

DEPARTMENT OF COMMERCE**International Trade Administration**

[A-507-502]

Certain In-Shell Raw Pistachios from Iran: Preliminary Results of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty New Shipper Review of Certain In-Shell Raw Pistachios from Iran.

SUMMARY: In response to a request from Tehran Negah Nima Trading Company, Inc., (Nima), the Department of Commerce (Department) is conducting a new shipper review of the antidumping duty order on certain in-shell raw pistachios from Iran. This new shipper review covers imports of subject merchandise from Nima. The period of review is July 1, 2000, through June 30, 2001. The Department preliminarily determines that Nima has made sales of subject merchandise to the United States below normal value. If these preliminary results are adopted in our final results of this new shipper review, we will instruct the U.S. Customs Service to liquidate entries during the period of review. The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisal instructions directly to the Customs Service. Interested parties are invited to comment on these preliminary results. See Preliminary Results of the Review section, *infra*. Parties who submit comments are requested to submit with the argument: (1) a statement of the issues and (2) a brief summary of the arguments.

EFFECTIVE DATE: August 6, 2002.

FOR FURTHER INFORMATION CONTACT: Phyllis Hall or Donna Kinsella, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230; telephone: 202-482-1398 or 202-482-0194, respectively.

SUPPLEMENTARY INFORMATION:**The Applicable Statute**

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930, as amended (the Act) by the Uruguay

Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR Part 351 (2001).

Background

On July 17, 1986, the Department published in the Federal Register a notice of the antidumping duty order on certain in-shell pistachios from Iran. See Antidumping Duty Order; Certain In-Shell Pistachios from Iran, 51 FR 25922 (July 17, 1986). On July 31, 2001, Tehran Negah Nima Trading Company, Inc., an exporter of subject merchandise during the period of review (POR), requested that the Department conduct a new shipper review of the antidumping duty order. We initiated the review on October 10, 2001 (66 FR 51638). On October 11, 2001, the Department issued the antidumping questionnaire. On November 15, 2001, the respondent submitted section A of the questionnaire. On December 10, 2001, the respondent submitted sections B-C of the questionnaire. On January 25, 2002, the Department issued the first supplemental questionnaire. On March 20, 2002, the Department issued a second supplemental questionnaire. On May 3, 2002, the Department issued a third supplemental questionnaire. On February 22, 2002, the respondent submitted its response to the first supplemental questionnaire. On April 4, 2002 and May 15, 2002, respondent submitted its responses to the second and third supplemental questionnaires. On May 3, 2002, the Department sought information from Fallah Pistachio. On May 6, 2002, the Department issued Section D of its questionnaire to Maghousdi Farm. On June 3, 2002, Fallah Pistachio submitted its response to the Department's request for information. On June 20, 2002, Maghousdi Farm submitted its response to Section D. Under section 751(a)(2)(B)(iv) of the Act, the Department may extend the deadline for completion of a new shipper review if it determines that the case is extraordinarily complicated. On April 2, 2002, the Department fully extended the time limit for the preliminary results of this new shipper review by 120 days until July 29, 2002. See *Certain In-Shell Raw Pistachios From Iran: Extension of Time Limit for Preliminary Results of Antidumping New Shipper Review*, 67 FR 15530 (April 2, 2002).

Period of Review

The POR is July 1, 2000, through June 30, 2001.

Scope of the Review

Imports covered by this review are raw, in-shell pistachio nuts from which the hulls have been removed, leaving the inner hard shells and edible meats, from Iran. The merchandise under review is currently classifiable under item 0802.50.20.00 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by the respondents covered by the description in the "Scope Review" section above and sold in the comparison market during the POR, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. If there were no home market foreign like products to compare to a U.S. sale, we used constructed value (CV).

Export Price/Constructed Export Price

In accordance with section 772(a) of the Act, export price is the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States. In accordance with section 772(b) of the Act, constructed export price is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter. For purposes of this review, Nima classified its sales as EP sales. See Section C response, at 5. Nima identified one channel of distribution for its U.S. sales during the POR. *Id.* at 6. With respect to Nima's sale dated June 25, 2001, based on Nima's description of the sale, the Department preliminarily determines that the goods were sold directly to an unaffiliated purchaser in the United States and as such the transaction constitutes an EP sale. We calculated EP in accordance with section 772(a) of the Act. We based EP on the FOB price to the unaffiliated purchaser in the United States. We made deductions for freight charges (*i.e.*, foreign inland freight) to

the customer in accordance with section 772(c)(2)(A) of the Act.

