to have identified our error, and reported two costs, one inclusive of selling as well as the G&A costs of CSP and Canfor Sweden as well as all Canfor consolidated's G&A costs less CPPI's in the numerator (per our inadvertent request)[61] and another that included only Canfor consolidated's G&A expenses less those of CPPI in the numerator and Canfor consolidated's total costs in the denominator (including those of CSP and Canfor Sweden) less those of CPPI.[62] Despite Canfor doing so, we relied on the database that included Canfor consolidated's indirect sales expenses in the numerator.[63] While the petitioner has asserted that Canfor has not fully explained its itemization of G&A and selling expenses, the petitioner has noted no error in their calculations and we found Canfor's response sufficiently complete with regard to properly identifying Canfor consolidated's G&A selling expenses. Therefore, for the final results, we have relied on its reported G&A costs in determining the G&A expense ratio.[64]

[58] *See, e.g.*, Canfor's AQR at Exhibit A-9)
[59] *See* Canfor's Letter, "Canfor's Sections B-D Supplemental Questionnaire Response," dated December 7, 2023, at 2 (Canfor's B-D SQR).
[60] *See* Canfor's B-D QR at Exhibit D-28.
[61] *See* Canfor's B-D SQR at Exhibit D-54.
[62] *Id.* at Exhibit D-54.
[63] *See* Canfor Preliminary Cost Analysis Memorandum.
[64] *See* Canfor Final Cost Analysis Memorandum.

Comment 5: Whether Commerce Should Apply the Transactions Disregarded Provision to Canfor's Transactions With Affiliated Seed Suppliers

Petitioner's Comments

The following is a verbatim summary of argument submitted by the petitioner. For further details, *see* the Petitioner's Case Brief at 4-6.

> Commerce should apply the transaction disregarded provision section 773(f)(2) of the Act to seeds used for reforestation that Canfor obtained from affiliated parties. Commerce has consistently applied the transactions disregarded provision in prior segments of this proceeding to respondents' affiliated seed transactions,[65] and should do so here with respect to seeds Canfor sourced from affiliated parties during the POR.

Canfor's Comments

The following is a verbatim summary of argument submitted by Canfor. For further details, *see* Canfor's Rebuttal Brief at 2 and 5-7.

> Canfor owns interests in two seed coops, Vernon Seed Orchard (Vernon Seed) and Huallen Seed Orchard Company (Huallen), that supply seeds for Canfor's reforestation activities in BC and Alberta, respectively. The petitioner argues that Commerce should adjust the prices Canfor pays for seeds from these affiliated suppliers. Commerce analyzes transactions with affiliated parties under section 773(f)(2) of the Act. A transaction between affiliated parties may be disregarded if the price does not "fairly reflect" a market price.[66] When assessing the prices of transactions between affiliated parties, Commerce generally uses the higher of the affiliated sale price or market price. Commerce has a preference for using the prices in a respondent's transactions with unaffiliated parties, provided they reflect an arm's-length dealing.
>
> The petitioner's argument that Commerce should apply the transactions disregarded rule to seeds Canfor purchased from Vernon Seed and Huallen fundamentally misunderstands the market for seeds. Seed prices vary based on species and class of seed, and therefore are not susceptible to comparison by simply averaging these disparate seed prices into a single average price. Commerce should not make the petitioner's requested adjustment in the *Final Results*.

Commerce's Position: We agree with the petitioner and have applied the transactions disregarded rule to Canfor's purchase of seeds from affiliated parties and have adjusted Canfor's COM accordingly.[67] Section 773(f)(2) of the Act provides:

[65] *See* Petitioner's Case Brief at 1-2 (citing, *e.g.*, *Lumber from Canada AR4 Final Results* IDM at Comment 11; and *Lumber from Canada AR2 Final Results* IDM at Comment 20).
[66] *See* section 773(f)(2) of the Act.
[67] *See* Canfor Final Cost Analysis Memorandum.

> {a} transaction directly or indirectly between affiliated persons may be disregarded if, in the case of any element of value required to be considered, the amount representing that element does not fairly reflect the amount usually reflected in sales of merchandise under consideration in the market under consideration. If a transaction is disregarded under the preceding sentence and no other transactions are available for consideration, the determination of the amount shall be based on the information available as to what the amount would have been if the transaction had occurred between persons who are not affiliated.

Commerce generally compares a respondent's purchases of an input in question from its affiliate to the respondent's purchases of the same input from unaffiliated suppliers to determine whether the price charged by the affiliated party reflects "the amount usually reflected in sales."[68] In this case, we find that record evidence supports a finding that the transactions disregarded rule should be applied as it relates to seeds that Canfor obtained from affiliated parties due to a comparison of purchase prices between Canfor and affiliated parties and Canfor and unaffiliated parties.

While Canfor argues that it is impossible to compare seeds used in BC from those used in Alberta, Canfor provided no information regarding the prices of seed from unaffiliated parties in each province, despite Commerce requesting this information twice.[69] Further, while Canfor claims that its submitted prices it paid are unreliable of the true costs, it was Canfor that provided these prices and did so in response to Commerce requesting the data in order to determine whether the seeds were purchased at a market price.[70] Thus, because the seed purchases from affiliated and unaffiliated parties are on the record and no information on the record allows a comparison of affiliated and unaffiliated seed prices, nor does it provide any alternate means of measuring what any actual market prices may be, for the final results, we have based our analysis regarding the transactions disregarded rule on a comparison of all affiliated and unaffiliated seed prices and find that the affiliated price are less than market prices and have adjusted Canfor's costs accordingly.[71]

Comment 6: Whether Commerce Should Include Restructuring Costs Associated with the Mackenzie Mill

Petitioner's Comments

The following is a verbatim summary of argument submitted by the petitioner. For further details, *see* the Petitioner's Case Brief at 2 and 7-12.

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[68] *See, e.g.*, *Certain Carbon and Alloy Steel Cut-To-Length : Final Results of Antidumping Duty Administrative Review*, 88 FR 39229 (June 15, 2023), and accompanying IDM at Comment 5; *Refrigerator-Freezers from Korea* IDM at Comment 17; *Certain Welded Stainless Steel Pipes from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*, 75 FR 27987 (May 19, 2010), and accompanying IDM at Comment 3; and *Silicomanganese from Brazil: Final Results of Antidumping Duty Administrative Review*, 69 FR 13813 (March 24, 2004), and accompanying IDM at Comment 7.

[69] *See* Canfor's B-D QR at D-32 and Exhibit D-18; *see also* Canfor's SDR at 7 and Exhibit D-44.

[70] *Id.*

[71] *See* Canfor Final Cost Analysis Memorandum.

> Commerce should adjust Canfor's reported G&A expenses to include restructuring costs related to the Mackenzie mill. Commerce's established practice is to only "exclude{e} gains or losses related to the permanent closure or sale of an entire facility."[72] Similar to prior segments of this proceeding, the record does not support a conclusion that the Mackenzie mill was sold or that the lack of production reflects a permanent closure. Instead, the record shows that the Mackenzie mill was indefinitely curtailed, during the POR. As such, Commerce should include the restructuring costs recorded by the company related to this facility in Canfor's G&A expense calculation.

Canfor's Comments

The following is a verbatim summary of argument submitted by Canfor. For further details, *see* Canfor's Rebuttal Brief at 3 and 7-11.

> As it has in previous segments of this proceeding, Canfor charged costs and revenue related to its shut-down mills, including Mackenzie, to cost of goods sold (COGS) and listed these amounts separately from the cost of the sawmills that produced lumber sold because these mills have been permanently closed and sold and there was no production at these mills that contributed to COP. The petitioner argues that because the sale of the Mackenzie mill was not completed during the POR, Commerce should treat the shutdown expenses for this mill as part of COP. Without regard to whether the sale has closed, this sawmill was permanently closed during the POR and Commerce's practice has been to exclude from COP costs related to the permanent closure of a respondent's facilities.

Commerce's Position: We disagree with the petitioner. As we noted in the underlying investigation, our "longstanding practice has been to exclude costs that are related to the *permanent closure or sale* of entire production facilities, as they no longer relate to the normal, ongoing operations of a company."[73] Canfor stated that the Mackenzie sawmill was permanently closed in 2020.[74] During the year ending December 31, 2021, Canfor reflected the sale of certain Mackenzie sawmill assets during the fourth quarter of 2021.[75] In February 2022, Canfor published a news release announcing the sale of the Mackenzie sawmill assets and land tenure and also announced the February 2022 sale of both in the 2022 annual report.[76] Further, Canfor announced in its official Annual Information Form covering 2022 that it had permanently closed its Mackenzie sawmill.[77] None of the arguments that the petitioner raises contradict Canfor's claims and statements in official documents that its operations at the Mackenzie sawmill were permanently closed in 2020. Even when citing the existence of costs incurred by the Mackenzie sawmill during the POR, the petitioner only cited depreciation and non-operational costs and no operational costs.[78] Thus, the permanent nature of the Mackenzie sawmill shut down is

[72] *Id.* (citing *Lumber from Canada AR3 Final Results* IDM at Comment 17).
[73] *See Lumber from Canada Investigation* IDM at 94-95, 108-09.
[74] *See* Canfor's AQR at 3.
[75] *Id.* at Exhibit A-9.
[76] *Id.*
[77] *Id.* at Exhibit A-20 at 13.
[78] *See* Petitioner's Case Brief at 11.

supported by the record evidence. Therefore, for the final results and consistent with our practice, we have not included in Canfor's G&A expenses the costs associated with the permanently shut down Mackenzie sawmill.

Comment 7: Whether Commerce Should Include Devaluation Losses in Canfor's G&A Calculation

Petitioner's Comments

The following is a verbatim summary of argument submitted by the petitioner. For further details, *see* the Petitioner's Case Brief at 2-3 and 12-16.

> Commerce should adjust Canfor's reported G&A expenses to include devaluation loses. Under Commerce's normal practice, gains and losses on revaluation of inventories must be included in the reported COM "as long as such adjustments result from revaluations of either raw materials or work in process (WIP) and are not related to finished goods inventory."[79] Applying this practice, Commerce should adjust Canfor's reported G&A expenses in the final results.

Canfor's Comments

The following is a verbatim summary of argument submitted by Canfor. For further details, *see* Canfor's Rebuttal Brief at 3-4 and 12-15.

> The petitioner misunderstands what the inventory devaluation adjustment represents, misconstruing it as an actual cost on Canfor's books that Canfor excluded from its reporting. Consistent with international financial reporting standards (IFRS), the inventory devaluation adjustment is made to recognize a theoretical, potential future loss if the inventory were to be sold at its current market value on the date of the balance sheet. Canfor's mills themselves (*i.e.*, the entities producing lumber) valued inventory on an actual cost basis and those unadjusted actual costs are the basis for Canfor's reported COM. Adding the hypothetical inventory loss adjustment to Canfor's G&A expense ratio, as the petitioner requests, would result in overstating Canfor's costs by double counting a portion of Canfor's raw materials costs. Commerce has previously distinguished between inventory loss adjustments done for financial statement presentation purposes and actual inventory write-downs of the kind that the petitioner presumes is occurring here. Making an inventory *write-down* adjustment when Canfor has only recognized a theoretical *potential loss* would be illogical and would unreasonably increase the Canfor's COP.

Commerce's Position: We agree with the petitioner. It is Commerce's practice to recognize gains and losses on revaluation of inventories by including them in the reported COM "as long as

[79] *Id.* at 2-3 (citing, *e.g.*, *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Mexico: Final Results of Antidumping Duty Administrative Review; 2018-2019*, 86 FR 41448 (August 2, 2021) (*HWRP from Mexico*), and accompanying IDM at Comment 8.

such adjustments result from revaluations of either raw materials or WIP and are not related to finished goods inventory."[80] As the inventory devaluation pertains to the POR raw materials and WIP,[81] we are using the 2022 fiscal year information from the financial statements regarding the devaluation as the basis for our G&A calculation for Canfor.

In calculating a G&A expense ratio, Commerce normally includes period expenses that are related to the general operations of the company as a whole, such as G&A expenses.[82] The U.S. Court of International Trade (CIT) has agreed with Commerce that G&A expenses are those expenses which relate to the general operations of the company as a whole rather than to the production process.[83] Moreover, Commerce has determined that the gains and losses on periodic raw material and semi-finished goods inventory valuation are related to the general operations of the company as a whole and should be included in the reported costs.[84] Consequently, we find it appropriate to include Canfor's raw material and semi-finished goods inventory valuation gains or losses that were recorded in the company's income statement in the calculation of the G&A expense ratio. While Canfor objects to its dumping margin being based on costs that both reflect the material costs as originally recorded and also the amount of devaluation of these material costs,[85] these were the amounts recorded in the current accounts of Canfor for the POR. Therefore, for the final results, we find that it is appropriate to include the devaluation of material inputs consumed during the POR.[86]

Comment 8: Whether Commerce Should Deduct CVDs from U.S. Price

Petitioner's Comments

The following is a verbatim summary of argument submitted by the petitioner. For further details, *see* the Petitioner's Case Brief at 16-23.

> Commerce should deduct countervailing duties (CVDs) from U.S. price because the language "any … costs, charges, or expenses, and United States import duties" in section 772 of the Act must be interpreted as including CVDs as payment of such

[80] *See* Petitioner's Case Brief at 2-3 (citing *HWRP from Mexico* IDM at Comment 8). We have followed this approach in *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Mexico: Final Results of Antidumping Duty Administrative Review; 2018-2019*, 86 FR 41448 (August 2, 2021); *Certain Crystalline Silicon Photovoltaic Products from Taiwan: Final Results of Antidumping Duty Administrative Review; 2014-2016*, 82 FR 31555 (July 7, 2017), and accompanying IDM at Comment 10; and *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2019-2020*, 87 FR 20390 (April 7, 2022) (*HWRP from Korea*), and accompanying IDM at Comment 6.
[81] *See* Canfor's SDR at 5 and Exhibit D-42.
[81] *Id.*
[82] *See, e.g.*, *HWRP from Korea* IDM at Comment 6.
[83] *See U.S. Steel Corp. v. United States*, 998 F. Supp. 1151, 1154 (CIT 1998).
[84] *See, e.g.*, *Certain Oil Country Tubular Goods from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 84 FR 24085 (May 24, 2019), and accompanying IDM at Comment 8.
[85] *See* Canfor's SDR at 5 and Exhibit D-42 (where it identified the devaluation costs incurred during 2022 and see Canfor's SDR at 4-5 where it stated that the reported 2022 costs were based on historical costs (*i.e.*, costs as originally recorded in Canfor's accounting system)).
[86] *See* Canfor Final Cost Analysis Memorandum.

duties are "incident to bringing the subject merchandise from the original place of shipment in the exporting country to the place of delivery in the United States."

The rationale for the use of adjustments in establishing normal value and export price (EP) is to produce a fair, "apples-to-apples" comparison between the price in the comparison and U.S. markets.[87] The SAA, explaining the basis for adjustments to normal value, describes such adjustments as "intended to ensure that dumping margins will be tax-neutral."[88] If Commerce were to not make these adjustments, the agency would fail to achieve "an ex-factory price that is comparable to the price of goods in the home market."[89]

Commerce should reconsider its practice of not deducting CVDs from U.S. price in this segment. As an initial matter, Commerce's analysis of this issue in the preceding administrative review is internally inconsistent—as Commerce claims that its decision is based on "{t}he plain meaning of the language,"[90] while also relying on cases where the agency claimed "substantial deference" in interpreting a statutory term that is undefined.[91] Moreover, Commerce's prior determinations regarding whether CVDs should be deducted from U.S. price are unpersuasive given the errors in their statutory interpretation that attempts to introduce ambiguity where none exists.[92] Contrary to Commerce's prior determinations, there is no ambiguity in the statutory language "any additional costs, charges, or expenses, and United States import duties." Additionally, Commerce's interpretation of the text "any additional costs, charges, or expenses, and United States import duties" contained in section 772(c)(2)(A) of the Act conflicts with language in other parts of the statute that permits importers to deduct "customs duties and other Federal taxes currently payable" in determining the transaction value of the merchandise.[93]

Canfor's Comments

The following is a verbatim summary of argument submitted by Canfor. For further details, *see* Canfor's Rebuttal Brief at 4 and 17-19.

