

DEPARTMENT OF COMMERCE**International Trade Administration**

[C-507-501]

Certain In-shell Pistachios from the Islamic Republic of Iran: Preliminary Results of Countervailing Duty Administrative Review

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

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty (CVD) order on certain in-shell (raw) pistachios from the Islamic Republic of Iran (Iran) for the period January 1, 2004, through December 31, 2004. For information on the net subsidy rate for the reviewed company, please see the "Preliminary Results of Review" section of this notice. Interested parties are invited to comment on these preliminary results. (See the "Public Comment" section of this notice.)

EFFECTIVE DATE: February 22, 2006.

FOR FURTHER INFORMATION CONTACT: Darla Brown, AD/CVD Operations, Office 3, Import Administration, U.S. Department of Commerce, Room 4014, 14th Street and Constitution Avenue NW., Washington DC 20230; telephone (202) 482-2786.

SUPPLEMENTARY INFORMATION:**Background**

On March 11, 1986, the Department published in the *Federal Register* the countervailing duty order on certain in-shell (raw) pistachios from Iran. See *Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: In-shell Pistachios from Iran*, 51 FR 8344 (March 11, 1986) (*In-shell Pistachios*). On March 1, 2005, the Department published a notice of opportunity to request an administrative review of this CVD order. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 70 FR 9918 (March 1, 2005). On March 31, 2005, we received timely requests for administrative review from the California Pistachio Commission (CPC) and Cal Pure Pistachios, Inc. (Cal Pure). The CPC and Cal Pure requested that the Department conduct a review with respect to Tehran Negah Nima Trading Company, Inc., trading as Nima Trading Company (Nima), the respondent company in this proceeding. On April 22, 2005, we initiated an administrative review of the CVD order on in-shell

(raw) pistachios from Iran covering the period of review (POR) January 1, 2004, through December 31, 2004. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 70 FR 20862 (April 22, 2005).

On June 8, 2005, we issued our initial questionnaire to the Government of Iran (GOI) and Nima. Neither the GOI nor Nima submitted questionnaire responses. Therefore, as discussed below in the "Use of Facts Available" section of this notice, we have resorted to the facts otherwise available, employing an adverse inference. See Section 776 of the Tariff Act of 1930, as amended (the Act).

On December 5, 2005, we extended the period for the completion of the *Preliminary Results* pursuant to Section 751(a)(3)(A) of the Act. See *Certain In-shell (Raw) Pistachios from the Islamic Republic of Iran: Extension of Time Limit for Preliminary Results of Countervailing Duty Administrative Review*, 70 FR 72426 (December 5, 2005).

In accordance with 19 CFR 351.213(b), this administrative review covers only those producers or exporters for which a review was specifically requested. Accordingly, this administrative review covers Nima and ten programs.

Scope of Order

The product covered by this order is in-shell (raw) pistachio nuts from which the hulls have been removed, leaving the inner hard shells and edible meat, as currently classifiable in the Harmonized Tariff Schedules of the United States (HTSUS) under item number 0802.50.20.00. The HTSUS subheading is provided for convenience and customs purposes. The written description of the scope of this proceeding is dispositive.

Use of Facts Available

During the course of this proceeding, we have sought information from the company subject to this review, Nima, and from the GOI pertaining to countervailable subsidy programs in Iran and their use by Nima and Nima's growers and producers. Specifically, we have asked for information concerning Nima's and its growers' usage of the following programs: Provision of Credit, Provision of Fertilizer and Machinery, Tax Exemptions, Provision of Water and Irrigation Equipment, Technical Support, Duty Refunds on Imported Raw or Intermediate Materials Used in the Production of Export Goods, Program to Improve Quality of Exports of Dried Fruit, Iranian Export Guarantee Fund, GOI Grants and Loans to

Pistachio Farmers, and Crop Insurance for Pistachios. See pages II-3 through II-8 and pages III-6 through III-11 of the Department's June 8, 2005, questionnaire. In addition, we have requested information concerning the total sales and sales of subject merchandise made by Nima during the POR. See pages III-3 through III-6 of the Department's June 8, 2005, questionnaire.

