

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 of "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