The petitioner claims, despite years of consistent practice by Commerce that has been affirmed by the courts, that CVD deposits paid by Canfor constitute costs

[87] *Id.* at 18 (citing*, e.g.*, *Torrington Co. v. United States*, 68 F.3d 1347, 1352 (Fed. Cir. 1995)).
[88] *Id.* (citing Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, Vol. 1, at 827 (1994) (SAA)).
[89] *Id.* (citing *Borusan Mannesmann Boru Sanayi ve Ticaret A.S. v. United States*, 494 F. Supp. 3d 1365, 1373 (CIT 2021)).
[90] *Id.* (citing *Lumber from Canada AR4 Final Results* IDM at 46).
[91] *Id.* at 20 (citing *Notice of Final Results of Antidumping Duty Administrative Review: Low Enriched Uranium from France*, 69 FR 46501 (August 3, 2004) (*Low Enriched Uranium from France*)).
[92] *Id.* at 20 (citing *CS Wind Vietnam Co. v. United States*, 832 F.3d 1367, 1377 (Fed. Cir. 2016) ("{A}n agency's statement of what it 'normally' does or has done before is not, by itself, an explanation of 'why its methodology comports with the statute.' Whether it does so in a particular agency decision or in a cited earlier decision, the agency must ground such a normal or past practice in the statutory standard." (quoting *SKF USA, Inc. v. United States*, 263 F.3d 1369, 1383 (Fed. Cir. 2001)).
[93] *See* 19 U.S.C. § 1401a(b)(3)(B).

incident to bringing merchandise into the United States and that Commerce should adjust U.S. price to account for countervailing duties. Commerce has never deducted CVD deposits or countervailing duties from U.S. price, and the courts have upheld this determination. The petitioner has failed to identify any reason for Commerce to reconsider its settled practice in the context of this administrative review, and Commerce should reject Petitioner's unwarranted request that Commerce adjust Canfor's U.S. price.

Canadian Parties' Comments

The following is a verbatim summary of argument submitted by the Canadian Parties. For further details, *see* the Canadian Parties' Rebuttal Brief.

> The petitioner's argument that Commerce should deduct countervailing duties and countervailing duty cash deposits from U.S. price when calculating dumping margins is contrary to the law and Commerce's policy. Commerce's implementation of the statute represents its longstanding and judicially endorsed policy of not deducting countervailing duties and countervailing duty cash deposits from U.S. price. Commerce has repeatedly rejected the petitioner's requests for Commerce to reconsider its policy because the petitioner's arguments are at odds with the plain meaning of the statute and with over forty years of Commerce practice. The petitioner has not presented any reason for Commerce to reconsider that policy.
>
> Antidumping and countervailing duties are not "costs" pursuant to 772(c)(2)(A) of the Act, nor are they "import duties" under the statute. Instead, as courts have uniformly recognized and as Commerce's longstanding policy reflects, they are a special duty, separate and distinct from those in the statute, and thus afforded disparate treatment—they are not deducted from U.S. price when calculating dumping margins.
>
> The petitioner's claim that Commerce's interpretation of the term "United States import duties" in section 772(c)(2)(A) of the Act conflicts with the meaning of the term "customs duties" in Section 1401a(b)(3)(B) of the Act simply does not apply because the two terms are not identical and thus cannot possibly be given identical meaning. The petitioner's argument is not supported by any legal authority and must be rejected.

Commerce's Position: We disagree with the petitioner. Commerce has explained that deducting CVDs from U.S. prices in AD cases would be inconsistent with the context and logic of the statute and its legislative history and would result in a "double remedy."[94] Commerce has

[94] *See Low Enriched Uranium from France*, 69 FR at 46506 ("{D}eduction of countervailing duties, whether export or non-export, from the U.S. price used to calculate the dumping margin, would result in a double remedy for the domestic industry." (quoting *U.S. Steel Grp. v. United States*, 15 F. Supp. 2d 892, 900 (CIT 1998) (*U.S. Steel Group*)).

never deducted CVDs from U.S. price in an AD proceeding.[95] Our determination not to deduct CVDs from U.S. price in an AD proceeding has been upheld both by the CIT and the U.S. Court of Appeals for the Federal Circuit (CAFC or Federal Circuit).[96] The petitioner has continuously argued this point throughout this proceeding, and our response has been the same in each review.[97]

Additionally, we disagree with the petitioner's assertion that CVDs are included where section 772(c)(2)(A) of the Act specifies that Commerce will deduct from U.S. price any "costs, charges, or expenses, and United States import duties." The plain language of section 772(c)(2)(A) of the Act does not include CVDs and CVD deposits. Further, in explaining why CVDs are not covered by the term "any costs, charges, or expenses," we stated in *Low Enriched Uranium from France* that, "{w}hile CVDs are a special type of import duty, they are nevertheless a species of import duty, and are thus covered, *if at all*, by the phrase 'United States import duties.'"[98] Thus, we do not agree that under section 772(c)(2)(A) of the Act, CVDs would be considered costs that should be deducted from U.S. price. As noted above, this has been Commerce's treatment of CVDs in dumping cases for decades and it has been upheld by the courts in numerous decisions.

The petitioner has added little of substance to its previous arguments other than to cherry pick language in order to accuse Commerce of being inconsistent – noting that we concluded on one hand that the plain language of section 772(c)(2)(A) of the Act does not include CVDs and on the hand, we have interpreted CVDs not to be an import duty, regardless of whether the agency claimed "substantial deference" in interpreting a statutory term that is undefined in reaching this interpretation.[99] These are simply two ways of reaching two different conclusions and we do not find our conclusions to be inconsistent.

Also baseless is the petitioner's implication that we relied solely on practice in determining not to treat CVDs as import duties. However, it would not be incorrect to have done so as past practice has been upheld by the courts in numerous decisions and the essential facts here are the same as in previous decisions. Nevertheless, in the second administrative review of this proceeding, we both detailed our rationale for determining not to treat CVDs as import duties as opposed to our treatment of 301 and 232 duties, explaining that, as opposed to CVDs, 301 duties "do not constitute 'special duties,' but rather are considered normal U.S. import duties. Therefore, we properly deducted them from U.S. prices pursuant to section 772(c)(2)(A) of the Act."[100] We further explained that "{s}ection 232 duties are not akin to antidumping or section 201 duties. In particular, we find that section 232 duties are not focused on remedying injury to

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[95] *See Low Enriched Uranium from France*, 69 FR at 46506 ("In the 23 years that Commerce has administered the AD law, it has never deducted AD duties or CVDs from initial U.S. prices in calculating dumping margins.")).
[96] *See Wheatland Tube Co. v. United States*, 495 F.3d 1355, 1362-64 (Fed. Cir. 2007); *AK Steel Corp. v. United States*, 988 F. Supp. 594, 607-08 (CIT 1997), *aff'd*, 215 F.3d 1342 (Fed. Cir. 1999), *aff'd*, 215 F.3d 1342 (Fed. Cir. 1999); *U.S. Steel Group*, at 898-900).
[97] *See Lumber from Canada AR2 Final Results* IDM at 29*; Lumber from Canada AR3 Final Results* IDM at 53-54; *Lumber from Canada AR4 Final Results* IDM at 46.
[98] *See Low Enriched Uranium from France*, 69 FR at 46505 (emphasis added). This citation also refutes the petitioner's argument that *Low Enriched Uranium from France* does not address whether CVDs should be deducted from U.S. price. Notably, Commerce also clarified that CVDs would not be deducted as United States import duties because they are not normal United States import duties. *Id.*
[99] *Id.* at 20 (citing *Low Enriched Uranium from France*).
[100] *See Lumber from Canada AR2 Final Results* IDM at 28.

a domestic industry."[101] We stated that this statement and logic clearly also applies to CVDs, which are also focused on remedying injury to a domestic industry.[102] We also noted in the second administrative review that the petitioner has raised nothing substantively that was not already addressed in *Low Enriched Uranium from France* and in CIT and Federal Circuit decisions.[103] Rather than merely citing past precedent, Commerce in this proceeding and in many other AD proceedings, as well as in proceedings at the CIT and Federal Circuit where our declination to deduct CVDs was upheld, has fully explained the above-described rationale for not deducting CVDs from the U.S. price in AD cases and relied on this rationale for not deducting CVDs.

The petitioner continually cites the statutory language "any additional costs, charges, or expenses, and United States import duties," claiming that Commerce's interpretation of the text "any additional costs, charges, or expenses, and United States import duties" contained in section 772(c)(2)(A) of the Act conflicts with language in other parts of the statute that permits importers to deduct "customs duties and other Federal taxes currently payable" in determining the transaction value of the merchandise, and also that if Commerce were to not deduct CVDs from U.S. price, the agency would fail to achieve "an ex-factory price that is comparable to the price of goods in the home market." However, while the petitioner continues to make these statements, it fails to address the fact that we do not consider CVDs to be a cost in the context of dumping for the reasons articulated again and again by Commerce and upheld by the courts numerous times, as cited above.

Comment 9: Whether Commerce Should Rescind the Review of Companies for which all Review Requests Were Withdrawn

Petitioner's Comments

The following is a verbatim summary of argument submitted by the petitioner. For further details, *see* the Petitioner's Case Brief at 3-4 and 28-30.

> Commerce should rescind this administrative review, in part, in accordance with 19 CFR 351.213(d)(1), with respect to companies for which all requests for review were timely withdrawn.[104] In this review, the COALITION withdrew its request that Commerce review certain companies within 90 days of the published notice of initiation. Because the COALITION timely withdrew its administrative review request of these producers and exporters, and because no other interested party requested a review of any of these entities, Commerce must rescind its review of these companies consistent with the agency's regulations and established practice.

No other interested party commented on this issue.

[101] *Id.* at 29.
[102] *Id.*
[103] *See Lumber from Canada AR2 Final Results* IDM at 28.
[104] *See* Petitioner's Case Brief at Exhibit 2 for a list of all companies for which the petitioner claims all review requests were withdrawn. However, one of these companies, Woodstock Forest Products, is treated for customs purposes as a single entity with 10104704 Manitoba Ltd., the latter of which remains under review. *See* Appendix II of the accompanying *Federal Register* notice for a detailed explanation of the treatment of these companies.

Commerce's Position: We agree with the petitioner. All review requests for the respondents identified by the petitioner were withdrawn within the deadline specified by 19 CFR 351.213(d)(1).[105] Therefore, for the final results, we have rescinded this review with respect to the companies in Attachment III in the accompanying final results *Federal Register* notice.[106]

Comment 10: Whether Commerce Should Revise the Names of Certain Respondents

Petitioner's Comments

The following is a verbatim summary of argument submitted by the petitioner. For further details, *see* the Petitioner's Case Brief at 4 and 28-33.

> Commerce should make a number of revisions to the names of the entities appearing in the list of companies under review. These changes are necessary to correct the typographical error in which the company 0752615 B.C. Ltd. was inadvertently identified as "752615 B.C. Ltd.,"[107] to separately identify the unrelated companies Produits Matra Inc. and Sechoirs de Beauce Inc., who are separate and distinct producers of subject merchandise,[108] and to ensure that the names appearing in the final results and cash deposit instructions are consistent with CBP's preference that names appear without reference to business designations such as DBA, AKA, and O/A.

No other interested party commented on this issue.

Commerce's Position: We agree with the petitioner on all accounts. The respondent 0752615 B.C. Ltd. has been consistently referred to as such in all previous proceedings,[109] as well as identifying itself as 0752615 B.C. Ltd in its review request.[110] Produits Matra Inc. and Sechoirs de Beauce Inc. have been identified as separate entities in all proceedings prior to this review,[111] and Produits Matra Inc. and Sechoirs de Beauce Inc. identified themselves as separate entities in their respective review requests.[112] Finally, consistent with Commerce's preference that names appear without reference to business designations such as DBA, AKA, and O/A, we have removed all such designations from the respondents' names. For the final results, all names have been identified as specified above.[113]

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[105] *See* Petitioner's Letter, "Partial Withdrawal of Request for Administrative Review," dated May 17, 2023.
[106] *See* the accompanying *Federal Register* notice for these final results at 2-3 and Attachment III.
[107] To illustrate, adding a leading "0" and correcting 752615 B.C. Ltd. to read 0752615 B.C. Ltd.
[108] For example, listing separately Produits Matra Inc. and Sechoirs de Beauce Inc.
[109] *See Lumber from Canada AR1 Final Results*; *Lumber from Canada AR2 Final Results*; *Lumber from Canada AR3 Final Results*; and *Lumber from Canada AR4 Final Results.*
[110] *See* 0752615 B.C Ltd.'s Letter, "0752615 B.C Ltd., Fraserview Remanufacturing Inc., dba Fraserview Cedar Products Request for Administrative Review," dated January 27, 2023.
[111] *See Lumber from Canada AR1 Final Results*; *Lumber from Canada AR2 Final Results*; *Lumber from Canada AR3 Final Results*; and *Lumber from Canada AR4 Final Results.*
[112] *See* Produits Matra Inc.'s Letter, "Request for Antidumping Duty Administrative Review (1/1/2022-12/31/2022)," dated January 20, 2023; *see also* Sechoirs de Beauce Inc.'s Letter, "Request for Antidumping Duty Administrative Review (1/1/2022-12/31/2022)," dated January 20, 2023.
[113] *See* the accompanying *Federal Register* notice for these final results at Attachment II.

Comment 11: Whether Commerce Should Revise the Application of West Fraser's By-Product Offset

West Fraser's Comments

The following is a verbatim summary of argument submitted by West Fraser. For further details, *see* West Fraser's Case Brief at 16-18. We note that we requested that interested parties provide a public, executive summary for each issue raised in their briefs. *See Preliminary Results*, 89 FR at 8153. Therefore, because the executive summary in West Fraser's Case Brief contains business proprietary information (BPI), we have redacted that content herein.

> Commerce must correct its byproduct revenue adjustment for West Fraser. In its *Preliminary Results*, Commerce adjusted the West Fraser byproduct revenue to reflect the extent to which West Fraser's average sales prices to affiliated customers for the different byproducts (including wood chips, sawdust/shavings, wood hog, and trimblocks) {were different}. Commerce, however, made an error in this process. Specifically, Commerce calculated separate percentage reductions to byproduct revenue for both Alberta and British Columbia, but rather than applying these separate provincial percentages, Commerce incorrectly added the two percentages together and used this percentage to reduce the byproduct revenue offset amount. This result greatly overstates the appropriate adjustment. West Fraser provides suggested programming language to revise the application of the by-product offset for the *Final Results*.

Petitioner's Comments

The following is a verbatim summary of argument submitted by the petitioner. For further details, *see* the Petitioner's Rebuttal Brief. We note that we requested that interested parties provide a public, executive summary for each issue raised in their briefs. *See Preliminary Results*, 89 FR at 8153. Therefore, because the executive summary in the Petitioner's Rebuttal Brief contains BPI, we have redacted that content herein.

> Commerce should not insert West Fraser's proposed programming language. Commerce can correct any error in the preliminary results simply by {calculating the adjustment in a different manner}. Therefore, it is unnecessary for Commerce to insert the programming language proposed by West Fraser.

Commerce's Position: We agree with West Fraser. In the *Preliminary Results*, we calculated separate percentage adjustments for both the BC and Alberta provinces.[114] However, in the application of these adjustments in the SAS programming for the *Preliminary Results*, we mistakenly increased the percentage adjustment for one of the provinces by calculating a simple average to apply to both provinces. While West Fraser and the petitioner have both proposed

[114] *See* Memorandum, "Analysis for the Preliminary Results of the Fifth Antidumping Duty Administrative Review: Certain Softwood Lumber Products from Canada – West Fraser Mills Ltd.," dated January 31, 2024 (West Fraser Preliminary Results Analysis Memorandum), at Attachment III.

SAS programming language for a more targeted application of these adjustments, we find that West Fraser's suggested language will lead to a more precise result. Therefore, for the final results, we have followed the programming language proposed by West Fraser.[115]

Comment 12: Whether Commerce Should Adjust West Fraser's Log Prices

West Fraser's Comments

The following is a verbatim summary of argument submitted by West Fraser. For further details, *see* West Fraser's Case Brief at 19-22. We note that we requested that interested parties provide a public, executive summary for each issue raised in their briefs. *See Preliminary Results*, 89 FR at 8153. Therefore, because the executive summary in West Fraser's Case Brief contains BPI, we have redacted that content herein.

> Commerce must correct its adjustment of West Fraser's log prices to reflect {certain price} differences. Although Alberta Newsprint Company (ANC) provides logs only for West Fraser's Alberta operations, Commerce's *Preliminary Results* incorrectly applied the percentage increase to West Fraser's log costs for all mills, including those in British Columbia as well as those in Alberta. This inaccuracy should be corrected in Commerce's final results.

No other interested party commented on this issue.

Commerce's Position: We agree with West Fraser. In the *Preliminary Results*, we inadvertently applied a percentage increase to West Fraser's logs costs for all of its mills. For the final results, we have corrected this matter by only applying the adjustment for log prices to the Alberta province.[116]

Comment 13: Whether Commerce Should Adjust West Fraser's G&A Expenses for Inventory Valuation Loss

West Fraser's Comments

The following is a verbatim summary of argument submitted by West Fraser. For further details, *see* West Fraser's Case Brief at 22-23.

