determination. As our final determination is affirmative, the ITC will determine whether imports of the subject merchandise are materially injuring, or threaten material injury to, the U.S. industry, within 45 days. If the ITC determines that material injury or threat of material injury does not exist, the proceedings will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that such injury does exist, we will issue an antidumping duty order directing Customs officers to assess an antidumping duty on fresh cut roses from Colombia entered or withdrawn from warehouse, for consumption on or after the date of the suspension of liquidation.

Notification to Interested Parties

This notice serves as the only reminder to parties subject to administrative protective order (APO) in these investigations of their responsibility covering the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

Dated: January 26, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–2608 Filed 2–3–95; 8:45 am]

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[A–331–801]

Final Determination of Sales at Less Than Fair Value: Fresh Cut Roses from Ecuador

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

EFFECTIVE DATE: February 6, 1995.

FOR FURTHER INFORMATION CONTACT: James Terpstra or Pamela Ward, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–3965 or (202) 482–1174, respectively.

Final Determination

We determine that fresh cut roses (roses) from Ecuador are being, or are likely to be, sold in the United States at less than fair value, as provided in 19 U.S.C. 1673d. The estimated margins are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

Since the notice of preliminary determination on September 13, 1994 (59 FR 48299, September 20, 1994), the following events have occurred.

In September and October, the Department of Commerce (the Department) received responses to the Department's supplemental questionnaires.

On September 20 and 27, 1994, Arbusta, Florinsa and Guanguilqui Agro Industrial S.A. (Guaisa), three of the mandatory respondents, and Inversiones Floricola S.A. (Floricola), the fourth mandatory respondent, respectively, requested a postponement of the final determination. On September 28, 1994, the Department agreed to postpone the final determination until January 26, 1995 (59 FR 50725; October 5, 1994).

On September 20, 1994, Arbusta made allegations of clerical errors in the calculation of Arbusta's preliminary margin. In addition, Florinsa requested that the Department reconsider its preliminary determination and assign it a less punitive BIA rate.

On September 28, 1994, the Department received a new sales listing from Arbusta. This was returned to Arbusta on September 30, 1994, as untimely in accordance with 19 C.F.R. 353.31(a).

On September 29 and 30, 1994, the Department received requests for a public hearing from respondents, petitioners, and the Government of Ecuador.

On September 30, 1994, petitioner submitted comments on the Department's verification outline.

On October 3, 1994, White and Case entered a Notice of Appearance on behalf of Denmar, S.A. an interested party. Denmar S.A. and its related companies are, collectively, a producer, exporter and importer of fresh cut roses from Ecuador.

Department personnel conducted sales and cost verifications of respondents' data from October 3, 1994, through November 11, 1994, in Quito, Ecuador; the Netherlands; Miami, Florida; New York, New York; and Los Angeles, California.

On October 14, 1994, the Department received a notice of appearance from Klayman & Associates on behalf of the Government of Ecuador and received comments on the preliminary determination on October 17, 1994.

On November 23, 1994, the Department received new computer tapes from Floricola.

In December the Department issued its verification reports.

The Department received general issues case briefs on December 2 and 12, 1994. The Department received general issues rebuttal briefs on December 16 and 19, 1994. The Department received company specific case briefs on December 23 and 30, 1994. The Department received company specific rebuttal briefs on January 5, 1995.

On January 3, 1995, the Department received new computer tapes from Guaisa, Florinsa and Arbusta.

On January 5, 1995, Klayman & Associates withdrew its appearance on behalf of the Government of Ecuador. On the same day, Kay, Scholer, Fierman, Hays & Handler entered an appearance on behalf of the Government of Ecuador.

A public hearing was held on January 6, 1995.

Scope of Investigation

The products covered by this investigation are fresh cut roses, including sweethearts or miniatures, intermediates, and hybrid teas, whether imported as individual blooms (stems) or in bouquets or bunches. Loose rose foliage (greens), loose rose petals and detached buds are excluded from the scope of these investigations. Roses are classifiable under subheadings 0603.10.6010 and 0603.10.6090 of the *Harmonized Tariff Schedule of the United States (HTSUS)*. The *HTSUS* subheadings are provided for convenience and customs purposes. The written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation (POI) is January 1, 1993, through December 31, 1993. *See* the April 14, 1994, Memorandum from the Team to Richard W. Moreland.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Best Information Available

We have determined, in accordance with 19 U.S.C. 1677e(c), that the use of best information available (BIA) is appropriate for sales of the subject merchandise by Florinsa. We have found that Florinsa's original and deficiency questionnaire responses were unusable for the final determination because they contained significant deficiencies and could not be verified. *See* the January 19, 1995, Memorandum from the Team to Barbara Stafford. These deficiencies were so substantial that it was not possible for the

Department to calculate an antidumping duty margin for Florinsa.

In assigning BIA, the Department applies a two-tier methodology based on the degree of respondent's cooperation. In the first tier, the Department normally assigns higher margins (*i.e.*, margins based on more adverse assumptions) for those respondents which did not cooperate in an investigation or which otherwise impede the proceeding. If a respondent is deemed as non-cooperative, the Department bases the final margin for the relevant class or kind of merchandise on the higher of: (1) The highest margin in the petition or (2) the highest calculated margin of any respondent within the country that supplied adequate responses for the relevant class or kind of merchandise.

In the second tier, the Department assigns lower margins to those respondents who substantially cooperate in an investigation. These margins are based on the higher of: (1) The highest calculated margin for any respondent within that country that supplied adequate information for the relevant class or kind of merchandise or (2) the average of the margins in the petition. *See, e.g., Final Determination of Sales at Less than Fair Value: Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany,* 54 FR 18992 (May 3, 1989).

The Department's two-tiered methodology for assigning BIA has been upheld by the U.S. Court of Appeals for the Federal Circuit. See *Allied-Signal Aerospace Co.* v. *United States,* 996 F.2d 1185 (Fed. Cir. 1993); see also *Krupp Stahl AG* v. *United States,* 822 F. Supp. 789 (CIT 1993).

Florinsa responded to our requests for information and we find that it has been substantially cooperative for purposes of this final determination. Accordingly, we used as second-tier BIA for this respondent, the average of the margins contained in the petition, which is 84.72 percent. This margin is higher than the highest margin calculated for any respondent in this investigation.

Exclusion of BIA Rate From Calculation of the ''All Others'' Rate

The Department has determined to exclude from the calculation of the ''All Others'' rate the BIA rate assessed to Florinsa. The Department's general practice is to include in its calculation of an ''all others'' rate all investigated firms that receive affirmative margins, including any firm whose margin is based upon BIA. However, where appropriate, the Department has departed from its general practice in prior cases and excluded BIA-based margins from the calculation of the ''all others'' rate. *See, e.g., Silicomanganese from Brazil,* 59 FR 55432 (November 7, 1994); *Sweaters from Hong Kong* (*Sweaters*), 55 FR 30733 (July 27, 1990) (affirmed by the CIT in *National Knitwear*).

For example, in *Sweaters,* an association of Hong Kong knitting manufacturers and an association of U.S. textile and apparel importers argued that firms not representative of the industry should not be included in the calculation of the ''all others'' rate, particularly where a firm had received a BIA-based margin. The Department agreed that departure from its general practice was warranted because it would have been ''inappropriate'' to include The BIA-based rate in the calculation of the ''all others'' rate given ''(1) The enormous disparity between the three verified rates and the highest rate in the petition, *i.e.*, approximately 20 times greater; (2) [the Department's] examination of only the top 30 percent of total quota holdings, and (3) the small number of firms investigated, *i.e.*, four from a potential pool of over 300.'' 55 FR 30737–38 (comment 3).

Like *Sweaters,* the unusual circumstances present in the instant proceedings, particularly the Department's need to limit the number of firms investigated, call into question the representativeness of investigated firms with respect to noninvestigated firms. Specifically,

(1) The Department only examined companies which produced the top 40 percent of the total export volume, as opposed to the normal 60 percent minimum proscribed by the Department's regulations (19 C.F.R. 353.42(b));

(2) the Department examined only a relatively small number of firms, *i.e.*, four out of a potential pool of 20 firms in Ecuador;

(3) the Department was unable, due to administrative burdens, to accept voluntary respondents and exclusion requests.

Based on these circumstances and in light of the *Sweaters* precedent, it is reasonable to exclude Florinsa's BIA-based margin from the calculation of the ''all others'' rate. *See* comment 21, *infra* for petitioner and respondent arguments. *See also* the January 13, 1995, Memorandum from the Office of Chief Counsel to Susan G. Esserman.

Such or Similar Comparisons

We have determined that all roses covered by this investigation comprise two categories of ''such or similar'' merchandise: culls and export-quality roses. None of the respondents reported sales of culls in the United States. Therefore, no comparisons in this such or similar category were made. Regarding export quality roses, we compared United States Price (USP) to constructed value (CV).

Fair Value Comparisons

To determine whether sales of roses from Ecuador to the United States were made at less than fair value, we compared the USP to the CV for all non-BIA respondents, as specified in the ''United States Price'' and ''Foreign Market Value'' sections of this notice.

United States Price

For all U.S. prices, we calculated USP using weighted-average monthly prices by rose type, where the appropriate data were available. *See* Comments 4 and 5 below.

During the POI, respondents paid commissions to related parties in the United States. However, we made no adjustment for these payments. Instead, we subtracted the actual indirect selling expenses incurred by the related party in the United States because we determined that to account for both commissions and actual expenses would be distortive. *See* Comment 7 below.

For sales by Arbusta and Guaisa, we based USP on purchase price, in accordance with 19 U.S.C. 1677a(b), when the subject merchandise was sold to unrelated purchasers in the United States prior to importation and when exporter's sales price (ESP) methodology was not otherwise indicated.

In addition, for Arbusta, Guaisa, and Floricola, where sales to the first unrelated purchaser took place after importation into the United States, we also based USP on ESP, in accordance with 19 U.S.C 1677a(c).

Each of the respondents classified credits related to quality problems with the merchandise as warranty expenses. However, because these quality-related credits functioned as price reductions, we reclassified them as such.

We made company-specific adjustments, as follows:

1. Arbusta

For Arbusta, we calculated purchase price based on packed F.O.B. Quito prices to unrelated customers. In accordance with 19 U.S.C. 1677a(d)(2)(A), we made deductions, where appropriate, for foreign inland freight and for quality-related credits and for export taxes imposed by the Government of Ecuador, in accordance with 19 U.S.C. 1677a(d)(2)(B). We also deducted DHL expenses for one customer.

We calculated ESP based on packed prices to unrelated customers in the United States. We made deductions, where appropriate, for quality-related credits, foreign inland freight, export taxes, air freight, U.S. customs duties, U.S. brokerage and handling expenses and U.S. inland freight. We also made deductions for direct selling expenses inlcuding credit and for U.S. and Ecuadorian indirect selling expenses, including inventory carrying costs.

Regarding export taxes, Arbusta did not report these taxes in its sales listing. Because the taxes are included in the USP, we, therefore, calculated them based on the formula given in Arbusta's response.

2. Floricola

For Floricola, we calculated ESP based on packed prices to unrelated customers in the United States. We made deductions, where appropriate, for quality-related credits, including billing and other credits, foreign inland freight, export taxes imposed by the government of Ecuador, air freight, U.S. customs duties, U.S. inland freight and credit expenses. We also made deductions for U.S., Panamanian, and Ecuadorian indirect selling expenses, including brokerage and handling expenses and inventory carrying costs.

Floricola failed to report inventory carrying costs on their ESP sales. Accordingly, as in the preliminary determination, we calculated these costs using an inventory carrying period of seven days.

3. Guaisa

For Guaisa, we calculated purchase price based on packed F.O.B. Quito prices to unrelated customers. We made deductions, where appropriate, for quality-related credits and foreign inland freight. We also made deductions for export taxes imposed by the Government of Ecuador.

We calculated ESP based on packed prices to unrelated customers in the United States. We made deductions, where appropriate, for quality-related credits, foreign inland freight, U.S. inland freight, air freight, U.S. customs duties, U.S. brokerage and handling expenses, employee commissions, credit expenses and indirect selling expenses including warehousing expenses inventory carrying costs.

Guaisa reported that it earned a rebate, as well as six free round-trip tickets, from its air freight carrier based on its volume of sales to the United States during the POI. We deducted the rebate from Guaisa's air freight calculations. However, because the airline tickets were not a direct reduction in the air freight paid, we did not reduce Guaisa's air freight.

Foreign Market Value

We based FMV on CV for all producers. For those respondents with viable third country markets, we rejected sales to these markets. *See* Comment 6 below. The remaining respondent had no viable home or third country market. We calculated CV on a rose type basis, where the appropriate data were available. *See* comment 5 below.

In order to determine whether there were sufficient sales of fresh cut roses in the home market to serve as a viable basis for calculating FMV, we compared the volume of home market sales of export quality roses to the volume of third country sales of export quality roses in accordance with 19 U.S.C. 1677b(a)(1)(A). Based on this comparison, we determined that none of the three non-BIA respondents had viable home markets.

In the preliminary determination, we based FMV for two of the three non-BIA respondents on third country sales. However, as set forth in Comment 6 below, we determined third country prices as an inappropriate basis for FMV in this investigation. Therefore, we calculated FMV based on CV for all non-BIA companies, in accordance with 19 U.S.C. 1677b(e).

Third Country Versus Constructed Value

The Department has determined that FMV should be based on CV rather than third country. For a full discussion of this issue, see Comment 6 below.

Constructed Value

We also made specific adjustments to each respondent's submitted COP and CV data as described below:

1. Arbusta

For Arbusta, we: (1) Adjusted amortization and depreciation expenses for the effects of Ecuadorian inflation; (2) corrected G&A to reflect income generated from the sale of humus; (3) reclassified the FONIN tax to selling expenses; (4) removed foreign exchange gains unrelated to production from the reported financial expenses.

2. Floricola

For Floricola, we: (1) Adjusted amortization and depreciation expenses for the effects of Ecuadorian inflation; (2) corrected a computational error in the amortization expense; (3) reclassified the FONIN tax to selling expenses; (4) included the amortization of pre-operating expenses and corrected the over accrual of other expenses in G&A; (5) reclassified insurance reimbursements, gain on sale of fixed assets and other expenses from financial expense to G&A; (6) revised the cost of goods sold used as the allocation basis for G&A; and, (7) decreased short term financial income for foreign exchange gains from sales transactions.

3. Guaisa

For Guaisa, we: (1) Adjusted amortization and depreciation expenses for the effects of Ecuadorian inflation; (2) corrected the allocation methodology for certain expenses to a relative area planted methodology; (3) included the write-off of greenhouses; (4) adjusted costs for two clerical errors; (5) increased financial expenses to include all interest paid; (6) increased financial expenses for translation losses on loans denominated on foreign currencies; (7) increased the quantity of export quality roses to reflect normal production levels.

In order to calculate FMV, we made company-specific adjustments as described below:

1. Arbusta

For CV to purchase price comparisons, we made circumstance of sale adjustments for direct selling expenses including credit expenses.

For CV to ESP comparisons, we made deductions, where appropriate, for direct selling expenses including credit expenses. We also deducted from CV indirect selling expenses, including inventory carrying costs up to the amount of indirect selling expenses incurred on U.S. sales, in accordance with 19 CFR 353.56(b)(2).

2. Floricola

For CV to ESP comparisons, we made deductions, where appropriate for direct selling expenses. We also deducted the indirect selling expenses up to the amount of the indirect selling expenses incurred on U.S. sales, in accordance with 19 CFR 353.56(b)(2).

3. Guaisa

For CV to purchase price comparisons, we made circumstance of sale adjustments for direct selling expenses including credit expenses and export taxes.

For CV to ESP comparisons, we made deductions, where appropriate, for direct selling expenses including credit expenses and export taxes. We also deducted from CV the indirect selling expenses, including inventory carrying costs and warehousing expenses up to the amount of indirect selling expenses

incurred on U.S. sales, in accordance with 19 CFR 353.56(b)(2).

Currency Conversion

Because certified exchange rates for Ecuador were unavailable from the Federal Reserve, we made currency conversions for expenses denominated in Ecuadorian sucres based on the official monthly exchange rates in effect on the dates of the U.S. sales as published by the International Monetary Fund.

Verification

As provided in 19 U.S.C. 1677e(b), Department personnel conducted sales and cost verifications of respondents' data from October 3, 1994, through November 11, 1994, in Quito, Ecuador; the Netherlands; Miami, Florida; New York, New York; and Los Angeles, California.

Critical Circumstances

In the petition, petitioner alleged that ''critical circumstances'' exist with respect to importation of roses. However, we did not initiate a critical circumstances investigation. Because roses are extremely perishable, it is not possible to accumulate an inventory of roses in order to evade a potential antidumping duty order. Therefore, we determined that an allegation that critical circumstances exist is without merit. *See* the September 12, 1994, Concurrence Memorandum.

