

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.