> In the *Preliminary Results*, Commerce adjusted West Fraser's G&A expense ratio by increasing West Fraser's G&A expenses by an "inventory valuation loss" in its reported costs. However, the result was an incorrect "double counting" of this amount, since, as reflected in an explanation in the 2022 West Fraser Annual Report, West Fraser's policy is to reflect the "lower of the net realizable value or cost" in its reported log costs. Accordingly, in the final results, Commerce should eliminate the inclusion of this "inventory valuation loss" in its calculation of West Fraser's G&A ratio to avoid this impermissible "double counting."

[115] *See* West Fraser Final Results Analysis Memorandum at Attachment I.
[116] *Id.* at 2 and Exhibit 2 for additional details.

Petitioner's Comments

The following is a verbatim summary of argument submitted by the petitioner. For further details, *see* the Petitioner's Rebuttal Brief at 27-30.

> Commerce's decision, in the *Preliminary Results*, to include the reported raw material write-downs in West Fraser's G&A expense calculation is consistent with the agency's practice of including raw material valuation adjustments in a respondent's G&A expenses. In this case, as the inventory revaluation pertained to logs, a raw material, Commerce properly adjusted West Fraser's reported G&A expenses.

Commerce's Position: We disagree with West Fraser that the inventory valuation losses related to raw materials should be excluded from the reported costs. Accordingly, consistent with the *Preliminary Results*, we have continued to include inventory valuation losses related to raw materials in West Fraser's G&A expense ratio for the final results. This finding is also consistent with Commerce's past practices regarding inventory valuation losses and G&A expense ratios.[117]

West Fraser argues that including inventory losses in the G&A expense ratio is double counting because its financial statements reflect a "lower of the net realizable value or cost" for log costs.[118] We disagree that the record reflects such a conclusion. West Fraser's statement regarding its inventories and the lower of the net realizable value or cost is an adjustment made in accordance with International Financial Reporting Standards, as referenced on its audited financial statements.[119] On the balance sheet, the net loss is reflected in the value of the inventories that a company is holding at that time, while the income statement reflects the incremental gain or loss for a period of time.[120] Thus, West Fraser is recognizing the gains or losses associated with the inventory it is currently holding on its balance sheet, which are unrelated to the inventory that was consumed in current production. In calculating a G&A expense ratio, Commerce normally includes such period expenses, *i.e.*, those that are more related to an accounting period and not directly related to manufacturing merchandise, as they are related to the general operations of the company as a whole.[121] Moreover, the CIT has agreed with Commerce that G&A expenses are those expenses which relate to the general operations of the company as a whole rather than to the production process.[122] Consequently, we find it appropriate to include West Fraser's raw material inventory valuation losses, which were

[117] *See Certain Oil Country Tubular Goods from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 84 FR 24085 (May 24, 2019) (*OCTG from Korea 2016-2017*), and accompanying IDM at Comment 8.
[118] *See* West Fraser's Case Brief at 23.
[119] *See* West Fraser's Letter, "Section A Questionnaire Response," dated May 9, 2023, at Exhibit WF-AR5-A-22.
[120] *See OCTG from Korea 2016-2017* IDM at Comment 8.
[121] *Id*.
[122] *See U.S. Steel Group, et al. v. United States*, 998 F. Supp 1151, 1154 (CIT 1998) (citing *Rautaruukki Oy v. United States*, 19 CIT 438, 444 (1995)).

recorded in the company's income statement,[123] in our calculation of the G&A expense ratio. In fact, Commerce has previously determined that the gains and losses on periodic raw material and inventory revaluations are related to the general operations of the company as a whole and should be included in the reported costs.[124]

Comment 14: Whether Commerce Double Counted Billing Adjustments

West Fraser's Comments

The following is a verbatim summary of argument submitted by West Fraser. For further details, *see* West Fraser's Case Brief at 24-25.

> In the *Preliminary Results*, Commerce deducted "billing adjustment" amounts notwithstanding West Fraser's explanations in its questionnaire responses that all billing adjustments had already been reflected in the price information that West Fraser had provided. Accordingly, Commerce should eliminate these billing adjustments to avoid the double accounting of these adjustments.

No other interested party commented on this issue.

Commerce's Position: We agree with West Fraser. In the *Preliminary Results*, we inadvertently included billing adjustments in our programming. For the final results, we have not deducted billing adjustments from our calculations.[125]

Comment 15: Whether Commerce Correctly Applied Surrogate Costs

West Fraser Comments

The following is a verbatim summary of argument submitted by West Fraser. For further details, *see* West Fraser's Case Brief at 25-26.

> Commerce ran its standard cost surrogate macro program but neglected to revise this program to implement its consistent past practice, reflected in the instructions for its questionnaire and otherwise, not to allow matching and surrogate values across species and grade groups. This apparent error should be remedied in Commerce's final results.

Petitioner's Comments

The following is a verbatim summary of argument submitted by the petitioner. For further details, *see* the Petitioner's Rebuttal Brief at 31-32.

[123] *See* West Fraser's Letter, "Response to October 25, 2023, Sections A-D Supplemental Antidumping Duty Questionnaire," dated November 14, 2023, at Exhibit WF-AR5-SABCD-45.
[124] *See OCTG from Korea 2016-2017* IDM at Comment 8.
[125] *See* West Fraser Final Results Analysis Memorandum at 2 for additional details.

Commerce has previously explained that respondents need to justify the use of alternative methodologies for surrogate costs. In this case, West Fraser fails to identify any distortion resulting from Commerce's decision to follow its default methodology and assign surrogate costs for products that were sold but not produced during the POR. As a result, Commerce should decline to make West Fraser's requested modification to the comparison market program.

Commerce's Position: We agree with West Fraser. Section 1-E-iii-a of the comparison market program entitled "SURROGATE COSTS FOR NON-PRODUCTION" contains the following directive: "If you have products that were sold but not produced during the period and that do not already have adequate surrogate cost information reported, type 'YES' (without quotes) on the first line and complete the rest of this section."[126] In the *Preliminary Results*, we inadvertently set this section of the comparison market program to "YES."[127] While West Fraser reported "that certain control numbers sold during the POR were not produced during the period,[128] West Fraser also reported that "for these control numbers, West Fraser has added records to DATABASE 4 and assigned the costs based on that of a surrogate, in accordance with the instructions provided in Appendix D-3."[129] Given that West Fraser reported surrogate costs for these control numbers (CONNUM), West Fraser met its questionnaire obligations and section 1-E-iii-a of the comparison market program was run in error for the *Preliminary Results.* Therefore, for the final results, we have corrected this error by setting this section of the program to "NO."[130]

Comment 16: Whether Commerce's Application of the Differential Pricing Analysis Is Contrary to Law and in Violation of the Assumptions Articulated in *Stupp*

West Fraser's Comments

The following is a verbatim summary of argument submitted by West Fraser. For further details, *see* West Fraser's Case Brief at 6-7.

> Commerce's differential pricing analysis — and, in particular, its reliance on a Cohen's *d* framework — is fundamentally inconsistent with the requirement that Commerce confirm the applicability of the express assumptions underlying that framework. In *Stupp Corp. v. United States*, the Federal Circuit remanded Commerce's application of the Cohen's *d* test to data groups that were small, not normally distributed, and had disparate variances.[131] The U.S. Court of Appeals for the Federal Circuit has repeatedly held that Commerce's application of the Cohen's *d* test in its differential pricing analysis must be consistent with the assumptions on which the test is based and the relevant statistical literature. That is, before Commerce may use the Cohen's *d* test to justify its use of the average-to-transaction method (A-T method) to calculate antidumping margins rather than the

[126] *Id.* at Attachment I for additional details.
[127] *See* West Fraser Preliminary Results Analysis Memorandum at Attachment I.
[128] *See* West Fraser's Letter, "Response to Aprill 11, 2023 Section B, C and D Initial Antidumping Duty Questionnaire, dated June 6, 2023, at D-75,
[129] *Id*.
[130] *See* West Fraser Final Results Analysis Memorandum at 2 and Attachment I for additional details
[131] *Id*. at 6; *see also Stupp Corp. v. United States*, 5 F.4th 1341, 1357 (Fed. Cir. 2021) (*Stupp*).

preferred average-to-average method (A-A method), Commerce must confirm whether the assumptions of the Cohen's *d* test — as these assumptions were expressly set forth by Dr. Cohen in formulating the test and have been further explained in the statistical literature — are satisfied. Because Commerce failed in its *Preliminary Results* utilizing the Cohen's *d* test even to examine whether the assumptions underlying the test were satisfied, there is no reasonable basis on the record to support Commerce's differential pricing analysis.

Commerce's differential pricing analysis in the *Preliminary Results* is also inconsistent with the language and evident purpose of the statute permitting Commerce to use the A-T method rather than the statutorily preferred "usual" A-A method. As developed in the Canadian Parties' Case Brief, the Congressional purpose in authorizing Commerce in certain specific circumstances to use the A-T method was to uncover "targeted" dumping, and Commerce's *Preliminary Results* decision does not satisfy either of the two elements that Congress has required that Commerce must satisfy in order to use the A-T method to respond to such "targeted dumping," that is, (i) that there is a pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or periods of time, and (ii) that Commerce can explain why such differences cannot be taken into account using the A-A method.

Central Canada's Comments

The following is a verbatim summary of argument submitted by Central Canada. For further details, *see* Central Canada's Case Brief at 18.

The trade courts – the U.S. Court of International Trade (CIT) and the CAFC, in addition to the World Trade Organization (WTO), have been identifying infirmities with Commerce's differential pricing methodology (DPM) and, more specifically, the Cohen's *d* test, for several years. In 2023, the North American Free Trade Agreement (NAFTA) Binational Panel hearing the appeal of the underlying Softwood Lumber AD investigation remanded to Commerce on issues concerning the Cohen's *d* test. The body of jurisprudence, including binding CAFC precedent, that has developed since the initiation of the Softwood Lumber dumping case has identified Commerce's failure to respect well-established statistical principles.

Despite this judicial chorus of criticism, Commerce presses on. In this fifth administrative review of the antidumping order on softwood lumber from Canada, Commerce preliminarily has found dumping by Canfor and West Fraser through continued reliance on the DPM and the Cohen's *d* test, and these unlawful results artificially inflated the all-others' (non-selected companies') rate. Commerce continues to dismiss as irrelevant the underlying assumptions of the Cohen's *d* test: sufficient sample size, normal distribution, and roughly equal variances.

Evidence on the record in this review, ignored in the *Preliminary Results*, presents Commerce with an additional challenge. Professor Larry V. Hedges, a preeminent

expert in statistics, has devoted an entire report to one issue: whether Commerce's use of the Cohen's *d* test can be reliable in identifying significant price differences when assumptions upon which the Cohen's *d* test was developed are not satisfied. Professor Hedges reaches a persuasive conclusion: Commerce's use of the Cohen's *d* test suffers from statistical errors that render use of the test and the consequent *Preliminary Results* inaccurate and invalid.

Canadian Parties' Comments

The following is a verbatim summary of argument submitted by the Canadian Parties. For further details, *see* the Canadian Parties' Case Brief at 12-35.

Commerce must reconsider its use of the Cohen's *d* coefficient to test for significant differences in prices. When the data being analyzed do not meet the three assumptions of normality, equal variances, and equal and sufficient size, the resulting coefficient does not measure what Commerce claims it measures or what the statute requires Commerce to measure. This is true regardless of whether Commerce uses full populations of data or sampled data in conducting its test.

Professor Cohen's work and the statistical literature unequivocally establish that Cohen's *d* is a parametric method for measuring effect size. This means that Cohen's *d* can produce meaningful results only for data that satisfy the assumptions (the "parameters"), allowing the *d* coefficient to correspond to the U measures of nonoverlap. If the groups being compared do not satisfy the assumptions, then the *d* coefficient will not reasonably indicate the degree of difference between those groups. Professor Cohen's illustrative real-world examples correlating to each of his proposed thresholds are themselves based on data widely known to conform to the assumptions.[132]

In *Stupp Corp. v. United States*,[133] the U.S. Court of Appeals for the Federal Circuit ("Federal Circuit") discussed the work of several authorities on statistics, all of which expose Commerce's misuse of Cohen's *d.* That literature demonstrates that the interpretive value of the Cohen's *d* coefficient depends on the underlying assumptions being met. Commerce's claim that it uses full populations of data does not address this concern. Similarly, Commerce has cherry-picked irrelevant statements and ignored the literature as a whole when claiming that Professor Cohen's "operational thresholds" are independent of the *U* measures and assumptions.

Commerce has acknowledged the Federal Circuit's observation that, when it applies the Cohen's *d* test and the assumptions are violated, the result may indicate significant differences between prices when there clearly are none. However, rather than accepting the logical conclusion of this observation—that the test does not

[132] *See* Canadian Parties' Case Brief at 20-24 for the Canadian parties' discussion of Professor Cohen's tables and calculations used to calculate *d.*
[133] *See Stupp v. United States*, 5 F. 4th 1341 (Fed. Cir. 2021) (*Stupp II*).

reliably measure significant differences in prices—Commerce has insisted that subsequent steps in the differential pricing methodology prevent erroneous findings of targeted dumping. However, the ratio and meaningful-difference tests cannot change the fact that the Cohen's *d* test is not measuring what Commerce says it measures or what the statute requires Commerce to measure.

Moreover, the groups of prices that Commerce tested using Cohen's *d* do not resemble the types of groups between which Cohen's *d* was designed to analyze differences. The overwhelming majority of so-called "passes" in Commerce's preliminary analysis involved comparisons of groups of prices that do not meet all—and, in many cases, any—of the assumptions. The arbitrariness of interpreting *d* coefficients derived from nonnormal, disparately sized, and unequally variant groups of data is apparent when comparing the distribution and nonoverlap of Commerce's test/base groups with those of the groups that Professor Cohen used to illustrate his thresholds. Commerce's calculations yield arbitrary results, including "large" Cohen's *d* values for groups exhibiting levels of nonoverlap that Professor Cohen expressly characterized as below his threshold for "large" differences. Commerce is also missing the crux of the Federal Circuit's discussion in *Stupp*—that Commerce's use of the Cohen's *d* test when values hover around the same price point can lead to "passes" where the prices do not significantly differ. Without measures by Commerce to ensure that the comparison groups meet standardized criteria for numerosity, normality, and variance, the results of Commerce's Cohen's *d* calculations are invariably arbitrary and thus unreasonable and unlawful.

Canfor's Comments

The following is a verbatim summary of argument submitted by Canfor. For further details, *see* Canfor's Case Brief at 13-21.

Commerce has continued to apply its differential pricing methodology in a manner that has been found unlawful as applied by the CAFC. Specifically, Commerce misapplied the so-called Cohen's *d* test to find that there was a pattern of prices that differed significantly among purchasers, regions, or time periods, such that an alternative price comparison method for determining normal value should be used. However, in applying this test, Commerce has once again failed to control for the factors that the academic literature—and the Federal Circuit—regard as prerequisites for the proper application of the Cohen's *d* test, namely that the two comparison groups have a sufficient number of observations, a normal distribution, and roughly equal variances. In the *Final Results*, Commerce must address the flaws in its differential pricing analysis, the evidence in the record that detracts from Commerce's conclusion, its reasoning for why the statutorily preferred comparison method cannot account for its observed differences rather than the alternative method, and, finally, must explain why Commerce has continued to ignore the international obligations of the United States by continuing to set to zero any negative results generated by the alternative method.

Petitioner's Comments

The following is a verbatim summary of argument submitted by the petitioner. For further details, *see* the Petitioner's Rebuttal Brief at 32-35.

> Commerce's differential pricing methodology has been sustained by the CAFC and the CIT as a reasonable exercise of Commerce's discretion on multiple occasions. Under the statute, Commerce is authorized to compare the weighted-average of normal values to individual U.S. transactions where Commerce determines there is a pattern of U.S. prices that differ significantly across purchasers, periods and regions. There is no precedent that would support Commerce abandoning its standard differential pricing methodology in this review. As such, Commerce should not modify or change its application of the differential pricing methodology in the final results.

Sierra Pacific's Comments

The following is a verbatim summary of argument submitted by Sierra Pacific. For further details, *see* Sierra Pacific's Rebuttal Brief at 1-3.