Interested Party Comments

The Department conducted LTFV investigations in *Fresh Cut Roses from Ecuador* and *Fresh Cut Roses from Colombia* concurrently. We determined that certain decisions should be applied consistently across both cases, even though parties may have placed different arguments on the record as these decisions concerned issues common to both cases. All decision memoranda pertaining to general issues and corresponding supporting documentation are on the record for both investigations. The information discussed in the General Comments section of this notice is all non-proprietary. Therefore, unless otherwise stated, the General Comments apply to both investigations, even if parties in one investigation did not specifically address the issue.

General Comments

Petitioner and respondents raised comments pertaining to the concordance, the treatment of Difmer adjustments, the aggregation of third country markets, and annual and monthly averaging of FMV. These comments were rendered moot by the Department's decision to base FMV on CV. *See* Comment 6 below.

Comments Pertaining to Scope

Comment 1: Roses in Bouquets

Respondents assert that roses in bouquets should not be included within the scope of the investigation for four reasons: (1) There is no legal basis for the Department to include within the scope of the investigation only a component part contained in imported finished merchandise (*i.e.,* the roses within the bouquet); (2) bouquets are not within the same class or kind of merchandise as roses according to the criteria set out in *Diversified Products* v. *United States,* 572 F. Supp. 883, 889 (CIT 1983) (*Diversified Products*); (3) the Department lacks the authority to expand the investigation to include bouquets; and (4) petitioner does not represent producers of bouquets or producers of ''roses in bouquets.'' Respondents have supplied an analysis of the information in these investigations as applied to *Diversified Products*.

Petitioner requests that the Department continue to include roses in bouquets within the scope of its investigation. Petitioner states that since the description of bouquets is found in the petition, the Department's and ITC's preliminary determinations are dispositive as to the scope of the investigation, and an analysis under *Diversified Products* is unnecessary, although petitioner supplied such an analysis. Petitioner states that the scope description in the petition covers all fresh cut roses, whether imported as individual blooms (stems) or in bouquets or bunches. Also, petitioner claims to represent growers producing mixed bouquets of fresh cut flowers, and hence has standing to file a petition covering bouquets.

Petitioner maintains that any antidumping duty order issued in this investigation will be substantially undermined if foreign rose producers/exporters can circumvent the order by importing bouquets of fresh cut roses covered by the order. Petitioner states that it would be absurd for the Department to permit respondents to combine merchandise subject to the order to achieve a final product outside the scope of the order.

DOC Position

Roses, including roses in bouquets, are within the scope of the investigation and constitute a single class or kind of merchandise. Because the scope covers only the roses in bouquets, not the bouquets themselves, respondents' arguments that bouquets constitute a separate class or kind are inapposite. Therefore, a *Diversified Products* analysis is not required. The Department's conclusion that all roses, whether or not imported as individual stems or in bouquets or bunches, constitute a single class or kind of merchandise is consistent with its determination in *Flowers. See Flowers,* 59 FR 15159, 15162–4 (March 31, 1994) (final results of 4th admin. review).

The packaging and presentation of roses in bunches and bouquets do not transform the roses into merchandise outside the scope of the order. *See Final Determination of Sales at Less Than Fair Value; Red Raspberries from Canada,* 50 FR 19768, 19771 (May 10, 1985). Nor is the rose transformed into a new article by virtue of being bunched or placed in a bouquet. Notably, Customs disaggregates bouquets, requiring separate reporting and collection of duties on individual flower stems regardless of how they are imported. As a result, Customs, in this case, will collect duty deposits only on individual rose stems incorporated in bouquets, not the bouquets themselves.

Respondents argue that there is no legal basis for the Department to include within the scope of an investigation only a component part of imported finished merchandise, *i.e.,* the roses within the bouquet. As discussed above, consistent with Customs, the Department is not treating bouquets as a distinct finished product.

Respondents' argument that the Department cannot expand the investigation to include bouquets, also can be dismissed. A review of the descriptions contained in the petition and the Department's and ITC preliminary determinations reveals quite clearly that what is covered by this investigation is all fresh cut roses, regardless of the form in which they were imported. Specifically, the petition covers ''all fresh cut roses, *whether imported as individual blooms (stems) or in bouquets or bunches,* as provided in HTSUS 0603.10.60.'' Petition at 8 (emphasis added). HTSUS 0603.10.60 covers

> Cut flowers and flower buds of a kind suitable for bouquets or for ornamental purposes, fresh * * *
>
> 0603.10.60 Roses:
> 10 Sweetheart
> 90 Other

Furthermore, the scope of this investigation unequivocally states that

> The products covered by this investigation are fresh cut roses, including sweethearts or miniatures, intermediates, and hybrid teas,

whether imported as individual blooms (stems) or in bouquets or bunches.

Preliminary Determination of Sales at Less Than Fair Value, 59 FR 48285 (Colombia), 59 FR 48294 (Ecuador) (emphasis added). Finally, in its preliminary determination, the ITC found that "the plain language of Commerce's scope description in these investigations demonstrates that the merchandise subject to investigation covers the roses *in* the bouquets only," and not the bouquets themselves. ITC Pub. No. 2766 at 9 (March 1994). Neither the Department nor the petitioner has ever attempted to include the bouquets themselves, nor any of the other types of flowers which comprise a bouquet, within the scope of this investigation. The plain language of the Department's scope description demonstrates that the merchandise subject to investigation covers the roses *in* the bouquets only and does not expressly state that the bouquets are themselves covered. Notably, the ITC stated that "[b]ouquets are referred to in the scope definition to indicate that all fresh cut roses are covered, regardless of the form, or packaging, they are imported in." ITC Pub. No. 2766 at 9 (March 1994).

Finally, we disagree with respondents' contention that petitioner lacks standing in this investigation because it does not represent producers of bouquets or producers or "roses in bouquets." In order to have standing in an antidumping investigation, petitioner must produce, or represent producers of, the like product. *See, e.g., Final Determination of Sales at Less Than Fair Value: Nepheline Syenite from Canada,* 57 FR 9237 (March 17, 1992) (comment 5). We agree with the ITC that there is one like product in this investigation—"all fresh cut roses, regardless of variety, or whether included in bouquets." ITC Pub. No. 2766 at 9, 14 (March 1994). Because petitioner represents producers of fresh cut roses they have standing in this investigation.

Comment 2: Spray Roses

Respondent HOSA, an exporter/purchaser of spray roses, argues that spray roses are a genetically distinct species of the *rosa genus.* Therefore, HOSA argues that the Department should exclude spray roses from the scope of the investigation. HOSA states that spray roses are not explicitly included in the scope of the investigation. Furthermore, HOSA argues that spray roses were never mentioned in the petition nor were price or cost of production data provided in the petition for spray roses. HOSA suggests that the Department analyze spray roses pursuant to the criteria set out in *Diversified Products* analysis to evaluate whether spray roses are within the scope of this investigation.

Petitioner requests that the Department include spray roses in the antidumping duty order. Petitioner states that since the description of spray roses is found in the petition, the instant investigation and the Department and ITC determinations are dispositive as to the scope of the investigation and analysis under *Diversified Products* is unnecessary, (although respondent provides an analysis under *Diversified Products*). Petitioner asserts that all fresh cut roses, without regard to stem length, species or variety, were specifically covered in the scope of the petition. Petitioner contends that the fact that spray roses may be of a distinct species of the *rosaceae* family does not exclude them from the petition, since the petition includes all roses, regardless of species. Although it claims it as unnecessary, petitioner conducts an analysis under the *Diversified Products* criteria to show that spray roses are properly included in the scope of the petition.

DOC Position

We agree with petitioner. The descriptions of the merchandise in the petition and in the Department's scope are dispositive with respect to spray roses and the evidence on the record, including the ITC's preliminary determination, supports treating this rose variety no differently than other varieties within the same class or kind of merchandise subject to these investigations.

The scope of the petition clearly refers to spray roses. First, the petition notes that the scope "* * * covers all fresh cut roses, whether imported as individual blooms, stems or in bouquets or bunches." Spray roses are fresh cut roses sold in bunches or bouquets and are classified under the HTSUS subheading 0603.10.60, as are standard roses. Second, the petition states that its scope is "* * * inclusive of all imported roses from Colombia and Ecuador, without regard to stem length, species or varieties." Third, the scope description in the petition cites the ITC's definition from the prior roses investigation. *See* ITC's Publication 2178 at 4–15 (April 1989) "Roses are members of the *rosaceae* family. * * *" Genetically, spray roses are members of the *rosaceae* family, as are standard roses.

While differences exist between spray and standard roses, it should be noted that differences also exist between other varieties of roses within the scope of this investigation. The ITC stated in its preliminary finding of fresh cut roses from Colombia and Ecuador that "* * * we note that different rose varieties also have varying stem lengths and bloom sizes (*e.g.,* as with spray roses, sweetheart roses have smaller buds and shorter stems than traditional roses), which we do not find to be significant differences in physical characteristics." *See* ITC Pub. No. 2766 at 10 (March 1994). Although the ITC's preliminary finding is not dispositive with respect to this scope analysis, it clearly demonstrates that the physical differences of each rose variety within the same like product category are not merely unique to spray roses, and that the differences of the varieties within the same like product category are not sufficient "to rise to the level" of differences in the like product.

We also note that the rationale used by the ITC in these investigations, of including spray roses within the same like product category, is consistent with the Department's rationale as to whether a product should or should not be in the same class or kind of merchandise. In its notice of final determination of sales at LTFV in *Antifriction Bearings from West Germany,* 54 FR 18992 (May 3, 1989), the Department stated that "the real question is whether the difference is so material as to alter the essential nature of the product, and therefore, rise to the level of class or kind differences." The class or kind of merchandise subject to these investigations includes different rose varieties such as sweethearts or miniatures, intermediates, and hybrid teas. Like spray roses, each variety within the class or kind differs from the other varieties. However, in this instance, the similarities greatly outweigh the dissimilarities and the dissimilarities do not alter the essential nature (*i.e.,* that spray roses are export quality roses) of the spray roses.

Comment 3: Rose Petals

Simpson & Turner, an importer of rose heads, rose petals (petals), and foliage (by-products) argues that such products should be excluded from the scope of this investigation because these products are not the same "class or kind of merchandise" as the subject merchandise. Simpson & Turner maintains that the petition refers to stems, but does not mention petals or foliage, and the HTSUS description refers to flower buds as "flower buds of a kind suitable for bouquets or for ornamental purposes."

Simpson & Turner argues that rose heads, rose petals and foliage were not

mentioned in the Department's LTFV investigation's initiation or preliminary determination. The scope description specifically refers to a fresh cut rose as a bloom, which is clarified to be a stem. The scope description then defines the form of importation of the stem as an individual, part of a bouquet or bunch.

Petitioner asserts that Simpson & Turner fails to distinguish imported ''rose bush foliage, rose petals, and rose heads'' from ''culls'' within the scope of the this investigation. Petitioner asserts that culls are within the scope of the petition and investigation. Petitioner states that in its preliminary determination, the Department found that culls are a ''such or similar category'' separate from export quality roses but nonetheless covered by the petition and states further that no party has challenged the Department's determination that culls are within the scope of the investigation.

Petitioner states that the description of merchandise provided by Simpson & Turner, however, invites the Department to issue a scope ruling that would permit culls to enter the United States outside the order. To the extent that Simpson & Turner seek to exclude more than loose rose petals, loose rose foliage, or stems without rose heads, the described merchandise apparently consists of culls, which as such are included by the plain language of the petition and by the Department's unchallenged ruling concerning ''such or similar'' categories.

Petitioner further notes that culls are simply roses that did not meet the criteria of quality and length required for export. Culls may ''have crooked stems, deformed buds, or have opened prematurely.'' (Guaisa § A Resp. at 26). Consequently, petitioner asserts that the roses imported by Simpson & Turner, consisting of rose heads with very small stems or of roses ''normally discarded at the farm level in time of grading due to poor appearance, stage of development and scarring'' meet the definition of culls and should thus be included within the scope of these investigations.

DOC Position

We agree with Simpson & Turner. *See Scope of Investigation* above, indicating that loose rose foliage (greens), loose rose petals and detached buds should be excluded from the scope of these investigations.

The scope used in the preliminary determination clearly stated that roses which are imported as individual blooms (stems) or in bouquets or bunches are included. However, we asked petitioner to comment on this scope issue at the December 12, 1994, Colombia hearing, at which time petitioner clearly stated that it does not consider loose rose foliage, loose rose petals or buds detached from the stem to be included in the scope of these investigations.

Comments Pertaining to USP

Comment 4: Annual and Monthly U.S. Price Averaging

Petitioner argues that USP should not be averaged over a full month or over a year because such prices would be unrepresentative of transaction-specific, daily or weekly U.S. sales. Petitioner claims that both monthly and annual averaging would obscure or mask dumping. Petitioner contends that monthly averaging would mask dumping of roses at low prices within every month and that annual averaging would be even more distortive, concealing dumping during months in which major holidays occur.

Petitioner claims that the facts in the instant *Roses* investigations do not support the reasons articulated in the *Flowers* administrative reviews for departing from the normal Department practice of using daily U.S. prices. Specifically, petitioner maintains that, because roses have a shorter life span than other fresh cut flowers, there is no basis for using a monthly average U.S. price. Petitioner also asserts that respondents' inability to control production, timing, or prices is irrelevant to the application of the averaging provision in the statute.

Respondents claim that the Department erred in the preliminary determination by comparing one average constructed value encompassing all varieties and stem lengths to a product-specific monthly average USP. Respondents argue that this comparison is inappropriate because, although growers do not maintain cost records on a variety-specific or stem-specific basis, different rose products have different physical characteristics and different costs and values related to productivity and consumer preferences, all of which result in widely different prices. Respondents assert that if costs are standardized, yet prices fluctuate according to consumer demand for particular rose products, average costs can only be meaningfully compared to equivalent average prices without artificially creating margins. Respondents argue that an annual average constructed value should be compared to an annual average USP. Respondents state that the unique factors characterizing rose production, demand, and perishability, in addition to extreme seasonality, compel the use of annual average U.S. prices.

Respondents maintain that using any type of monthly average USP in the comparison measures only seasonality and not dumping. Specifically, respondents argue that the Department must take into account: (1) That the USP cycle is an unavoidable consequence of the highly seasonal nature of U.S. demand; (2) the high perishability of the product; (3) the rose production cycle is geared towards consumer demand which is concentrated around Valentine's Day; and (4) roses cannot be stored and rose production is a continuous process that cannot be turned off after Valentine's Day. According to respondents, these conditions result in unavoidable price swings. For these reasons, respondents contend that using any type of monthly USP average artificially creates dumping margins by establishing a benchmark that no producer can meet.

In addition, respondents contend that using monthly average USP does not account for month-to-month volatility caused by the extreme seasonality of U.S. demand. Therefore, respondents maintain that monthly average U.S. prices are not representative for purposes of comparison with an annual CV and that only an annual average USP captures the full demand/production cycle, undistorted by seasonal factors.

Regarding petitioner's contention that the Department should not use a monthly USP in the *Roses* cases because, unlike flowers, roses have a shorter life, Floramerica points out that shelf life alone does not justify a departure from the Department's traditional averaging methodology and further, that there is information on the record which shows that roses do not have a shorter shelf life.

DOC Position

19 U.S.C. 1677f–1(b) and 19 353.59(b) provide the Department with the discretionary authority to use sampling or averaging in determining United States price, provided that the average is representative of the transactions under investigation. In these investigations, we determined, based on a combination of factors, to average U.S. sales. The Department was confronted with approximately 555,000 Colombian transactions which, when combined with the number of estimated U.S. sales transactions from Ecuador, exceeded one million. As a result, a decision to make fair value comparisons on a transaction-specific basis would place an onerous, perhaps even an impossible, burden on the Department in terms of data collection, verification, and

analysis. Consequently, we exercised our discretion in order to reduce the administrative burden and maximize efficient use of our limited resources. Additionally, we recognize the need for consistency in our treatment of these concurrent investigations and, although the number of transactions may vary between the two countries, uniform application of an averaging methodology ensures that both Colombia and Ecuador will be treated on the same basis. *See* the June 24, 1994, Decision Memorandum pertaining to reporting requirements from Team to Barbara Stafford.

Moreover, we took into account that the majority of respondents, who make U.S. sales on consignment, have little, if any, ability to provide the level of detail which would have been required for the Department to do a transaction-specific analysis because unrelated consignees generally keep accounts for respondents' U.S. sales in monthly grower reports. Upon review of data submitted, and later verified, we concluded that a month was the shortest period of time which would permit all respondents to provide U.S. sales information on a uniform basis, thus ensuring that we treated all respondents in a similar manner in terms of data collection and analysis.