Section 776(a) of the Act requires the use of facts available when an interested party withholds information that has been requested by the Department, or when an interested party fails to provide the information requested in a timely manner and in the form required. As described above, by failing to respond to our questionnaire, Nima and the GOI have failed to provide information regarding these programs, as well as Nima's sales, in the manner explicitly requested by the Department; therefore, we must resort to the facts otherwise available.

Furthermore, Section 776(b) of the Act provides that in selecting from among the facts available, the Department may use an inference that is adverse to the interests of a party if it determines that a party has failed to cooperate to the best of its ability. The Department finds that by not providing necessary information specifically requested by the Department, the GOI and Nima have failed to cooperate to the best of their ability. Therefore, in selecting from among the facts available, the Department determines that an adverse inference is warranted.

When employing an adverse inference in an administrative review, the statute indicates that the Department may rely upon information derived from (1) the petition, a final determination in a countervailing duty or an antidumping investigation, any previous administrative review, new shipper review, expedited antidumping review, section 753 review, or section 762 review; or (2) any other information placed on the record. See Section 776(b) of the Act and 19 CFR 351.308(c). Thus, in applying adverse facts available, we have used information from the final determination of *In-shell Pistachios; Certain In-shell Pistachios and Certain Roasted In-shell Pistachios from the Islamic Republic of Iran: Final Results of New Shipper Countervailing Duty Reviews*, 68 FR 4997 (January 31, 2003) (*New Shipper Reviews*); and *Certain In-shell Pistachios from the Islamic Republic of Iran: Final Results of Countervailing Duty Administrative Review*, 70 FR 54027 (September 13, 2005) (*2003 In-shell Pistachios*).

If the Department relies on secondary information (e.g., data from a petition) as facts available, Section 776(c) of the Act provides that the Department shall, "to the extent practicable," corroborate such information using independent sources reasonably at its disposal.¹ The SAA further provides that to corroborate secondary information means that the Department will satisfy itself that the secondary information to be used has probative value. See also 19 CFR 351.308(d) (describing the corroboration of secondary information).

Thus, in those instances in which it determines to apply adverse facts available, the Department, in order to satisfy itself that such information has probative value, will examine, to the extent practicable, the reliability and relevance of the information used. However, unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there typically are no independent sources for data on company-specific benefits resulting from countervailable subsidy programs. The only source for such information normally is administrative determinations. In the instant case, no evidence has been presented or obtained which contradicts the reliability of the evidence relied upon in previous segments of this proceeding.

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render benefit data not relevant. See *Cotton Shop Towels from Pakistan: Final Results of Countervailing Duty Administrative Review*, 66 FR 42514 (August 13, 2001). Where circumstances indicate that the information is not appropriate as adverse facts available, the Department will not use it. See *Fresh Cut Flowers from Mexico: Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996). In the instant case, no evidence has been presented or obtained which contradicts the relevance of the benefit data relied upon in previous segments of this proceeding. Thus, in the instant case, the Department finds that the information used has been corroborated to the extent practicable.

¹ The Statement of Administrative Action accompanying the URAA clarifies that information from the petition is "secondary information." See Statement of Administrative Action, URAA, H. Doc. No. 316, Vol. 1, 103d Cong. (1994) (SAA) at 870.

Analysis of Programs

Programs Preliminarily Determined to Be Countervailable

Because the GOI and Nima did not provide the information necessary to conduct an analysis of these programs, we are making an adverse inference that each of these programs continues to exist, is countervailable, and that a benefit was conferred upon Nima during the POR.

A. Provision of Fertilizer and Machinery

In *In-shell Pistachios*, 51 FR at 8345-6, the Department found that growers, processors or exporters of pistachios in Iran can obtain fertilizer and machinery from the GOI at preferential prices.

As further discussed above in the "Use of Facts Available" section of this notice, we have determined that the application of adverse facts available is warranted on the grounds that Nima and the GOI did not respond to our request for information. Therefore, we have determined as adverse facts available that this program continues to exist and that Nima received a countervailable benefit during the POR.

To calculate the net subsidy rate under this program, we used the highest rate listed in *In-shell Pistachios* for this program. Accordingly, we preliminarily determine that the net subsidy rate for this program is 7.11 percent *ad valorem*.