> The Federal Circuit did not invalidate Commerce's application of the Cohen's *d* test under any circumstance. The Federal Circuit in *Stupp* remanded to Commerce for further explanation as to how the Cohen's *d* limits should apply. On remand, the CIT held that Commerce provided a reasonable explanation of its application of the Cohen's *d* test as part of its differential pricing analysis. Thus, as Commerce has found in other recent cases, the Federal Circuit's decision in *Stupp* does not require that Commerce change its application of the Cohen's *d* test in the final results of this review. The Federal Circuit's decision in *Stupp* also does not require Commerce to test whether the assumptions underlying the Cohen's *d* thresholds are satisfied for the respondents' U.S. sales data, as the Canadian Parties suggest. Commerce has explained in other cases that because the Cohen's *d* coefficient is calculated based on the means and variances of test and comparison groups that include all of the respondents' reported U.S. sales (*i.e.*, the entire population and not samples), there is no need for Commerce to test whether Professor Cohen's assumptions regarding sampling size or randomness of the samples hold true for the respondents' U.S. sales data.
>
> Other, more recent court decisions issued post-*Stupp* similarly support Commerce's continued use of the Cohen's *d* test as part of its differential pricing analysis. The Canadian Parties and other respondents also cite the Federal Circuit's decision in *Mid Continent Steel & Wire* to argue that Commerce's calculation of the denominator of the Cohen's *d* coefficient based on simple averaging is unreasonable. However, similar to *Stupp*, the Federal Circuit in *Mid Continent Steel & Wire* remanded for further explanation of why Commerce's simple averaging of standard deviations in the denominator of the Cohen's *d* test is

> reasonable. On remand, the CIT sustained Commerce's continued use of simple averaging in the denominator of the Cohen's *d* test, because Commerce "addresse{d} the Court of Appeals' mandate to provide a 'connection to the undisputed purpose of the denominator figure'" and "provided an explanation that logically connects the relevance of full populations to the use of simple averaging."

Commerce's Position: We disagree with the Canadian Parties, Canfor, and West Fraser on this issue. For the final results, we have continued to apply the Cohen's *d* test as part of our differential pricing analysis in our calculations.

As an initial matter, we note that there is nothing in section 777A(d) of the Act that mandates how Commerce measures whether there is a pattern of prices that differ significantly or explains why the A-A method cannot account for such differences. On the contrary, carrying out the purpose of the Act[134] requires a gap filling exercise properly conducted by Commerce.[135] As explained in the *Preliminary Results*, as well as in various other proceedings,[136] Commerce's differential pricing analysis, including the use of the Cohen's *d* test, is reasonable and not contrary to the law.[137]

In carrying out the statutory objective, Commerce determines whether "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 … explains why such differences cannot be taken into account using {the A-A comparison method}."[138] Commerce finds that the purpose of section 777A(d)(1)(B) of the Act is to evaluate whether the A-A method is the appropriate method to determine if, and if so, to what extent, a given respondent is dumping the subject merchandise in the U.S. market.[139]

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[134] *See Koyo Seiko Co. v. United States,* 20 F.3d 1156, 1159 (Fed. Cir. 1994) ("The purpose of the antidumping statute is to protect domestic manufacturing against foreign manufacturers who sell at less than fair market value. Averaging U.S. prices defeats this purpose by allowing foreign manufacturers to offset sales made at less-than-fair value with higher priced sales. Commerce refers to this practice as 'masked dumping.' By using individual U.S. prices in calculating dumping margins, Commerce is able to identify a merchant who dumps the product intermittently--sometimes selling below the foreign market value and sometimes selling above it. We cannot say that this is an unfair or unreasonable result." (internal citations omitted)).

[135] *See, e.g.*, *Apex Frozen Foods Private Limited v. United States*, 37 F. Supp. 3d 1286, 1302 (CIT 2014).

[136] *See, e.g.*, *Certain Oil Country Tubular Goods from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2015-2016*, 83 FR 17146 (April 1, 2018) (*OCTG from Korea 2015-2016*), and accompanying IDM at Comment 8; *Welded Line Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 85 FR 76517 (November 30, 2020), and accompanying IDM at Comment 4; and *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 32937 (June 10, 2015), and accompanying IDM at Comments 1 and 2.

[137] *See Preliminary Results*.

[138] *See* section 777A(d)(1)(B) of the Act.

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

A. The Statistical Criteria

We disagree that the Federal Circuit findings in *Stupp II* require Commerce to change its application of the Cohen's *d* test. The Federal Circuit in *Stupp II* did not find that Commerce's use of the Cohen's *d* test is unlawful. Specifically, in *Stupp II*,

> {Plaintiff} challenges Commerce's use of the 0.8 cutoff for determining whether particular results "pass" the Cohen's *d* test. {Plaintiff} has two arguments: First, {Plaintiff} argues that Commerce's selection of the 0.8 cutoff was arbitrary. Second, {Plaintiff} argues that Commerce's application of the 0.8 cutoff in this case was unsupported by evidence because Professor Cohen's suggestion that "0.8 could be considered a 'large' effect size" was limited to comparisons involving data that met certain restrictive conditions — "in particular, that the datasets being compared had roughly the same number of data points, were drawn from normal distributions, and had approximately equal variances." According to {Plaintiff}, none of those conditions were satisfied in this case.[140]

The Federal Circuit dismissed the first argument that the 0.8 threshold was arbitrary as it had already spoken to that question:

> We addressed the crux of {Plaintiff's} first argument in our decision in *Mid Continent* … . We held that "the 0.8 standard is 'widely adopted' as part of a 'commonly used measure' of the difference relative to such overall price dispersion … . {I}t is reasonable to adopt that measure where there is no better, objective measure of effect size."[141]

Concerning the plaintiff's second argument, the Federal Circuit held:

> We agree that there are significant concerns relating to Commerce's application of the Cohen's *d* test in this case and, more generally, in adjudications in which the data groups being compared are small, are not normally distributed, and have disparate variances. Our concerns raise questions about the reasonableness of Commerce's use of the Cohen's *d* test in less-than-fair-value adjudications, warranting further supporting explanation from the Department.[142]

Accordingly, the Federal Circuit remanded the issue to Commerce, directing the agency:

> to explain whether the limits on the use of the Cohen's d test prescribed by Professor Cohen and other authorities were satisfied in this case or whether those limits need not be observed when Commerce uses the Cohen's *d* test in less-than-fair-value adjudications. In that regard, we invite Commerce to clarify its argument

[140] *See Stupp II*, 5 F.4th at 1356 (internal citations omitted).
[141] *Id.* 5 F.4th at 1356-57 (internal citations omitted).
[142] *Id.* 5 F.4th at 1357.

> that having the entire universe of data rather than a sample makes it permissible to disregard the otherwise-applicable limitations on the use of the Cohen's *d* test.[143]

The Federal Circuit's was concerned that:

> Commerce's application of the Cohen's *d* test to data that do not satisfy the assumptions on which the test is based may undermine the usefulness of the interpretive cutoffs. In developing those cutoffs, including the 0.8 cutoff, Professor Cohen noted that "we maintain the assumption that the populations being compared are normal and with equal variability, and conceive them further as equally numerous."[144]
>
> While Commerce is correct that it does not "sample" data, that observation does not address the fact that Professor Cohen derived his interpretive cutoffs under the assumption of normality. Nor does it address {Plaintiff's} representation that Commerce's analysis in this case violated Professor Cohen's other assumptions, homogeneity-of-variances and the number of observations being compared. {…} Violating those assumptions can subvert the usefulness of the interpretive cutoffs, transforming what might be a conservative cutoff into a meaningless comparator.[145]

In *Stupp II*, based on the panel's understanding that Dr. Cohen based his proposed thresholds, including the large, 0.8 threshold, using the three statistical criteria, the Federal Circuit concluded that an analysis which is dependent on those thresholds would require data which would also satisfy those three statistical criteria. However, the plaintiff asserted that its sale price data in the test and comparison groups used in the Cohen's *d* test did not meet those three statistical criteria. Accordingly, the Federal Circuit remanded the issue for Commerce to explain whether the plaintiff's sale prices meet these statistical criteria, or to explain whether it is permissible to disregard the statistical criteria in its application of the Cohen's *d* test.

Likewise, Canadian Parties in the instant review claim that respondents' sale prices do not meet the three statistical criteria.[146] Therefore, Canadian Parties assert that Commerce is not permitted to use the Cohen's *d* test as part of the differential pricing analysis, and, consequently, Commerce may not resort to the application of the alternative, average-to-transaction method to calculate the weighted-average dumping margins in the final results of this review.

Commerce finds that the academic literature,[147] and specifically Dr. Cohen's *Statistical Power Analysis for the Behavioral Sciences*, does not support the proposition that Dr. Cohen developed

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[143] *Id.* 5 F.4th at 1360.
[144] *Id.* 5 F.4th at 1357 (citing Cohen, Jacob, *Statistical Power Analysis for the Behavior Sciences*, Second Edition, Lawrence Erlbaum Associates (1988) (*Cohen*), at 21).
[145] *Id.* 5 F.4th at 1360.
[146] *See* Canadian Parties Brief at 19-30.
[147] *See* GOC's Letter, "Submission of Factual Information," dated January 2, 2024. This submission includes at Exhibit 7: *Cohen*; Exhibit 19: Ellis, Paul D., *The Essential Guide to Effect Sizes: Statistical Power, Meta-Analysis, and the Interpretation of Research Results*, Cambridge University Press, 2010 (*Ellis*); Exhibit 8: Coe, Robert, "It's the Effect Size Stupid: What Effect Size Is and Why It Is Important," paper presented at the Annual Conference of

his thresholds to interpret his *d* coefficient of effect size using the assumptions of normality, similarity of variances, and sufficient number of observations. Dr. Cohen proposed his small, medium, and large thresholds as a convention and he expected that, while "arbitrary," the thresholds "will be found to be reasonable by reasonable people."[148] The actual numerical values for Dr. Cohen's proposed thresholds (*i.e.*, 0.2, 0.5, and 0.8 for small, medium, and large effects, respectively) were not based on calculated results or statistical analyses, but were threshold numbers that Dr. Cohen proposed because he considered that they will be found reasonable by others.[149] Having reviewed Dr. Cohen's text, we find no basis to conclude that the statistical criteria, which raised concerns before the Federal Circuit in *Stupp II*, were part of Dr. Cohen's selection of these proposed conventions.

On the other hand, the purpose of the statistical criteria is to determine whether the analysis results (*e.g.*, the mean), which are based on sampled data, are representative of the results if the analysis had been based on the full population of data. The role of the statistical criteria (*i.e.*, the type of distribution, variance(s) and number of observations) is to be part of the analysis to determine the "reliability of {the} sample results."[150] Commerce's application of the Cohen's *d* test, including Dr. Cohen's large, 0.8, threshold, do not require addressing the statistical criteria. Because the prices used in the Cohen's *d* test include all prices of comparable merchandise for the test and comparison groups, there is no role for the statistical criteria to examine whether the calculated results are reliable and representative of the results if calculated on the full populations of data.

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the British Educational Research Association (September 2002) (*Coe*); Exhibit 5: Grissom, Robert J. and Kim, John J., *Effect Size for Research, Univariate and Multivariate Applications*, Second Edition, San Francisco State University (2012) (*Grissom*); Exhibit 1: Hedges, Larry V., "Review and Analysis of the Cohen's *d* Test as Used in the U.S. Department of Commerce's Differential Pricing Methodology" (Hedges Report); and Exhibit 3: Algina, James, Keselman, H.J., and Penfield, Randall D., "An Alternative to Cohen's Standardized Mean Difference Effect Size: A Robust Parameter and Confidence Interval in the Two Independent Groups Case," Psychological Methods, (2005) (*Algina*).

[148] *See Cohen* at 13.

[149] *See Mid Continent Steel & Wire, Inc. v. United States*, 940 F.3d 662 (Fed. Cir. 2019) (*Mid Continent III*) ("{T}he 0.8 standard is 'widely adopted' as part of a 'commonly used measure' of the difference relative to such overall price dispersion; and it is reasonable to adopt that measure where there is no better, objective measure of effect size. We agree with the Trade Court that this rationale adequately supports Commerce's exercise of the wide discretion left to it under {section 777A(d)(1)(B) of the Act}." (citing *Certain Steel Nails from Taiwan: Final Determination of Sales at Less Than Fair Value*, 80 FR 28959 (May 20, 2015), and the accompanying IDM at 25-26 ("In 'Difference Between Two Means,' the author states that 'there is no objective answer' to the question of what constitutes a large effect. Although {respondent} focuses on this excerpt for the proposition that the 'guidelines are somewhat arbitrary,' the author also notes that the guidelines suggested by Cohen as to what constitutes a small effect size, medium effect size, and large effect size 'have been widely adopted.' The author further explains that Cohen's *d* is a 'commonly used measure{}' to 'consider the difference between means in standardized units.'" (quoting *Lane* at 1-2)))); *see* also *Stupp II*, 5 F.4th at 1357 ("We held that 'the 0.8 standard is 'widely adopted' as part of a 'commonly used measure' of the difference relative to such overall price dispersion … . {I}t is reasonable to adopt that measure where there is no better, objective measure of effect size.'" (internal citations omitted))

[150] *See Cohen* at 6.

Dr. Cohen presents the concept of a "power analysis,"[151] which tests the null hypothesis to determine whether a phenomenon in a population exists based on sample data.[152] In Commerce's Cohen's *d* test, the "phenomenon" is the difference in prices between the test and comparison groups, and the null hypothesis is that the difference in prices is equal to zero (*i.e.*, identical). Rejection of the null hypothesis would indicate that there is a non-zero difference in the prices between the two groups.

A power analysis is dependent on three parameters: (1) the significance criterion;[153] (2) the reliability of the sampled data;[154] and (3) the effect size.[155] The first two parameters of the power analysis, the significance criterion and the reliability of the sample data, evaluate whether the results based on sampled data reliably represent the phenomenon in the full population of data.[156] This "statistical inference" is dependent on the probability of rejecting a true null hypothesis (*i.e.*, significance criterion), the sample size, and for the difference of the means analysis, the shape of the population distribution (*i.e.*, normality and variance).[157] In Commerce's Cohen's *d* test, statistical inferences are not relevant to determine whether the results of the analysis are representative because each test and comparison group include all of the respondent's prices of comparable merchandise during the period of investigation or review that are used to calculate the weighted-average dumping margin for the respondent.

The effect size is the "*degree* to which the phenomenon is present in the population,"[158] where the "larger this value, the greater the *degree* to which the phenomenon under study is manifested."[159] In the Cohen's *d* test, if the null hypothesis is rejected, then the result of the analysis is that the prices differ by some non-zero amount. The extent that the prices differ between the two groups is measured by the effect size.

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[151] *Id.* at 1 (Dr. Cohen's purpose is "to provide a self-contained comprehensive treatment of statistical power analysis from an 'applied' viewpoint" where the "power of a statistical test is the probability that it will yield statistically significant results.").

[152] *Id.* (In general, the result that is sought is based on a test of the null hypothesis, "*e.g.*, 'the hypothesis that the phenomenon to be demonstrated is in fact absent'" but whereas a researcher "typically hopes to 'reject' this hypothesis and thus 'prove' that the phenomenon in question is in fact present." (internal citation omitted)) and 4 ("*The power of a statistical test of a null hypothesis is the probability that it will lead to the rejection of the null hypothesis*, *i.e.*, the probability that it will result in the conclusion that the phenomenon exists." (emphasis in the original)).

[153] *Id.* at 4 ("{T}he significance criterion represents the standard of proof that the phenomenon exists, or the risk of mistakenly rejecting the null hypothesis." "{I}t is the rate of rejecting a true null hypothesis," *e.g.*, a Type I error.)

[154] *Id.* at 6 ("The reliability (or precision) of a sample value is the closeness with which it can be expected to approximate the relevant population value. It is necessarily an estimated value in practice, since the population value is generally unknown. Depending upon the statistic in question, and the specific statistical model on which the test is based, reliability may or may not be directly dependent upon the unit of measurement, the population value, and the shape of the population distribution. However, it is *always* dependent upon the size of the sample." (emphasis in the original))

[155] *Id.* at 9-10 (the "effect size {means} 'the *degree* to which the phenomenon is present in the population,' or 'the degree to which the null hypothesis is false.'" (emphasis in the original)).

[156] *Id.* at 1-2 (One cannot ignore "the necessarily probabilistic character of *statistical inference*" and that the "{r}esults from a random sample drawn from a population will only approximate the characteristics of the population." (emphasis added)).

[157] *Id.* at 19-20.

[158] *Id.* at 9 (emphasis in original); *see also Ellis* at 4-5 ("An effect size refers to the magnitude of the result as it occurs, or would be found, in the population.").

[159] *See Cohen* at 10 (emphasis in original).