Importantly, because of the highly perishable nature of the product, we believe that monthly averaging of U.S. prices in these investigations provides a fair and more representative measure of value. Unlike nonperishable merchandise, respondent growers cannot withhold their roses from the market to await a better price. Rather, respondents are faced with the choice of accepting whatever return they can obtain on certain sales, so-called "end-of-the-day" and "distress sales", or of destroying the product. Were we to perform a transaction-by-transaction comparison, such an approach, beyond the limits imposed on the Department as described above, would give undue and disproportionate weight to end-of-the-day sales. Even where a respondent's normal sales were above fair value, he could be found to be dumping solely on the basis of sales made as a result of perishability. By adopting a monthly averaging period, we ensure that the entire range of distress and nondistress sale prices are covered.

Furthermore, while use of actual prices and transaction-by-transaction data is the norm, the statute allows for averaging provided such averaging yields representative results. We conclude that, in light of the above factors, using monthly averages of U.S. sales prices constitutes the shortest period necessary to capture a representative analysis of the ordinary trading practices in this industry. Our approach is consistent with the Department's past practice in investigations of fresh cut flowers as well as other perishable agricultural products. *See Certain Fresh Cut Flowers From Colombia: Final Results of Antidumping Duty Administrative Review*, 55 FR 20491 (May 17, 1990); *Final Determination of Sales at Less Than Fair Value: Certain Fresh Cut Flowers From Mexico*, 52 FR 6361 (March 3, 1987). Furthermore, our approach has been upheld consistently by the court. *See Floral Trade Council* v. *United States*, 775 F. Supp. 1492, 1500–2 (CIT 1991); *Asociacion Colombiana de Exportadores de Flores* v. *United States*, 704 F. Supp. 1114 (CIT 1989).

Lastly, we are unpersuaded by two additional arguments proffered by petitioner to shorten the averaging period in these investigations. First, petitioner claims a factual distinction between the life-span of a rose and a fresh cut flower. However, we find that the record in these investigations establishes that from the time of importation, roses last approximately seven to ten days, while flowers last approximately ten to fourteen days and both may be held for more than one week in refrigerated coolers. Thus, we find this to be a distinction without a difference. Second, petitioner argues that, by not using a shorter averaging period, dumping during peak holiday periods such as at Valentine's Day, will elude the Department. According to petitioner, sales of roses imported before this holiday, but which are sold after the holiday when demand is quite low, will be sales at dumped prices. The petitioner does not consider such dumped sales legitimately within the category of end-of-the-day sales, for which our averaging period is designed to fairly account. Rather, petitioner argues that by averaging these low-priced sales with high-priced holiday sales for the month of February, dumping will be understated. While we recognize that using a monthly averaging period could result in some offsetting of high-priced sales with low-priced sales, we believe that overall, monthly averaging is representative of the transactions under investigation. Moreover, in verifying numerous companies' February grower reports we found that only an insignificant number of roses were imported in February after Valentine's Day, as compared to the overwhelming volume imported during the first 13 days of the month, thus ameliorating this circumstance.

Annual Averaging

While we recognize that averaging is necessary in these investigations, we believe that averaging U.S. sales prices over a year is inappropriate. As we stated in *Flowers*,

> nothing in the statute, the legislative history, or the Department's practice (including *Final Determination of Sales of Not Less Than Fair Value: Fresh Winter Vegetables from Mexico* (45 FR 20512; March 24, 1980) supports the broad notion of annual averaged U.S. prices. Annual averaging would extend too much credit to respondents by allowing them to dump for entire months when demand is sluggish, so long as they recoup their losses during months of high demand.

See Final Results of Antidumping Administrative Review and Revocation in Part of the Antidumping Duty Order: Certain Fresh Cut Flowers from Colombia, 56 FR 50554, 50556 (October 7, 1991). The CIT has agreed with the Department that monthly averaging adequately compensates for perishablilty but averaging over a longer period could obscure dumping. *See Floral Trade Council v. United States*, 775 F. Supp. 1492, 1500 (CIT 1991).

Even though respondents argue that the demands of the U.S. market determine their U.S. pricing and that they are price takers rather than price setters, we note that the intent to dump is not the issue. *See Final Determination of Sales at Less Than Fair Value: Certain Fresh Cut Flowers from Mexico*, 52 FR 6361, 6364 (March 3, 1987). The issue is whether, in fact, dumping is occurring.

Comment 5: Product Averaging

Regarding the use of variety and stem-specific monthly average USPs, respondents contend that the Department is bound by its longstanding administrative practice in the original investigations and subsequent administrative reviews of *Flowers* to calculate monthly average USPs by flower type, without regard to variety or grade. Additionally, the Department has consistently concluded that comparing CV data by flower type to grade or variety-specific USPs would produce unfair and distorted results. Respondents maintain that the Department has not furnished any reasonable explanation for its departure from this practice in the preliminary determination.

Respondents urge the Department to compare all rose products to all rose products on an annual average basis. Alternately, respondents request that the Department compare product-

specific, monthly U.S. prices to identical product-specific, monthly FMV prices. Respondents note that where FMV is not available, CV should be used. However, the profit element should be monthly FMV profit, not annual FMV profit. In addition, respondents argue that average CV of all products combined must be compared to U.S. prices of non-matched products.

Petitioner argues that product averaging should not be used to obliterate differences in prices due to physical differences in roses. Petitioner stresses that it is particularly important that the prices of the low-priced Visa roses are not averaged together with prices of other red roses. Petitioner maintains that an average across varieties, colors, or stem lengths substantially distorts the market reality.

DOC Position

We agree with respondents that averaging by flower type is appropriate in this investigation. Consistent with *Flowers*, where possible, we compared USP and CV on a rose type basis, *i.e.*, hybrid tea, sweetheart, etc. *See, e.g., Fresh Cut Flowers From Colombia*, 59 FR 15159, 15160–61 (March 31, 1994) (4th admin. review final). For a number of companies, however, we were unable to compare USP and CV on a rose type basis because the respondents do not keep their cost data in such a fashion. As a result, in order to ensure an ''apples-to-apples'' comparison, we aggregated U.S. price data to arrive at a weighted-average monthly USP for all rose types for comparison with respondents' single average CV for all rose types. While it would have been preferable to disaggregate rose costs for these respondents in order to make a fair value comparison on a rose type basis, we were not able to do so in this investigation because the data were not available and we did not present respondents with a methodology for disaggregating costs. However, we intend to do so in any future administrative reviews if an order is issued. We will seek to devise a method to enable us to compute cost by rose type, which will not require respondents to change their method of recordkeeping.

Comments Pertaining to Third Country

Comment 6: Third Country as Basis for FMV

Petitioner maintains that there is no basis in law for rejecting third country prices that are adequate to establish a viable market. In addition, petitioner states that the Department's regulations state a preference for the use of third country prices, where the home market is not viable. Petitioner maintains that the statute prescribes adjustments for differences in circumstances of sale, which can take account of differences in markets, but it does not permit the Department to simply reject a viable market, due to factors other than dissimilar merchandise, for the purposes of determining FMV.

Petitioner claims that there is no evidence on the record to establish that third country prices are incompatible for comparison to U.S. prices. Petitioner questions the validity of respondents' statistical studies, claiming that the statistical analyses provided by Drs. Botero and Sykes and Lewis are unworthy of consideration because they exclude the impact of dumping in their price analyses. According to petitioner, if the Colombian and Ecuadoran growers are dumping during the several off-peak (non-holiday) months in the U.S. market, but not in other markets, such dumping would produce price changes in the U.S. market that are much sharper and greater than the price changes in Europe, thereby causing the greater volatility in the U.S. market identified by respondents. Petitioner adds that, because the Colombian and Ecuadoran imports constitute such a large percentage of the U.S. market and because they sell through consignment agents on a national basis, the supply of Colombian and Ecuadorian roses uniformly depresses U.S. prices whenever those imports oversupply the U.S. market.

Petitioner argues that the Botero and Sykes and Lewis reports are further skewed because they use the prices of a single variety of red rose, the Visa, which it asserts is the most price sensitive. Moreover, these reports did not provide source documentation showing the composition of the Dutch auction prices relied upon. Thus, it is unclear how many varieties of roses were included in the comparison database. In addition, since Colombian and Ecuadoran roses sold on the Aalsmeer auction account for only a very small portion of all roses exported to the EU, Aalsmeer prices may not be representative of Colombian and Ecuadorian rose prices in the EU.

Petitioner argues that the statements provided in the Hortimarc Report based on FTD data, which included traditional retail florists and excluded non-traditional outlets such as supermarkets, and mass merchandisers, ignores a significant number of spontaneous purchases from their analysis.

Petitioner states that the Stern & Wechsler argument regarding the opposing demand strains of the U.S. and EU market are irrelevant to the comparison of foreign market values and U.S. prices. Petitioner maintains that the U.S. market is as supply driven as any other market during non-holiday months.

Petitioner recognizes that in the second administrative review of *Fresh Cut Flowers From Colombia*, (55 FR 20491, May 17, 1990) (*Flowers*), the Department departed from its normal practice and rejected third country prices in favor of CV for the following three reasons: 1) third country and U.S. price and volume movements were not positively correlated which showed that different forces operated in the relevant markets, in some instances, pushing prices in opposite directions; 2) third country sales only occurred in peak months which resulted in a distorted comparison of off-peak U.S. prices to peak third country prices; and 3) the perishable nature of flowers and the inability to control short-term production resulted in ''chance'' sales.

Petitioner argues that the Department's analysis of statistical data on the record in these investigations confirmed a positive correlation in prices, thus refuting the principal finding of the *Flowers* case. In fact, petitioner argues that the basis for creating an exception to the statutory preference for price-to-price comparisons was the presence of a negative correlation. Regarding volatility, petitioner notes that in *Flowers*, the Department never required that prices be equally volatile in each market; volatility alone does not require the Department to reject a price-to-price comparison. In fact, petitioner argues that in *Flowers* the Department found differences in volatility between the U.S. and European markets and price movement in opposite directions in each market.

Regarding the second factor, petitioner observes that, unlike the *Flowers* case, third country sales of roses even occur in off-peak months and argues that the Department's six-month weighted average FMVs take into account seasonal peaks and off-peaks. Moreover, petitioner maintains that major flower buying holidays are the same in all markets and, therefore, peaks will occur at similar times in all markets.

Finally, with regard to the issue of perishability and production control, petitioner maintains that respondents may control production by pinching back rose buds. In addition, petitioner notes that there is evidence on the record indicating that third country sales of roses are stable, some occurring as a result of negotiated standing orders

and, therefore, there is a lesser incidence of chance sales then was present in *Flowers*. Petitioner contends that statements by respondents regarding a potential shift of exports from third country markets to U.S. markets reveals the extent to which respondents, in fact, control, plan, and target their rose exports to certain markets.

Respondents claim that third country prices should be rejected in favor of CV because the three factors found in *Flowers* are present in these cases. With regard to the first *Flowers* factor, respondents quote empirical evidence on the record showing substantial differences in demand and pricing seasonality between U.S. and third country markets. Respondents argue that there are two principal aspects of seasonality: timing (*i.e.*, the point in time at which demand peaks and valleys occur in seasonal cycles) and volatility (*i.e.*, the magnitude of peaks and valleys). Respondents argue that, in *Flowers*, the Department relied on both differences in timing and in volatility to explain why it rejected third country prices. Respondents assert that in the rose industry, as in the flower industry, (1) the U.S. market is holiday-demand driven; (2) U.S. demand is not a stable consumption base because the majority of roses are purchased primarily as gifts; and (3) the U.S. market is demand driven. In contrast, respondents state that (1) the European market is marked by relatively even year-round demand; (2) flower purchasing on a more regular basis (not tied to gift giving) is a deep rooted tradition in Europe; and (3) the European market is supply driven.

Respondents have submitted several statistical analyses of the different markets which, they claim, conclusively show that the seasonal demand and pricing patterns are significantly different between the markets. Respondents point to the second Botero report and the Sykes & Lewis report which states that the mere presence of a price correlation is insufficient proof that demand patterns are equivalent. Respondents contend that while petitioner criticizes their statistical analysis, petitioner has not provided any independent correlation analysis regarding U.S. and third country prices.

With regard to the second *Flowers* factor, access to third country markets, respondents claim that petitioner's own data rebut the contention that respondents have substantial continuous access to third country markets because there are no Colombian and Ecuadorian imports of roses in at least one month for every country for which petitioner has provided data. Respondents assert that petitioner's claim that Colombian and Ecuadorian production is planned with third countries in mind, and that roses are sold at the same fixed price over a period of time as a result of a pre-negotiated arrangement, is a misunderstanding of the facts on the record.

In addition, respondents claim that combining third country markets would not rectify the gaps created by the absence of sales in all months in individual markets. Respondents note that adding two markets with partial year sales is still tantamount to using only peak prices for foreign market value. With regard to the third *Flowers* factor, respondents claim the control and perishability factor relied upon by the Department in the *Flowers* case is equally applicable to roses. Respondents cite to portions of the Department's *Roses* preliminary determination where the Department noted that there are substantial similarities between flowers and roses in perishability and short-term lack of production control. Respondents also cite to the first Tayama report which states that roses are even more perishable than fresh cut flowers.

Respondents claim that petitioner oversimplifies their argument regarding seasonality by neglecting to view all aspects of the *Flowers* exception: the unique combination of differences in seasonality between U.S. and third country markets for a highly perishable product for which production cannot be controlled in the short term. Thus, respondents maintain that the *Roses* case is a logical extension of the *Flowers* case.

DOC Position

The Department agrees with respondents. In the preliminary determination, we rejected respondents' request to use CV as the basis for FMV because we determined that the record at that time did not support the application of the *Flowers'* precedent. Since the preliminary determination, a considerable amount of new information has been submitted. Based on our review of this new information, we have determined that the records in these cases warrant rejection of third country sales in favor of CV. *See* the January 26, 1995, Decision Memorandum pertaining to third country versus constructed value from the Team to Barbara Stafford for a more detailed discussion of this issue.

Information on the record establishes that the three factors identified by the Department in *Flowers* as supporting the use of CV are satisfied in this case. First, the market for roses in the U.S. differs significantly from the markets in third countries. For example, as in *Flowers,* price and quantity within the United States' rose market are positively correlated; however, the price and quantity within Europe, Canada, and Argentina are negatively correlated.

Similarly, the U.S. market for roses, like the U.S. market for flowers, is more volatile in terms of price and quantity movements than the markets in third countries markets; the European per capita consumption of flowers is four to ten times greater than the United States, and Colombian and Ecuadorian producers have, in general, limited access to the main third country markets, *i.e.,* the Dutch auction. Thus, the differences in the rose markets are similar to the differences that existed in *Flowers.*

The second *Flowers* factor we considered was whether a comparison of third country sales to U.S. sales would require comparisons of low-price U.S. sales in off-peak months with high-price third country sales in peak months, or vice versa. In the preliminary determination, we found that this factor was not present in these investigations because (1) there were sufficient third country sales in each month of the POI (when markets were combined); and, (2) using two six-month FMV periods reduced distortion caused by price comparisons involving peak and non-peak periods.

For purposes of this final determination, we have determined that use of third country prices could result in off-peak U.S. sales being compared with peak third country sales. While six-month averages ameliorate potential distortions, almost all of the respondents do not have third country sales in every month of the POI. It is only by combining markets that respondents have sales in each month of the POI. If we were to use third country prices as the basis for FMV, prices during peak periods in one third country could be combined with prices during peak periods in another third country. These peak prices would then be compared to both peak and non-peak periods in the United States. We find that this factor supports use of CV in these cases, albeit to a somewhat lesser degree than in *Flowers.*

The third *Flowers* factor we considered was the extreme perishability of roses—*i.e.*, the inability to control short-term production—and the resultant ''chance'' element to sales. As noted in our preliminary determinations, there are substantial similarities between the subject merchandise in these investigations and

Flowers: (1) roses, like flowers, are extremely perishable; (2) rose growers have relatively minor control over short-term production; (3) rose production is also affected by exogenous factors (*e.g.*, weather, disease, etc.) like other flowers; and (4) roses cannot be stored and we note that there are only very minor alternative uses (*e.g.*, drying).

In conclusion, we have determined that the factors that led the Department use CV instead of third country prices in *Flowers* are present in these investigations. Therefore, we have adopted CV as the basis for comparison with U.S. prices.

