

parties. For example, in *Certain Malleable Cast Iron Pipe Fittings from Brazil; Final Results of Antidumping Duty Administrative Review*, 60 FR 41876, August 14, 1997, we applied total best information available to the respondent because it did not respond to our questionnaire. As a result, we issued the December 1998 non-importer-specific Pipe Fittings liquidation instructions because we had no information on which to base importer-specific assessment rates.

Further, where we have not gathered the information during a review to establish importer-specific liquidation rates and liquidation has remained suspended during the pendency of litigation, sometimes lasting several years as parties contest our decisions at the Court of International Trade and the Court of Appeals for the Federal Circuit, we have on occasion decided to apply the weighted-average margins as the assessment rate for all importers because to calculate the importer-specific assessment rates would lead to additional delay and possibly errors. See, for example, Memorandum to Laurie Parkhill from George Callen, Assessment Methodology for Liquidation of Entries Subject to the 1994–1995 Review of Tapered Roller Bearings, January 18, 2002. Given that until fairly recently the Department did not always calculate importer-specific assessment rates when conducting its reviews, the instructions pertaining to DRAMs and TRBs in all likelihood reflected a decision to issue instructions using the information on the record (*i.e.*, the weighted-average margins) rather than calculate importer-specific assessment rates for the first time, after all decisions were final and conclusive, in accordance with 19 CFR 351.212(b).

Finally, the Canadian resellers' comment that the results of review of the producer are applied to all imports is not entirely accurate. In January 2000 the Department sent instructions to Customs with respect to two companies covered by the 1996–1997 review of the order on corrosion-resistant carbon steel flat products from Canada which were specific with respect to the importers of the products. Those instructions do not suggest that all imports of this merchandise produced by the specific producer should be liquidated pursuant to the results of the review. In fact, as in most cases, there is no reference in one of the instructions at all to imports of the reviewed producer's merchandise which were imported by a party other than the party the producer identified in its response. In the other set of instructions for a different company covered by the same review, the

Department instructed Customs to liquidate all other entries during the 1996–1997 period of review, except those of one specific company, at the rate in effect at the time of entry. Again, there was no suggestion that the Department intended to apply the results of the review of a producer to unreviewed resellers' exports to the United States. Further, such importer-specific liquidation instructions are consistent with the regulations at 19 CFR 351.212(b). The unreviewed resellers' exports are at issue in this clarification because the regulations do not address them in any meaningful manner.

*Comment 11:* SSCI argues that the Department's proposal is contrary to law and the regulations because it is based on the assumption that the reseller's sales are not encompassed within the administrative review of the producer and results in an assessment rate which differs from both the cash-deposit rate paid on imports from the reseller and the producer's rate calculated by the Department during the course of the review. SSCI characterizes the Department's current practice as one in which the Department applies the final results of the review of a producer to all imports of that producer's merchandise during the review. Alternatively, SSCI and the Canadian Government contend that, in accordance with section 777A(c)(2) of the Act, the Department is required, by law, to assess duty on the reseller's shipments at the cash-deposit rate in accordance with 19 CFR 351.212(c). Furthermore, SSCI argues that findings in *Federal Mogul Corporation v. United States*, 822 F. Supp. 782, 787–88 (CIT 1993), and *Jeumont Schneider Transformateurs v. United States*, 18 CIT 647 (CIT 1994), support their position that, when no interested party requests an administrative review, the Department will instruct Customs to liquidate the entries for the review period at the rate deposited at time of entry. Finally, SSCI states that the Department's interpretation of *ABC Int'l Traders* is incorrect. SSCI argues that the facts of *ABC Int'l Traders* were limited to very specific circumstances where there was neither a specific reseller rate nor an all-others rate and that the Court held that the reseller should have known that it would have been assigned the only existing rates. SSCI comments that, under the current proposal, resellers would have no reason to believe that their entries would be subject to the all-others rate, which differs from the cash-deposit rate applied to their exports at

the time of entry and their producer's rate as determined during the review.

Micron disagrees with SSCI's contention that the Department's regulations preclude the application of the all-others rate. Micron holds that SSCI is mistaken in arguing that the only alternative to automatic assessment at the cash-deposit rate is assessment based on the overall, weighted-average dumping margin the Department calculates for the producer of the imported goods. To the contrary, Micron asserts, the courts have held that the Department has discretion in the selection of its methodology of assigning antidumping duty rates to particular imports; it may choose to calculate margins on an entry-by-entry basis or assess duties by allocating the total dumping margins calculated on all sales to an importer across all entries made by the importer during the period of review. Similarly, where it has determined that the sales to the United States were made through an independent reseller, Micron contends, the Department may reasonably determine that those shipments should be assessed antidumping duties based on either the overall margin calculated for the producer during that review or on the all-others rate, if higher. According to Micron, the application of the higher of the two rates is a reasonable proxy for the actual margins of dumping associated with the reseller's sales, where the reseller always has the option of requesting a review to establish its own company-specific rate if it believes that such a rate would be more favorable than either the producer's overall rate or the all-others rate.

*Response:* The Department's methodology in reviews does not include an analysis of a reseller's sales if the producer has no knowledge of those sales. Therefore, if that reseller is not participating in the review, that reseller's sales are not encompassed within the administrative review. Thus, the Department has determined that the rate it calculates for a producer in a review is not the most appropriate rate upon which to base liquidation of entries for which the reviewed producer did not have knowledge of exports to the United States. Based on the Department's prior practice, when an entity has not been assigned a rate from a previously completed segment of a proceeding and that entity does not participate in a current review, that entity is subject to the all-others rate and its imports of subject merchandise are assessed at that rate. This clarification is consistent with that principle.