

that the rate in effect at the time of entry should apply, or, even, that the all-others rate should apply. Given the variation in the claims parties have made with respect to the rate applicable at liquidation, we initiated this clarification in order to clarify how we would instruct the Bureau of Customs and Border Protection (Customs) to liquidate entries in certain circumstances and to put importers on notice of the applicable rate even if they do not request or participate in a review. As we explain in response to Comment 7, below, knowing the method we will use when instructing Customs to liquidate an entry when it is not reviewed enables the importer to determine whether to request a review.

Comment 3: According to the Canadian Government, the use of the all-others rate will result in the Department's application of a wholly unrealistic final antidumping duty rate for resellers because the all-others rate is an unchanging weighted-average rate determined during the original less-than-fair-value investigation (LTFV).

Response: The Department's current practice often results in the use of an inaccurate rate for duty assessment in reseller situations where the Department conducts a review. Under the current practice, the duty rate for non-reviewed resellers (which do not have their own rate and where the deposit rate at the time of entry becomes the final rate of duty) is based on a previous review of the producer's selling experience, not the reseller's selling experience. Furthermore, the current system perpetuates the possible application of an inaccurate rate because there may be little incentive for resellers to request a review to obtain their own specific rates. Moreover, through litigation of customs protests we have seen that resellers "shop" for margins by waiting until the completion of the review to determine whether the producer's rate determined in the review or the all-others rate is more favorable. For example, in situations where the Department calculates a dumping margin for a producer which is higher than the all-others rate, importers have claimed at liquidation that the producer was not involved in the transaction (see *ABC International Traders, Inc. v. United States*, 19 CIT 787 (1995)). Regardless of the allegedly "unrealistic" nature of the all-others rate, where the review has identified the customers of the reviewed party, application of either the as-entered deposit rate of the producer or the results of the review to the unreviewed reseller's entries is not appropriate.

This clarification establishes an assessment policy for any unreviewed reseller. If the all-others rate is not an accurate reflection of the market, then an interested party can request a review of that reseller. Within the context of the review the Department will then consider that reseller's specific selling experience in determining the appropriate rate.

Comment 4: The Canadian Government maintains that the Department's proposal could create a burden on producers with respect to whether they knew if an unaffiliated reseller would resell certain merchandise to domestic customers or for export to the United States.

Response: Currently, any responding producer must report all sales made to the United States. As stated in the preamble to the current regulations (62 FR at 27303), " * * * in an AD proceeding, the Department usually investigates or reviews sales by a non-producing exporter only if that exporter's supplier sold the subject merchandise to the exporter without knowledge that the merchandise would be exported to the United States." Therefore, the producer already bears the responsibility of reporting sales made through a reseller where the producer has knowledge that the reseller will sell the merchandise in the United States. Under the clarified automatic-liquidation regulation, this responsibility will not be altered.

Comment 5: The Canadian Government argues that the Department should recognize that resellers, distributors, exporters, and other intermediaries are unable to participate in administrative reviews to the same degree as producers. Often, it asserts, such entities do not operate sophisticated accounting systems which would enable them to participate in the kind of investigative process that the Department would normally impose on producers. Furthermore, it contends, resellers are invariably unable to provide certain other information that is necessary to an administrative review, such as costs of production, and other complications arise when the Department discovers through verification that the universe of sales covered by a review must be altered. In this context, the Canadian Government concludes, resellers could not participate in an administrative review without incurring a high risk of inviting the use of "facts otherwise available" to calculate a final antidumping duty rate.

Response: Section 782(c)(2) of the Act provides that the Department will take into account difficulties experienced by interested parties, particularly small

companies, in supplying information and will provide any assistance that is practicable. Further, section 776(b) of the Act provides for the use of an adverse inference where the Department finds that an interested party "has failed to cooperate by not acting to the best of its ability to comply with a request for information." Pursuant to these provisions, the Department may consider the specifics of any given respondent in determining whether it acted to the best of its ability. Such decisions can be made by the Department on a case-by-case basis. Further, it is the Department's practice to take a respondent's records and accounting system into consideration when determining whether that respondent has cooperated to the best of its ability.

Comment 6: The Canadian Government argues that resellers are, by definition, sellers rather than producers and, as such, sell products at many levels of trade, in large and small quantities, both domestically and in the export market, to a wide range of customers and in numerous shipments. Accordingly, it contends, the normal price-comparison process may lead to invalid results.

Response: Through the process of conducting an administrative review, the Department examines all the factors which comprise an individual respondent's selling experience. Under the guidelines established by the statute and the regulations, we make appropriate adjustments to export price, constructed export price, and normal value to reflect the unique characteristics of the respondent's experience such as differences in levels of trade and quantity. Moreover, producer-sellers also can have a variation in all the factors indicated. Therefore, our analysis of a reseller will be the same as our analysis of a producer. Furthermore, the analysis of the reseller will be based on that reseller's actual selling experience, making it more accurate than the use of the producer's experience to determine the reseller's rate of dumping.

Comment 7: Several commenters assert that, if the Department determines to modify its policy in this regard, it should be prospective only and made effective for review periods which have not yet started. One party, the Steel Service Center Institute (SSCI), argues that the modification should be applied only to antidumping investigations initiated after the publication of the clarification or at the very least to annual reviews of antidumping duty orders which do not encompass merchandise entered prior to the