Comments Pertaining to Related Party Commissions

Comment 7: Related Party Commissions

Petitioner requests that commissions paid to consignment agents should be deducted from USP even where consignees are related parties. Specifically, petitioners argue that (1) the statute directs us to deduct commissions from USP in ESP situations, without discretion to disregard U.S. commissions in related party transactions; (2) in *Timken,* the court recognized that the statute required a deduction when a U.S. importer was paid commissions, as opposed to earning ''profits;'' (3) the statute should be followed, regardless of the fact that commissions were not deducted in *Flowers*; and (4) we should deduct U.S. indirect selling expenses if such expenses exceed the related consignee's commissions, in accordance with 19 U.S.C. 1677a(e)(2).

Respondents claim that the Department's treatment in the preliminary determination of related party sales commissions is invalid. They argue that deducting the related importer's commission from U.S. price has the effect of deducting the importer's profit, which the Department does not have the authority to do. The Department should deduct the importer's actual selling expenses rather than intracompany transfers. Respondents argue that the Department's approach is inconsistent with past practice since related party commissions have never been treated as a direct selling expense, but rather have been collapsed in the past for the purposes of determining U.S. price and expenses. Moreover, respondents assert that the Department's statute and regulations do not authorize the Department to deduct the higher of related party commissions or related party actual expenses. Respondents claim that in selectively choosing deductions of commissions or actual expenses, the Department fails to account for the fact that the commission it treats as a cost is also sales related income to the related importer. Respondents maintain that the Department should ignore the sales commissions paid between related parties on ESP sales, regardless of whether such commissions are at arm's length, and treat as U.S. indirect selling expenses the importer's share of operating and selling expenses allocable to the exporter's subject sales.

DOC Position

The difference between a related consignee's commission and the related consignee's U.S. indirect selling expenses is equal to the related consignee's profit. The Department does not deduct profit from USP in ESP transactions because the law does not allow it. 19 C.F.R. 353.41(e) (1) and (2) do, however, instruct us to make adjustments in ESP situations for commissions and expenses generally incurred by or for the account of the exporter in selling the merchandise.

With respect to treatment of related party commissions paid in the U.S., we have in the past looked to the definition of ''exporter'' which provides that related party importers are to be collapsed with, and treated as part of, the exporter. 19 U.S.C. 1677(13). In this context, it is inappropriate to treat a commission the exporter has paid to itself as an expense. The expense is the actual costs incurred by or for the account of the exporter.

In *LMI-Le Metalli Industriale, S.p.A.* v. United States, 912 F.2d 455, 459 (Fed. Cir. 1990) (*LMI*), the CAFC indicated that related party commissions can and should be adjusted for if the commissions are at arm's-length and are directly related to the sales under review.[1] By implication, an arm's-length commission includes the actual indirect selling expenses incurred by the commissionnaire and the commissionnaire's profits. Thus, *LMI* allows us to deduct the profits that are implicit in the commission. The facts in *LMI,* however, are distinguishable from the facts in these investigations. In *LMI,* the Court directed the Department to adjust for sales commissions paid to a related subsidiary of the respondent in the home market. The sales on which the commissions were paid in the home market were purchase price-type transactions made with the assistance of the related party selling agent. The issue of how to treat any selling expenses incurred by the related party selling agent in addition to commissions earned by that related party selling agent did not arise in *LMI.*

In the instant investigations, the sales on which the commissions were paid are ESP transactions where, because the importer of the merchandise is related to the exporter, we collapse the two pursuant to 19 U.S.C. 1677(13) and base USP on the sale to the first unrelated party. In contrast to *LMI,* therefore, the producer and its related party selling agent in these investigations are collapsed. Thus, the commission represents an intracompany transfer of funds. Under these circumstances, our past practice of ignoring intracompany transfers is still applicable.

Furthermore, ESP transactions are fundamentally different from purchase price transactions in that, with respect to ESP transactions, 19 U.S.C. 1677a(e), specifically allows for deductions of indirect expenses. In contrast, with respect to purchase price transactions, 19 U.S.C. 1677a(d) only allows an adjustment for indirect expenses when there are commissions in one of the two markets. Therefore, when commissions are paid in an ESP situation, the opportunity for double counting exists; this problem does not arise in a purchase price situation like the one reviewed by the Court in *LMI.*

Whether the sales involved are purchase price or ESP, the Department's goal is to derive a reliable USP by subtracting actual expenses from actual sales prices. A commission paid by the exporter to its collapsed related importer is not an expense incurred by the exporter; rather the actual expenses incurred by the exporter are the indirect selling expenses of the related consignee.

At the preliminary determination, we determined that related party commissions were directly related to the sales under consideration. However, we agree with respondents and, for the final determination, considered commissions an intracompany transfer. We have therefore, deducted only the amount of U.S. indirect selling expense for all companies with related party commissions.

Comments Pertaining to Accounting

Comment 8: Inflation Adjusted Depreciation and Amortization

Petitioner argues that the Department should compute respondents'

[1] In *Coated Groundwood Paper from Finland,* 56 FR 56363 (November 4, 1991), which was subsequent to *LMI,* we developed guidelines to determine whether commissions paid to related parties, either in the United States or in the foreign market, are at arm's-length. If, based on the guidelines, we found commissions to be at arm's-length, we stated that we would make an adjustment for such commissions.

depreciation expense based on asset values which, in accordance with Colombian GAAP, have been adjusted to reflect the effects of inflation. Petitioner notes that respondents computed depreciation charges for rose production costs based on the historical cost of the underlying fixed assets. Petitioner maintains that because of the effects of inflation on prices, respondents' methodology inappropriately matches historical depreciation charges based on past price levels with revenues generated from the sale of roses at current price levels.

Petitioner notes that in past cases involving hyperinflationary economies, the Department has corrected for the effects of inflation by computing cost of production based on respondent's replacement costs. Petitioner argues that although the POI inflation rates in Colombia did not meet the Department's normal hyperinflation threshold, the annual rate of inflation nevertheless has been so substantial as to cause the government to adopt accounting standards that require an adjustment for inflation. Thus, according to petitioner, the Department must correct respondents' reported depreciation expense in order to avoid distorting the cost of rose production.

Respondents claim that the Department should accept their submitted rose production costs without taking into account the effects of the inflation adjustment on depreciation expense. Respondents argue that, although the inflation adjustment may result in additional costs in their financial statements, these are not actual, historical costs. Instead, the inflation adjusted costs are ''phantom'' costs required by tax law, but not specifically addressed under GAAP.

Respondents maintain that the purpose of the tax law was to generate tax revenues for the government, because any write-up of fixed assets due to inflation results in additional income that must be recognized in a firm's financial statements. Respondents contend that if the Department determines that it must include the effects of the fixed asset inflation adjustment in respondents' rose CV, then it also must reduce CV by the amount of financial statement income generated by the adjustment. Respondents note that such income is directly related to production and, thus, there is no basis for failing to offset costs if the inflation adjustment is included in CV.

Additionally, respondents claim that the Department already effectively makes an inflation adjustment through the use of monthly exchange rates in its computer program. Respondents state that the exchange rate is related to differences in the two countries rates of inflation, and the use of such exchange rates has an effect equivalent to making the year-end inflation adjustment.

DOC Position

We agree with petitioner that respondents' failure to follow their normal accounting practice of adjusting depreciation and amortization expenses for the effects of inflation distorts rose production costs for purposes of our antidumping analysis. The exclusion of the inflation adjustment results in costs which are not reflective of current price levels and thus produces an improper matching of revenues and expenses. Therefore, we have revised the submitted COP and CV figures to reflect inflation-adjusted depreciation and amortization expenses based on the growers' normal accounting practices.

We disagree with respondents' claim that the Department's use of monthly exchange rates effectively makes an inflation adjustment, because the exchange rates are being applied to costs which are reported in understated foreign currency. To avoid distortion in production costs, we have used annual average constructed value figures and converted them to U.S. dollars using a weighted-average exchange rate based on the monthly volume of roses sold by each grower.

We also disagree with respondents' assertion that income resulting from the inflation adjustment is directly related to production and should be applied as an offset to financial expense. This annual revaluation of non-monetary assets does not represent income during the POI. Instead, it merely reflects an increase to respondent's financial statement equity due to the restatement of non-monetary assets to account for inflation.

Comment 9: Statutory General Expenses and Profit

Petitioner claims that statutory general expenses and profit should be based on third country sales, since third country sales and third country profit and general expenses would be used as a basis for FMV when home market sales are not available.

Respondents maintain that the facts of this case and the statute require that Department calculate profit on the basis of home market sales, particularly since the Department made a finding in its preliminary determination that home market sales of export quality roses were made in the ordinary course of trade. In addition, respondents note that where the Department used third country price comparisons in its preliminary determination, if in the final determination the Department chooses to reject third country prices in the final determination in favor of CV, it cannot use annual average third country profit margins in calculating CV, because this would be the equivalent of comparing an annual average third country price to a monthly average U.S. price.

DOC Position

In calculating CV, we used selling expenses based on U.S. surrogates and the eight percent statutory minimum for profit where there was not a viable home market for export quality roses. Where there was a viable, but dissimilar, third country markets, we used U.S. surrogates and the eight percent statutory profit because we have determined that third country markets do not provide an appropriate basis for foreign market value. *See* Comment 6 above.

We used U.S. selling expenses as a surrogate even though certain producers had viable home markets for culls which are included in the general class or kind of merchandise.

19 USC 1677b(e)(1)(B) states that the CV of imported merchandise shall include an amount for general expenses and profit equal to that usually reflected in sales of merchandise of the same general class or kind as the merchandise under consideration which are made by producers in the country of exportation, in the usual commercial quantities and in the ordinary course of trade, except that—

(i) the amount for general expenses shall not be less than 10 percent of the cost as defined in subparagraph (A), and

(ii) the amount for profit shall not be less than 8 percent of the sum of such general expenses and cost.

19 C.F.R. 353.50(a) states that if FMV is based on CV, the Secretary will calculate the FMV by adding general expenses and profit usually reflected in sales of merchandise of the same class or kind of merchandise.

However, in the final determination of *Certain Granite Products from Italy,* 53 FR 27187, 27191–2 (July 19, 1988)(comment 15), the Department stated that, due to the uniqueness of one of the such or similar categories of merchandise, there was no comparability between sales in the home market and sales in the United States. Therefore, the Department used the U.S. selling expenses as a surrogate in computing CV instead of home market selling expenses. As in *Certain Granite Products from Italy,* we find that, in the instant investigations, culls are not representative of the

merchandise sold in the United States, as these products are by definition not export-quality.

Comment 10: Allocation of Production Costs to Cull Roses

Respondents argue that the Department incorrectly calculated CV by requiring growers to allocate production costs only to export quality roses, thereby assigning no costs to cull roses. Respondents note that because cull roses are included in the class or kind of merchandise, they should be allocated a share of production costs equal to that of export quality roses. Respondents point out that the Department has never held that a product covered by an investigation should be treated as a byproduct having no cost. Respondents also argue that the Federal Circuit in *Ipsco, Inc.* v. *United States,* 965 F.2d 1056 (Fed. Cir. 1990) defined byproducts as ''secondary products not subject to investigation.''

Petitioner asserts that cull roses should be categorized as byproducts to which, from an accounting standpoint, no production costs should be allocated. Petitioner claims that an appropriate measure for determining whether a specific product represents a byproduct or coproduct is to determine if the production process would still be performed if the product in question was the only one produced. According to petitioner, no rose grower would establish operations solely for the purpose of growing culls for sale and, therefore, cull roses are unmistakably byproducts. Petitioner notes that ITA has consistently and correctly treated cull roses as byproducts, with revenues earned from their sale being properly recognized as other income and, thus, deducted from the cost of producing export quality roses.

DOC Position

We disagree with respondents' claim that CV was calculated incorrectly by not allocating any production costs to cull roses. When determining how to allocate costs among joint products, the Department normally relies upon generally accepted accounting principles (GAAP) to prescribe an appropriate cost allocation methodology. One of the factors used to assess the proper accounting treatment of jointly-produced products examines the value of each specific product relative to the value of all products produced during, or as a result of, the process of manufacturing the main product or products. In this regard, the distinguishing feature of a byproduct is its relatively minor sales value in comparison to that of the major product or products produced.

The Department's general practice in agricultural cases has been to offset the total cost of production with revenue earned from the sale of the reject agricultural products. The cultivation costs, net of any recovery from byproducts, are then allocated over the quantity of non-reject product actually sold. *See, e.g., Fresh Cut Flowers from Colombia,* 52 FR 6844 (March 5, 1987); *Fresh Cut Flowers from Peru,* 52 FR 7003 (March 6, 1987); *Fall-Harvested Round White Potatoes,* 48 FR 51673 (November 10, 1983); *Fresh Cut Roses from Colombia,* 49 FR 30767 (August 1, 1984).

In *Asociacion Colombiana de Exportadores* v. *United States,* 704 F Supp. 1114, 1125–26 (CIT 1989), the Court found that ''[c]ulls were often disposed of as waste, or if saleable, were sold for low prices in the local market. ITA's treatment of non-export quality flowers as a byproduct was supported by substantial evidence. The record indicates that cull value was relatively low and that the production of culls was unavoidable. These both have been recognized by ITA in the past as indicia of byproduct status.'' The CIT further noted, ''[c]ull value, if determinable, should be deducted from cost of production and production costs should not be allocated to culls.''

For each respondent in this investigation, the total revenue generated from the sale of cull roses was minimal when compared to the revenue generated from the sale of export quality roses. Other facts concerning the production and sale of cull roses are also consistent with those found in the investigation and subsequent administrative reviews of *Flowers.* We therefore find that it is appropriate to treat cull roses sold in the home market as a byproduct of the production of export quality roses. This treatment is consistent with the Department's previous practice of accounting for culls as a byproduct in the calculation of COP and CV.

Finally, we disagree with respondents' argument that the inclusion of cull roses in the class or kind of merchandise compels the Department to use a particular cost accounting methodology. A decision that a particular product is, or is not, within the scope of a proceeding does not dictate, or necessarily have any relationship to, the selection of the particular cost accounting methodology that must be applied in the determination of COP and CV.

Unlike respondents, we do not read the Federal Appeals Court's decision in *Ipsco* as standing for the proposition that in all circumstances a byproduct for accounting purposes cannot be within the class or kind of merchandise as that term is defined under the Act. Moreover, as discussed above, our decision in this regard has been explicitly upheld by the CIT.

Comment 11: CV—Interest Expense

Respondents argue that the Department grossly overstated each respondents' net interest expense in calculating CV by using total company-wide interest expense instead of the expense allocable to rose production. Respondents request that the Department correct its preliminary calculations in line 38 of the CV tables, and using the allocated per unit interest expense calculated on the spreadsheet.

Petitioner agrees with respondents that net interest expenses were potentially overstated in the preliminary determination and ITA should allocate interest expenses on a sales dollar basis to roses and then to rose stems, provided that interest expenses reported were in fact reported with respect to all sales of all rose types to all markets.

DOC Position

We agree that for some respondents we incorrectly assigned total company-wide financial expenses only to roses. For purposes of the final determination, we allocated net financial expenses to roses and non-subject merchandise using one of the following methodologies, each of which we consider reasonable: cultivated area, cost of sales or cost of cultivation. We computed a per stem financial cost by dividing the net financial expenses related to roses by the total export quality of stems sold.

Comment 12: CV—U.S. Indirect Selling Expenses

Respondents allege that the Department incorrectly included U.S. indirect selling expenses incurred by respondents' related importers in its calculation of constructed value. Respondents claim that including these expenses in constructed value artificially inflated the FMV, since these expenses would never have been incurred to sell roses in the home market. In addition, respondents object to the Department's calculation of an eight percent profit on these expenses, while at the same time deducting related party commissions, and thereby all profit earned by the related importer, from U.S. prices. Respondents hold that the Department should include only all selling expenses incurred in Colombia and Ecuador in its calculation of CV.

Petitioner claims that the Department should include in constructed value direct and indirect selling expenses equal to those expenses incurred in third country markets, unless such markets are not viable. And, to the extent that the Department deems home market sales to be within the ordinary course of trade, and in the event that the home market for any given respondent was viable, then the Department should add home market selling expenses to constructed value. Petitioner states that, in the absence of selling expenses from either the home or third country market, the Department's practice is to add U.S. selling expenses in computing SG&A.

DOC Position

For those companies with viable home markets, we used home market indirect selling expenses. For those companies without viable home markets we used U.S. indirect selling expenses as a surrogate. *See* Comment 9 above. Respondents' objection to deduction of related party commissions is addressed in Comment 7 above.

