

an antidumping rate should be the higher of either the all-others rate or the producer's rate. If resellers believe that they could get a lower rate than that which would result from this rule, Micron concludes, they could come forward and request a review, an option which is not available to petitioners which may not know the identity of the reseller.

The Canadian Government argues, however, that this scenario is not relevant to Canadian resellers. It maintains that typically the Canadian resellers have openly identified the producers to which a specific antidumping duty rate has been assigned because their deposit rates are based on those same producer rates. Furthermore, the government argues that any suggestion that antidumping duty orders are being circumvented by resellers is entirely without foundation and should not form the basis of any change in the Department's assessment policy.

SSCI claims that the fact that the Department has received no comments from the domestic steel industry with regard to the cross-border trade by steel service centers indicates that this proposed change is unnecessary. Furthermore, SSCI maintains that Micron's comments contemplate a hypothetical situation that bears no relationship to the conditions of competition in the North American steel industry. SSCI disputes Micron's assertion that resellers could "hide in the bushes" since the identity of the steel service centers that sell into the U.S. market are known or can be determined easily. In fact, SSCI concludes, steel service centers not only identify themselves as the exporters of the merchandise, but they also provide Customs with the names of the mills from which they purchase the merchandise.

*Response:* We find no convincing evidence that any asymmetry will exist with the implementation of this proposed clarification. It is true that a reseller may request a review when the all-others rate is higher than the producer's rate. This provides the opportunity for a reseller to establish a rate which best reflects that reseller's selling experience. Likewise, a producer may request a review of its own rate. Use of a "higher of" assessment methodology, as suggested by Micron, to compel a party to request a review, however, would not be reasonable.

Moreover, the assessment methodology we are implementing now for unreviewed entries involving intermediate parties not only addresses any potential circumvention of duty

orders as suggested by the Canadian Government, but it also ensures that the proper assessment rate is assigned to subject merchandise purchased from resellers. The Department must apply a methodology, in accordance with its regulations, that results in a proper assessment rate and which provides for the appropriate enforcement of U.S. law.

More to the point, however, the cash deposit may not reflect the actual dumping margins associated with the subject merchandise because the price discriminator for those sales may have been the reseller rather than the producer. If the producer has knowledge of the reseller's U.S. sales and reports sales to the reseller as U.S. sales in the course of the Department's administrative review, then it is appropriate that those sales receive the producer's rate for final duty-assessment purposes. Indeed, that rate is determined by our analysis of the producer's selling experience, which includes those sales. If, however, the producer has no knowledge of sales to the United States made by a reseller (where a producer believes the ultimate consumer for its sales is the customer in the home market or third country), then those sales are not included in the Department's margin analysis for the producer because the proper respondent for these sales to the United States is the reseller. The most accurate determination of the appropriate assessment rate would be an analysis of the reseller's pricing practices.

Furthermore, the current practice places a greater burden on the petitioners to identify specific resellers. Given a reseller's ability to margin-shop by not requesting an administrative review, there is less incentive under the current practice for the resellers to request an administrative review. With this clarification, however, a reseller will be more likely to request an administrative review if a reseller believes the all-others rate does not reflect its pricing practices during the period of review.

*Comment 10:* SSCI comments that the Department's current practice is equitable, easy to administer, and supported by statutory authority and judicial precedent. It also contends that the current practice constitutes a reasonable construction of applicable law, *i.e.*, whenever a party requests an administrative review of an antidumping duty order, all parties recognize that the final results of review will apply to all merchandise made by that producer and shipped to the United States, either directly or through a reseller. Moreover, it asserts, the current practice is also easy to administer in

that all parties are aware of the "rules of the game," making costly administrative reviews unnecessary when parties are satisfied with the rate applicable to producers. Finally, SSCI states, the current policy conforms to the law in that section 777A(c)(2) of the Act gives the Department the discretion to assess duties on a reseller's sales at the rate applicable to a producer whose shipments are examined during an administrative review. Furthermore, SSCI contends, this practice has been implicitly approved by the Court of International Trade in *ABC International Traders, Inc. v. United States*, 19 CIT 787 (1995). Specifically, SSCI notes, the Court held that the proper rate to be applied to the reseller in question is "the manufacturer's rates as determined on review, because no reseller rates exist," citing *ABC Int'l Traders*, 19 CIT at 790.

The Canadian Government characterizes the Department's current practice as automatic liquidation of entries from resellers at the producers' cash-deposit rate in effect at the time of entry.

Micron rebuts by first observing that the positions of both the Canadian Government and SSCI differ from its position, but they also are mutually inconsistent. Micron contends that the Canadian Government states that the Department should not depart from its current practice of assessing resellers under the automatic-assessment provisions of 19 CFR 351.212(c). Micron contends, citing several 1997 and 1998 liquidation instructions, that SSCI's characterization is the most accurate reflection of the Department's current practice. Nevertheless, Micron emphasizes, the Department must take this opportunity to clarify its policy. Moreover, Micron argues that SSCI's contention that the petitioner can request a review for any particular reseller is specious. Micron states that the reseller may not always be visible to the petitioner and therefore the petitioner may not have the opportunity to request a review of specific resellers. Micron contends that, if the petitioner does not request a review for a given reseller, it cannot be said that the petitioner has waived its rights to challenge the application of a different assessment rate.

Consolidated Bearings Company (Consolidated) comments that the Department's proposal contradicts its current practice of instructing Customs to liquidate entries at the weighted-average rates determined in a review and published in the **Federal Register**. Specifically, Consolidated refers to certain liquidation instructions the