

SSCI's citations to *Federal Mogul* and *Jeumont* miss the point. The issue in both *Federal Mogul* and *Jeumont* is whether the Department could change a company's cash-deposit rate once a particular rate had been assigned and the company shipped the subject merchandise to the United States. See *Federal Mogul*, 822 F.Supp. at 788, and *Jeumont*, 18 CIT at 651. The issue addressed here by the Department's proposed clarification is the proper rate at the time of assessment, which should be the proper rate assigned to the subject merchandise as determined by the identity of the price discriminator for the U.S. sales attributable to the entries. The Department's methodology does not change a company's cash-deposit rate after that rate has been assigned; rather it determines the proper rate for final assessment purposes regardless of whether that rate is the rate applicable to a producer or a reseller.

Similarly, the Canadian Government's references to U.S. law and the Department's regulations at 19 CFR 351.212 also miss the point of the Department's clarification. Section 351.212 of the regulations provides that, absent a request for an administrative review, the Secretary will instruct Customs to "assess antidumping duties * * * at rates equal to the cash deposit of, * * * estimated dumping duties * * * required on that merchandise at the time of entry." 19 CFR 351.212(c)(1)(I) (emphasis added). As it stands now, it is left to the importer to choose the cash-deposit rate applied to "that merchandise at the time of entry" because, at the time of entry, only the importer knows the identity of the price discriminator for those particular imports. Presently, the importer may choose to claim the producer's or the all-others rate at the time of importation, whichever is most beneficial to the importer, and then claim that this rate must be the assessment rate also. This rate may or may not be the proper cash-deposit rate required for those imports because the proper rate depends on the identity of the seller. Where the cash deposit is not the cash-deposit rate of the seller (the price discriminator), it is not the proper cash deposit "required at the time of entry" under U.S. law or the Department's regulations. Consequently, the Department's methodology is intended to clarify the means to determine the proper cash-deposit rate and to provide importers with the information necessary to determine the proper assessment rate in a timely fashion. Thus, the importers may make an informed decision as to whether they wish to request a review of the price

discriminator, the producer or reseller as the case may be, for their imports of the subject merchandise or accept the automatic-assessment rate, which may reflect the results of the review if the producer had knowledge or may be the all-others rate if there was no knowledge.

Comment 12: SSCI maintains that, should the Department decide to modify its current practice, it will need to expressly advise any affected reseller that it will not be subject to the producer's rate. Furthermore, it contends, the Department must make special provisions for conducting a "reseller review."

Response: This notice serves as public notification to the importing public of our clarification of the liquidation policy with regard to resellers. Based on this information, resellers will now need to determine whether they need to request a review to establish a more accurate rate for their exports to the United States. Furthermore, the administrative review of a reseller will be conducted as specified 19 CFR part 351. There need not be nor will there be any special provisions for administrative reviews of resellers.

Comment 13: SSCI comments that the Department needs to make available to the general public the appraisement instructions it sends to Customs. SSCI refers to the confusion it claims occurred upon issuance of the Department's instructions for the second administrative review of the antidumping duty order involving corrosion-resistant carbon steel products from Canada. In that situation, SSCI contends, resellers were unaware of the fact that the Department had instructed Customs to liquidate their shipments at the all-others rate until after they received liquidation letters from Customs. Had those instructions been included in the **Federal Register** notice containing the final results of review, SSCI asserts, resellers might have avoided the burden of filing hundreds of protests with Customs in order to protect their interests while awaiting the Department's issuance of revised instructions replacing its original liquidation instructions.

Response: While most liquidation instructions contain business proprietary information, the Department places public versions of its liquidation instructions in the public file. Access to the public files is available through the IA Central Records Unit, room B-099 of the main Department of Commerce building.

Comment 14: Volvo comments that as a reseller it frequently accepts the producer's rate rather than request a

review of its entries because it is more cost-effective to do so. (In its comments, Volvo did not specify whether the company-specific rate to which it refers is the cash-deposit rate in effect at the time of entry or the results of review for the producer which did not cover the sales of the reseller.) Moreover, it observes that, by the Department's own admission, if such a reseller request were made it would more than likely not be reviewed. In addition, Volvo asserts, the Department has stated that it recognizes that this policy will likely increase the number of reviews requested. Further, Volvo contends, if the Department elects not to review a reseller, the burden should lie with the Department to demonstrate that the company-specific rate should not apply.

Response: We recognize that many economic factors are considered by an importer or a possible respondent in determining whether to request a review and participate with our inquiries in an antidumping proceeding. It is our goal, through this policy, to clarify the possible liquidation rates should a party determine not to request a review. Furthermore, Volvo's reference to the Department's admission that it is unlikely to conduct a reseller review, if requested, is taken from Departmental policy regarding its investigation procedures. Unless there are extenuating circumstances, it is exceedingly rare for the Department to refuse a request for an administrative review of an antidumping duty order or finding.

Comment 15: Volvo contends that the Department's purpose in assigning the all-others rate is clearly punitive in that there is no logic in assigning a higher rate when the producer's rate is determined to be at a lower level.

Response: Our goal is to determine the proper rate for a reseller and to provide a methodology which gives parties the ability to understand how we will determine the proper liquidation rate so that these parties can make informed decisions about whether to request administrative reviews. Within this context, the rate we determine for a producer is based on that particular producer's pricing practices. These are not necessarily the same pricing practices as those of the reseller. Resellers virtually always determine their own pricing and marketing policies with no input from the producer. Indeed, the producer may have no knowledge of the product after it leaves the producer's possession. Therefore, to use that producer's pricing practices to determine the reseller's final duty rate is inappropriate and does not address the pricing practices of the