Comment 13: Per Unit CV in Dollars

Respondents argue that the Department's methodology used to obtain the per unit CV in dollars produces a distorted, declining per unit dollar CV. Respondents note that the Department's method involves converting annual average per unit foreign-denominated costs to monthly per unit dollar figures using the monthly exchange rate, which in part reflects a relatively high inflation rate. Respondents claim that in order to properly obtain the average per unit CV, the Department should first convert each month's total foreign-denominated costs using that month's exchange rate, and then sum these monthly dollar costs for the period. Next, the total dollar costs should be divided by the total quantity of roses sold to obtain the average per unit CV in dollars for the period.

Petitioner does not object to respondents' request for modifications in the Department's methodology, although petitioner suggests that such modifications are unnecessary. If modified however, petitioner argues that it is inappropriate to apply a foreign-dominated interest rate in order to calculate imputed credit costs, unless the exchange rate is also adjusted for currency devaluation.

DOC Position

We agree that in this case the Department's previous methodology used to obtain per unit constructed value in U.S. dollars did not provide an accurate result. In order to avoid distortion, we have converted home market cost in local currency to U.S. dollars using the annual average exchange rate.

Comment 14: Home Market Price Cost Test

Respondents maintain that the Department's sales below cost test does not test whether a particular product is sold below its cost of production. Respondents argue that the Department's normal methodology is to compare prices to model-specific COPs. Because respondents were only able to supply the Department with average COP information representing an entire range of rose production, they argue that the Department should compare annual average COP figures to average home market prices of all varieties and stem lengths.

Additionally, respondents state that, to account for price seasonality, the Department must use annual home market average prices to properly test whether home market sales prices permit the recovery of costs in a reasonable time. Respondents refer to the Botero Report as evidence that the unusual seasonal prices of roses allow for ''below average costs over periods of time, including months, that do not cover a full price cycle.''

Petitioner argues that the court has rejected the comparison of production costs with average home market prices. *See, Timken Co.* v. *United States,* 673 F. Supp. 495, 516–17 (CIT 1987).

DOC Position

While it is our normal practice in determining sales below cost to compare the price of each sale in the home market to the cost of production (COP) of that product during the period under investigation, in these investigations we were not able to do so because the respondents do not segregate their cost data by rose type, variety and stem length. As a result, we determined that to compare one yearly COP (the POI in these investigations is one year), which combines all export quality rose costs to prices for each variety of export quality roses would not be appropriate. *See* Comment 5 above. Instead, we combined prices of home market sales for all varieties on a monthly basis to our annual COP, in conforming with our modified cost test for agricultural products, as discussed below in Comment 15.

Although respondents urge the Department to combine individual sales prices for all export quality roses in the home market on a yearly basis to compare to the yearly COP calculation for export quality roses, respondents have not persuaded us that such a radical departure from our procedure is warranted in these circumstances. As discussed in Comment 15, the Department has a specific test for determining whether or not sales are below cost that encompasses recovery of costs within a reasonable time, which we have applied here.

Comment 15: 50–90–10 Test

Respondents maintain that the Department originally intended to change its 10–90–10 test to a 50/50 test whereby, if less than half of all sales were below cost, then all sales should be used in creating weighted-average FMVs, and if half or more of the sales were found to be sold below cost, then home market sales would be rejected in their entirety and FMV would be based on CV.

Petitioner maintains that respondents have misrepresented the Department's past practice and ignored judicial precedent. Petitioner maintains that the current 50–90–10 test by which the Department removes from consideration ''significant'' quantities of sales made below COP but uses those sales made above cost, is correct. Petitioner maintains that the courts supported the Department's use of remaining above-cost sales as sufficient for FMV in *Timken Co.* v. *United States,* 673 F. Supp. 495, 516–517 (CIT 1987), and that the basic principle applies to all products.

DOC Position

We disagree with respondents. The Department has an established practice which takes into account the realities of selling perishable agricultural products. In *Final Determination of Sales at Less Than Fair Value: Certain Fresh Winter Vegetables from Mexico,* 45 FR 20512, 20515 (March 24, 1980), after examining the nature of sales of vegetables, the Department determined that it was a regular business practice to make a relatively high number of sales of the subject merchandise below cost because of the perishability of the product, which rapidly ages into non-salable merchandise. As a result, the Department determined that were it to apply the normal below cost test used for nonperishable products, *i.e.,* the 10–90–10 test, this would not fairly reflect the economic realities of the fresh vegetable industry. As a result, the Department concluded that it would permit all sales at below cost to remain in the FMV comparison unless more than 50 percent were found to be below cost.

This modified test was clarified in a review of *Final Results of Antidumping Duty Administrative Review; Certain Fresh Cut Flowers from Mexico,* 58 FR 1794, 1795 (January 17, 1991), wherein the Department explicitly stated that the test to be applied for determining sales below cost for perishable agricultural products was a 50–90–10 test, *i.e.,* if between 50 and 90 percent of home market sales consisted of prices below cost, then only the below cost sales were disregarded, while if over 90 percent of sales were below cost then all sales in the home market were disregarded. *See Final Results of Antidumping Duty Review: Certain Fresh Cut Flowers from Mexico,* 56 FR 1795, 1795 (January 17, 1991).

This modified test still remains our current practice and respondent's rationale for the adoption of a straight 50–50 test is an unmerited modification. Were we to adopt respondents' either/or position, *i.e.,* if less than 50 percent are below cost we will use all sales, and if more than 50 percent we will disregard all sales, then we would, in effect, be concluding that 11 percent of widget sales above cost are sufficient to be the basis for FMV but that 49 percent of rose sales above cost are insufficient. This is an illogical result, which we are not prepared to accept.

Comment 16: Duty Deposit Rate—Roses Shipped But Not Sold

Respondents urge the Department to adjust the deposit rate to reflect the fact that many roses imported into the U.S. perish or are destroyed prior to sale. To avoid over collecting duty deposits on roses that never reach the U.S. market, and since there is no way of distinguishing between roses that will be sold and roses that will be destroyed at the time of entry, respondents argue that the duty deposit rate should be adjusted downward to reflect the quantity of roses shipped to the United States, but not sold. This practice is being used in *Flowers.* Respondents suggest the Department multiply any *ad valorem* rates it calculates by the ratio of total quantity sold divided by total quantity shipped, as reported by each respondent.

Petitioner states that all imports at the time of importation are potentially for sale and, therefore, must bear the appropriate cash deposit rate. Because the percentage of roses that will go unsold varies due to season, weather, problems in transportation, etc., petitioner argues that there is no accurate way to adjust for this potential impact.

Additionally, petitioner states that if the Department does adjust the duty deposit rate to account for roses shipped but not sold, than it is appropriate to adjust the deposit rate to reflect the fact that values entered by Customs are arbitrarily established on consignment entries. Petitioner argues that the use of the calculated USP to derive a cash deposit rate may bear no relation to the value used by Customs for collecting duties. Therefore, petitioner believes that the duty deposit rate should be adjusted upwards so that the duty amount collected reflects the potentially uncollectible duty deposits calculated in the final determination.

DOC Position

We disagree with respondent that the duty deposit rate should be adjusted for roses shipped but not sold. We do, however, agree with respondent, in part, that such adjustment is appropriate for assessment purposes, which are distinct from duty deposit purposes. In the case cited by respondents, *Fresh Cut Flowers from Colombia* 55 FR 20491 (May 17, 1990), the Department indicated that it would make such an adjustment in preparing assessment instructions to the Customs Service. The Department did not make such an adjustment to the duty deposit rates in that case and has not done so in subsequent reviews.

We agree with petitioners that all imports at the time of importation are potentially for sale, and that the percentage of roses which go unsold varies with the seasons. Moreover, this percentage will likely vary with each producer and reseller. Thus, any adjustment contemplated would be speculative. It is preferable to wait until the Department prepares assessment instructions on entries covered by these deposit rates and then make such an adjustment based on the actual experience of the affected companies.

Comment 17: Cash Deposits—The Department's Sampling Technique

Respondents claim that the all others cash deposit rate calculated by the Department is not based on a representative sample of the Colombian rose exporting population—it merely reflects the experience of 16 of the largest exporters. Furthermore, according to respondents, the all others rate disregards the representativeness of such experience. Respondents maintain that this is inconsistent with the Department's statutory requirement that any averages and samples used must be representative of the whole. *See* 19 U.S.C. 1677f–1(b).

DOC Position

We disagree with respondents. The Department's normal practice, in accordance with its regulations, is to select that number of the largest exporters of the subject merchandise needed to represent 60 percent of the imports into the United States from the country under investigation. Due to the large number of companies needed to reach 60 percent of imports in this investigation and the administrative burden it would put on the Department's resources to investigate these companies, the Department selected the 16 largest exporters representing over 40 percent of the imports into the United States. *See* the May 2, 1994, Decision Memorandum from the Team to Barbara Stafford.

The methodology used by the Department maximized its coverage of imports into the United States. The technique of selecting the largest exporters was employed in the *Preliminary Determination of Sales at Less Than Fair Value: Sweaters Wholly or in Chief Weight of Man-Made Fiber from Taiwan,* 55 FR 17779 (April 27, 1990). The other suggested sampling methods, stratified and random, were not selected due to the lack of sufficient industry-wide information on the universe of Colombian and Ecuadorian rose growers (approximately 400 companies in Colombia and 100 companies in Ecuador). The collection and analysis of data to determine an appropriate sampling technique was not reasonably within the power of the Department to undertake. Therefore, we have chosen the most representative sample under the circumstances.

Comment 18: Duty Deposit Rate for Volunteer Companies

Respondents argue that the due process clause of the Fifth Amendment to the U.S. Constitution precludes the Department from requiring cash deposits with respect to companies that the Department refused to investigate. Respondents cite *Kemira Fibres Oy* v. *United States,* Slip Op. 94–120 (CIT July 26, 1994) to support their argument that due process is required in antidumping proceedings. Such a course, according to respondents, would represent an unconstitutional deprivation of property without due process of law. Respondents maintain that the cash deposit rate must be set at zero, and that all cash deposits paid to date should be refunded, and any bonds posted should be lifted, for all companies ready and willing to participate, but not chosen by the Department.

Petitioner also refers to *Kemira Fibres* to support its argument that procedural due process guarantees do not require trial-type proceedings in all administrative determinations.

Additionally, petitioner maintains that, as long as the Department adheres to the procedures mandated by Congress and implemented in the Department's regulations, then the Department has afforded interested parties the process due. These regulations, according to petitioner, allow interested parties the right to appear and submit their views on the proceedings of an investigation, but they do not require the Department to investigate every company that requests a company-specific margin.

DOC Position

We agree with petitioner. Although it is the Department's practice to accept voluntary respondents when we have the administrative resources to do so, the Department's regulations do not require that we accept responses from voluntary respondents. Furthermore, pursuant to 19 C.F.R. 353.14(c), the Department is required to investigate exclusion requests only ''to the extent practicable in each investigation.''

Due to the large number of producers and limited administrative resources, the Department was unable to follow its standard practice of investigating 60 percent of the exports of roses into the United States. Accepting these voluntary respondents and investigating exclusion requests would have reduced the number of ''mandatory'' respondents we could select. Because the Department is not required to investigate all voluntary respondents and requests for exclusion, and because the Department followed its regulations and policy concerning voluntary respondents and exclusion requests, we have afforded interested parties the process due.

Comment 19: Exclusion Requests

The Government of Ecuador and Expoflores argue that the Department has deviated from its standard policy by refusing to accept requests for exclusions or the submission of voluntary responses. Respondents further argue that in the instant investigation this departure caused excessive harm because the Department chose to investigate only 40 percent of the Ecuadorian rose industry, rather than the normal 60 percent of exports to the United States. Respondent's argue that three Ecuadorian companies requested in timely fashion an exclusion from any potential antidumping duty order. In addition, respondents claim that Hilsea submitted a voluntary response to Section A of the Department's questionnaire which the Department returned. Respondents argue that, by denying Hilsea the opportunity to submit a voluntary response, the Department deprived it of the opportunity of demonstrating to the Department that it is not dumping subject merchandise in the United States.

Petitioner states that the Department lawfully limited its investigation to the largest Ecuadorian exporters accounting for 40 percent of U.S. imports from Ecuador and should not exclude ''voluntary'' respondents from the final determination, and that the Department has discretion within the time limits of an LTFV investigation to determine ''fair value'' on the basis of a percentage of total imports. Petitioner states that the regulations indicate that the Department ''normally'' will examine imports accounting for 60 percent of the volume or value sold during the POI. Petitioner states that this is not a ''normal'' case, given the volume of transactions and complexity of both it, and the companion investigation of roses from Colombia. Further, petitioner asserts that the Department's regulations specifically authorize the agency to investigate a subset of all exporting companies in an antidumping investigation. Petitioner asserts that the Department is not required to investigate every company with U.S. imports. Finally, petitioner argues that the availability of a refund, with interest, adequately protects respondents that sought to volunteer, but who could not be accommodated due to the sheer number of responses investigated. Petitioner maintains that if such companies receive a lower rate than ''all others'', however, the domestic industry is deprived of due process by a decision that is not based on the record.

DOC Position

We agree with petitioner. Although it is the Department's practice to accept voluntary respondents when we have the administrative resources to do so, the Department's regulations do not require that we accept responses from all who wish to submit voluntary respondents. Further, considering concurrent investigations is within the discretion of the Department.

Comment 20: Exclusion of BIA from ''All Others''

The GOE and Expoflores argue that the ''all others'' rate should not be skewed by the inclusion of a BIA rate. These parties argue that where the Department examines the pricing practices of only a relatively small number of companies, the usual assumption that compels the Department to include a margin based on BIA (*i.e.* that the pricing practices of the investigated companies are representative) is lacking.

Petitioner argues that there is no basis to depart from the standard Department practice of including BIA rates in the calculation of the ''all others'' rate. Specifically, petitioner argues that where BIA rates are not wildly different than rates calculated on the basis of verified data, the court has endorsed the use of BIA rates as part of the calculated all others rate.

DOC Position

We agree with respondents. *See Exclusion of BIA Rate From Calculation of the All Others Rate* section above.

Comment 21: Rejection of Untimely Sales Tape

Petitioner argues that the Department cannot for any purpose accept for the record the revised tapes required to be filed on January 3, 1995. Petitioner quotes a memorandum to the file regarding ''tape submissions'' dated December 30, 1994, which indicates that the Department extended the deadline for filing computer tapes from December 30 to January 3, 1995. Petitioner states that specifically, the memorandum records the deadline as ''9 a.m.'' Petitioner states that, ''filing'' as a matter of law is not complete without service of the tapes upon counsel for petitioner. 19 C.F.R. 353.31(g). Petitioner argues that, under the regulations, ''[t]he Secretary will not accept any document that is not accompanied by a certificate of service listing the parties served, the type of document served, and, for each, indicating the date and method of service.'' 19 C.F.R. 353.31(g). Petitioner states that, in this case, there is no question that counsel for petitioner are covered by the administrative protective order and entitled to receive on a timely basis copies of any computer tapes filed by respondents. Petitioner notes that the Department has previously alerted counsel for Arbusta in this proceeding of the need to serve computer tapes due to counsel's tardiness in serving earlier tapes submitted to the Department. At this very late stage of the proceedings, petitioner claims there is no basis to accept any new computer tapes for the record, where service was not made and the rights of petitioner have been so prejudiced.

Respondents did not comment on this issue.

DOC Position

We accepted respondent's sales tapes and gave petitioner time to comment on these tapes. Although respondents did not provide the sales tapes to petitioner

in a timely manner according to our regulations, we accorded petitioner sufficient time to comment and petitioner, therefore, was not prejudiced. *See* the January 17, 1995, Memorandum to File.

Company Specific Comments

Arbusta

Comment 22

Petitioner argues that respondent's sales to its related U.S. importer (related importer) were reported using an unreliable methodology, and, therefore, U.S. price for these sales should be based upon BIA. Specifically, petitioner takes issue with respondent's methodology for identifying the country of origin of U.S. sales by comparing production records with sales records.

Respondent argues that the Department should accept its method of reporting U.S. sales whose origin cannot be identified from sales records kept in the normal course of business. Respondent further argues that the Department cannot punish it for maintaining commercial records in the ordinary course of its business that do not identify data in accordance with the Department requirements.

DOC Position

We agree with respondent. At verification we noted that, in order to compile its sales listing for the Department, the related importer excluded the following from its total POI sales: (1) sales of non-Ecuadorian origin having a specific origin code; (2) non-subject merchandise; and (3) samples. The result represented sales of respondent-produced merchandise (representing approximately 86 percent of its related importer's total sales of subject merchandise) and sales of ''unknown'' origin. Based on records kept in the normal course of business, respondent's related importer was unable to determine the origin of the remaining sales. However, our review of the related importer's method of using the average price on its grower's report to determine which sales to report suggests that the sales of ''unknown'' origin were priced in accordance with sales of known origin. Therefore, we find the method used to report sales of unknown origin to be reasonable and non-distortive. Moreover, the related importer reported actual prices in its sales listing. Therefore, we have accepted respondent's reporting methodology as reflective of actual experience and have used it for purposes of the final determination.