"To this point, the {effect size} has been considered quite abstractly as a parameter which can take on varying values (including zero in the null case). In any given statistical test, it must be indexed or measured in some defined unit appropriate to the data, test, and statistical model employed."[160] Dr. Cohen prompts the researcher to respond to the question, "How large an effect do I expect *exists in the population*?"[161] "{The researcher} may initially find it difficult to answer the question even in general terms, *i.e.*, 'small' or 'large,' let alone in terms of the specific {effect size} index demanded."[162] The answer to such a question may depend upon resources available to the researcher. Alternatively, Dr. Cohen proposed "*as a convention*, {effect size} values to serve as operational definitions of the qualitative adjectives 'small,' 'medium,' and 'large.' This is an operation fraught with many dangers: The definitions are arbitrary, such qualitative concepts as 'large' are sometimes understood as absolute, sometimes as relative; and thus they run a risk of being misunderstood."[163] Nonetheless, Dr. Cohen emphasizes that "{a}lthough arbitrary, the proposed conventions will be found to be reasonable by reasonable people."[164]

Dr. Cohen presents the layout of his presentation of effect size as a component of a power analysis:

> Each of the Chapters 2-10 will present in some detail the {effect size} index appropriate to the test to which the chapter is devoted. Each will be translated into alternative forms, the operational definitions of 'small,' 'medium,' and 'large' will be presented, and examples drawn from various fields will illustrate the test. This should serve to clarify the {effect size} index involved and make the methods and tables useful in research planning and appraisal.[165]

Specifically, as "seen in Chapter 2, the {effect size} index for *differences between population means* is standardized by division by the common within-population standard deviation (σ)."[166] Thus, Dr. Cohen's *d* coefficient is a standardized, unitless ratio of the difference in the means divided by some measure of the dispersion of the data,[167] all of which represent a phenomenon in the population.

For an analysis based on the difference of the means, Dr. Cohen proposed that numerical thresholds define a small, medium, and large effect, *i.e.*, 0.2, 0.5, and 0.8 respectively.[168] As discussed above, these numerical thresholds are arbitrary, but Dr. Cohen expected that they

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[160] *Id.* at 11.
[161] *Id.* at 12 (emphasis added) and at 20-21.
[162] *Id.*
[163] *Id.* (emphasis in original).
[164] *Id.* at 13.
[165] *Id.* at 13-14.
[166] *Id.* at 11 (emphasis added) and 20 ("σ = the standard deviation of either population (since they are assumed equal)").
[167] *Id.* at 21 ("Since both numerator and denominator are expressed in scale units, these 'cancel out,' and *d* is a pure number (here a ratio), freed of dependence upon any specific unit of measurement.").
[168] *See Cohen* at 24-27.

would be found reasonable by reasonable people.[169] Indeed, these thresholds have been "widely accepted" as recognized in *Mid Continent III*, and "Cohen's cut-offs provide a good basis for interpreting effect size and for resolving disputes about the importance of one's results."[170] Further, the academic literature provides no evidence that the values themselves or their use are dependent on statistical analysis or the application of the statistical criteria as argued by the plaintiff in *Stupp II*. Indeed, their usefulness is based on their acceptance within the academic community.

Dr. Cohen provided different approaches to illustrate his proposed small, medium and large effect size thresholds. Dr. Cohen's first approach is based on the concept of "percent nonoverlap," where Dr. Cohen posits:

> If we maintain the assumption that the populations being compared are normal and with equal variability, and conceive them further as equally numerous, it is possible to define measures of nonoverlap (U) associated with *d* which are intuitively compelling and meaningful.[171]

For the percent non-overlap, Dr. Cohen conceives two bell curves (*i.e.*, two normal distributions) where the difference in the means is the difference between the peaks of each bell curve.[172] The area underneath one bell curve that is not also underneath the second bell curve is the percent nonoverlap. Dr. Cohen's assumptions that each population be normally distributed, have equal variances, and be equally numerous (rather than a probability function) is to permit the calculation of the area of the nonoverlap of the two bell curves. A normally distributed bell curve is defined by a specific probability function, which when the variance of the bell curve is known, allows for the calculation of the area underneath that curve. Likewise, when two bell curves are placed over one another, and both bell curves are normally distributed with equal variances, then the percent non-overlap, just like the percent overlap (*i.e.*, the area common under both curves) can be calculated. The assumptions of normality and homoscedasticity are required to enable the calculation of the percent (*i.e.*, area) of non-overlap as one approach to illustrate different effect size values.[173] These limitations do not apply to Dr. Cohen's development of his proposed thresholds themselves. The percent non-overlap does not define the small, medium or large thresholds, but only serves to illustrate in a very understandable

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[169] *See Ellis* at 41 ("Cohen's effect size classes have two selling points. First, they are easy to grasp. You just compare your numbers with his thresholds to get a ready-made interpretation of your result. Second, although they are arbitrary, they are sufficiently grounded in logic for Cohen to hope that his cut-offs 'will be found to be reasonable by reasonable people'" (internal citation omitted)).

[170] *Id.* at 40.

[171] *Id.* at 21-23.

[172] Note that because Dr. Cohen's assumptions to calculate the non-overlap of the two curves require normal distributions and equal variances, the areas underneath each curve is equal and the only difference between the two curves is the mean of each normal distribution.

[173] *Id.* at 22 and Table 2.2.1 (which presents the percent nonoverlap for various values of the Cohen's *d* coefficient. For example, for $d = 0$, the percent nonoverlap is 0.0 percent, *i.e.*, the bell curves lie completely on top of each other. For $d = 0.8$, the percent nonoverlap is 47.4 percent, or, in other words, almost half of the area under each of the bell curves is not common to both distributions).

visual presentation of the difference in two groups of data which represent different degrees of effect size.[174, 175]

Dr. Cohen second approach is to provide "operational definitions" to illustrate small, medium, or large effects. The first is an observational description, where, for example, a "medium effect size is conceived as one large enough to be visible to the naked eye"[176] and a large difference is "grossly perceptible."[177] To illustrate these operations definitions, Dr. Cohen provides real-life situations where small, medium and large effect sizes have been found to exist. These involve the differences in the IQs of various groups of people or the differences in the heights of various ages of teenage girls.[178] These illustrative examples do not link Dr. Cohen's thresholds with the statistical criteria, as the 0.8 effect, which has been observed is for the population of, for example, all Ph.D. holders and college freshmen. Certainly, when the data on the IQs of these two groups of people were collected, it was not collected from everyone who met those group definitions, but it would have been collected from a selected sample from each group. The results of the analysis would have been calculated based on the sampled data from each group, and also, through statistical inferences, the representativeness of those results for the entire populations would have been determined. If the statistical analysis of the sampled data demonstrated that the sample-based results are representative of the population, then the sample-based results would be applied to the entire populations of Ph.D. holders and college freshmen. This use of statistical inference, however, is necessary to ensure that the sample is representative of the full universe of data, but it was not part of Dr. Cohen's proposed small, medium, and large thresholds, which are numerical values that have been widely accepted in the academic community.

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[174] Similar to the measure of the percent non-overlap, we note that the Federal Circuit also raised the measure of the "percentile standing." *See Stupp II*, 5 F.4th at 1358 (quoting *Grissom* at 66 ("When the distribution of scores of a comparison population is not normal, the usual interpretation of a d_G or d in terms of estimating the *percentile standing* of the average-scoring members of another group with respect to the supposed normal distribution of the comparison group's scores would be" (emphasis added)). As with the measure of the percent non-overlap, the calculation of the percentile standing is dependent on the normal distribution and equal variances of the two groups to permit the calculation of the areas beneath the bell curves. *See Grissom* at 62.

[175] Dr. Hedges critiques Commerce's conclusion, stating that "when the assumptions of normality and equal standard deviations are not met, Cohen's interpretations of *d*, including his conventions for small, medium, and large effect sizes (which are based on those assumptions) cannot be relied upon." *See* Hedges Report, Appendix II, at (iii). Commerce does not disagree with Dr. Hedges statements that normality and equal variances are assumptions underpinning both *Cohen*'s percent non-overlap and *Grissom*'s percentile standing. Indeed, these assumptions are required in order to quantify the measures of non-overlap (U_1) and percentile standing (U_3). However, while each of these measures may be used to interpret a given value for Dr. Cohen's *d* coefficient, these measures were not used by Dr. Cohen in the development of his proposed thresholds of small, medium and large. Nor does Commerce rely on these measures to support its use of Dr. Cohen's large, 0.8, threshold, which, as discussed above, is based on Dr. Cohen's "operational definitions" of these thresholds. *See Cohen* at 24-27.

[176] *See Cohen* at 26.

[177] *Id.* at 27.

[178] For example, a large effect "is represented by the mean IQ difference estimated between holders of the Ph.D. degree and typical college freshmen, or between college graduates and persons with only a 50-50 chance of passing in an academic high school curriculum. These seem like grossly perceptible and, therefore, large differences, as does the mean difference in height between 13- and 18-year-old girls, which is of the same size ($d = 0.8$)." *Cohen* at 27 (internal citation omitted).

It is important to note that Dr. Cohen's assumptions that are required to calculate the percent non-overlap is the source of the quote by the Federal Circuit in *Stupp II*:

> Commerce's application of the Cohen's *d* test to data that do not satisfy the assumptions on which the test is based may undermine the usefulness of the interpretive cutoffs. In developing those cutoffs, including the 0.8 cutoff, Professor Cohen noted that "*we maintain the assumption that the populations being compared are normal and with equal variability, and conceive them further as equally numerous*."[179]

As discussed above, the assumptions which the Federal Circuit links with Dr. Cohen's development of his proposed thresholds properly relate to the calculation of the percent non-overlap, not with Dr. Cohen's 0.2, 0.5, and 0.8 numerical thresholds for small, medium and large effects, respectively. Dr. Cohen realized that his proposed thresholds were arbitrary, and foresaw that these thresholds may be questioned, but believed that they would be found to be reasonable by reasonable people. Indeed, in practice, Dr. Cohen's thresholds have found been widely accepted, and the Federal Circuit has also accepted that these thresholds are not arbitrary and reasonable:

> {T}he 0.8 standard is "widely adopted" as part of a "commonly used measure" of the difference relative to such overall price dispersion; and it is reasonable to adopt that measure where there is no better, objective measure of effect size.[180]

The statistical criteria that are at issue in *Stupp II* are not relevant to Commerce's use of the Cohen's *d* test. As presented in the academic literature, Dr. Cohen's development of his effect size thresholds was not based on the statistical criteria. Further, because the sale prices used in Commerce's Cohen's *d* test encompass the full universe of sale prices for each test and comparison group,[181] the parameters calculated based on the test and comparison groups are not estimates of the population values but are the actual values of the population parameters; therefore, statistical inference is not relevant to the calculations performed in Commerce's Cohen's d test. Accordingly, we find no evidence to support the Canadian Parties' arguments that Commerce must account for the statistical criteria when it uses the Cohen's *d* test.

Moreover, the Cohen's *d* test is only one part of Commerce's differential pricing analysis, which also includes the ratio test and the meaningful difference test. The Cohen's *d* test determines whether prices differ significantly, the ratio test determines whether there is a pattern, and the meaningful difference test determines whether the average-to-average method can account for the price differences in the respondent's pricing behavior in the U.S. market. In *Stupp III*, based

[179] *See Stupp II*, 5 F.4th at 1357 (quoting *Cohen* at 21) (emphasis added).
[180] *See Mid Continent III*, 940 F.3d at 673 (internal citation omitted).
[181] As noted above, the sale prices in each test and comparison group encompass all of the sale prices of comparable merchandise during the period of investigation or review to each purchaser, region or time period, and these sale prices encompass all of the U.S. prices which are the basis for the calculation of the respondent's weighted-average dumping margin.

on that further explanation, Commerce's use of the Cohen's *d* test was affirmed as lawful.[182] Although the Canadian Parties may disagree with the CIT's analysis in that opinion, their disagreement does not render the decision invalid.

Nothing in the Canadian parties' case briefs or the Hedges Report demonstrates that Dr. Cohen developed his thresholds based on the assumptions of normality, similarity of variances and sufficient number of observations.[183] The Federal Circuit remanded this issue and provided "Commerce an opportunity to explain whether the limits on the use of the Cohen's *d* test prescribed by Professor Cohen and other authorities were satisfied in this case or whether those limits need not be observed when Commerce uses the Cohen's *d* test in less-than-fair-value adjudications."[184] Commerce has explained that the statistical criteria were not part of Dr. Cohen's development of his proposed thresholds, nor are they relevant to Commerce's calculation of the Cohen's *d* coefficient as those calculations include the full universe of prices in each of the test and comparison groups and thus no statistical inferences are required to establish that the calculated results represent the actual parameters, including the effect size, of the full populations of prices.[185] Thus, in accordance with our practice and prior precedent, we will continue to apply the Cohen's *d* test in the same manner as in the *Preliminary Results* for the final results of this review.[186]

Similarly, the Canadian Parties' reliance on certain opinions, such as *NEXTEEL*, *SeAH*, and *Marmen,* is misplaced.[187] In *NEXTEEL*, the Federal Circuit did not find that Commerce's use of the Cohen's *d* test is unlawful or that the statistical criteria must be addressed as part of the Cohen's *d* test; rather, relying on *Stupp II*, the Federal Circuit in *NEXTEEL* remanded Commerce's decision for further explanation or reconsideration of the statistical criteria. In a decision that is now final and conclusive, the CIT upheld Commerce's redetermination on remand in *NEXTEEL*, inclusive of Commerce's application of the Cohen's *d* test.[188]

In *SeAH*, the CIT did not find that Commerce's use of the Cohen's *d* test was unlawful or that the statistical criteria must be addressed.[189] Moreover, in Commerce's redetermination, the issue concerning the application of the differential pricing analysis, including the Cohen's *d* test, was rendered moot as a result of changes in calculations following reconsideration of another

[182] *See Stupp Corp. v. United* States, 619 F. Supp. 3d 1314 (CIT 2023) (*Stupp III*), appeal docketed Federal Circuit No. 2023-1663 (March 27, 2023); *see also SeAH Steel Corp. v. United States*, 619 F. Supp. 3d 1309 (CIT 2023) (denying motion for reconsideration despite arguments that *Stupp II* applied).
[183] As a general matter, we considered the contents of the Hedges Report and how it relates to the academic literature on this topic. *See Samsung Int'l v. United States*, 887 F. Supp. 2d 1330, 1338 n.18 (CIT 2012) ("Expert opinions are merely advisory, however, and are given weight only to the extent they are consistent with lexigraphic and other reliable sources.").
[184] *See Stupp II*, 5 F.4th at 1360.
[185] We note that much of Commerce's explanation above was before the CIT when it sustained Commerce's redetermination in *Stupp III*.
[186] *Id.*
[187] *See, e.g.*, Central Canada's Case Brief at 3, 10-12 (citing *NEXTEEL Co. v. United States*, 28 F.4th 1226 (Fed. Cir. 2022) (*NEXTEEL*); *SeAH Steel Corp. v. United States*, 539 F. Supp. 3d 1341 (CIT 2021) (*SeAH*); *Marmen Inc. v. United States,* 545 F. Supp. 3d 1305 (CIT 2021) (*Marmen*).
[188] *See NEXTEEL Co. v. United States*, 676 F. Supp. 3d 1345 (CIT 2023) (*NEXTEEL*).
[189] *See SeAH*, 539 F. Supp. 3d at 1351.

issue,[190] and, thus, Commerce did not provide a further explanation that that the statistical criteria are not relevant for its application of the Cohen's *d* test.

Further, in *Marmen*, the CIT remanded "the issue of Commerce's use of the Cohen's *d* test for Commerce to explain further whether the limits on the use of the Cohen's *d* test were satisfied in this case in the context of the *Stupp II* case."[191] On remand, Commerce further explained that because Commerce applied the Cohen's *d* test to a population rather than a sample, doing so sufficiently negates the relevance of the statistical criteria and questionable understanding about Dr. Cohen's thresholds that were raised in *Stupp II*.[192] The CIT sustained Commerce's redetermination, and held that Commerce's application of the Cohen's *d* test to determine whether there was a significant pattern of differences was reasonable.[193]

Comment 17: Whether West Fraser's Pricing Over the POR Was Inconsistent with the Targeted Dumping for Which Congress Authorized Commerce to Utilize the A-T Method

West Fraser's Comments

The following is a verbatim summary of argument submitted by West Fraser. For further details, *see* West Fraser's Case Brief at 10-14. We note that we requested that interested parties provide a public, executive summary for each issue raised in their briefs. *See Preliminary Results*, 89 FR at 8153. Therefore, because the executive summary in West Fraser's Case Brief contains BPI, we have redacted that content herein.