B. Provision of Credit

In *In-shell Pistachios*, the Department found that bounties or grants were provided to growers, processors, or exporters in Iran of pistachios under this program. Specifically, the Department found that agricultural cooperatives in Iran make credit available on terms inconsistent with commercial considerations from funds provided by the GOI to their members. See 51 FR at 8346.

As further discussed above in the "Use of Facts Available" section of this notice, we have determined that the application of adverse facts available is warranted on the grounds that Nima and the GOI did not respond to our request for information. Therefore, we have determined as adverse facts available that this program continues to exist and that Nima received a countervailable benefit during the POR.

To calculate the net subsidy rate under this program, we used the highest rate listed in *In-shell Pistachios* for this program. Accordingly, we preliminarily determine that the net subsidy rate for this program is 7.11 percent *ad valorem*.

C. Tax Exemptions

In *In-shell Pistachios*, the Department found that bounties or grants were provided to growers, processors, or exporters in Iran of pistachios under this program. Specifically, the Department determined that farmers benefit from legislation that exempts farmers and livestock breeders from paying taxes, provided they follow government agricultural guidelines. See 51 FR at 8346.

As further discussed above in the "Use of Facts Available" section of this notice, we have determined that the application of adverse facts available is warranted on the grounds that Nima and the GOI did not respond to our request for information. Therefore, we have determined as adverse facts available that this program continues to exist and that Nima received a countervailable benefit during the POR.

To calculate the net subsidy rate under this program, we used the highest rate listed in *In-shell Pistachios* for this program. Accordingly, we preliminarily determine that the net subsidy rate for this program is 7.11 percent *ad valorem*.

D. Provision of Water and Irrigation Equipment

In *In-shell Pistachios*, the Department found that bounties or grants were provided to growers, processors, or exporters in Iran of pistachios under this program. Specifically, the Department determined that pistachio growers in Iran may benefit from the construction of soil dams, flood barriers, canals, and other irrigation projects undertaken by the government to increase agricultural production. See 51 FR at 8346.

As further discussed above in the "Use of Facts Available" section of this notice, we have determined that the application of adverse facts available is warranted on the grounds that Nima and the GOI did not respond to our request for information. Therefore, we have determined as adverse facts available that this program continues to exist and that Nima received a countervailable benefit during the POR.

To calculate the net subsidy rate under this program, we used the highest rate listed in *In-shell Pistachios* for this program. Accordingly, we preliminarily determine that the net subsidy rate for this program is 7.11 percent *ad valorem*.

E. Technical Support

In *In-shell Pistachios*, the Department found that bounties or grants were provided to growers, processors, or exporters in Iran of pistachios under this program. Specifically, the

Department determined that pistachio growers in Iran receive technical support as part of the GOI's program to support agricultural development, and that this technical support included research projects to improve cultivation techniques, as well as assistance in harvesting, marketing, and the use of fertilizer. See 51 FR at 8346.

As further discussed above in the "Use of Facts Available" section of this notice, we have determined that the application of adverse facts available is warranted on the grounds that Nima and the GOI did not respond to our request for information. Therefore, we have determined as adverse facts available that this program continues to exist and that Nima received a countervailable benefit during the POR.

To calculate the net subsidy rate under this program, we used the highest rate listed in *In-shell Pistachios* for this program. Accordingly, we preliminarily determine that the net subsidy rate for this program is 7.11 percent *ad valorem*.

F. Duty Refunds on Imported Raw or Intermediate Materials Used in the Production of Export Goods

In the *New Shipper Reviews*, we found that there was sufficient information on the record to suggest that duties and levies paid in connection with the importation of intermediate materials used in the production of the exported commodities and goods are refunded to exporters, pursuant to the Third Five Year Development Plan (TFYDP) enacted by the GOI. See the May 8, 2002, Memorandum to Melissa G. Skinner from the Team, re: New Subsidy Allegations, contained in the February 2, 2006, Memorandum to the File from the Team, re: Placing Memos on the Record.

As further discussed above in the "Use of Facts Available" section of this notice, we have determined that the application of adverse facts available is warranted on the grounds that Nima and the GOI did not respond to our request for information. Therefore, we have determined as adverse facts available that this program continues to exist and that Nima received a countervailable benefit during the POR.