Comment 23

Petitioner claims we should base the LTFV margin for respondent's consignment sales to two related consignees on BIA as we were unable verify these consignees. Petitioner argues that, with respect to the ESP sales listing for these consignees, as the data on the record was not verifiable and acceptance of the growers report data would constitute the submission of a substantially new response, the U.S. sales listing of ESP sales to these two related parties is unreliable and cannot be used for purposes of the final determination.

Respondent claims that, in preparing for verification, it discovered that sales through its two consignees in Miami had been systematically reported incorrectly in its sales listing, in part because of a computer error. Respondent claims that it immediately sought to rectify these errors by submitting a new sales listing for these consignees on September 28, 1994, as part of its timely response to the supplemental questionnaire issued by the Department on September 15, 1994. Respondent states that the Department erroneously rejected the new sales listing on the untenable grounds that 19 C.F.R. 353.31(a)(1)(i) requires that factual information be submitted ''seven days before the scheduled date on which the verification is to commence.'' Respondent alleges that the Department's interpretation of the regulation was grossly unfair and inconsistent with past precedent as verification of the information was not scheduled until October 19 and 20, far longer than seven days after the submission date of September 28, 1994. Thus, respondent contends that the new September 28, 1994, sales listing was filed well within the seven day deadline set forth in 19 C.F.R. 353.31(a)(1)(i).

DOC Position

We agree with petitioner. Respondent attempted to submit an entirely new, unsolicited sales tape beyond the deadlines established by 19 C.F.R. 353.31(a). Contrary to respondent's assertion, the September 28, 1994, sales listing was submitted less than two business days prior to the October 3, 1994, start of verification. We rejected the sales tape as untimely. Furthermore, when respondent provided excerpts from the untimely revised sales list at verification in Ecuador, we examined them and determined that they showed that the original sales list was substantially inaccurate and would not verify. *See* verification report. Accordingly, we have assigned BIA to these unverified sales. As BIA, we have used the highest of the highest non-aberrational margin calculated for any U.S. sale or the average petition margin.

Comment 24

With regard to the rejected sales tapes of respondent's two related consignees, petitioner argues that there is no basis in the record to apply a ''neutral'' margin where respondent conceded that its original sales listing was erroneous and where the revised data were neither timely submitted nor verified. Petitioner states that partial BIA for purposes of calculating the LTFV margins for the missing sales data should consist of the higher of the highest non-aberrant transaction margin or the average petition margin.

DOC Position

We agree with petitioner. *See* Comment 23 above.

Comment 25

Petitioner contends that, while the verification report erroneously suggests that alleged ''free samples'' or sales with a ''zero'' price should be removed from the sales listing, this conclusion is incorrect under the statute and Department precedent. First, petitioner claims that, as a matter of law, there is no basis to exclude any U.S. sale from the fair value comparison and that the statute applies to all sales, without the limitation ''ordinary course'' or otherwise. *Ipsco, Inc.* v. *United States,* 687 F. Supp. 633, 640–41 (CIT. 1988). Hence, petitioner argues that given an express limitation on the determination of FMV and no corresponding exclusion from USP, statutory construction requires that there be no exception in the latter case. *See Ad Hoc Committee of AZ-NM-TX-FL Producers of Gray Portland Cement* v. *United States,* 13 F.3d 398, 401 (Fed. Cir. 1994). Second, petitioner claims that, to the extent that a box charge is recovered from sales at a ''zero'' price, such sales are indistinguishable from distress sales. Moreover, petitioner states that because USPs were averaged in order to take account of distress sales, such sales must be included in the sales listing in order to produce a ''representative'' average price. (19 U.S.C. § 1677f–1(b).) An average without including the alleged ''distress'' sales is clearly *not* ''representative'' of all U.S. sales. *Floral Trade Council* v. *United States,* 775 F. Supp. 1492, 1503 (CIT 1991), *appeal pending,* No. 94–1019, –1020. In *Floral Trade Council,* the court affirmed ITA's determination that so-called ''distress'' sales must be included in the U.S. sales listing because ''[a]veraging already

accounts for perishability, and all United States sales both in and out of the ordinary course of trade are included in calculating USP.''

Respondent argues that its one zero-priced transaction should be excluded from the sales listing because providing a sample does not constitute a ''sale'' pursuant to 19 U.S.C. 1673. Respondent claims it had one shipment of sample roses for which it received no revenue whatsoever and that, by legal definition, a sale must include the exchange of money. Moreover, respondent claims the Department has the authority to exclude U.S. sales from a LTFV margin calculation if such sales are not representative of the sellers' behavior and are so small in quantity and value that they would have an insignificant effect on the margin. *See Ipsco Inc.* v. *United States,* 714 F. Supp. 1211, 1217 (CIT 1989) (*rev'd on other grounds,* 965 F.2d 1056 (Fed. Cir. 1992) (*Ipsco*)). Respondent states that this one shipment meets the criteria set out in *Ipsco.*

DOC Position

We agree with respondent. We verified that all sales to one customer in July had been shipped as free samples. In accordance with our treatment of all sample sales in this case, we have deleted these observations from the sales listing. Therefore, the verification report states that U.S. (purchase price) observations 339 through 352 should be removed from the sales listing.

Comment 26

Petitioner states that export taxes are a direct selling expense, and are deductible from USP under 19 U.S.C. 1677a(d)(2). Accordingly, petitioner states that FONIN export taxes should be calculated for all U.S. sales and deducted in the sales listing. Petitioner agrees with respondent that the FONIN tax should not be included in G&A expenses and that such taxes must be deducted separately from U.S. price pursuant to 19 U.S.C. 1677a(d)(2). With respect to the basis for calculating the FONIN taxes, however, petitioner is unclear whether the computer sales listings contain the ''reference value'' declared to the Central Bank of Ecuador. In the absence of these values, petitioner claims there is no record basis for calculating the FONIN tax in a manner that will duplicate the actual tax paid. Petitioner argues that the Department should, therefore, apply the tax to the gross price as the best estimate of the amount paid.

Respondent claims that the Ecuadorian export tax, FONIN, was calculated as 0.5 percent of the reference value declared to the Central Bank of Ecuador and shown on the export invoice. Respondent states that it reported FONIN taxes as part of administrative expenses in its CV tables and the amount of FONIN paid during the POI therefore should be deducted from its administrative expenses. Respondent included FONIN in its indirect selling expense calculation and since this expense is deducted from USP it must also be removed from indirect selling expense to avoid double counting.

DOC Position

We agree with petitioner and with respondent, in part. Section 772(d)(2)(B) of the Act specifically directs that export taxes be deducted from USP; therefore, we have deducted FONIN from USP and adjusted expenses accordingly to avoid double counting. We have calculated FONIN as a percentage of the gross unit price as was done in the preliminary determination.

Comment 27

Petitioner states that credit costs on PP sales should be amended to reflect the correct number of credit days as noted at verification.

DOC Position

We agree with petitioner. Consistent with our treatment of minor changes to submitted data, we have used verified data for respondent's credit days (*see e.g., Final Determination of Sales at Less Than Fair Value: New Minivans from Japan,* 57 FR 21937, 21952 (May 26, 1992) (*Minivans*).

Comment 28

Petitioner states that we should revise the quality credits incurred by respondent's related importer in accordance with the verification report. In its rebuttal brief, petitioner states that it agrees with respondent that the Department should use the revised data received at verification concerning these expenses.

Respondent states that while it provided revised figures for U.S. quality credits, the revisions do not substantially affect previously submitted data. Thus, respondent claims the Department should accept its quality credit calculation as provided by it related importer at verification.

DOC Position

We agree with petitioner and respondent and have used the quality credits as verified. *See e.g., Minivans.*

Comment 29

Petitioner claims that verification of movement expenses on sales through respondent's related importer established that the charges reported to the Department could not be supported by its records. Petitioner cites the sales verification report wherein the Department stated that, with regard to movement expenses, it found that respondent's related importer both over-reported and under-reported certain of these expenses. Accordingly, petitioner states the Department should deny the claimed adjustments and instead apply BIA.

Petitioner argues that for each charge we should impute the highest per-unit amount claimed in any month to all sales. Petitioner notes that the determinations cited by respondent do not support the proposition that any changes identified by a respondent during verification should be made, so long as they are not extensive.

Respondent states that, while it provided revised figures for U.S. movement expenses, the revisions do not substantially affect previously submitted data. Thus, respondent claims the Department should accept its revised figures for movement expenses (brokerage and handling, air freight and inland freight) provided by it related importer at verification and which tied to its accounting system, even though these figures differed slightly from the amounts reported. Respondent argues that the use of the verified movement expenses in the Department's final margin calculation would be consistent with the Department's practice and precedent. Respondent cites the *Final Determination of Certain Steel Products from Italy,* 58 FR 37327 (July 9, 1993), wherein the Department used revised information provided by respondents at verification because it did not substantially amend previously submitted data.

DOC Position

We agree with respondent. We found that the verified movement expenses were not greatly different from the reported figures. Therefore, consistent with our treatment of minor discrepancies found at verification, we have used the verified movement expenses. *See e.g., Minivans.*

Comment 30

Petitioner states that we should increase indirect selling expenses incurred in Ecuador to include the full amount shown in respondent's September 28, 1994, indirect selling expense exhibit. Petitioner notes that

verification in Ecuador established that respondent could not support the total indirect selling expenses incurred in Ecuador and urges the Department to allocate the larger amount to ESP sales as BIA.

DOC Position

We disagree with petitioner that BIA is warranted. At verification, we noted a small discrepancy in respondent's submission. At verification, we tied indirect selling expenses to the general ledgers and trial balances. Consistent with our treatment of minor changes to submitted data, we have used the verified data for respondent's indirect selling expenses. *See e.g., Minivans.*

Comment 31

Petitioner takes issue with the verification of respondent's reported ''estimator'' used to calculate foreign inland freight and states that the Department should base foreign inland freight on BIA for purposes of the final determination.

Respondent states that its foreign inland freight expense was based on the cost paid to its unrelated trucking company to transport roses from the farm to the airport. Respondent claims it accurately reported this expense by dividing the standard charge by the number of boxes shipped, and then dividing the per box charge by the number of stems per box. Respondent claims that the Department verified the accuracy of the standard freight charge by reviewing six selected entries to the freight account from three months of the POI. With the exception of freight charges paid to a former employee, respondent claims the Department found its standard freight charge to be accurate. Thus, respondent states the Department should accept this expense as verified.

DOC Position

We agree with petitioner. Only fifty percent of the entries examined tied to respondent's responses. Therefore, we have used the highest foreign inland freight amount reported in respondent's response as BIA.

Comment 32

Petitioner notes that verification disclosed that respondent offset its short-term interest expenses by income from exchange-rate gains on sales, sales of humus, and ''other'' income. Petitioner claims that none of these income items is allowed as an offset to interest expenses according to longstanding Department practice unless it is directly linked to the interest expenses deducted. *See, e.g., Silicon Metal from Brazil,* 59 FR 42806, 42811 (August 19, 1994) (final results admin. review); *Certain Carbon and Alloy Steel Wire Rod from Canada,* 59 FR 18791, 18795 (April 20, 1994) (final LTFV determination).

Respondent claims it offset financial expenses with short-term interest income and exchange gains generated from sales transactions. Respondent cites the verification report wherein the Department, ''[e]xamined the assets which generated interest income and noted that they were short-term in nature.'' Respondent states the Department also noted that exchange gains that were offset against financial expenses were from sales transactions. Thus, the Department should accept its financial expenses as reported.

DOC Position

We agree with petitioners that these items are not proper offsets to interest expenses as they are of a general and administrative nature.

GUAISA

Comment 33

Petitioner argues that the U.S. sales listing is unreliable and should be disregarded. Petitioner points out that at verification the Department found one U.S. ''sale'' that was reported with a quantity, price and payment date even though the roses were discarded at the county dump. Petitioner contends that this sale was not a sale but a computer generated transaction. Petitioner states that because one of the eight ESP transactions reviewed at verification contained this computer generated transaction, it is unclear whether, and to what extent, other computer generated transactions are contained in the sales listing. Petitioner argues that the reliability of Respondent's related consignee's sales data is in question because of this significant flaw. Therefore, petitioner contends, the Department should not rely upon respondent's data but assign an LTFV margin to respondent based on BIA.

DOC Position

We disagree with petitioner. We examined respondent's records in considerable detail at verification and are satisfied that this discrepancy is not widespread. Therefore, there is no basis to use BIA, and we accept respondent's U.S. sales data for purposes of calculating a margin.

Comment 34

Respondent claims that the Department should disregard disposal sales from its sales listing and that ''disposal'' sales are different from ''end of the day'' (*i.e.,* distress) sales. Respondent states that the purpose of a disposal sale is to discard waste and that disposal sales are made to customers outside the fresh cut flower industry, such as manufacturers of potpourri or dried flowers, and recyclers of cardboard and plastic. Respondent maintains that it has a separate coding system in its computer system for disposal sales and does not pay its U.S. subsidiary a commission on these sales.

Respondent maintains that disposal sales differ from distress sales because they are inflicted with disease or damage before entering the United States. Further, respondent contends that it established at verification that roses classified as disposal enter the United States in damaged or diseased condition.

Respondent also argues that the discarded roses are essentially the equivalent of ''secondary merchandise'' which the Department has excluded from the calculation of USP in other cases (*see, e.g., Certain Cold-Rolled Carbon Steel Flat Products from Argentina,* 58 FR 37062, 37077 (July 9, 1994) (*Carbon Steel*). Respondent notes that in *Carbon Steel,* the Department excluded sales of non-prime merchandise where sales of such merchandise were an insignificant portion of total sales. Respondent maintains that its disposal sales constitute far less than five percent by volume of its related consignee's sales. Respondent claims that the high percentage of monthly disposal sales in May was due to a propagation of botritis.

Regarding ''zero-value'' sales, respondent states that by definition, a ''zero-value'' sale is one for which no revenue has been collected. Respondent asserts that petitioner mistakenly claims that the verification report states that a ''box charge is collected'' on so-called zero-price sales because the verification report does not make any reference to ''zero-value sales'' on the page cited by petitioner. Respondent states that petitioner is confusing zero value sales with disposal sales. The basic legal definition of a ''sale'' necessarily includes the exchange of money; this component is distinctly absent from zero-value sales.

Petitioner argues that: (1) There is no record support and no verified evidence that roses have been damaged or diseased before entering the United States; and (2) there is no basis offered by respondent on which the Department could segregate sales of diseased roses from normal distress sales that result from the perishability of roses.

Petitioner adds that there is a large supply of roses on the market in May due to the fact that roses cut for Valentine's Day have a second ''flush'' by May and may be shipped to the U.S. market, whether or not there is sufficiently strong demand. Therefore, petitioner argues that a particular stem price does not establish that the roses were damaged or diseased. Furthermore, petitioner maintains that distress sales are already accounted for by the use of a monthly average.

Regarding zero-value sales, petitioner maintains that as a matter of law there is no basis for excluding any sales from the fair value comparison (*see Ipsco, Inc.* v. *United States*. 687 F. Supp. 633, 640–41 (CIT 1988) and *Ad Hoc Committee of AZ-NM-TX-FL Producers of Gray Portland Cement* v. *United States,* 13 F.3d 398, 401 (Fed. Cir. 1994). Petitioner notes that because a box charge was paid on these sales, respondents could easily evade an order by selling roses for a zero price but charging for the box.

Petitioner argues that, to the extent that respondent unilaterally and improperly excluded zero-price sales from its U.S. sales listing, the monthly average U.S. prices are overstated and respondent's sales listing must be rejected and the Department apply BIA.

DOC Position

Regarding ''disposal sales,'' we agree with petitioner and kept these sales in the sales listing. At verification, we observed that a large number of very low price sales were reported in the month of May. Company officials stated that, the fact that a high number of these sales were made at distressed prices in the month of May is not unusual because it is the second harvest of the February crop and occurs in a month when the supply exceeds demand. The fact that, in its brief, respondent refers to these distress sales as ''disposal'' sales does not change the fact that these are distress sales.

Regarding zero value sales, we agree with respondent that these should be treated as sample sales. Respondent reported a small percentage of its U.S. sales as sample sales. Consistent with our treatment of samples in the preliminary determination and for all companies, the Department has excluded sample sales from our U.S. calculation in previous cases (*see, e.g., Final Determination of Sales at Less Than Fair Value: Professional Electric Cutting and Sanding and Grinding Tools from Japan* 58 FR 30144, 30146 May 26, 1993).

