help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions Via Express/Package Delivery Services: Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St. NW., Washington, DC 20005; or

2. Submissions Via the U.S. Postal Service: Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave. NW., Washington, DC 20230.

The closing period for their receipt is July 7, 2003. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to July 21, 2003.

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address Number 1 listed above, and at the U.S. Department of Commerce Export Assistance Center, 8235 Forsyth Blvd., Suite 520, St. Louis, MO 63105.

Dated: April 29, 2003.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–11176 Filed 5–5–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of policy concerning assessment of antidumping duties

SUMMARY: The Department of Commerce hereby issues clarification on the automatic-liquidation regulation where a reseller has been involved in the chain of commerce.

FOR FURTHER INFORMATION CONTACT: Laurie Parkhill, Office 3, Import Administration, at 202–482–4733, or Patrick Gallagher, Office of Chief Counsel for Import Administration, at 202–482–5053.

EFFECTIVE DATE: May 1, 2003 (*see* discussion below).

SUPPLEMENTARY INFORMATION: This notice clarifies the Department of Commerce's (the Department's) regulation, 19 CFR 351.212(c), regarding automatic liquidation where an intermediary (*e.g.*, a reseller, a trading company, an exporter) exports the merchandise. This notice uses the term ''reseller'' to apply to any intermediary that could be an interested party as defined in section 771(9)(A) of the Tariff Act of 1930, as amended (the Act).

Background

On October 15, 1998, the Department published a proposed clarification of the Department's position on the automatic-liquidation procedures for a reseller and invited public comment on that clarification. *See Notice and Request for Comment on Policy Concerning Assessment of Antidumping Duties,* 63 FR 55361. On November 12, 1998, we published a notice of *Rebuttal Period for Comments on Policy Concerning Assessment of Antidumping Duties* (63 FR 63288) which extended the period for initial comments to November 13, 1998, established a rebuttal period until December 4, 1998, and provided for the submission of comments and rebuttal in an electronic format for posting to the Import Administration internet home page. The Department received several written comments and rebuttals regarding the proposed assessment clarification. Given the time which had elapsed since the original publication of the proposal, on March 25, 2002, the Department published a notice of an additional one-week comment period (67 FR 13599). The Department received additional comments by April 1, 2002.

In preparing this final clarification, the Department reviewed and considered each of the comments it received carefully. Although we received several comments after the originally established deadlines, we have decided to consider and respond to all comments in order to allow for a thorough analysis of this issue.

As described in the October 15, 1998, **Federal Register** notice, automatic liquidation at the cash-deposit rate required at the time of entry can only apply to a reseller which does not have its own rate if no administrative review has been requested, either of the reseller or of any producer of merchandise the reseller exported to the United States. If the Department conducts a review of a producer of the reseller's merchandise where entries of the merchandise were suspended at the producer's rate, automatic liquidation will not apply to the reseller's sales. If, in the course of an administrative review, the Department determines that the producer knew, or should have known, that the merchandise it sold to the reseller was destined for the United States, the reseller's merchandise will be liquidated at the producer's assessment rate which the Department calculates for the producer in the review. If, on the other hand, the Department determines in the administrative review that the producer did not know that the merchandise it sold to the reseller was destined for the United States, the reseller's merchandise will not be liquidated at the assessment rate the Department determines for the producer or automatically at the rate required as a deposit at the time of entry. In that situation, the entries of merchandise from the reseller during the period of review will be liquidated at the all-others rate if there was no company-specific review of the reseller for that review period.

Analysis of Comments Received

Comment 1: The Canadian Government contends that Canadian enterprises, due to the integrated nature of the North American market and the consequent special nature of Canadian/U.S. trade, will bear the preponderance of the impact of any such change in policy.

Response: We have found no evidence to indicate that this clarification will have a greater impact on any segment of the market or any of our trading partners.

Comment 2: The Canadian Government comments that the Department's proposal would essentially remove the provisions of 19 CFR 351.212(c)(1) with respect to resellers without providing an explanation of the circumstances that gave rise to the proposed clarification of the policy. It argues further that the Department must provide evidence as to why such a change is necessary in order to justify a policy change which would be detrimental for many resellers and it questions whether the integrity of an antidumping duty order has been harmed through the imports from a reseller.

Response: In various proceedings parties have claimed that entries should be liquidated at many different rates in cases where entries involving resellers have not been reviewed. Parties have claimed, depending on the situation, that the results of the Department's review of the producer should apply,

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

publication of the clarification. SSCI contends that such action by the Department imposes a hardship because the service centers could not anticipate it and avoid the consequences. In its rebuttal comments, SSCI comments on the retroactive effect further, arguing that the sales the Department analyzes in a future review will capture sales and entries that have already taken place. SSCI cites *Bowen* v. *Georgetown University Hosp.,* 488 U.S. 204 (1988), to support its conclusion that a retroactive examination of sales is not supported by law.

