



## DEPARTMENT OF COMMERCE

### International Trade Administration

[Docket No. 250514-0087; RTID: 0625-XC054]

#### Alternatives to the Use of Cohen's *d*; Request for Comment

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**ACTION:** Notice; request for comment.

**SUMMARY:** The U.S. Department of Commerce (Commerce) seeks information and public comment on how the administering authority can meet the statutory requirement outlined in section 777A(d)(1)(B)(i) of the Tariff Act of 1930, as amended (the Act), to identify if “there is a pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or periods of time.” The U.S. Court of Appeals for the Federal Circuit (Federal Circuit) recently held that it is unreasonable to use the current Cohen's *d* test when the Cohen's *d* test is applied to data that do not satisfy the statistical assumptions of normal distribution, equal variances, and sufficiently numerous data. Commerce seeks information and public comment regarding alternatives to the use of the Cohen's *d* test to define when prices differ significantly among purchasers, regions, and time periods, pursuant to section 777A(d)(1)(B)(i) of the Act.

**DATES:** Comments must be submitted no later than May 30, 2025.

**ADDRESSES:** Submit comments, identified by ITA-2025-0004, by either of the following methods to ensure that the comments are received and considered:

- *Electronic Submission:* Submit all electronic comments via the Federal eRulemaking Portal. Go to <https://www.regulations.gov> and type Docket No. ITA-2025-0004 in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.

- *Mail:* Comments may also be submitted by mail or hand delivery/courier, addressed to Christopher Abbott, Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, Room 18022, Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230. An appointment *must* be made in advance with the APO/Dockets Unit at (202) 482-4920 to submit comments in person by hand delivery or courier.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments and information received are a part of the public record and will generally be posted to <https://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, *etc.*) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. Commerce will not accept comments accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. Therefore, do not submit confidential business information or otherwise sensitive or protected information.

All comments and information must be in English or be accompanied by a complete English translation to be considered. Commerce will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only. Supporting documents and any comments received on this docket may be viewed at <https://www.regulations.gov/document/ITA-2025-0004>.

Any questions concerning the process for submitting comments should be directed to the Enforcement and Compliance Communications Office at (202) 482-1413 or [ECCCommunications@trade.gov](mailto:ECCCommunications@trade.gov).

**FOR FURTHER INFORMATION CONTACT:** Melissa Porpotage, Enforcement and Compliance Communications Office at (202) 482-1413.

**SUPPLEMENTARY INFORMATION:**

**Background**

The U.S. Department of Commerce (Commerce) administers the antidumping and countervailing duty (AD/CVD) trade remedy laws. Commerce generally calculates dumping margins by one of two methods: (1) by comparing the weighted average of the normal values to the weighted average of the export prices (or constructed export prices) for comparable merchandise (known as the average-to-average method); or (2) by comparing the normal values of individual transactions to the export prices (or constructed export prices) of individual transactions for comparable merchandise (known as the transaction-to-transaction method).<sup>1</sup> The statute also provides for an exception to these two comparison methodologies when Commerce finds 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 where such differences cannot be taken into account using one of the comparison methods described above.<sup>2</sup> When these criteria are satisfied, Commerce may compare the weighted average of the normal values to the export price (or constructed export price) of individual transactions for comparable merchandise (known as the average-to-transaction method).

The Federal Circuit has held that, if statutory conditions are satisfied, this provision authorizes Commerce to use the average-to-transaction comparison methodology to address “masked” dumping.<sup>3</sup> The Federal Circuit further held that under the average-to-average comparison methodology, “sales of low-priced ‘dumped merchandise’ would be averaged with (and offset by) the sales of higher-price ‘masking’ merchandise, giving the impression that no

---

<sup>1</sup> See section 777A(d)(1)(A) of the Act (19 U.S.C. 1677f-1(d)(1)(A)).

<sup>2</sup> See section 777A(d)(1)(B) of the Act (19 U.S.C. 1677f-1(d)(1)(B)).

<sup>3</sup> See *Apex Frozen Foods Private Ltd. v. United States*, 862 F.3d 1337, 1341 (Fed. Cir. 2017).

dumping was taking place and frustrating the antidumping statute's purpose.”<sup>4</sup> Commerce addresses this concern by comparing the weighted average of the normal values to the export prices (or constructed export prices) of individual transactions for comparable merchandise, if there is a pattern of export prices for comparable merchandise that differ significantly among purchasers, regions, or periods of time, and the administering authority can explain why such differences cannot be taken into account using a method described in paragraph (1)(A)(i) or (ii) of section 777A(d)(1)(B)(i) of the Act. In other words, the average-to-transaction method can be used when two preconditions are met: (1) a pattern of prices that differ significantly exists, and (2) the average-to-average comparison method cannot account for such differences.

In conducting its analysis under section 777A(d)(1)(B)(i) of the Act, Commerce has applied various methodologies,<sup>5</sup> and is currently applying the Cohen's *d* test as part of its differential pricing analysis.<sup>6</sup>

Commerce is considering possible alternatives to the current approach for conducting analysis under section 777A(d)(1)(B)(i) of the Act with respect to identifying when prices differ significantly among purchasers, regions, or periods of time.

Accordingly, Commerce solicits public comment and information on potential alternative approaches for analyzing a respondent's U.S. prices under section 777A(d)(1)(B)(i) of the Act to

---

<sup>4</sup> *Id.*; see also generally, *Differential Pricing Analysis; Request for Comments*, 79 FR 26720 (May 9, 2014).

<sup>5</sup> *Id.* (discussing various approaches).

<sup>6</sup> The Federal Circuit recently held that it is unreasonable to use the current Cohen's *d* test, as part of its differential pricing analysis, which Commerce utilized for over a decade, when the test is applied to data sets that do not satisfy the statistical assumptions of normal distribution, equal variability, and sufficiently numerous data. See *Marmen Inc. v. United States*, 2025 U.S. App. LEXIS, 9506 (Fed. Cir. April 22, 2025). At this time, this decision is not final and conclusive, as there is a possibility of rehearing and/or appeal, and the Court's mandate has not been issued. See Notes of Committee on Rules - 1998 Amendment (subdivision c) - Fed. Rule of Appellate Procedure 41 (“A court of appeals’ judgment or order is not final until issuance of the mandate; at that time the parties’ obligations become fixed.”); *GPX Int’l Tire Corp. v. United States*, 678 F.3d 1308, 1312 (Fed. Cir. 2012) (“An appellate court’s decision is not final until its mandate issues.”); *Heartland By-Products, Inc. v. United States*, 223 F. Supp 2d 1317, 1332 (CIT 2002) (“Under the Federal Rules of Appellate Procedure, an opinion of the appeals court is not final until it issues its mandate.”). Thus, there is no requirement for specific agency action in response to this decision at this time; however, we are not precluded from seeking public comment regarding potential alternatives to the current approach, which the agency is free to modify, if appropriate, at any time.

identify if there is a pattern of prices for comparable merchandise that differ significantly among purchasers, regions, or periods of time.

### **Opportunity for Public Comment and Information**

For each submission, please provide comments that specifically address the statutory criteria outlined under section 777A(d)(1)(B)(i) of the Act and include an executive summary of your comments (500-word maximum).

Dated: May 14, 2025.

---

**Christopher Abbott,**

*Deputy Assistant Secretary*

*for Policy and Negotiations,*

*performing the non-exclusive functions and duties*

*of the Assistant Secretary for Enforcement and Compliance.*

[FR Doc. 2025-08914 Filed: 5/15/2025 11:15 am; Publication Date: 5/19/2025]