Comment 35

Petitioner argues that the Department should use the quality credits reported on the growers reports for ESP sales. Petitioner maintains that the Department was unable to tie the total amount of credits allegedly outside the POI with the total amount given on sales ''inside'' the POI. Petitioner states that, even though respondent's growers reports may contain credits applicable to 1992 sales, it does not contain credits given in 1994 for 1993 sales. Therefore, because credits on the growers reports cover an entire seasonal cycle, it is reasonable to use credits awarded over a full year as the basis for this adjustment even though the credits do not tie entirely to the POI.

Respondent states that the Department identified discrepancies in its related consignee's U.S. quality credit calculation. However, respondent maintains that the Department verified corrected data and, therefore, should use its corrected data in the final determination. Furthermore, respondent states that the difference between the amount the Department was unable to tie from respondent's response to its worksheets differed by only a small percentage from that reported. Therefore, respondent argues that this does not discredit its methodology of excluding credits paid on sales made before the POI and including credits paid after the POI which were on sales made during the POI.

Respondent maintains that the Department has erroneously referred to the ''credit reimbursement'' as if it were a quality credit. Respondent states that this ''credit reimbursement'' is compensation from respondent's related consignee to respondent in the form of an inter-company transfer and bears no connection to quality credits. Respondent explains that the money transferred is actually ''excess'' profit accumulated by respondent's related consignee from sales of roses from other farms during the Valentine's Day holiday. Furthermore, respondent states that this credit reimbursement figure is not found in any quality credit account but, as found by the Department at verification, is recorded in respondent's related consignee's operating statement as a cost of sales. Therefore, the Department should use the verified quality credits, as stated above, in its quality credit calculation and should exclude credit reimbursements from the calculation.

DOC Position

We agree with petitioners. Because there is a discrepancy in respondent's methodology of matching credits in the POI with sales outside the POI, we used the quality credits reported on the growers reports in our calculation, including the credits given on freight and packing. We also included credit reimbursements as a quality credit expense.

Respondent reported in its sales listing the quality credits shown on the growers reports. At verification, we noted that by using the growers reports to report quality credits, respondent had included quality credits which applied to 1992 and excluded quality credits reported in 1994 which applied to 1993. Therefore, at our request respondent attempted to match the quality credits to the month the sales occurred. Respondent provided a breakdown of the quality credits for 1992; however, it did not provide a breakdown of quality credits recorded in its 1994 records that applied to 1993 credits due to the limited time available at verification. Therefore, we were able to determine how, if at all, the quality credits should be adjusted. However, we were satisfied that what they reported is what was actually incurred and found no reason to conclude that the reported figures should not be used. Therefore, we used the verified data from the growers reports.

Comment 36

Respondent argues that at verification the Department found that it received free airline tickets and freight rebates from its freight carriers in recognition of the high level of business given the freight carriers by respondent. Therefore, respondent contends that the Department should treat the value of these tickets and rebates as a deduction from total U.S. air freight expenses.

Petitioner notes that it is unclear whether respondent counted such income as an offset to air freight expenses in its normal books and records. Petitioner states that because neither the sales nor the cost verification reports mention that such an item appeared in respondent's general ledger or was treated other than as income to respondent's officers, the record does not tie the airline tickets to POI sales of roses.

Petitioner contends that although respondent claims that the tickets were rewarded ''in recognition of the high level of business given the freight carriers,'' there is no documentary evidence to support this claim. Petitioner adds that no other Ecuadoran rose grower made a similar claim and there is no support for the claimed adjustment.

DOC Position

Respondent reported an air freight rebate and six free airline tickets received from its air cargo carrier in its response. For the preliminary determination, we deducted the air freight rebate from air freight expenses. We did not deduct the value of the six free round trip airline tickets from respondent's air freight expenses. We verified that respondents received rebates on air freight expenses incurred during the POI. Therefore, we granted the percentage of rebate allocable to roses based on exports of roses to exports of all products. Regarding airline tickets, because these tickets are not a reduction of the air freight expense of respondent, or a reduction to respondent's cost, we discarded the airline tickets from our analysis.

Comment 37

Respondent argues that the Department should accept the reported number of days for purposes of calculating imputed credit calculation on its purchase price sales.

Respondent's accounting system did not electronically link the date of sale and date of payment, instead respondent manually matched invoices and payment records. Respondent stated that, a burdensome and exhaustive task, some errors occurred. However, respondent argues that these errors were not significant and worked to respondent's disadvantage.

Petitioner argues that since the Department only verified a few observations and found pervasive errors in credit days reported the payment days reported are unreliable and the Department should apply BIA. Petitioner asserts that, as partial BIA, the Department should select the longest payment days from a non-aberrational transaction and impute that period to all U.S. sales.

DOC Position

We agree, in part, with petitioner. As BIA, we used the highest monthly weighted-average credit days reported on purchase price sales. At verification, we found that every preselect and surprise sale had an error in the calculation of the number of credit days outstanding for third country and purchase price sales.

Comment 38

Respondent asserts that the Department should use the verified interest rate for the imputed credit expense for purchase price sales. Respondent argues that using the verified interest rate does not substantially effect previously submitted information. Therefore, respondent claims that, the Department, consistent with its precedent and practice, should accept and use the revised calculations. In support of this assertion, respondent cites the final determination of *Certain Steel Products from Italy*, 58 FR 37327 (July 9, 1993) wherein the Department used actual information provided by respondents at verification which did not substantially amend previously submitted data.

Petitioner argues that information regarding purchase price interest rates collected at verification should not be accepted by the Department merely on the ground that the revisions do not substantially affect previously submitted. However, to the extent that these corrections were verified and the Department was satisfied of their accuracy, petitioner does not object to the use of the verified interest rate.

DOC Position

We agree with both parties. We used the verified information for calculating the interest rate for imputed credit.

Comment 39

Respondent, stating that it experienced extraordinary wind damage on August 2 through 7, 1993, argues that the Department should not include in COP or CV, the expenses it incurred to rebuild its greenhouses. Respondent maintains that the hurricane winds experienced during the POI were not a normal event. Respondent states that according to U.S. GAAP, for an event to be considered ''extraordinary'' it ''must be unusual in nature and infrequent in occurrence.'' (*See Floral Trade Council* v. *United States*, Slip Op. 92–213.) Respondent contends that the hurricane winds it experienced were both ''unusual in nature'' and ''infrequent in occurrence.'' Respondent states that this was the first time that winds of such abnormally high and devastating velocity struck the region, and thus such winds were highly abnormal and could not be reasonably anticipated. Accordingly, respondent contends that the Department should base CV on the actual production of the first five months of the POI and expected production for the remaining seven months. In addition, respondent urges the Department to exclude its extraordinary costs associated with the damage from the windstorm.

Petitioner notes that wind, like other weather conditions, is an anticipated factor in growing roses. Petitioner maintains that certain losses occur each year due to weather, disease, or the environment. Therefore, there is no basis to treat respondent's wind damage costs differently for this investigation.

Petitioner argues that respondent did not claim expenses associated with the windstorm as ''extraordinary'' in its financial statements. Thus, petitioner contends, there is no basis upon which normal and allegedly ''extraordinary'' costs can be segregated.

Petitioner maintains that if an adjustment for extraordinary losses is granted, it would be improper for the Department to determine unit costs based on theoretical production. Instead, extraordinary cost from the storm should be removed from the total and then actual costs incurred should be spread over actual production.

DOC Position

We agree with respondent. At verification we reviewed news videos and photographs of the wind damage. The severe wind storm damage resulted in an unusual loss of crop. To make an appropriate adjustment for this loss we have normalized the production level. We have relied upon the actual number of stems sold in January through July 1993. For the months which suffered crop losses due to the storm, *i.e.*, August, September, October and November, we have based our calculations of monthly stems produced on the average of actual monthly sales from the first seven months of 1993. This is a conservative estimate since respondent had plants that would have begun to enter the productive phase during the August-November period. Thus, under normal circumstances, production would have increased to include additional stems harvested from plants just starting the production period when the wind storm occurred.

Finally, we disagree with petitioner that we should remove all expenses as an extraordinary cost and that it would be inappropriate to isolate an extra cost of the storm. The Department determined that the major loss of the storm was the loss of the growing crop, the stems which would have matured over approximately the next twelve weeks. Therefore, we believe that it is appropriate to adjust for the loss of the crop.

Comment 40

Petitioner states that verification disclosed that nursery plants were excluded from the basis for allocating certain costs to rose production. Petitioner argues that by depreciating the rose plants over their useful life, respondent takes account of the pre-production stage of its rose plants. Therefore, respondent should not also exclude plants in the pre-production

stage from the total to which costs are allocated. Otherwise, no costs are attributed to the pre-production rose plants.

Petitioner states that respondent's allocation of services (*e.g.*, insurance and depreciation expenses) by the number of plants, rather than the area in production is reasonable. However, petitioner argues that greenhouse depreciation, machinery and equipment depreciation, insurance on the facility, and service costs are related to area in production, not the number of plants.

Petitioner also argues that the record does not establish that the nursery stock was sold exclusively to unrelated customers. Therefore, if some or all of the nursery stock was used in respondent's greenhouses, then there is no basis for excluding these costs or allocating a portion to rose production.

Furthermore, petitioner contends that because respondent did not segregate these costs in its response, the Department should determine whether the number-of-plants allocation (including nursery plants) reasonably approximates the production-area allocation. If not, petitioner argues that the Department should use the higher percentage as the allocation basis as BIA.

Respondent argues that petitioner's theory that the pre-production stage of a rose plant is accounted for by depreciating rose plants over their useful life is erroneous. Respondent asserts that petitioner is confusing the amortization of pre-production costs of rose plants ultimately grown by respondent for production, with the separate business of selling nursery rose plants to unrelated parties. Respondent maintains that the sale of nursery plants constitutes a separate line of business and the costs of nursery plants, like any other plant not subject to this investigation, should not be included in the CV calculation of fresh cut roses.

Respondent adds that it allocated service, insurance and depreciation expenses on the basis of number of plants which included nursery rose plants. Respondent states that nursery plants are not considered production plants and are sold to unrelated customers in the normal course of business. Therefore, respondent contends that the nursery plants, like any other plant not subject to this investigation, should not be included in the CV calculation.

DOC Position

We agree with petitioner that using the number of plants to allocate certain expenses is not an accurate measure. At verification, we reviewed respondent's plant allocation methodology and determined that it was inaccurate. With the exception of the plants themselves, other inputs in the growing process seem to be more closely linked to the area under cultivation. We also reviewed the calculation of area under cultivation. As we have determined that it is more correct to allocate the costs in question based on cultivation area, we have re-allocated the cost on that basis.

Comment 41

Respondent states that it translated dollar-denominated loans and payments into sucres in its financial statements and that during the POI, that a fictitious loss was created and recorded in the translation gain/loss account. Respondent argues that this account is purely cosmetic and does not reflect actual costs of production. Therefore, the Department should not include the fictitious translation expenses in its CV calculation.

Petitioner asserts that because respondent's so-called ''translation'' losses on foreign-currency loans are recorded in respondent's financial statement in the ordinary course of business and in accordance with GAAP, they should not be disregarded. Petitioner asserts that, in order to repay foreign-currency loans, respondent will be required to convert sucres to the currency of the loan. Therefore, repayment is affected by the exchange rate. Moreover, the overall financial condition of respondent, and its ability to raise capital and obtain loans, is affected by the translation losses shown on its financial statements. Accordingly, petitioner argues, there is no basis to ignore these costs in determining the total cost of production.

DOC Position

We agree with petitioner. The translation loss reflects an actual increase in the amount of sucres that will be paid to settle these borrowings. We have therefore included the translation loss and amortized it over the remaining life of the loan.

Comment 42

Petitioner maintains that respondent treated interest payments to a shareholder as normal interest expenses in its ordinary books and records. Petitioner cites *Kiwi Fruit from New Zealand*, 59 FR 48596, 48599 (September 22, 1994) (final results of admin. review) in which the Department stated:

> Absent specific evidence to the contrary, we consider expenses recorded in a company's financial statements to reflect actual expenses incurred in its operations * * * Respondent has not presented any documentary evidence in support of its claim that the recorded expenses were not actual expenses. Accordingly, we continue to rely on the growers' financial statements for orchard expenses in the final results.

Moreover, petitioner maintains that the proceeds of the loan were used for working capital, not capital expenditures. Petitioner contends that the shareholder and the company did not treat the loan as a stock purchase or otherwise as an increase in capitalization. Therefore, the issue is not whether the interest costs of the loan should be excluded, but whether the provision of working capital was at a favorable less than arm's length rate. If so, petitioner maintains that the transaction should be treated as any other related-party input and revalued at an arm's length interest rate. Alternatively, the interest paid to a shareholder should be treated as income to that shareholder in return for management services. Furthermore, petitioner maintains that because of the nature of the relationship between the shareholder and respondent, the ''interest'' paid to the shareholder should be deemed to be part of his salary.

Respondent states that this ''loan'' was more in the nature of an investment and was recorded in respondent's records as a loan for tax purposes only. Furthermore, respondent states that it followed the Department's questionnaire instructions which state to ''include all interest expenses incurred on your company's long and short-term debt from *unrelated* sources.* * *'' Therefore, respondent states that the Department should not include interest paid to a shareholder as part of respondent's financial costs.

DOC Position

We agree with petitioner. At verification, the Department was unable, due to time constraints, to collect sufficient information to determine what the original classification of a loan should have been. Since the loan was not recorded originally as an equity investment and is reflected in the company's books and records as borrowings, we have no basis to reclassify it as equity. Therefore, consistent with the company's financial statement treatment, we have included interest expense for this loan in our cost calculations.

Inversiones Floricola, S.A.

Comment 43

Petitioner argues that a small rose producer in Ecuador (because its identity is proprietary, it will hereinafter be referred to as ''company X'') is related to respondent and that respondent did not report sales from this farm in its sales listing. Regarding the nature of the relationship, petitioner states that there is sufficient evidence of ownership between respondent and company X. Petitioner argues that: (1) The rose farms of the group most likely have similar production processes and could, therefore, shift production to company X to supply respondent's U.S. customers to take advantage of a possible lower antidumping duty margin; and (2) there is at least a possibility of future price manipulation due to knowledge of marketing and production information for both respondent and company X; (4) there is no evidence on the record of an absence of control of production or sales at the group of companies and that respondent's claim that Sunburst Farms controls marketing, sales, and pricing for respondent are unsupported by the evidence on the record; and (5) even the smallest amount of third country sales by company X would establish the viability of respondent's third country markets. Therefore, petitioner argues that company X and respondent are related parties and as such, company X's sales should have been reported. Petitioner argues that, as cooperative BIA, the Department should assign the average margin from the petition to company X.

Respondent maintains that it is the only rose-producing entity among its related companies, and that it has fully reported its sales and cost information in this investigation. Regarding company X, respondent argues that it is not a related party under 19 U.S.C. 1677(13). Respondent states that it is neither an agent nor a principal of company X. Furthermore, respondent states that it owns no interest in company X and company X owns no interest in respondent. Respondent argues that there is no direct or indirect ownership link between respondent and company X.

Moreover, respondent maintains that respondent and company X operate as separate and distinct entities. Respondent argues that there is no common control between company X and respondent. Company X does not share employees, land, equipment, administrative offices, distribution channels, or pricing and production decisions with respondent or respondent's related farm. Respondent maintains that production, marketing, sales, and pricing decisions for respondent are made by Sunburst Farms Miami and Sunburst Farms Holland in accordance with export market conditions. Furthermore, there are no contractual relations or similar business dealings between respondent and company X.

Regarding petitioner's assertion that respondent could shift production to company X, respondent argues that company X is primarily a dairy farm and does not have sufficient capacity to take over more than a negligible portion of respondent's production. Furthermore, respondent states that the Department verified that no expenses or revenue from any other farm runs through company X's checking account. Respondent thus argues that joint control of both entities cannot be established and therefore, these companies are not related within the meaning of 19 U.S.C. 1677(13). However, if the Department determines that respondent and company X are related, respondent maintains that the Department should apply a separate rate for company X, and that the Department should use respondent's verified data to calculate its rate.

DOC Position

It is the Department's practice to collapse parties related within the meaning of section 771(13) of the Act when the facts demonstrate that the relationship is such that there is a strong possibility of manipulation of prices and production decisions that would result in circumvention of the antidumping law. *See Nihon Cement Co.* v. *United States,* Slip Op. 93–80 (CIT May 25, 1993); *Certain Iron Metal Construction Castings from Canada,* 55 FR 460, 460 (January 5, 1990) (final results of admin. review); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany,* 54 FR 18992, 19089 (May 3, 1989) (final results of LTFV investigation). Based on the evidence on the record, we find that respondent and company X are not related parties within the meaning of section 771(13) of the Act and, as a result, should not be collapsed in this investigation.