Response: This clarification will be applicable only to entries for which the anniversary month for requesting an administrative review is May 2003 or later. For example, if the anniversary month of an order is June, the clarification will apply for the first time to entries made during the period of review for which parties may request a review in June 2003 which, in most cases, will be the period June 1, 2002, through May 31, 2003. This does not impose a hardship for parties to the proceeding because they have the opportunity during the anniversary month to decide whether to request a review of those earlier sales.

The purpose of this clarification is to provide all parties with the methodology the Department will use to determine the proper assessment rate for subject merchandise when resellers are in the chain of commerce between the producer and the sale to a customer for importation into the United States in order to provide parties with the opportunity to make an informed determination about whether to request a review of a reseller. The holding in *Bowen* is not on point because this methodology does not ''retroactively'' apply duties to the subject entries. Rather, duties are owed on imports of the subject merchandise and the question is one of the proper rate to be applied. This notice provides parties the opportunity to understand how the Department will determine the proper assessment rate early enough so that a party may request an administrative review of the reseller if it chooses to do so. The fact that the subject merchandise may have entered before the publication of this clarification is immaterial because interested parties will be informed of the methodology the Department will use to determine the proper assessment rate, regardless of the cash-deposit rate in effect at the time of entry, and because an interested party will have the opportunity to request an administrative review of the reseller if it believes that the deposit and possible final assessment rates do not reflect the reseller's pricing practices.

Comment 8: Several parties offer alternative approaches for the Department to consider. One suggestion is that under 19 CFR 351.107(c) the Secretary should establish a combination rate for non-producing exporters with multiple supplying producers. Such cash-deposit rates, they contend, which would then be finalized in accordance with the appropriate producer's rate, would be based on each combination of reseller and producer. Another proposal observes that, although not specifically provided in the regulations, the Department could also apply cash-deposit requirements and final duties based on the trade-weighted average rate assessed on each producer that supplied to the reseller, *i.e.,* if a reseller is exporting merchandise that is produced by three different producers, then the cash deposit and final rate should be the weighted average of the specific rates found for all three producers. SSCI contends that the Department could calculate the reseller's export price or constructed export price by taking the reseller's resale price, adjusted for selling, general, and administrative expenses, movement costs, and further-manufacturing costs, compared to the reseller's purchase price from the producer. In SSCI's scenario, the reseller's rate would be determined based on the producer's rate plus any difference found. The final alternate proposal, also from SSCI, is to calculate a reseller-specific rate using a constructed-value method starting with the reseller's purchase price plus the reseller's general expenses and profit.

Response: We considered a number of possible alternatives for this clarification but found none that better represent the reality of the reseller's selling practices. Further, each proposal assumes that the Department has information about the reseller. In fact, this clarification addresses liquidation of entries involving a reseller about which there is *no* information on the record of a review. Nevertheless, we have examined the merits of each of the proposals.

While 19 CFR 351.107(c) addresses the possibility of combination rates for deposit purposes, the underlying assumption is that the Department has information about the non-producing reseller and its supplier(s). Therefore, the type of situation we are addressing in this clarification would not fit into that regulation. The second proposal creates a specific reseller rate which is based on the producer's selling practices, not those of the reseller. Therefore, this would not be a realistic reflection of the resellers' pricing practices and would continue to be distortive. Further, there is no description of how we would create that rate, given that we would have none of the required information, and in what context, given that the situation we are addressing exists outside the realm of an administrative review. The third and fourth proposals would require the calculation of a rate for a specific reseller based somewhat on the reseller's information. If the Department is requested to review a reseller and establish a rate for that reseller, the Department will conduct an administrative review in accordance with the established administrative-review procedures under 19 CFR 351. Moreover, the basic premises of the third and fourth proposals are flawed. Both assume we know the identity of the reseller prior to liquidation and that we can conduct an administrative review of its exports. On the contrary, we do not know whether a reseller has sales unless such sales are reported by the producer or by the reseller itself in a review. The existence of U.S. sales by a reseller for which the reviewed producer did not have knowledge only comes to light after all entries covered by the review have been liquidated, which occurs after the final and conclusive results of review. For these reasons, these proposals are not administrable.

Comment 9: Micron Technology comments that application of the all-others rate to resellers which have not been individually reviewed is, in many cases, appropriate. It contends, however, that the uniform application of the all-others rate to an independent reseller, as proposed by the Department, creates an asymmetry between the position of the foreign producers and exporters and the domestic industry. Micron contends that, when the all-others rate is higher than the producer's rate, the reseller may request a review to receive a separate rate but, in those cases where a reviewed producer/exporter is also the producer of the goods which are exported by an independent reseller and the exporter/producer's rate is higher than the all-others rate, the reseller will not request a review. Furthermore, Micron asserts, this policy would provide an incentive to resellers not to make themselves known to petitioners so that they will not be able to request a review of the resellers. Therefore, this party argues, the assessment rate for resellers which are exporting goods that are manufactured by a producer which has

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

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

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.

