Inversiones Floricola, S.A.

Comment 43

Petitioner argues that a small rose producer in Ecuador (because its identity is proprietary, it will hereinafter be referred to as "company X'') is related to respondent and that respondent did not report sales from this farm in its sales listing. Regarding the nature of the relationship, petitioner states that there is sufficient evidence of ownership between respondent and company X. Petitioner argues that: (1) The rose farms of the group most likely have similar production processes and could, therefore, shift production to company X to supply respondent's U.S. customers to take advantage of a possible lower antidumping duty margin; and (2) there is at least a possibility of future price manipulation due to knowledge of marketing and production information for both respondent and company X; (4) there is no evidence on the record of an absence of control of production or sales at the group of companies and that respondent's claim that Sunburst Farms controls marketing, sales, and pricing for respondent are unsupported by the evidence on the record; and (5) even the smallest amount of third country sales by company X would establish the viability of respondent's third country markets. Therefore, petitioner argues that company X and respondent are related parties and as such, company X's sales should have been reported. Petitioner argues that, as cooperative BIA, the Department should assign the average margin from the petition to company X.

Respondent maintains that it is the only rose-producing entity among its related companies, and that it has fully reported its sales and cost information in this investigation. Regarding company X, respondent argues that it is not a related party under 19 U.S.C. 1677(13). Respondent states that it is neither an agent nor a principal of company X. Furthermore, respondent states that it owns no interest in company X and company X owns no interest in respondent. Respondent argues that there is no direct or indirect ownership link between respondent and company X.

Moreover, respondent maintains that respondent and company X operate as separate and distinct entities. Respondent argues that there is no common control between company X and respondent. Company X does not share employees, land, equipment, administrative offices, distribution channels, or pricing and production decisions with respondent or respondent's related farm. Respondent maintains that production, marketing, sales, and pricing decisions for respondent are made by Sunburst Farms Miami and Sunburst Farms Holland in accordance with export market conditions. Furthermore, there are no contractual relations or similar business dealings between respondent and company X.

Regarding petitioner's assertion that respondent could shift production to company X, respondent argues that company X is primarily a dairy farm and does not have sufficient capacity to take over more than a negligible portion of respondent's production. Furthermore, respondent states that the Department verified that no expenses or revenue from any other farm runs through company X's checking account. Respondent thus argues that joint control of both entities cannot be established and therefore, these companies are not related within the meaning of 19 U.S.C. 1677(13). However, if the Department determines that respondent and company X are related, respondent maintains that the Department should apply a separate rate for company X, and that the Department should use respondent's verified data to calculate its rate.

DOC Position

It is the Department's practice to collapse parties related within the meaning of section 771(13) of the Act when the facts demonstrate that the relationship is such that there is a strong possibility of manipulation of prices and production decisions that would result in circumvention of the antidumping law. See Nihon Cement Co. v. United States, Slip Op. 93-80 (CIT May 25, 1993); Certain Iron Metal Construction Castings from Canada, 55 FR 460, 460 (January 5, 1990) (final results of admin. review); Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany, 54 FR 18992, 19089 (May 3, 1989) (final results of LTFV investigation). Based on the evidence on the record, we find that respondent and company X are not related parties within the meaning of section 771(13) of the Act and, as a result, should not be collapsed in this investigation.

Pursuant to section 771(13) of the Act, the Department examined (A) whether respondent was the agent or principal of company X; (B/C) whether respondent owns or controls any interest in the business of company X, or vice versa; and (D) whether there is any direct or indirect common ownership between respondent and company X, involving at least 20 percent of the voting power or control. The Department found no evidence that any of these statutory indicators of relatedness existed with respect to respondent and company X.

Petitioner's arguments concerning interlocking shareholders, shifting of production, possibility of price manipulation, and control of production and sales, are inapposite because they are related to factors that the Department considers in determining whether to collapse companies for the purpose of calculating a single dumping margin. See, e.g., Antifriction Bearings from France, etc., 58 FR 39729, 39772 (July 26, 1993) (final results of 3d admin. review) ("AFBs III") Significantly, however, a collapsing analysis is only done on related parties. See, e.g., AFBs III at 39772. ("[T]he Department uses * * * factors in determining whether to collapse related enterprises. * * *'') (emphasis added). In most cases, the relatedness of the parties is quite clear, *i.e.*, a parent and a subsidiary, or two sister subsidiaries. See, e.g., AFBs III at 39772. In contrast, in this investigation there is no evidence that, pursuant to the definition of related parties under section 771(13) of the Act, respondent and company X are related. As a result, we have not performed a collapsing analysis.

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Respondent argues that the statute requires the Department to use general expenses and profit related to home market sales of the same general class or kind of merchandise that are in the ordinary course of trade. The respondent maintains that its home market sales of culls are the same general class or kind of merchandise as export- quality roses. Respondent also maintains that culls are a regular and recurring part of business in Ecuador and are in the ordinary course of trade. Therefore, the respondent contends that the Department should use its verified home market selling expenses in CV. Regarding profit, respondent argues that the appropriate profit for use in CV is the statutory minimum eight percent.

Respondent argues that if the Department uses its U.S. selling expenses in CV, it must modify its methodology for calculating respondent's ESP offset to eliminate the margin-creating effects of its preliminary ESP offset calculation.

Respondent further argues that if the Department uses its U.S. selling expenses, then the Department should not include the Panama and farm-level components of those expenses in CV. Respondent contends that the inclusion of farm-level or Panamanian expenses