Pursuant to section 771(13) of the Act, the Department examined (A) whether respondent was the agent or principal of company X; (B/C) whether respondent owns or controls any interest in the business of company X, or vice versa; and (D) whether there is any direct or indirect common ownership between respondent and company X, involving at least 20 percent of the voting power or control. The Department found no evidence that any of these statutory indicators of relatedness existed with respect to respondent and company X.

Petitioner's arguments concerning interlocking shareholders, shifting of production, possibility of price manipulation, and control of production and sales, are inapposite because they are related to factors that the Department considers in determining whether to collapse companies for the purpose of calculating a single dumping margin. *See, e.g., Antifriction Bearings from France, etc.,* 58 FR 39729, 39772 (July 26, 1993) (final results of 3d admin. review) (''*AFBs III*''). Significantly, however, a collapsing analysis is only done on related parties. *See, e.g., AFBs III* at 39772. (''[T]he Department uses * * * factors in determining whether to collapse related enterprises. * * *'') (emphasis added). In most cases, the relatedness of the parties is quite clear, *i.e.*, a parent and a subsidiary, or two sister subsidiaries. *See, e.g., AFBs III* at 39772. In contrast, in this investigation there is no evidence that, pursuant to the definition of related parties under section 771(13) of the Act, respondent and company X are related. As a result, we have not performed a collapsing analysis.

Comment 44

Respondent argues that the statute requires the Department to use general expenses and profit related to home market sales of the same general class or kind of merchandise that are in the ordinary course of trade. The respondent maintains that its home market sales of culls are the same general class or kind of merchandise as export- quality roses. Respondent also maintains that culls are a regular and recurring part of business in Ecuador and are in the ordinary course of trade. Therefore, the respondent contends that the Department should use its verified home market selling expenses in CV. Regarding profit, respondent argues that the appropriate profit for use in CV is the statutory minimum eight percent.

Respondent argues that if the Department uses its U.S. selling expenses in CV, it must modify its methodology for calculating respondent's ESP offset to eliminate the margin-creating effects of its preliminary ESP offset calculation.

Respondent further argues that if the Department uses its U.S. selling expenses, then the Department should not include the Panama and farm-level components of those expenses in CV. Respondent contends that the inclusion of farm-level or Panamanian expenses

double-counts home market expenses as expenses incurred in the United States are already being used as a supposed proxy. Moreover, the expenses incurred in Panama relating to U.S. sales have nothing to do with the home market because the Panamanian selling agent is involved only with export sales.

Petitioner maintains that the home market is not a viable market in the ordinary course of trade with respect to export quality roses. Petitioner argues that the home market is a market for distress sales. Petitioner states that the Department should use third-country expenses and profits to calculate CV.

Petitioner argues that it is appropriate to add selling expenses on the same terms as the constructed value (*i.e.,* using annual average indirect selling expense). Petitioner further argues that if the Department relies on U.S. selling expenses to compute CV, all U.S. selling expenses, whether incurred in Ecuador, Panama, or in the United States should be included. Petitioner argues that it has been the Department's practice and upheld by the courts that all expenses incurred in selling merchandise in the United States should be deducted from ESP, regardless of whether the entity incurring the expenses was physically located in the United States.

DOC Position

We disagree with respondents and have used U.S. selling expenses as a surrogate (*see* Comment 9). We agree with petitioners that all expenses incurred in selling merchandise in the United States should be deducted from ESP, regardless of whether the entity incurring the expenses was physically located in the United States. Further, we disagree that modification of our standard ESP offset methodology is warranted in this case.

Comment 45

Petitioner asserts that the verification report indicates that common indirect selling expenses were allocated to three Panamanian companies which were involved with the sale of roses. However, petitioner argues that the verification report indicates that certain selling expenses were not allocated to the company involved in the sale of respondent's roses. Petitioner contends that all indirect selling expenses should be reallocated.

Respondent asserts that it allocated its indirect selling expenses among all three of the Panamanian companies based on the relative sales revenue of each company. Respondent argues that the allocation is clearly supported in the verification report.

DOC Position

We agree with respondent. We verified that all selling expenses were reported and allocated appropriately.

Comment 46

Petitioner asserts that the sales verification report indicates that respondent understated its per-unit indirect selling expenses incurred in Ecuador because it allocated its expenses over sales to two related companies. Petitioner argues that, because the Department is unable to segregate respondent's third country sales from third country sales of its two related companies, all third country sales should be excluded from the denominator for purposes of calculating an indirect selling expense factor. Petitioner also contends that respondent has not previously alleged that it performed all export selling functions for all three companies and that it is too late for such an allegation. Petitioner argues that respondent's case brief on this topic is purely post hoc. Therefore, petitioner maintains that the Department should allocate respondent's export selling expenses solely to respondent's export sales.

Respondent contends that the verification report is incorrect with regard to its assertion that respondent understated its farm-level U.S. indirect selling expenses. The verification report states that respondent should have used the export sales revenue specific to respondent, not the sales revenue of its two related companies in the denominator of the ratio used to allocate farm-level selling expenses to roses. However, respondent argues that the total indirect expenses incurred by the above-three companies were incurred in respondent's central office. Respondent maintains that it was not possible to isolate farm- or product-specific selling expenses from the total selling expenses incurred at the central office. Respondent further maintains that the central office provides selling support functions for all products sold by all entities in the Group. Therefore, respondent calculated the ratio used to determine the portion of total selling expenses allocable to roses by including revenue from sales of all products from all three companies in the ratio's denominator. Respondent contends that if it had only used sales revenue from the products sold by respondent, it would have overstated, not understated, the amount of the total selling expenses allocable to roses. Respondent argues, therefore, that the Department should accept respondent's verified data for the final determination.

DOC Position

We agree with respondent and have used respondent's allocation methodology and the verified information for purposes of the final determination. *See e.g., Minivans.*

Comment 47

Petitioner argues that respondent incorrectly excluded all selling expenses allocable to Sunburst New York. Petitioner contends that there is no evidence on the record that supports respondent's claim that Sunburst New York's selling expenses should be excluded because it only handled imports from the Netherlands. Petitioner argues that the evidence on the record indicates that Sunburst New York charged Sunburst Miami for freight forwarding fees, which suggests that imports from Ecuador or Colombia, rather than Holland, were sold by Sunburst New York. Petitioner argues that absent evidence concerning purchases and sales by Sunburst New York, the record does not support exclusion of Sunburst New York's selling expenses.

Respondent maintains that Sunburst New York is a separate corporate entity, wholly-owned by Sunburst Farms Miami, which acts exclusively as an importer and freight forwarder of Dutch flowers. Sunburst New York does not make any sales of Dutch flowers, all such sales are made by Sunburst Farms Miami's Holland sales department. Respondent contends that the freight forwarding fees charged by Sunburst New York to Sunburst Farms Miami are intracompany fees to reimburse Sunburst New York for its freight forwarding operations and are, thus, unrelated to sales of subject merchandise.

DOC Position

We agree with respondent. At verification, we found that Sunburst Farms had a separate sales department that dealt solely with products imported from Holland. Therefore, we find that respondent appropriately excluded Sunburst New York's selling expenses from its allocation.

Comment 48

Petitioner argues that the Department should correct home market indirect selling expenses based on verification.

Respondent did not address this issue.

DOC Position

We agree with petitioner. We corrected home market indirect selling expenses to reflect findings at verification. *See, e.g., Minivans.*

Comment 49

Petitioner states that, according to the cost verification report, fixed costs incurred with respect to packing were excluded from the calculated cost of production. Petitioner contends that there is no basis to conclude that these costs should be treated as packing expenses solely because the depreciation and insurance costs were related to the post harvest areas. Petitioner argues that, regardless of whether or not these costs were ''post-harvest,'' they should be treated as cultivation costs and added to overhead.

Respondent states that it removed fixed overhead costs related to packing from its packing calculation pursuant to the Department's instructions prior to verification. However, respondent maintains that these costs relate to functions such as hydration and grading, which are associated with packing costs and have nothing to do with production. Therefore, respondent argues these costs should not be included in its cost of cultivation and are most appropriately classified as packing costs.

DOC Position

We agree with respondent that these are packing costs. In our August 2, 1994, questionnaire, we requested that respondent remove fixed costs from its packing expenses. At that time we thought it appropriate to classify these expenses as part of COP. However, during the cost verification, we analyzed these costs and determined that it was appropriate to include these expenses in packing.

Comment 50

Petitioner states that, according to the verification report, respondent excluded year-end adjustments to farm specific G&A of: (1) Amortization of pre-operating expenses, and (2) reduction for an over accrual of social benefits.

Regarding pre-operating expenses, petitioner argues that respondent should include all amortized pre-operating expenses in G&A following normal company accounting practices absent evidence that the expenses were incurred with respect to operations other than rose production.

Regarding the over-accrual of social benefits, petitioner states that the verification report is unclear as to whether there is evidence that there is a basis for departing from the financial statements. Absent such evidence, petitioner argues that the financial statement figures should be used.

Regarding the over-accrual of social benefits, respondent contends that at year-end, it adjusted its social benefits costs to reflect the actual social benefits paid during the year. Respondent states that the costs reported to the Department included the over-accrual. Therefore, the subtraction of the amount of the over-accrual from G&A expenses noted in the verification report should be made.

DOC Position

We agree with petitioner. We found at verification that these items are G&A expenses of the company and made an adjustment. This verified data was used in our final determination. *See, e.g., Minivans.*

Comment 51

Petitioner argues that respondent's per unit G&A expenses were understated. Petitioner contends that the percentage G&A factor was applied to the reported cultivation costs, excluding the post harvest costs. Petitioner maintains that the Department should correct this error so that the cost of production and constructed value reflect full costs.

DOC Position

We agree with petitioner. The application of the G&A ratio resulted in an understatement of this expense. Therefore, for our final determination we corrected this by applying the ratio on the same basis upon which it was calculated.

Comment 52

Petitioner argues that income from exchange-rate gains on sales, insurance reimbursement, gains on sales of fixed assets, and income from social security cannot be allowed to offset respondent's interest expenses unless these income items are linked to the interest expenses deducted.

Respondent argues that income from exchange-rate gains on sales, insurance reimbursement, and gains on sales of fixed assets are related to production or has been generated from short-term investments of working capital and are, therefore, allowable as offsets to its financial expenses.

DOC Position

We agree with petitioner that these are not properly offsets to financial expenses. However, the insurance reimbursement and gains on sales of fixed assets, while not a financial expense of the company, do reflect items of a G&A nature. Accordingly, we have included them as such in our calculations.

Comment 53

Petitioner argues that Sunburst Farm's interest revenue on late accounts should be corrected as per the verification report.

DOC Position

We agree with petitioner and used Sunburst Miami's verified interest income for purposes of our final determination. *See, e.g., Minivans.*

Comment 54

Respondent argues that, pursuant to the Department's instructions, it segregated the amount of FONIN taxes paid from its cost of cultivation and reported this amount separately. Respondent maintains that the Department verified this expense without discrepancy. Respondent contends that the Department should use the actual allocated amounts for the final. Additionally, respondent argues that the Department should deduct from cost of cultivation the amount of FONIN tax originally reported.

Petitioner maintains that, to the extent the Department verified the revised FONIN tax, these amounts are appropriately deducted from USP.

DOC Position

We agree with petitioner and respondent in part. We deducted the verified amounts of FONIN tax from USP. We also deducted the FONIN tax reported in COP.

Comment 55

Respondent maintains that the Department should accept the corrections it submitted in its revised sales tape for purposes of the final determination. Additionally, respondent argues that the Department should use the verified interest expense Sunburst paid during the POI rather than the reported percent.

Petitioner contends that the Department should verify that the corrections respondent reportedly changed concerning foreign inland freight, U.S. inland freight, quality credits, U.S. indirect selling expenses, interest revenue, air freight, brokerage and handling, and packing cost were properly implemented.

DOC Position

We agree with both parties. We have reviewed the new sales listing and found that respondent made the changes as per the verification report. Therefore, used these revised expenses in our calculations. In addition, we used respondent's revised U.S. interest rate.

Suspension of Liquidation

In accordance with 19 U.S.C. 1673b, we are directing the Customs Service to continue to suspend liquidation of all entries of fresh cut roses from Ecuador, as defined in the ''Scope of Investigation'' section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or the posting of a bond on all entries equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds United States price as shown in the table below. The margins are as follows:

Manufacturer/Producer/Exporter	Margin (percent)
Arbusta-Agritab (and its related farms Agrisabe, Agritab, and Flaris)	5.38
Florin S.A. (and its related farms Cuentas En Participacion Florinsa-Ertego (Florinsa Cotopaxi) and Exflodec)	84.72
Guanguilqui Agro Industrial S.A. (and its related farm Indipasisa)	14.24
Inversiones Floricola S.A. (and its related farm Flores Mitad Del Mundo S.A.)	4.63
All Others	6.32

ITC Notification

In accordance 19 U.S.C. 1673d(d) we have notified the ITC of our determination.

Notification to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order (APO) in this investigation of their responsibility covering the return or destruction of proprietary information disclosed under APO in accordance with 19 C.F.R. 353.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant 19 U.S.C. 1673d(d) and 19 C.F.R. 353.20(b)(2).

Dated: January 26, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–2607 Filed 2–3–95; 8:45 am]

BILLING CODE 3510–DS–P

[C–791–001]

Ferrochrome From South Africa; Final Results of Countervailing Duty Administrative Review

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

ACTION: Notice of final results of Countervailing Duty Administrative Review.

SUMMARY: On November 12, 1993, the Department of Commerce (the Department) published in the **Federal Register** its preliminary results of administrative review of the countervailing duty order on ferrochrome from South Africa for the period January 1, 1991, through December 31, 1991. We have now completed this review and determine the bounty or grant to be zero for Consolidated Metallurgical Industries, Ltd. (CMI), and 0.81 percent *ad valorem* for all other companies.

EFFECTIVE DATE: February 6, 1995.

FOR FURTHER INFORMATION CONTACT: Dana S. Mermelstein or Maria P. MacKay, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–0984/2786.

SUPPLEMENTARY INFORMATION:

Background

On November 12, 1993, the Department published in the **Federal Register** the preliminary results of its administrative review of the countervailing duty order on ferrochrome from South Africa (46 FR 21155, April 9, 1981). The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

We invited interested parties to comment on the preliminary results. On December 13, 1993, a joint case brief was submitted by Chromecorp Technology (Pty) Ltd., CMI, Ferralloys Limited, Middleburg Steel and Alloys (Pty) Ltd. (MS&A), and Samancor, the South African producers which exported ferrochrome to the United States during the review period (respondents). We returned respondents' brief because it contained untimely new factual information. *See* 19 CFR 355.31(a)(1)(ii). The Department has not considered the rejected new factual information for these final results of review. *See* 19 CFR 355.31(a)(3), 355.3(a). On December 21, 1993, respondents resubmitted a revised case brief. The comments addressed in this notice were presented in the resubmitted case brief.

At the request of respondents, the Department held a public hearing on December 28, 1993. On January 14 and January 16, 1994, respondents submitted two documents containing unsolicited written argument. The regulations (19 CFR 355.38) require written argument to be submitted in accordance with the deadlines and requirements for case briefs and rebuttal briefs. The two submissions in question were made after these deadlines. These submissions were returned to respondents in accordance with the regulations (19 CFR 355.38(a)). The Department has therefore not considered the arguments presented in these two submissions for purposes of reaching these final results of review.

The review covers the period January 1, 1991 through December 31, 1991. The review involves five companies and the following programs:

(1) Industrial Development Corporation Loans
(2) Export Incentive Program
(3) Regional Industrial Development Incentives
(4) Preferential Rail Rates
(5) Government Loan Guarantees
(6) Beneficiation Allowances—Electric Power Cost Aid Scheme
(7) General Export Incentive Scheme

After consideration of respondents' comments on the preliminary results of review, the Department has now recalculated the bounties or grants attributable to the Category D Scheme of the Export Incentive Program, and to the Industrial Development Corporation long-term loan program. The Department now determines the bounty or grant attributable to the Category D Scheme to be zero percent *ad valorem* for CMI, and 0.29 percent *ad valorem* for all other companies, and the bounty or grant attributable to the Industrial Development Corporation loan to be zero for CMI, and 0.05 percent *ad valorem* for all other companies. Accordingly, the Department determines the total bounty or grant from all programs under review to be zero for CMI, and 0.81 percent *ad valorem* for all other companies.

Scope of Review

Imports covered by this review are shipments of ferrochrome, which is currently classifiable under item 7202.41.00, 7202.49.10 and 7202.49.50 of the *Harmonized Tariff Schedule* (HTS). The HTS item numbers are provided for convenience and Customs