> It is particularly unreasonable for Commerce to apply its differential pricing analysis to West Fraser's United States export pricing in this review because: (1) this analysis was almost completely based on the variation in the West Fraser prices over "periods of time," and (2) a comparison between the West Fraser United States sales prices and the United States market price information reported in Random Lengths confirms that West Fraser was far from engaging in the "targeted dumping" that was the Congressional concern in permitting Commerce to calculate antidumping margins based on an "average to transaction" rather than the usual "average to average" methodology over the POR.

Petitioner's Rebuttal

The petitioner did not provide the requested executive summary regarding its rebuttal brief. The petitioner's arguments may be found at pages 38-40 of the Petitioner's Rebuttal Brief.

[190] *See SeAH Steel Corp. v. United States*, 589 F. Supp. 3d 1288, 1293 (CIT 2022) ("SeAH agrees with Commerce that the differential pricing analysis has been rendered moot because without the particular market situation adjustment, the dumping margin for SeAH would be *de minimis* regardless of which comparison method is used by Commerce." (internal citations omitted)).
[191] S*ee Marmen,* 545 F. Supp. 3d at 1320.
[192] *See Marmen Inc. v. United States*, 627 F. Supp. 3d 1312 (CIT 2023) (appeal docketed).
[193] *Id*.

Commerce's Position: We disagree with West Fraser that it is unreasonable for Commerce to apply its differential pricing analysis to West Fraser's United States export pricing in this review. West Fraser's argument that the differential pricing "analysis was almost completely based on the variation in the West Fraser prices over 'periods of time'" is unavailing because this is precisely the problem Congress addressed when it enacted 19 U.S.C. § 1677f-1(d)(1)(B). This provision allows Commerce to compare "{t}he weighted average of the normal values to the export prices (or constructed export prices) of individual transactions" – *i.e.*, to use the A-T method – "if (i) there is a pattern of {U.S. prices} for comparable merchandise that differ significantly among purchasers, regions *or periods of time* (emphasis added)."[194]

It should be noted that the Federal Circuit has found that Commerce is not required to "determine the reasons why there is a pattern of export prices for comparable merchandise that differs significantly among purchasers, regions, or time periods, nor does it mandate which comparison methods Commerce must use in administrative reviews." [195] The CIT has affirmed this finding by stating that Commerce is not required to consider factors when examining whether there exists a pattern of prices that differ significantly consistent with section 777A(d)(1)(B)(i) of the Act.[196] The salient finding is whether price differences exist, and based on the Cohen's *d* test, whether such differences are significant. West Fraser provides no evidence that the price differences that Commerce identified do not exist; rather, it suggests different reasons as to why these differences exist and, therefore, are not relevant to finding that these price differences should be accounted for. However, these differences are factual record evidence that U.S. prices for the same product differ, just as there is factual record evidence that the price of subject merchandise sold in the U.S. market differs from normal value. Therefore, given that both the CIT and the Federal Circuit have determined that Commerce is not required to look at other factors for determining a pattern of prices that differ significantly, we will continue to employ the differential pricing analysis unchanged for the final results.

Comment 18: Whether Commerce Improperly Applied the A-T Methodology with Zeroing

West Fraser's Comments

The following is a verbatim summary of argument submitted by West Fraser. For further details, *see* West Fraser's Case Brief at 14-16.

> In the *Preliminary Results*, Commerce compounded the unreasonable application of its differential pricing methodology by applying a "zeroing" approach to the A-T methodology. That is, in determining the weighted-average dumping rate, Commerce set to zero all negative results, that is, cases in which individual West Fraser U.S. prices were above the average normal value for the relevant CONNUM,

[194] While section 777A(d)(1)(B)(i)-(ii) of the Act only cover investigations, Commerce "has adopted the same basis for applying its A-to-T methodology in administrative reviews." See *NEXTEEL Co., Ltd. v. United States*, 676 F. Supp. 3d 1345, 1351 (CIT 2023) (citing *JBF RAK LLC v. United States*, 790 F.3d 1358, 1364 (Fed. Cir. 2015) (*JBF RAK CAFC*)).
[195] *See JBF RAK CAFC*, 790 F.3d at 1368 (quoting *JBF RAK LLC v. United States*, 991 F. Supp. 2d 1343, 1355 (CIT 2014) (*JBF RAK CIT*)).
[196] *See Nan Ya Plastics Corp. v. United States*, 128 F. Supp. 3d 1345, 1358 (CIT 2015).

> thereby greatly inflating the dumping margin calculated for West Fraser. The WTO Appellate Body has determined that Commerce's use of "zeroing" in its differential pricing analysis is inconsistent with the United States obligations under the Anti-Dumping Agreement. Although WTO decisions are not authoritative interpretations of United States law, as summarized below and detailed in the Canadian Parties' Case Brief, the adoption of the Uruguay Round Agreements Act indicates a Congressional intent that Commerce follow this authoritative WTO Appellate Body decision.

Canfor's Comments

The following is a verbatim summary of argument submitted by Canfor. For further details, *see* Canfor's Case Brief at 28.

> Commerce must explain why it has continued to ignore the international obligations of the United States by continuing to set to zero any negative results generated by the alternative method.

Canadian Parties' Comments

The following is a verbatim summary of argument submitted by the Canadian Parties. For further details, *see* the Canadian Parties' Case Brief at 89.

> Commerce has consistently zeroed in connection with differential pricing in every segment of this proceeding. In doing so, Commerce has unfairly inflated the dumping margins of the respondents. However, it is undisputed that the United States' international obligations prohibit zeroing in calculating dumping margins. Commerce must explain its use of zeroing in light of the United States' international obligations in the to avoid an arbitrary and capricious decision.
>
> Commerce preliminarily weight averaged the dumping margins for the mandatory respondents to determine the rate for non-selected companies. As we have demonstrated, Commerce's use of the DPM and its use of zeroing to calculate the margins for the mandatory respondents are not supported by substantial evidence and are not in accordance with the law. In the Final Results, Commerce should correct the mandatory respondents' margins and use those corrected margins to recalculate the non-selected rate, as required by U.S. law and Commerce's practice.

Central Canada's Comments

The following is a verbatim summary of argument submitted by Central Canada. For further details, *see* Central Canada's Case Brief at 8-10 and 33-42.

> Commerce, under the antidumping statute, is required to make "fair comparisons" that the law defines, in part, as comparisons between export prices and normal values "in respect of sales made at as nearly as possible the same time." Such

comparisons inherently account for different prices in different time periods or otherwise they would not be "fair."

The method for making fair comparisons – the weighted average to weighted average (A-A) methodology – is by law the preferred method. It effectively accounts for incidental variations between individual transactions by averaging, which is normally done on a monthly basis in administrative reviews. By covering and comparing all the comparable sales across the United States within the same time periods, the A-A methodology effectively accounts for seasonal and other variations inherent to certain commodities, as in the case of softwood lumber. Masking dumped sales for periods longer than a month is methodologically and substantively impossible.

Central Canada acknowledges Commerce's repeated use and defense of zeroing, and the CAFC jurisprudence permitting that practice. Yet, the WTO Appellate Body has ruled the use of zeroing in investigations (using the A-A methodology) and administrative reviews (using the A-T methodology) as inconsistent with the AD Agreement. And even though Commerce finally implemented those adverse WTO decisions, it exercised an apparent loophole under the targeted dumping provision, applying a computer program to run automatically a margin program that finds dumping where there is none.

The Appellate Body in *Washing Machines* called out this attempt to backdoor the use of zeroing as violative of the AD Agreement. WTO jurisprudence represents a source of persuasive authority for interpreting the meaning of the AD Agreement that the Uruguay Round Agreements Act was intended to implement, and Commerce is obligated, when possible, to construe U.S. law in a manner consistent with the WTO obligations of the United States. Antidumping determinations and results that include zeroing are expressly violative of the AD Agreement and, hence, contrary to U.S. law implementing that Agreement.

Petitioner's Rebuttal

The following is a verbatim summary of argument submitted by the petitioner. For further details, *see* the Petitioner's Case Brief at 42-47.

Reviewing courts have repeatedly held that Commerce's use of zeroing when applying an alternative comparison methodology is consistent with U.S. law when the statutory requirements of section 777A(d)(1)(B) of the Act are met. Commerce properly resorted to an alternative comparison method to reveal masked dumping. Accordingly, Commerce should continue to apply zeroing in calculating weighted-average dumping margins in the final results.

Sierra Pacific's Rebuttal

The following is a verbatim summary of argument submitted by Seirra Pacific. For further details, *see* Sierra Pacific's Case Brief at 9.

> Commerce's determination in this review is governed by U.S. law, which is fully consistent with the United States' WTO obligations. As Commerce noted in the original investigation, the Federal Circuit has held that WTO findings are not self-executing under U.S. law, and WTO reports are without effect under U.S. law "'unless and until such a {report} has been adopted pursuant to the specified statutory scheme' established in the Uruguay Round Agreements Act (URAA)." Congress adopted an explicit statutory scheme in the URAA that governs implementation of WTO reports and accords significant discretion to Commerce with regard to such implementation. Commerce has not revised or changed its use of the differential pricing methodology, or its use of zeroing under that methodology. Moreover, Commerce has made clear that it disagrees with the WTO Appellate Body's findings that its use of the differential pricing methodology and zeroing violates the Anti-Dumping Agreement. The Federal Circuit has affirmed Commerce's use of zeroing pursuant to its differential pricing analysis, finding that "differences revealed by zeroing are not inconsequential or to be ignored" and "the effects of zeroing are precisely what 19 U.S.C. § 1677f-1(d)(1)(B) seeks to address." In sum, Commerce should reject the Canadian Parties and the respondents' arguments that Commerce erred in the application of its differential pricing methodology to unmask targeted dumping and in its use of zeroing in calculating dumping margins using the A-T method in this review.

Commerce's Position: We disagree with Central Canada, the Canadian Parties, Canfor and West Fraser. WTO findings are not self-executing under U.S. law.[197] The Federal Circuit has held that WTO reports are without effect under U.S. law, "unless and until such a {report} has been adopted pursuant to the specified statutory scheme" established in the URAA.[198] In fact, Congress adopted an explicit statutory scheme in the URAA for addressing the implementation of WTO reports.[199] Indeed, the SAA noted that "WTO dispute settlement panels will have no power to change U.S. law or order such a change. Only Congress and the Administration can decide whether to implement a WTO panel recommendation and, if so, how to implement it."[200] As is clear from the discretionary nature of this scheme, Congress did not intend for WTO reports to automatically supersede the exercise of Commerce's discretion in applying the statute.[201] Commerce has not revised or changed its use of zeroing, nor has the United States

[197] *See, e.g.*, SAA at 659 ("WTO dispute settlement panels will have no power to change U.S. law or order such a change. Only Congress and the Administration can decide whether to implement a WTO panel recommendation and, if so, how to implement it."); *see also Corus Staal BV v. Dep't of Commerce,* 395 F.3d 1343, 1343, 1349 (Fed. Cir. 2005) (*Corus Staal*), *cert. denied* 126 S. Ct. 1023 (2006).
[198] *See Corus Staal*, 395 F.3d at 1343, 1347-49; *accord Corus Staal BV v. United States*, 502 F.3d 1370, 1375 (Fed. Cir. 2007).
[199] *See, e.g.*, 19 U.S.C. 3533, 3538 (sections 123 and 129 of the URAA).
[200] *See* SAA at 659.
[201] *See*, *e.g.*, 19 U.S.C. 3538(b)(4) (implementation of WTO reports is discretionary).

adopted changes to its practice pursuant to the URAA's implementation procedure. Contrary to Central Canada's assertion, Commerce is acting in accordance with and full respect for the law. The purpose of resorting to an alternative comparison method is to reveal masked dumping where higher-priced U.S. sales offset lower priced U.S. sales,[202] where the A-A comparison method cannot take into account the significant differences in U.S. prices.[203] Accordingly, for the final results, because we are applying the A-T method, we continue to apply zeroing in calculating Canfor's and West Fraser's weighted-average dumping margins consistent with the statute, regulations and Commerce's practice.[204]

Comment 19: Whether Commerce Properly Applied its Differential Pricing Methodology to Address Targeted Dumping

Sierra Pacific's Comments

The following is a verbatim summary of argument submitted by Sierra Pacific. For further details, *see* Sierra Pacific's Case Brief at 1-2.

> Commerce correctly used its differential pricing methodology to uncover targeted dumping and applied zeroing pursuant to the differential pricing methodology in this review. Both West Fraser and Canfor's sales over the POR showed a large pattern of prices that differ significantly among purchasers, regions or time periods. These price differences cannot be accounted for using the A-A methodology because there is at least a 25 percent relative change between the A-A methodology and the A-T methodology. Commerce properly relied on the A-T methodology to calculate the respondents' dumping margins and should continue to do so for the final results.

No other interested party commented on this issue.

Commerce's Position: We agree with Sierra Pacific and have continued to apply our differential pricing methodology for the final results.

Comment 20: Whether Commerce's Use of Simple Average Standard Deviations in the Cohen's *d* Denominator Disregards Comparative Sizes of Test and Control Groups

Central Canada's Comments

The following is a verbatim summary of argument submitted by Central Canada. For further details, *see* Central Canada's Case Brief at 26-30.

[202] *See* SAA at 842-43.
[203] *See* section 777A(d)(1)(B)(ii) of the Act; *see also OCTG from Korea 2015-2016* IDM at Comment 8.
[204] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101 (February 14, 2012).

> Commerce has continued to use a simple average of squared standard deviations to calculate the Cohen's *d* denominator, disregarding the established approach of using weighted averages for unequal-sized, normally distributed datasets. By weighing the smaller tested group and the larger control group's standard deviations equally, Commerce inappropriately gives undue weight to the larger group's standard deviations. Simple averaging creates a bias in the outcomes.
>
> The CAFC in the *Mid Continent* cases has rejected Commerce's explanation for using simple averaging and has vacated and remanded for further development. The NAFTA AD Panel in the Softwood Lumber investigation examined the Canadian Parties' claim on simple averaging, followed *Mid Continent I & II*, and "remand{ed} to Commerce for an explanation of its choice for the Cohen's d denominator, either simple averaging or an alternative choice." Consistent with CAFC jurisprudence, the scholarly literature, and the Hedges Report, Commerce, assuming continued use of the Cohen's *d* test, should use a weighted average to calculate the denominator or explain why the scholarly literature is inapplicable in this review.
>
> Professor Jacob Cohen himself says his own test was designed for use in behavioral research. Yet, Commerce, apparently ignoring that international trade is not behavioral science, treats the test as the "foundation" of the DPM. The application of the DPM has turned Commerce's "preferred" A-A comparison method into the "exception," and has made the exception the rule. Commerce's use of the Cohen's d test in this case cannot stand. It is past time for Commerce to give it up.

Petitioner's Comments

The petitioner did not provide the requested executive summary regarding its rebuttal brief. The petitioner's arguments may be found at pages 35-38 of the Petitioner's Rebuttal Brief.

Commerce's Position: We disagree with the Canadian respondents regarding the use of simple averaging to calculate the denominator of the Cohen's *d* coefficient. Regarding the concerns expressed in *Mid Continent III*, the Federal Circuit stated that "Commerce needs a reasonable justification for departing from what the acknowledged literature teaches about Cohen's *d*."[205] Thus, the Federal Circuit remanded the issue stating "Commerce must either provide an adequate explanation for its choice of simple averaging or make a different choice, such as use of weighted averaging or use of the standard deviation for the entire population."[206] However, the Federal Circuit did not find that Commerce's use of a simple average to calculate the denominator of the Cohen's *d* coefficient was unlawful, and Commerce continues to use a simple average in the final results of this review. While the *Mid Continent* litigation is still ongoing, we note that in the most recent court decision in this matter the CIT

[205] *See Mid Continent III,* 31 F.4th at 1381.
[206] *Id.*

upheld Commerce's use of simple averaging to calculate the denominator of the Cohen's *d* coefficient.[207]

Dr. Cohen presented effect size as part of his concept of power analysis,[208] where effect size is one element of Dr. Cohen's power analysis and represents "the degree to which the phenomenon is present in the population."[209] In Dr. Cohen's general formulation of "the effect size (ES) we wish to detect," he defines the "*d*" coefficient as the "standardizing of the raw effect size as expressed in the measurement unit of the dependent variable {*i.e.*, the difference in the means} by dividing it by the (common) standard deviation of the measures in their respective populations, the latter also in the original measurement unit."[210] Mathematically, Dr. Cohen expressed the effect size as,

$$d = \frac{m_A - m_B}{\sigma}$$

for a one-tailed case, or as

$$d = \frac{|m_A - m_B|}{\sigma}$$

for a two-tailed case,[211] where m_A and m_B are the "population means" and σ is "the standard deviation of either population (since they are assumed equal)."[212] Dr. Cohen repeated this definition of effect size for a population in his discussion of the "power tables," where "σ is the common within-population standard deviation (i.e., $\sigma_A = \sigma_B = \sigma$)."[213] Thus, the common within-population standard deviation is defined in the academic literature as equal to the standard deviation of population A or the standard deviation of population B, which are equal.

