

amount, instead of BIA, in the calculation of these foreign inland freight expenses.

Comment 26

Respondent states that the December 1993 amortization expense relating to its new farm should be included in the CV calculation since it started producing roses during the POI.

Petitioner states that to the extent that sales of roses from the new farm were included in the sales listing, costs incurred with respect to such farm should also be reported.

DOC Position

The Department agrees with both the petitioner and the respondent in that the December 1993 amortization associated with the preproduction costs of Greenhouse B-1 should be included in constructed value. During verification, it was found that rose production of saleable roses had begun in December 1993. The Department, therefore, increased respondent's submitted costs to include the December amortization expense.

Comment 27

Respondent states that the allocation of the Bogota office costs between subject and nonsubject merchandise is equitable and reasonable. Respondent argues that the Department should not charge these costs solely to subject merchandise because the only production-related expenses incurred at the Bogota office relate to the monthly Board of Directors meeting. All other managerial functions associated with rose production are performed at respondent's farm office.

Petitioner contends that corporate expenses incurred at the Bogota office should be added to G&A in full and not allocated based on use of the office. Petitioner argues that there is no basis to exclude the expenses of the Bogota office since there is no evidence that the owner does not oversee the rose business from this office. Petitioner's allegation that the office is used for a construction business is belied by the fact that the office expenses are carried on respondent's corporate income statement and tax return.

DOC Position

We agree with respondent. At verification, respondent demonstrated that the Bogota office was used mainly by a shareholder to manage other businesses which are not associated with rose production. The Department also determined that the methodology used to allocate the costs of the office between subject and nonsubject

merchandise was reasonable. Respondent allocated the Bogota office expense based on the number of days during which the company uses the office for its Board of Directors meeting. For the final determination, we increased respondent's submitted G&A expense by an allocated portion of the Bogota office costs.

Comment 28

Respondent argues that the Department should not account for certain expenses paid by the company on the owner's behalf as G&A costs since these expenses were unrelated to the production or sale of the subject merchandise. Respondent states that in past cases, the Department has not required respondents to include similar owner expenses in CV even when such expenses were recorded in the accounting records of the company. Respondent cites in support of its position *Final Determination of Sales at less Than Fair Value: Fresh Kiwifruit for New Zealand*, 57 Fed. Reg. 13695, 13704 (April 17, 1992). Respondent also argues that these expenses should be considered a dividend paid by respondent to its majority shareholder and, thus, should not be accounted for as salary or compensation since the shareholder performs no day to day management of the company.

Petitioner contends that the expenses paid by the company on the owner's behalf should be included in G&A since there is no evidence that such costs were unrelated to the rose business, and because they were carried on the respondent's books.

DOC Position

We did not include in CV the personal expenses paid by the company on the owner's behalf. At verification, the expenses in question were demonstrated to be personal in nature, tax motivated, and not related to the production of the subject merchandise. The Department reached a similar conclusion in the *Final Determination of Sales at less Than Fair Value: Fresh Kiwifruit for New Zealand*, 57 Fed. Reg. 13695, 13704 (April 17, 1992) in which personal expenses of an owner were not included in COP/CV since they were not related to the production of the subject merchandise.

Caicedo Group

Comment 29

Respondent argues that the Department should not have used a high BIA rate for its sales through an unrelated importer. It states that while most of its sales to the United States are

through its related importer, when the volume of exports is too great for the related party to handle, respondent will sell roses through other unrelated importers. One of these unrelated parties through which the respondent sold during the POI, according to respondent, failed to supply it with the detailed information needed for the response to the Department's questionnaire.

Respondent also states that at verification, it supplied what it could relating to these sales, including copies of written requests to the unrelated importer to supply the necessary information and a copy of a negative reply from this unrelated importer to its request. The respondent states that, because it did not have the ability to compel the unrelated importer to supply it with information, that it would be unfair to apply a punitive BIA rate to these sales. The respondent states that due to the high value and the small volume of these sales the Department should leave these sales out of the margin calculations altogether. Respondent adds that, if these sales are not excluded, the Department should apply to them the average margin found with respect to the remaining sales by the respondent.

The petitioner argues that where a party failed to supply U.S. sales data, the Department should apply "Tier 1" BIA. It cites 19 U.S.C. 1677e(c), which, it states, prescribes the use of "best information" whenever requested information is not supplied, without regard to motive. The petitioner also states that the circumstances appear to indicate that the unrelated importer acted as a consignment agent, in which case there would typically be growers reports or other documentation pertaining to transactions. The petitioner adds that respondent is properly responsible if its agent withholds data.

DOC Position

We agree with respondent. At verification, we closely examined the quantity and value of sales to this consignee and noted no discrepancies with respect to either quantity of sales to this importer or respondent's claims about the availability of price information needed to respond to the questionnaire.

The Department has the discretion to exclude certain sales. In *Dynamic Random Access Memory Semiconductors of One Megabit and Above from the Republic of Korea*, 54 FR 15467 (March 23, 1993), the Department excluded sales where the volume of sales was insignificant. We