With respect to Nima's sale dated January 25, 2001, the Department has preliminarily determined to exclude this sale for purposes of this new shipper review. According to information submitted by respondent on the record, this sale was not conducted by Tehran Negah Nima Trading Company, Inc.

Tehran Negah Nima Trading Company, Inc., trading as Nima Trading Company, the requester of this new shipper review, was incorporated and registered as a limited liability company in Iran on January 3, 2001. On February 10, 2001, the sole proprietor of Nima Trading Company, an entity established in November 2000, agreed to transfer all of his interest in Nima Trading Company and to allow Tehran Negah Nima Trading Company, Inc. to trade as "Nima Trading Company." Evidence on the record indicates that the January 25, 2001, U.S. sale reported by Tehran Negah Nima Trading, Inc., was actually concluded by the former sole proprietorship of Nima Trading Company. As of the date of sale, January 25, 2001, the entity requesting this review, Tehran Negah Nima Trading, Inc., did not have the authority to trade as Nima Trading Company. As noted above, that authority was not granted until February 10, 2001.

Since Tehran Negah Nima Trading Company Inc., trading as Nima Trading Company, is the entity which requested the new shipper review, the Department has determined to limit this review to sales made by Tehran Negah Nima Trading Company, Inc. The Department does not have sufficient information available on the record to conduct a successorship analysis to determine whether Tehran Negah Nima Trading Company, Inc., is the successor to the sole proprietorship of Nima Trading Company. Referencing the January 25, 2001, U.S. sale, respondent stated on the record that it "does not have any objection to have this sale removed from the file." See February 22, 2002 response at 8. The Department therefore has preliminarily determined to exclude the January 25, 2001, sale by Nima Trading Company for purposes of this review.

Normal Value

A. Ordinary Course of Trade

In accordance with section 773(a)(1)(B)(i) of the Act, the normal value shall be the price at which the foreign like product is first sold (or, in the absence of a sales, offered for sale) for consumption in the exporting

country, in the usual commercial quantities and in the ordinary course of trade and, to the extent practicable, at the same level of trade as the export price or constructed export price. Nima reported one sale of subject merchandise in the home market during the POR. See December 10, 2001, response at 10. Nima reported no sales of subject merchandise to any third country market. See November 15, 2001, response at 19. Regarding Nima's home market sale, Nima stated "the sole purpose of establishing Nima...was to be able to exploit business opportunities in the US market for Iranian pistachios. Therefore, Nima's home market sale to Bakhshie was certainly a deviation from the company's main objective...." Nima also stated that "the sale of raw in-shell pistachios in the home market is not part of Nima's ordinary course of business." Furthermore, Nima stated that it "does not have any plans for selling pistachios in the Iranian market in the future." See April 4, 2002, response at 7. Based on this information, the Department preliminarily finds that Nima's sale in the home market during the POR was not in the ordinary course of trade as defined in the statute and Departmental regulations.

Where sales of the foreign like product sold for consumption in the exporting country are determined not to be in ordinary course of trade, section 773(a)(1)(B)(ii) of the Act directs the Department to employ the price of sales to a third country as the basis for NV. However, as noted above, Nima reported no sales of subject merchandise to any third country markets during the POR. Section 773(a)(4) of the Act states that if the administering authority determines that the normal value of the subject merchandise cannot be determined under paragraph 773(a)(1)(B)(i), and there are no third country sales, the normal value of the subject merchandise may be based on the constructed value of that merchandise. Therefore, the Department determines that the use of constructed value in determining NV is appropriate in this review.

B. Normal Value Based on CV

In accordance with section 773(e)(1) of the Act, we calculated CV based on the COP plus the exporter's SG&A expenses and an amount for profit. For COP, we included the producer's cost of production and the middleman's operational costs. Because the exporter's G&A costs were not separately reported from its selling expenses, and were included as such, we did not include them again in calculating CV.

Because there are no viable home market sales or third country sales made by Nima during the POR, we cannot calculate CV profit under sections 773(e)(2)(A). Section 773(e)(2)(B)(iii) of the Act allows the Department to use amounts incurred and realized for profits, based on any other reasonable method as long as that profit does not exceed the amount normally realized by exporters or producers in connection with the sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise. We based profit on the profit the middleman reported for the sale of subject merchandise to the exporter. We believe that the use of the middleman's profit meets the requirements of section 773(e)(2)(B)(iii) of the Act. First, the profit calculated is based on the middleman's sale of in-shell raw pistachios. Second, the sale took place in Iran. Third, the sale occurred during the POR. Thus, the profit rate is a profit realized in connection with the sale, for consumption in the foreign country, of subject merchandise. Finally, there is no evidence on the record that indicates this profit rate is aberrational or not representative of home market profit rates of subject merchandise. See Constructed Value Adjustments for Preliminary Determination, Memorandum from Gina K. Lee through Michael P. Martin to Neal M. Halper dated July 29, 2002. The Department is currently seeking additional information on CV and may adjust its CV calculation for the Final Results. If the CV calculation is substantially altered based on additional information, the Department will allow interested parties an opportunity to comment before the Final Results.