In Dr. Cohen's general formulation of effect size, the denominator of the ratio, *i.e.*, the "standard deviation," is the standard deviation of population A or the standard deviation of population B, which are assumed to be identical. Thus, when the standard deviations of population A and population B are equal, either of the standard deviations of the two populations is used as the denominator. However, when the standard deviations of population A and population B are not equal:[214]

[207] *See Mid Continent Steel & Wire, Inc. v. United States*, 680 F. Supp. 3d 1346 (CIT 2024) (*Mid Continent V*), appeal docketed Federal Circuit No. 2024-1556 (March 11, 2024).
[208] *See Cohen* at 1 ("The purpose of this book is to provide a self-contained comprehensive treatment of statistical power analysis from an 'applied' viewpoint.").
[209] *Id.* at 9.
[210] *Id*. (referencing *Cohen* at 20).
[211] *Id*. (referencing *Cohen* at 20 (equations 2.2.1 and 2.2.2, respectively)).
[212] *Id*. (referencing *Cohen* at 20).
[213] *Id.* at 27.
[214] *Id.* at 43-44 and equation 2.3.2.

> the definition of *d* will be slightly modified. Since there is no longer a common within-population σ, *d* is defined as above (formulas (2.2.1) and (2.2.2)), but instead of σ in the denominator, the formula requires the root mean square of σ_A and σ_B, that is, the square root of the mean of the two variances:

$$\sigma' = \sqrt{\frac{\sigma_A^2 + \sigma_B^2}{2}}$$

In other words, when the standard deviations of the two populations are not equal, then the denominator of the effect size should be the simple average of the two, unequal standard deviations of population A and population B. In this scenario, there is no common within-population standard deviation. Moreover, unlike a common within-population standard deviation where one of the population standard deviations is used as the denominator, the denominator in this scenario is defined as the root mean square, *i.e.*, the simple average, of the standard deviations of population A and population B.[215] Throughout *Cohen*, when the standard deviations of the two populations are known, the denominator of the effect size is either the common population standard deviation when the standard deviations of the two populations are equal,[216] or the root square mean of the two standard deviations when the standard deviations of the two populations are unequal.[217]

Consistent with Dr. Cohen's general formulation of effect size based on means and standard deviations of two populations, Dr. Ellis recognized that:

> {t}he best way to measure an effect is to conduct a census of an entire population but this is seldom feasible in practice. Census-based research may not even be desirable if researchers can identify samples that are representative of broader populations and then use inferential statistics to determine whether sample-based observations reflect population-level parameters.[218]

However, given Dr. Cohen's general formulation of effect size and the *d* coefficient where the denominator of the ratio was defined as the "standard deviation," Dr. Ellis observed:

> {t}he only tricky part in this calculation is figuring out the population standard deviation. If this number is unknown, some approximate value must be used instead. When he originally developed this index, Cohen (1962) was not clear on

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[215] *Id.* at 44-45 ("Note that this value is not the standard deviation of either the population of men workers or that of women workers, but the root mean square of their respective population standard deviations, σ' (formula (2.3.2))."). [216] *Id.* at 20 and 27.

[217] *Id.* at 44, 60 ("The inequality of population σ values results only in a standardization of the difference in population means by the root mean square of the population variances (formula (2.3.2)) instead of the common population standard deviation."), 61 ("Since she is assuming that $\sigma_S^2 \neq \sigma_C^2$, the standardizing unit cannot be the common within-population standard deviation, but is instead the square root of the mean of the two variances, *i.e.*, $\sqrt{(\sigma_S^2 + \sigma_C^2)/2}$ (formula (2.3.2))."), 63 ("Note that d_4' is simply the m_P - m_C difference, standardized by the common within-population standard deviation (or, if $\sigma_P^2 \neq \sigma_C^2$, their root mean square, σ', formula (2.3.2))."), and 65 ("where σ is either the common population standard deviation or σ' from formula (2.3.2)").

[218] *See Ellis* at 5.

> how to solve this problem, but there are now at least three solutions. These solutions are referred to as Cohen's *d*, Glass's delta or Δ, and Hedges' *g*. As we can see from the following equations, the only difference between these metrics is the method used for calculating the standard deviation:
>
> $$Cohen's\ d = \frac{M_1 - M_2}{SD_{pooled}}$$
>
> $$Glass's\ \Delta = \frac{M_1 - M_2}{SD_{control}}$$
>
> $$Hedges'g = \frac{M_1 - M_2}{\text{SD }*_{pooled}}$$
>
> Choosing among these three equations requires an examination of the standard deviations of each group.[219]

Thus, when the standard deviations of the two populations are unknown, Dr. Ellis and other academic authors provide alternatives with which to estimate the denominator of the effect size. As noted in the equations above, Dr. Ellis provides different formulations for the "pooled standard deviation" as an estimate for the denominator of the effect size:

> For Cohen's *d*:[220]
>
> $$SD_{pooled} = \sqrt{\frac{\sum(X_A - \bar{X}_A)^2 + \sum(X_B - \bar{X}_B)^2}{n_A + n_B - 2}}$$
>
> For Hedges' *g*:[221]
>
> $$SD\ *_{pooled} = \sqrt{\frac{(n_A - 1)SD_A^2 + (n_B - 1)SD_B^2}{n_A + n_B - 2}}$$

In each of these equations, the variable *n* represents the sample size of each group of data.

When based on sampled data, Dr. Cohen stated that "{g}enerally, we can define the effect size *in the sample* (ES_s) using sample statistics in the same way as we define it for the population, and a statistically significant ES_s is one which exceeds an appropriate criterion value."[222] Dr. Cohen also provides an estimation of effect size when the analysis is based on sampled data:[223]

> {a}ccordingly, we redefine our ES index, *d*, so that its elements are sample results, *rather than population parameters*, and call it d_s. For all tests of the difference between means of independent samples,

[219] *Id.* at 10.
[220] *Id.* at 26.
[221] *Id.* at 27.
[222] *See Cohen* at 17 (emphasis in the original).
[223] *Id.* at 66-67 and equations 2.5.1 and 2.5.2 (emphasis added).

$$d_s = \frac{\bar{X}_A - \bar{X}_B}{s}$$

where $\bar{X}_A$ and $\bar{X}_B$ = the two sample means, and
s = the usual pooled within sample estimate of the population standard deviations, that is,

$$s = \sqrt{\frac{\sum(X_A - \bar{X}_A)^2 + \sum(X_B - \bar{X}_B)^2}{n_A + n_B - 2}}$$

The equation to estimate the denominator of the effect size based on sampled data, the "pooled" standard deviation, is identical to that included by Dr. Ellis for the Cohen's *d* coefficient, *i.e.*, the "pooled standard deviation." This is not the equation which Commerce uses in the Cohen's *d* test because it is based on the use of sampled data; Commerce's analysis encompasses the full population of data, *i.e.*, sale prices and, thus, it is appropriate for Commerce to use Dr. Cohen's simple average of the standard deviations of the test and comparison groups.

Commerce recognizes that in our prior proceedings, we used the term "pooled standard deviation" to denote the denominator of the "Cohen's *d* coefficient" used in the Cohen's *d* test. We clarify that our reference to a "pooled standard deviation" is not consistent with the use of that term in the academic literature and may have caused confusion. The "pooled standard deviation," as used by the academic authors, references some of the approaches to estimate the denominator of the effect size based on the actual standard deviations of the populations when such actual values are not known. Commerce has not used the "pooled standard deviation" as the term is meant in the academic literature to calculate the denominator of the Cohen's *d* test. Rather, Commerce has used the simple average of the actual standard deviations of the populations of the test and comparison groups as set forth in Dr. Cohen's equation 2.3.2. Commerce notes that if the two standard deviations are equal, then *Cohen* equation 2.3.2 simplifies into the identity $\sigma' = \sigma_A = \sigma_B = \sigma$, as used in Dr. Cohen's initial formulation of effect size in *Cohen* equations 2.2.1 and 2.2.2.

Professor Coe's discussion of effect size is consistent with that of Dr. Cohen and Dr. Ellis:

> {t}he 'standard deviation' is a measure of the spread of a set of values. Here it refers to the standard deviation of the population from which the different treatment groups were taken. In practice, however, this is almost never known, so it must be estimated either from the standard deviation of the control group, or from a 'pooled' value from both groups.[224]

In his discussion of "Which 'standard deviation'?," Professor Coe presents different arguments for and against using different approaches to provide the "best estimate of standard deviation." One option is the standard deviation of a "control group," *i.e.*, Glass Δ as presented by Dr. Ellis. A second option is a "'pooled' estimate of standard deviation," which is "essentially an average of the standard deviations of the experimental and control groups (Equation 4)."[225] Each of

[224] *See Coe* at 2.
[225] *Id.* at 6-7. Equation 4 is identical to the SD^*_{pooled} for Hedges' *g* in *Ellis* at 27.

Professor Coe's approaches is an estimate of the actual standard deviation, σ, of Dr. Cohen's general formulation of effect size, and rely on sampled data rather than on the actual standard deviations of the populations for which the difference in the means is tested.[226]

In sum, the academic literature allows for Commerce's use of the simple average, *i.e.*, *Cohen* equation 2.3.2, as the denominator of the effect size, *i.e.*, the Cohen's *d* coefficient, when the actual standard deviation of each population is known and they are unequal. Commerce's calculation of the effect size in the Cohen's *d* test is based on the full population of sale prices of comparable merchandise to a given purchaser, region, or time period and the full population of all other sale prices of comparable merchandise (*i.e.*, the test and comparison groups, respectively).[227] Accordingly, Commerce's calculation of the Cohen's *d* coefficient is based on the actual means and standard deviations of the test and comparison groups. Commerce's calculation of the Cohen's *d* coefficient is not based on sampled data, and there is no estimation of the actual mean and standard deviation of the test group and of the comparison group. The academic literature provides for the use of a weighted average as a possible approach when estimating the denominator of the effect size when the actual standard deviations are not known, which is not the situation with Commerce's application of the Cohen's *d* test. Therefore, the academic literature allows for the use of the simple average to calculate the denominator of the effect size, and it does not necessarily require the use of a weighted average.[228]

Moreover, Commerce's use of the simple average of the standard deviations of two full populations as the denominator of the Cohen's *d* coefficient is reasonable because these standard

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[226] Dr. Hedges critiques Commerce's analysis stating that "this passage provides no evidence about the scientific literature referring to computing effect sizes from population data." *See* Hedges Report, Appendix II at (vii). Contrary to Dr. Hedges understanding, Commerce finds that the academic literature only provides for a weighted average of the standard deviations of the test and comparison groups when the "effect size must be estimated from sample data." *Id.* at (vi) ("Commerce's characterization of this passage asserts that when the effect size must be estimated from sample data, the scientific literature allows for unweighted average of the standard deviations as a possible option."). *See Cohen* at 67, equation 2.5.2, *Ellis* at 26-26, fn.8 and 9; *Coe* at 6, equation 4; the exception being Glass' Δ, *Ellis* at 10. However, Dr. Hedges does not address the simple average provided by Dr. Cohen in equation 2.3.2. *See Cohen* at 44. As discussed herein, equation 2.3.2 is for when the standard deviations of the populations differ and equations 2.2.1 or 2.2.2 are not appropriate because those equations define the denominator of the *d* coefficient to be "the standard deviation of either population (since they are assumed equal)." *See Cohen* at 20. Each of these three equations clearly involve the standard deviations of the two populations which are being compared, both from Dr. Cohen's text as well as by Dr. Cohen's use of σ rather than *s* as the variable symbol. As recognized in *Algina*, the standard nomenclature for variable symbols is to use Latin letters for variables based on sampled data, and to use Greek letters for variables based on the full population of data. *See Algina* at 318, fn.1 ("Cohen used the Latin letter *d* to refer to the population ES. Following more typical practice we use *d* to refer to the sample ES and the Greek letter δ to refer to the population ES."). Thus, the academic literature does not agree with Dr. Hedges conclusion that "this passage provides no evidence … referring to computing effect sizes from population data." *See* Hedges Report, Appendix II at (vii).

[227] *See Mid Continent V*, 31 F.4th at 1378 ("Indeed, in each test-group/comparison-group pair, the test and comparison groups together make up 'the entire universe, *i.e.*, population, of the available data,' because for each test group, the comparison group is all other sales data." (internal citation omitted)).

[228] We recognize that the CIT remanded some of the explanation above for Commerce to provide further explanation or reconsideration. *Mid Continent Steel & Wire, Inc. v. United States*, 628 F. Supp. 3d 1316 (CIT 2023). We note that the CIT's decision was issued as part of ongoing litigation that has not reached a final judgment on this issue, and that the explanation has not yet been presented before the Federal Circuit. Moreover, the decision is not binding. *See Algoma Steel Corp. v. United States*, 865 F.2d 240 (Fed. Cir. 1989).

deviations are equally reliable. In his presentation of the parameters of the statistical power analysis, Dr. Cohen describes the "reliability of sample results and sample size":

> The reliability (or precision) of a sample value is the closeness with which it can be expected to approximate the relevant population value. It is necessarily an estimated value in practice, since the population value is generally unknown. Depending upon the statistic in question, and the specific statistical model on which the test is based, reliability may or may not be directly dependent upon the unit of measurement, the population value, and the shape of the population distribution. However, it is *always* dependent upon the size of the sample.[229]

Dr. Cohen further notes that:

> The nature of the dependence of reliability upon n {*i.e.*, sample size} is obvious from the illustrative formulas, and, indeed, intuitively. The larger the sample size, other things being equal, the smaller the error and the greater the reliability or precision of the results.[230]

Indeed, when Dr. Cohen defines the four parameters of statistical inference, "sample size (n)" represents the reliability of the sample results.[231] Accordingly, the sample size is a gauge of the reliability of sample results as part of Dr. Cohen's power analysis. The larger the sample size vis-à-vis the population, the more reliable the sample results.

Where sample sizes are equal in size, the estimated standard deviation for each of the sampled groups also has the same "reliability (or precision) of a sample value {which} is the closeness with which it can be expected to approximate the relevant population value."[232] Consequently, a simple average of the standard deviations of the two groups is appropriate because the reliability of each value of the standard deviation is equal. In other words, when the sample sizes of the two groups are equal, then the reliability of the estimates of the standard deviations are the same, and it is appropriate to give equal weights, *i.e.*, a simple average, when averaging the two standard deviations to calculate the denominator of the Cohen's *d* coefficient.

In contrast, "when the sampled groups have unequal sizes {*i.e.*, $nA \neq nB$}, the cited literature uniformly teaches use of a pooled standard deviation estimate that involves weighted averaging."[233] With the weighted average, the standard deviation of the group with the larger sample size (*i.e.*, sales volume) is given more weight than the group with the smaller sample size.[234] If the sample size of group A is larger than the sample size of group B, then the reliability of the standard deviation of group A will be greater than the reliability of group B. In such a situation, the standard deviation of group A has more reliability and is given more weight than the standard deviation of group B when calculating the denominator of the Cohen's *d* coefficient.

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[229] *See Cohen* at 6 (emphasis in original).
[230] *Id*. at 7.
[231] *Id*. at 14 ("Four parameters of statistical inference have been described: power, significance criterion (a), sample size (n), and effect size (ES).").
[232] *Id*. at 6.
[233] *See Mid Continent III*, 31 F.4th at 1378 (referencing *Cohen* at 67; *Ellis* at 26-27; *Coe* at 6).
[234] *See, e.g.*, *Coe* at 6 (equation 4).

Because the group with the larger sample size has greater reliability, the weights reflect the relative reliability of the standard deviations from the two groups.

In Commerce's application of the Cohen's *d* test, Commerce uses the full populations of data, *i.e.*, all prices of comparable merchandise to a given purchaser, region, or time period (*i.e.*, the test group) and all prices of comparable merchandise to all other purchasers, regions, or time periods (*i.e.*, the comparison group). As a result, the standard deviations calculated for the test and comparison groups each have a reliability of 100 percent, *i.e.*, "the closeness with which {the calculated value} can be expected to approximate the relevant population value."[235] In other words, the reliability of the calculated standard deviations based on the full population of sale prices to each group is identical. Because the reliability of the standard deviations based on full populations is equal, to calculate the denominator of the Cohen's *d* coefficient, Commerce finds that it is reasonable to weight these standard deviations equally, *i.e.*, a simple average, as presented in Dr. Cohen's equation 2.3.2, just as when the reliability is equal for standard deviations based on sampled data with equal sample sizes.