This program was alleged for the first time in the *New Shipper Reviews*, and thus was not among the programs addressed in *In-shell Pistachios*.

However, lacking any information from Nima and the GOI on the record of the instant review, we find that the net subsidy rate of 7.11, the highest rate established for individual programs in *In-shell Pistachios*, is the only available information on the record and is therefore, as adverse facts available, the

appropriate rate to apply to this program in these preliminary results. Accordingly, we preliminarily find that the net subsidy rate for this program is 7.11 percent *ad valorem*.

G. Program to Improve Quality of Exports of Dried Fruit

In the *New Shipper Reviews*, we found that there was sufficient information on the record to suggest that pursuant to the Budget Act of 2001 - 2002, the GOI provides financial assistance to exporters of dried fruit and pistachios to assist them in the production of export quality goods. See the May 8, 2002, Memorandum to Melissa G. Skinner from the Team, re: New Subsidy Allegations, contained in the February 2, 2006, Memorandum to the File from the Team, re: Placing Memos on the Record.

As further discussed above in the "Use of Facts Available" section of this notice, we have determined that the application of adverse facts available is warranted on the grounds that Nima and the GOI did not respond to our request for information. Therefore, we have determined as adverse facts available that this program continues to exist and that Nima received a countervailable benefit during the POR.

This program was alleged for the first time in the *New Shipper Reviews*, and thus was not among the programs addressed in *In-shell Pistachios*. However, lacking any information from Nima and the GOI on the record of the instant review, we find that the net subsidy rate of 7.11, the highest rate established for individual programs in *In-shell Pistachios*, is the only available information on the record and is therefore, as adverse facts available, the appropriate rate to apply to this program in these preliminary results.

Accordingly, we preliminarily find that the net subsidy rate for this program is 7.11 percent *ad valorem*.

H. Iranian Export Guarantee Fund

In the 2003 administrative review of raw in-shell pistachios, we found that petitioners had provided sufficient evidence to support their allegation that the GOI pays a "prize" in the form of an export subsidy to exporters; these prizes are payable commensurate with the added value of export goods and services. See the October 27, 2004, Memorandum to Melissa G. Skinner from the Team, re: New Subsidy Allegations, contained in the February 2, 2006, Memorandum to the File from the Team, re: Placing Memos on the Record.

As further discussed above in the "Use of Facts Available" section of this

notice, we have determined that the application of adverse facts available is warranted on the grounds that Nima and the GOI did not respond to our request for information. Therefore, we have determined as adverse facts available that this program continues to exist and that Nima received a countervailable benefit during the POR.

This program was alleged for the first time in *2003 In-shell Pistachios*, and thus was not among the programs addressed in *In-shell Pistachios*.

However, lacking any information from Nima and the GOI on the record of the instant review, we find that the net subsidy rate of 7.11, the highest rate established for individual programs in *In-shell Pistachios*, is the only available information on the record and is therefore, as adverse facts available, the appropriate rate to apply to this program in these preliminary results.

Accordingly, we preliminarily find that the net subsidy rate for this program is 7.11 percent *ad valorem*.

I. GOI Grants and Loans to Pistachio Farmers

In *2003 In-shell Pistachios*, we found that petitioners had provided sufficient evidence to support their allegation that the GOI's Foreign Exchange Reserve Account Board of Trustees agreed to provide both a grant of \$100,000,000 and a \$50,000,000 buyer's credit to Iranian pistachio cooperatives and pistachio farmers. See the May 8, 2002, Memorandum to Melissa G. Skinner from the Team, re: New Subsidy Allegations, contained in the February 2, 2006 Memorandum to the File from the Team, re: Placing Memos on the Record.

As further discussed above in the "Use of Facts Available" section of this notice, we have determined that the application of adverse facts available is warranted on the grounds that Nima and the GOI did not respond to our request for information. Therefore, we have determined as adverse facts available that this program continues to exist and that Nima received a countervailable benefit during the POR.

This program was alleged for the first time in *2003 In-shell Pistachios*, and thus was not among the programs addressed in *In-shell Pistachios*.

