

Department has issued with respect to certain malleable cast iron pipe fittings from Brazil (Pipe Fittings), DRAMs from the Republic of Korea (DRAMs), and tapered roller bearings and parts thereof from Japan (TRBs). In all three instances, Consolidated observes, the Department did not specify the importers to which the results of the review applied but, instead, instructed Customs to apply the results of those reviews to all importers of merchandise produced by the reviewed producer. Consolidated goes on to assert that the only appropriate assessment rate for a reseller which does not have its own rate is the rate the Department determines for the producer and publishes in the **Federal Register**. According to Consolidated, the use of any other rate results in an inaccurate assessment of the actual duties due and is not legally justified. Because resellers are rarely subject to a constructed-export-price analysis, Consolidated explains, the lack of record evidence makes any modification of the published rate unjustified for resellers which do not have their own rates.

Certain Canadian resellers of corrosion-resistant carbon steel products comment that the Department's current practice of applying the reviewed producer's results of review to the entries from resellers is consistent with statutory and regulatory practice. They contend that the proposed clarification is unlawful and unfair, and they do not agree that they should be liable for duties at the all-others rate if their supplier/producer disavows knowledge of ultimate exportation to the United States. In their view, the proposed clarification results in an unwarranted de facto repeal of the automatic-assessment regulation. Many of their comments echo the comments by SSCI and the Canadian Government.

Response: The comments we have received make it clear, from the various descriptions of our current practice, that this practice has generated confusion. Through this clarification, it is our purpose to provide notice to importers as to the methodology we will use to determine the liquidation rate applicable to entries of the subject merchandise if no one requests an administrative review of the seller of the imported merchandise to the United States. Based on an understanding of our future practice, all parties can make an appropriate decision regarding requests for review by evaluating whether they believe the applicable rate is satisfactory. Furthermore, the procedure would be readily administrable by the Department.

The argument that failure on the part of the petitioner to request a review binds the Department to an assessment rate selected by the importer at the time of entry is incorrect. The Department is well within its authority to assign the all-others rate for assessment purposes under the provisions of 19 CFR 351.212(c) whether that seller is the manufacturer or a reseller. Reliance by the Canadian Government and SSCI on *ABC Int'l Traders* to support their conclusion that the Department has no authority to assign the all-others rate is misplaced. In *ABC Int'l Traders*, there was no all-others rate or any other rate to be assigned to the resellers for subject merchandise sold by the resellers to customers in the United States. Nor did the Court find that it had been established that the producer had no knowledge that the merchandise in question was destined for the United States. Hence, the Court held that the importers were bound to the results of the Department's administrative review of the producer because there were no other assessment rates applicable to the subject merchandise. Had the Department's methodology, as announced by this notice, been in effect at the time the entries subject to the *ABC Int'l Traders* decision were made and the Department had determined that the producer did not have knowledge of the U.S. destination of the merchandise, the entries would have been liquidated at the all-others rate. The uncertainty on the part of all parties evident in the *ABC Int'l Traders* case is precisely what the Department's methodology is intended to alleviate by providing all parties the information necessary for them to determine the proper assessment rate early enough to request an administrative review if they wish.

The idea that the producer's rate determined in the review is the only appropriate rate for resellers which do not have their own rate misses the point of any review the Department may conduct of a producer. When the Department conducts a review of a producer, it is conducting a review of that producer's U.S. sales, not the producer's merchandise. Consolidated confuses the issue with its assertion that the rate the Department determines for the producer is the rate which reflects most accurately the actual duties due on entries from a reseller of a reviewed producer's merchandise. The producer's selling practices form the basis of the importer-specific assessment rates and weighted-average margin the Department calculates in a review, and these only pertain to imports of

merchandise where the producer was the seller to the United States. A producer's selling practices bear no relationship to the reseller's selling practices. This is the central point to this clarification: The results of the review of the producer's U.S. sales do not apply to entries where the producer did not make the sale to the United States and hence were not covered by the review. Therefore, while entry was made at the producer's cash-deposit rate under a reasonable assumption at the time of entry that the producer was involved in the U.S. transaction, through the administrative review the producer identified its actual customers and importers for its U.S. sales and only entries involving those customers and importers are appropriately assessed duties based on the results of the review. To apply the results of the review to imports from resellers for which the reviewed producers had no knowledge of the sales to the United States (and hence were not covered by the review) would allow the resellers to benefit from the selling practices of the producer without any analysis of the resellers' actual selling practices (indeed without any review of the relevant U.S. sales whatsoever).

Further, the assumption at the time of entry that the producer made the U.S. sales, and on whose rate the collection of a cash deposit at the time of entry was based, has been disproved through the review; in fact, it has been determined that a deposit based on the producer's rate at the time of entry was not appropriate. Rather, the review has demonstrated that the producer had nothing to do with the sale to the United States and imports from the reseller should have been suspended at the all-others rate. As a result, we proposed that, under these circumstances, the appropriate assessment rate is the all-others rate since no review was requested of the reseller's selling practices.

With respect to the specific instructions to which Consolidated refers in its comments, it is accurate that the Department has applied the results of the review of the producer as published in the **Federal Register** instead of importer-specific assessment rates in certain situations. For example, if a reviewed producer does not provide information we can use in our analysis, such that we apply adverse facts available to entries of its merchandise during the period of review, we have no information on which to base liquidation instructions which will distinguish between sales to the United States by the reviewed producer and sales by unreviewed intermediate