

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 Ecuadorian rose grower made a similar claim and there is no support for the claimed adjustment.