However, lacking any information from Nima and the GOI on the record of the instant review, we find that the net subsidy rate of 7.11, the highest rate established for individual programs in *In-shell Pistachios*, is the only available information on the record and is therefore, as adverse facts available, the appropriate rate to apply to this program in these preliminary results.

Accordingly, we preliminarily find that the net subsidy rate for this program is 7.11 percent *ad valorem*.

J. Crop Insurance for Pistachios

In *2003 In-shell Pistachios*, we found that petitioners had provided sufficient evidence to support their allegation that the GOI established the Iranian Agricultural Product Insurance Act (IAPIA), whereby the Agricultural Bank will insure agricultural produce as a means of achieving the goals and policies of the agricultural sector and that the GOI aids farmers in securing insurance premiums at less than market value. See the May 8, 2002, Memorandum to Melissa G. Skinner from the Team, re: New Subsidy Allegations, contained in the February 2, 2006 Memorandum to the File from the Team, re: Placing Memos on the Record.

As further discussed above in the "Use of Facts Available" section of this notice, we have determined that the application of adverse facts available is warranted on the grounds that Nima and the GOI did not respond to our request for information. Therefore, we have determined as adverse facts available that this program continues to exist and that Nima received a countervailable benefit during the POR.

This program was alleged for the first time in *2003 In-shell Pistachios*, and thus was not among the programs addressed in *In-shell Pistachios*. However, lacking any information from Nima and the GOI on the record of the instant review, we find that the net subsidy rate of 7.11, the highest rate established for individual programs in *In-shell Pistachios*, is the only available information on the record and is therefore, as adverse facts available, the appropriate rate to apply to this program in these preliminary results. Accordingly, we preliminarily find that the net subsidy rate for this program is 7.11 percent *ad valorem*.

Preliminary Results of Review

In accordance with 19 CFR 351.221(b)(4)(i), we have calculated an individual subsidy rate for Nima, the only producer/exporter subject to this administrative review, for the POR, *i.e.*, calendar year 2004. We preliminarily determine that the total estimated net countervailable subsidy rate is 71.10 percent *ad valorem*.

As Nima is the exporter but not the producer of subject merchandise, should the final results of this review remain the same as these preliminary results, the Department's final results of review will apply to subject merchandise exported by Nima and

produced by any grower. See 19 CFR 351.107(b).

The Department intends to instruct U.S. Customs and Border Protection (CBP), within 15 days of publication of the final results of this review, to liquidate all shipments of subject merchandise exported by Nima, entered, or withdrawn from warehouse, for consumption during the POR at the rate established in this administrative review.

We will instruct CBP to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order will be the rate for that company established in the most recently completed administrative proceeding. See *Certain In-Shell Pistachios from the Islamic Republic of Iran: Final Results of Countervailing Duty Administrative Review*, 68 FR 41310 (July 11, 2003). These cash deposit rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested.

Public Comment

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within five days after the date of the public announcement of this notice. Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to these preliminary results. Unless otherwise indicated by the Department, case briefs must be submitted within 30 days after the publication of these preliminary results. Rebuttal briefs, which are limited to arguments raised in case briefs, must be submitted no later than five days after the time limit for filing case briefs, unless otherwise specified by the Department. Parties who submit argument in this proceeding are requested to submit with the argument: (1) a statement of the issue, and (2) a brief summary of the argument. Parties submitting case and/or rebuttal briefs are requested to provide the Department copies of the public version on disk. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f). Also, pursuant to 19 CFR 351.310, within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments to be raised in the case and rebuttal briefs. Unless the Secretary specifies otherwise, the hearing, if

requested, will be held two days after the date for submission of rebuttal briefs.

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 351.309(c)(ii), are due. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This administrative review and notice are issued and published in accordance with Sections 751(a)(1) and 777(i)(1) of the Act.

Dated: February 14, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 021506F]

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of Closed Session Scientific and Statistical Committee (SSC) Selection Committee Conference Call.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene its SSC Selection Committee via conference call to select members for an Ad Hoc Shrimp Effort Working Group for recommendation to the Council.

DATES: The conference call will be held on Wednesday, March 8, 2006.

ADDRESSES: The meeting will be held via closed session conference call.

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne Swingle, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 348-1630.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico Fishery Management Council