Date of Sale

Section 351.401(i) of the Department's regulations states that the Department will normally use the date of invoice, as recorded in the exporter's or producer's records kept in the ordinary course of business, as the date of sale, but may use a date other than the date of invoice if it better reflects the date on which the material terms of sale are established. Nima stated that, for the U.S. market, date of sale is based on invoice date. See February 22, 2002, response at 11. Therefore, the Department is using the date of invoice as the date of sale.

Currency Conversion

According to the International Monetary Fund's 2001 Annual International Monetary Report, as of March 20, 2000, Iran had a dual exchange rate system. The two

officially-approved rates are: 1) the effective Tehran Stock Exchange (TSE) which is applied to all transactions, except for 2) government imports of essential goods, and services of public and publicly guaranteed debt (the exchange rate for which is approximately 1750Rls/\$US.) There is a separate TSE rate for "oil exports" and "non-oil exports", but both are within the first category of official exchange rates for private rather than public transactions.

The Department's preferred source for daily exchange rates is the Federal Reserve Bank. When the Federal Reserve Bank does not provide exchange rates for a certain currency, the Department's practice has been to use exchange rates obtained from the Dow Jones News/Retrieval Service. The Federal Reserve Bank does not provide exchange rates for the Iranian rial. Exchange rates for the Iranian rial published in the Dow Jones News/Retrieval Service appear to be official rates for public rather than private transactions and are not reflective of the actual exchange rates at which Nima converted foreign exchange earnings in the POR. Nima has documented on the record the dual exchange rate system in Iran, utilizing Iranian government reports and bank statements. The record shows clearly that the exchange rates Nima realized during the POR are dramatically different from the rates listed in the Dow Jones. For this reason and because there are no other appropriate exchange rates on the record, the Department used the actual exchange rates at which respondent converted its foreign exchange earnings during the POR.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following weighted-average dumping margin exists for the period July 1, 2000, through June 30, 2001:

Company	Weighted-Average Margin
Nima Trading Company (Nima)	120.04 percent

In accordance with 19 CFR 351.224(b), the Department will disclose to parties to this proceeding the calculations performed in connection with these preliminary results within five days of the date of publication of this notice.

Pursuant to 19 CFR 351.309, interested parties may submit written comments on these preliminary results. Case briefs must be submitted no later than 30 days after the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, must be submitted no later than five days after the time limit for filing case briefs. Parties submitting arguments in this proceeding are requested to submit with the argument: (1) a statement of the issue, and (2) a brief summary of the argument. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f). Also, within 30 days of the date of publication of this notice, an interested party may request a public hearing on arguments to be raised in the case and rebuttal briefs. See 19 CFR 351.310(c). Unless the Secretary specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs, or the first working day thereafter. The Department will issue the final results of this new shipper review, including the results of its analysis of issues raised in any case or rebuttal brief, within 90 days of these preliminary results.

Assessment

The Department shall determine, and the U.S. Customs Service (Customs) shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we have calculated exporter/importer-specific assessment rates. We calculated importer-specific duty assessment rates on a unit value per kilogram basis and then dividing this sum by the entered value for that sale. If these preliminary results are adopted in our final results, we will instruct Customs to assess antidumping duties on the merchandise subject to review. Upon completion of this review, the Department will issue appraisal instructions directly to Customs.

The Department is currently conducting a new shipper review of the countervailing duty order on raw in-shell pistachios from Iran involving Nima. The Department will adjust both the antidumping duty assessment rate and cash deposit rate resulting from this review for any duties imposed to offset export subsidies found at the conclusion of the countervailing new shipper review.

Cash Deposit

The following cash deposit requirements will be effective upon

publication of the final results of this new shipper review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this new shipper review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be the rate established in the final results of this new shipper review (except that no deposit will be required if the rate is zero or de minimis, *i.e.*, less than 0.5 percent); (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this review or the original LTFV investigation, the cash deposit rate will continue to be the "all others" rate of 184.28 percent established in the LTFV investigation. This rate reflects the amount of export subsidies found in the final countervailing duty determination in the investigation subtracted from the dumping margin found in the less than fair value determination. See 51 FR 8344. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next review.

Notification to Interested Parties

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties. This new shipper review and notice are issued and published in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act.

Dated: July 29, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

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