

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