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

price discriminator for the sales to the United States. To permit the reseller to claim the producer's rate when the reseller is the price discriminator for the U.S. sale allows a reseller to sell subject merchandise in the United States without the appropriate discipline of an antidumping duty order. Furthermore, the current methodology permits a reseller to undercut, with impunity, the price of an original producer which has worked to establish a lower rate through its pricing practices.

Comment 16: The American Bearings Manufacturers Association (ABMA) and The Timken Company support the October 15, 1998, proposed clarification of the automatic-liquidation procedures. The ABMA asserts that the Department's assignment of the producer's company-specific cash-deposit rate is an inappropriate basis upon which to assess final antidumping duties on entries on an intermediary's exports and urges the Department to adopt and finalize the proposed clarification promptly.

Response: As we stated in response to Comment 15, above, if the producer has no knowledge of a reseller's U.S. transactions, use of the producer's rate for final duty assessment, where a review of the producer has been requested, is not appropriate because it does not reflect the reseller's pricing practices.

Implementation

This clarification will apply to all entries for which the anniversary month for requesting an administrative review of an antidumping duty order or finding is May 2003 or later.

Further, this clarification addresses the assessment of duties on imports of merchandise from a market-economy country and subject to an antidumping duty order. This clarification does not apply to imports of merchandise from non-market-economy (NME) countries which may be subject to an antidumping duty order. In addition, this clarification does not apply to imports of merchandise subject to a countervailing duty order because this issue does not arise in the subsidy enforcement context.

Dated: April 30, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–11226 Filed 5–5–03; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–337–803]

Fresh Atlantic Salmon From Chile: Extension of Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 6, 2003.

FOR FURTHER INFORMATION CONTACT: Salim Bhabhrawala or Constance Handley at (202) 482–1784 or (202) 482–0631, Office of AD/CVD Enforcement 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Time Limits

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department of Commerce (the Department) to complete the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order/finding for which a review is requested and the final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary results to a maximum of 365 days after the last day of the anniversary month of an order/finding for which a review is requested, and for the final results to 180 days (or 300 days if the Department does not extend the time limit for the preliminary results) from the date of publication of the preliminary results.

Background

On August 27, 2002, the Department of Commerce (the Department) published a notice of initiation of administrative review of the antidumping duty order on fresh Atlantic salmon from Chile, covering the period July 1, 2001, through June 30, 2002. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 67 FR 55000 (August 27, 2003). The preliminary results of this proceeding were due no later than April 2, 2003.

On March 17, 2003, the Department determined that it was not practicable to complete the preliminary results of this review within the original time limit and extended the time limit for the completion of the preliminary results until no later than May 1, 2003. *See Fresh Atlantic Salmon from Chile: Extension of Preliminary Results of Antidumping Duty Administrative Review,* 68 FR 12671 (March 17, 2003); *see also* Memorandum from Gary Taverman, Director, Office 5 to Holly Kuga, Acting Deputy Assistant Secretary Re: Extension of Time Limit for Preliminary Results of Review (March 11, 2003), which is on file in the Central Records Unit, Room B–099 of the main Commerce building.

On April 29, 2003, L.R. Enterprises submitted a letter withdrawing all of its requests for reviews. In its letter, L.R. Enterprises stated that it had no further interest in maintaining the order. Respondents Pesquera Eicosal Ltda., Cultivadora de Salmones Linao Ltda., and Salmones Tecmar S.A. also submitted letters withdrawing their requests for review.

In addition, on the same day, U.S. fresh Atlantic salmon producers Atlantic Salmon of Maine, Cypress Island, Inc., Heritage Salmon Inc., Maine Nordic Salmon and Stolt Sea Farm Inc., submitted requests that the Department conduct a changed circumstances review for the purposes of revoking the order pursuant to Section 751(b)(1)(A) of the Act and 19 CFR 351.222(g). All of these U.S. producers stated that they were no longer interested in maintaining the order.

Extension of Time Limit for Preliminary Results of Review

The Department needs time to consider L.R. Enterprises recent notification that it is no longer interested in maintaining the order, and the requests for a changed circumstances review. Because we are considering initiating a changed circumstance review in the near future, we determine that it is not practicable to complete the preliminary results of this review within the time limit. Therefore, the Department is further extending the time limit for completion of the preliminary results until no later than July 31, 2003. We intend to issue the final results no later than 120 days after publication of the preliminary results notice.

This extension is in accordance with section 751(a)(3)(A) of the Act.