Comment 21: Whether Commerce's Methodology and Explanation for Calculating the Denominator of the *d* Coefficient Are Unreasonable

Canadian Parties' Comments

The following is a verbatim summary of argument submitted by the Canadian Parties. For further details, *see* the Canadian Parties' Case Brief at 19-31.

> Cohen's *d* is a measure of the standardized mean difference between two groups. When those groups do not meet the assumptions, the mean difference is no longer standardized. In such circumstances, the denominator of the Cohen's *d* coefficient does not contextualize the difference in means between two groups of data as Professor Cohen intended. This is true regardless of the method Commerce uses to calculate the denominator or whether the data are full populations or samples.
>
> Commerce has claimed that its supposed use of full populations justifies relying on equation 2.3.2. This assertion overlooks Professor Cohen's express requirement that the test group and the comparison group contain an equal number of observations to use equation 2.3.2. Commerce has asserted that Professor Cohen uses equations 2.5.1 and 2.5.2 to calculate effect sizes for sampled data, thus demonstrating that he uses equation 2.3.2 for population data. However, this argument ignores the specific context in which Professor Cohen discusses the equations. Equations 2.5.1 and 2.5.2 are not used to calculate *d*; rather, they are used to calculate a different statistic (ds) using experimental data. Meanwhile, equation 2.3.2 is used to calculate *d* as part of a power analysis. The equations are used for different purposes. That Professor Cohen refers to sampled data in equations 2.5.1 and 2.5.2 does not mean that he used population data in equation 2.3.2 (nor that it would matter if he had).

[235] *See Cohen* at 6.

Commerce has contended that Professor Algina's description on the conventions for using Greek and Latin variables demonstrates that Professor Cohen uses population data in equation 2.3.2. To the contrary, Professor Algina observes that Professor Cohen does not adhere to the typical practices.

Finally, Commerce has elsewhere claimed that it can simple average the standard deviations of the test and comparison groups because both are fully reliable representatives of the datasets. However, reliability is irrelevant to the inquiry at hand. As Commerce has averred, reliability measures the relationship between a statistic in a known group of data (sample) compared to the same statistic in an unknown group of data (population). It has nothing to do with the measure that Commerce purports to make: calculating the standardized mean difference between two known groups to determine whether the difference is significant. Even if Commerce's conception of reliability provided some information about the standard deviations of the two groups, that information would not warrant ignoring group size in computing the denominator.

Petitioner's Rebuttal

The petitioner did not provide the requested executive summary regarding its rebuttal brief. The petitioner's arguments may be found at pages 35-37 of the Petitioner's Rebuttal Brief.

Commerce's Position: The Canadian Parties argue that, as applied by Commerce, the denominator of the Cohen's *d* coefficient does not operate as Dr. Cohen intended. As we explained in response to Comment 20, however, Dr. Cohen specifically proposed a denominator – *i.e.*, equation 2.3.2 – for use in the conditions under which Commerce applies the Cohen's *d* test. Consequently, because Commerce employs the denominator provided by Dr. Cohen in the conditions he described for this denominator's use, we disagree that the denominator in Commerce's application of the Cohen's *d* test does not operate as Dr. Cohen intended.

The Canadian Parties argue that the fact that Dr. Cohen refers to sampled data in equations 2.5.1 and 2.5.2 does not mean that he used population data in equation 2.3.2. However, Dr. Cohen expressly and repeatedly references population data in connection with equation 2.3.2.[236] Consequently, we disagree that Dr. Cohen did not use population data in equation 2.3.2.

The Canadian Parties argue that Dr. Cohen's use of Greek variables in equation 2.3.2 does not indicate that this equation relates to the calculation of effect sizes based on populations because Professor Algina has observed that Dr. Cohen did not adhere to typical practices in this respect. We observe that the normal convention of using Greek letters to denote population variables and

[236] *See, e.g.*, *Cohen* at 44 (since there is no longer a common *within-population* {standard deviation} … the formula requires {equation 2.3.2}," 60 ("The inequality of *population* {standard deviation}values results only in a standardization of the difference in *population* means by the root mean square of the population variances (formula (2.3.2)) … ."), and 61 ("Since she is assuming that σS2 ≠ σC2, the standardizing unit cannot be the common *within-population* standard deviation, but is instead the square root of the mean of the two variances, *i.e.*, … formula 2.3.2." (emphasis added).

Latin letters to denote sample variables is not consistently followed in the academic literature. For example, below is the formulas for the calculation of the *d* coefficient based on populations:

Dr. Cohen[237]	$d = \frac{m_A - m_B}{\sigma}$
Dr. Algina *et al.*[238]	$\delta = \frac{\mu_2 - \mu_1}{\sigma}$
Drs. Grissom and Kim[239]	$d_{pop} = \frac{\mu_a - \mu_b}{\sigma}$

Compare those formulas with the formulas for the calculation of the *d* coefficient based on sampled data:

Dr. Cohen[240]	$d_S = \frac{\overline{X}_A - \overline{X}_B}{s}$
Dr. Ellis[241]	$Cohen's\ d = \frac{M_1 - M_2}{SD_{pooled}}$
Dr. Algina *et al.*[242]	$d = \frac{\overline{Y}_2 - \overline{Y}_1}{S}$
Drs. Grissom and Kim[243]	$d = \frac{\overline{Y}_a - \overline{Y}_b}{s_p}$

Notwithstanding the inconsistencies in these formulas, which each reader must keep in mind when going from one academic text to another, one aspect that is consistent is that the standard deviation of the population is uniformly represented by the Greek letter "σ", and the estimated standard deviation of the sampled data is represented by the Latin letters "s" or "SD." This further supports the evidence that Dr. Cohen's equation 2.3.2 – *i.e.*, $\sigma' = \sqrt{\frac{\sigma_A^2 + \sigma_B^2}{2}}$ – references the denominator of the Cohen's *d* coefficient for full populations.

Finally, we disagree with the Canadian Parties that the reliability of both the test and comparison groups is irrelevant. Reliability is relevant. A weighted average is specifically weighted by sample size: "Another approach, which is recommended if the groups are dissimilar in size, is to weight each group's standard deviation by its sample size").[244] Sample size is an indicator of reliability, and when Dr. Cohen defines the four parameters of statistical inference, "sample size (n)" represents the reliability of the sample results.[245] Dr. Cohen states that reliability "is the closeness with which {a value} can be expected to approximate the relevant population

[237] *Id.* at 20, equation 2.2.1.
[238] *See Algina* at 318.
[239] *See Grissom* at 68, equation 3.6.
[240] *See Cohen* at 66-67, equation 2.5.1.
[241] *See Ellis* at 10.
[242] *See Algina* at 318.
[243] *See Grissom* at 68, equation 3.5.
[244] *Ellis* at 10.
[245] *See Cohen* at 4 and 14.

value."[246] In Commerce's application of the Cohen's *d* test, the test and comparison groups account for 100% of their respective populations. Consequently, they are equally reliable. Accordingly, the standard deviations of the two groups are likewise equally reliable and should be treated equally without one having any more weight than the other.

Comment 22: Whether Commerce Erred in Finding a Pattern of U.S. Prices That Differ Significantly Among Purchasers, Regions, or Periods of Time

Canadian Parties Comments

The following is a verbatim summary of argument submitted by the Canadian Parties. For further details, *see* the Canadian Parties' Case Brief at 78-85.

> Commerce's past practice, dictionary definitions, WTO decisions, and the SAA dictate that Commerce may only find a "pattern" in the ratio test when the transactions are interrelated and logically connected. Here, Commerce aggregated U.S. transaction values that are allegedly differentially priced by purchasers, regions, and time periods into a single "pattern." Such sales are not logically related, do not constitute a "pattern," and are not indicative of discriminate pricing (targeted dumping). Thus, Commerce's aggregation of transaction values that supposedly "pass" the Cohen's *d* to find a "pattern" as part of its ratio test is not in accordance with the law.
>
> Section 777A(d)(1)(B)32 of the Act requires that Commerce explain why the average-to-average A-A methodology cannot account for the disparate U.S. prices identified in Cohen's *d* test and the ratio test before Commerce is permitted to use an alternative methodology to calculate a respondent's margin. Here, Commerce simply identified the differences between the mandatory respondents' margins when calculated using the A-A methodology compared to the average-to-transactions A-T methodology. Commerce did not explain why the A-A methodology cannot account for the supposedly disparate U.S. pricing detected in the other steps of the DPM.
>
> This failure is particularly acute with respect to the significant differences in prices among time periods that Commerce claims to have identified. Commerce's regulations require that the application of the A-A methodology be based on time periods that account for price differences over time. This means that Commerce's s A-A methodology is applied on a monthly basis, which has the necessary effect of accounting for any significant price differences across calendar quarters. If differential pricing across quarters masks targeted dumping, then calculating dumping margins on a monthly A-A basis reliably unmasks that dumping. Commerce has never explained why its own regulations do not already account for significant price differences among periods of time and must either attempt that mathematically impossible task or stop applying the A-T methodology based on quarterly price differences.

[246] *Id.* at 6.

Central Canada's Comments

The following is a verbatim summary of argument submitted by Central Canada. For further details, *see* Central Canada's Case Brief at 30-33.

> Commerce applies, after use of the defective Cohen's *d* test, a "ratio test" in contravention of the plain meaning of the Tariff Act. What Commerce considers as a significant "pattern" of price differences is no pattern at all, but rather a cumulation of various differences that inflate the numerator and generate a larger percentage of sales passing the Cohen's *d* test. By disregarding the statute and aggregating across categories of differences by purchaser, region, and periods of time, Commerce alters the results to justify recourse to the A-T methodology and zeroing.

Canfor's Comments

Canfor did not provide the requested executive summary regarding its case brief. Canfor's arguments may be found at pages 30-33 of Canfor's Case Brief.

Petitioner's Comments

The petitioner did not provide the requested executive summary regarding its rebuttal brief. The petitioner's arguments may be found at pages 38-42 of the Petitioner's Rebuttal Brief.

Sierra Pacifica's Comments

The following is a verbatim summary of argument submitted by Sierra Pacific. For further details, *see* Sierra Pacific's Case Brief at 7-8.

> The Canadian Parties and respondents argue that Commerce's ratio test fails to find a "pattern" of prices that differ significantly among purchasers, regions, or periods of time and is thus contrary to law. Nothing in section 777A(d)(1)(B)(i) of the Act prescribes how Commerce is to analyze whether there is a pattern of prices that differ significantly among purchasers, regions, or periods of time. Thus, Commerce's use of the ratio test is a reasonable exercise of discretion in filling the gap left by Congress. Central Canada asserts that Commerce's ratio test fails to demonstrate a pattern of significantly different prices. As Commerce has previously explained, the purpose of the ratio test is to evaluate the extent of the significant price differences found as a result of the Cohen's *d* test, and the results of the Cohen's *d* test are not outcome determinative. The CIT has affirmed Commerce's use of the ratio test as a reasonable means "to identify the existence and extent to which there is a pattern of export prices for comparable merchandise that differ significantly among purchasers, regions or periods of time."

Commerce's Position: We disagree with the Canadian Parties, Canfor, and Central Canada. Both the Federal Circuit and the CIT have found that there is no law barring Commerce from aggregating the value of sales whose prices differ significantly for various purchasers, region and time periods.[247] Given that aggregating the value of these sales whose prices differ significantly is consistent with Commerce's past practice, as well as legal precedent, we will continue to employ this methodology for the final results.

Comment 23: Whether Commerce Failed to Consider Qualitative Factors in Determining Whether Prices Were Significant

Canadian Parties' Comments

The following is a verbatim summary of argument submitted by the Canadian Parties. For further details, *see* the Canadian Parties' Case Brief at 75-78.

> The substantial evidence standard requires Commerce to address evidence that fairly detracts from its findings, including a finding of targeted dumping. This requirement is different from an inquiry into subjective reasons or "intent" a respondent may have for pricing its merchandise, which is an inquiry Commerce is not required to undertake. Commerce cannot ignore evidence that price differences are not the result of differential pricing and are not masking targeted dumping. The mandatory respondents' fluctuating U.S. prices tracked fluctuations in market prices, which were volatile during the POR. The statute is not intended to penalize respondents for market volatility, and Commerce cannot blindly apply its differential pricing methodology to circumstances that the record evidence establishes are objectively unrelated to targeted dumping.

Central Canada's Comments

The following is a verbatim summary of argument submitted by Central Canada. For further details, *see* Central Canada's Case Brief at 11-14.

> When there are significant price differences by season for a seasonal commodity, Commerce is expected to recognize differences in industries and products. And before Commerce may resort to an alternative methodology for comparisons, it must establish and provide an explanation why it cannot account for such differences through the use of the A-A (or transaction-to-transaction comparison). That explanation is missing here, replaced by the differential pricing methodology. Commerce has substantial record evidence on seasonality of softwood lumber. It

[247] In considering whether Commerce can aggregate sales across categories to establish a pattern, the Federal Circuit held, "{s}uch aggregation is not inconsistent with the statute, which requires that Commerce determine that there is a pattern of export prices … for comparable merchandise that differ significantly among purchasers, regions, or time periods. The statute is silent as to how Commerce must determine a pattern….We find that Commerce's interpretation of pattern was reasonable." *Dillinger France S.A. v. United States*, 981 F.3d 1318, 1325 (Fed. Cir. 2020) (internal citations omitted). *See also Stupp II*, 5 F.4th at 1354-55 (holding that there is no statutory language telling Commerce how to detect patterns of significantly differing export prices, much less how to aggregate and quantify pricing comparisons across product groups, and affirming Commerce's general approach as reasonable).

> has offered no qualitative explanation nor justification for using the A-T methodology; a computer program has replaced fealty to the law.

Petitioner's Comments

The petitioner did not provide the requested executive summary regarding its rebuttal brief. The petitioner's arguments may be found at pages 38-42 of the Petitioner's Rebuttal Brief.

Sierra Pacific's Comments

The following is a verbatim summary of argument submitted by Sierra Pacific. For further details, *see* Sierra Pacific's Case Brief at 8-9.

> Commerce has previously addressed and rejected respondents' arguments that it must address so-called "qualitative" factors that allegedly could explain the pattern of price differences found to exist. The courts have also repeatedly held that the statute does not require Commerce to identify the causes of the pattern of significantly different prices found to exist or explain whether or why the price differences are not the result of factors other than targeted dumping. The Canadian Parties fail to identify evidence actually demonstrating that respondents' price differentials were not the result of targeted dumping. This evidence does not demonstrate that the observed price differences in the respondents' U.S. sales should be attributed to factors other than targeted dumping of subject merchandise in the U.S. market. Thus, this evidence does not detract in any way from Commerce's finding, based on application of its differential pricing analysis, that respondents' U.S. sales prices during the POR exhibited a pattern that differs significantly among purchasers, regions, or time periods, and Commerce did not err in failing to address it.

Commerce's Position: We disagree with the Canadian Parties and Central Canada. The Federal Circuit has found that Commerce is not required to "determine the reasons why there is a pattern of export prices for comparable merchandise that differs significantly among purchasers, regions, or time periods, nor does it mandate which comparison methods Commerce must use in administrative reviews."[248] The CIT has affirmed this finding by stating that Commerce is not required to consider factors when examining whether there exists a pattern of prices that differ significantly consistent with section 777A(d)(1)(B)(i) of the Act.[249] The salient finding is whether price differences exist, and, based on the Cohen's *d* test, whether such differences are significant. The Canadian Parties and Central Canada provide no evidence that the price differences that Commerce identified do not exist; rather, they suggest different reasons as to why these differences exist and, therefore, are not relevant to finding that these price differences should be accounted for. However, these differences are factual record evidence that U.S. prices for the same product differ, just as there is factual record evidence that the price of subject merchandise sold in the U.S. market differs from normal value. Therefore, given that both the CIT and the Federal Circuit have determined that Commerce is not required to look at other

[248] *See JBF RAK CAFC*, 790 F.3d at 1368 (quoting *JBF RAK CIT*, 991 F. Supp. 2d at 1355).
[249] *See Nan Ya Plastics Corp. v. United States,* 128 F. Supp. 3d 1345, 1358 (CIT 2015).

factors for determining a pattern of prices that differ significantly, we will continue to employ the differential pricing analysis which is unchanged from the *Preliminary Results*.

VI. RECOMMENDATION

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

☒	☐
Agree	Disagree

8/12/2024

X

Signed by: RYAN MAJERUS

Ryan Majerus
Deputy Assistant Secretary
for Policy and Negotiations
performing the non-seclusive functions and duties
of the Assistant Secretary for Enforcement and Compliance