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C-507-501; C-507-601  
New Shipper Reviews  
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January 24, 2003

**MEMORANDUM TO:** Faryar Shirzad  
Assistant Secretary  
for Import Administration

**FROM:** Bernard T. Carreau  
Deputy Assistant Secretary  
for AD/CVD Enforcement II

**RE:** Countervailing Duty New Shipper Reviews: Certain In-Shell Pistachios (C-507-501) and Certain Roasted In-Shell Pistachios (C-507-601) from the Islamic Republic of Iran

**SUBJECT:** Final Issues and Decision Memorandum

SUMMARY

We have analyzed the comments and rebuttal comments of interested parties in the final results of the above-mentioned countervailing duty (CVD) new shipper reviews covering the period October 1, 2000, through September 30, 2001. As a result of our analysis, we have made certain modifications to our Preliminary Results. Below are the “Methodology and Background Information” and “Analysis of Programs” sections of this memorandum that describe the decisions made in these new shipper reviews. Also below is the “Analysis of Comments” section in which we discuss the issues raised by interested parties.

I. Use of Facts Available

During the course of these proceedings, we have repeatedly sought information pertaining to all companies that are cross-owned and/or affiliated with Maghsoudi Farms, the producer of subject merchandise. See page III-2 of the Department’s January 24, 2002 questionnaire and pages 1 and 2 of the Department’s May 15, 2002 supplemental questionnaire. In addition, we have repeatedly requested information concerning the total sales and sales of subject merchandise made by Maghsoudi Farms during the period of review (POR). See page III-3 of the Department’s January 24, 2002

questionnaire, pages 3 through 5 of the Department's May 15, 2002 supplemental questionnaire, and page 2 of the Department's July 26, 2002 second supplemental questionnaire.

In response to these inquiries, Tehran Negah Nima Trading Company (Nima), the exporter of subject merchandise that responded on behalf of Maghsoudi Farms throughout the proceeding, claimed that the production facilities of Maghsoudi Farms were limited to 250 hectares of farmland outside of Tehran. See page 9 of Nima's March 28, 2002 questionnaire response. However, during verification, the Department learned, for the first time, that Maghsoudi Farms owns and produces pistachios on an additional 23 hectares of farmland in Sirjan, Kerman province. We note that Nima did not provide any information regarding this second farm in any of its questionnaire responses nor did it provide any additional documentation on the farm during verification.

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, Nima and Maghsoudi Farms have failed to provide information regarding Maghsoudi Farms' production facilities in the manner explicitly and repeatedly 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, Nima and Maghsoudi Farms 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 or new shipper review, the statute indicates that the Department may rely upon information derived from (1) a final determination in a countervailing duty or an antidumping investigation; (2) any previous administrative review, new shipper review, expedited antidumping review, section 753 review, or section 762 review; or (3) any other information placed on the record. See 19 CFR §351.308(c) (2001). As adverse facts available in these new shipper reviews, we have relied upon information from the Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: In-Shell Pistachios from Iran, 51 FR 8344 (March 11, 1986) (Raw Pistachios), the Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Roasted In-Shell Pistachios from Iran (Roasted Pistachios), and information submitted onto the records of these new shipper reviews.

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.<sup>1</sup> The SAA further provides that to corroborate secondary information means simply that the Department will satisfy itself that the secondary information to be used has probative value. See also, 19 CFR §351.308(c) (2001).

Thus, in those instances in which it determines to apply adverse facts available, the Department,

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<sup>1</sup> The Statement of Administrative Action accompanying the URAA clarifies that information from the petition is "secondary information." See Statement of Administrative Action, accompanying H.R. 5110 (H. Doc. No. 103-316) (1994) (SAA) at 870.

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 publically 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 is administrative determinations. As a result, if the Department chooses as facts available information based on the Department's prior determinations concerning particular subsidy programs, it is not necessary to question the reliability of the benefit data for that time period.

With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render benefit data not relevant. 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) (where the Department disregarded the highest dumping margin as best information available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin). As discussed in the "Analysis of Comments" section below, the Department was able to confirm during verification that Maghsoudi Farms' (e.g., the farmland containing the 250 hectare plot previously reported to the Department) did not use certain alleged subsidy programs of the Government of the Islamic Republic of Iran (GOI).<sup>2</sup> In those situations, we have limited the application of adverse facts available to the 23 hectares of land that Nima and Maghsoudi Farms failed to report to the Department. Thus, in applying adverse facts available, we have apportioned the net subsidy rate to the additional 23 hectares of land using information on the records of these new shipper reviews as well as information from the final determinations of Raw Pistachios and Roasted Pistachios.<sup>3</sup> For those programs in which the Department was unable to confirm Maghsoudi Farms' non-use as a whole (i.e., both its 250 hectare plot and its 23 hectare plot), we applied adverse facts available and calculated net subsidy rates using those calculated in Raw Pistachios and Roasted Pistachios.<sup>4</sup> The Department's application of adverse facts available is discussed in further detail in the "Analysis of Comments" section below.

## II. Programs Determined to Confer Subsidies

### A. Provision of Fertilizer and Machinery

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<sup>2</sup> The Department has determined that the following GOI programs were not used on Maghsoudi Farm's 250 hectare plot: Provision of GOI Credit, Technical Assistance from the GOI, Duty Refunds on Imported Raw or Intermediate Materials Used in the Production of Exported Goods, and the Program to Improve the Quality of Dried Fruit.

<sup>3</sup> The calculation methodology we used to apportion these subsidies is described below in the "Provision of Credit" section of this memorandum and in the January 24, 2003 Final Calculation Memorandum, a public document on file in room B-099 of the Main Commerce Building.

<sup>4</sup> Specifically, we applied a total adverse facts available approach to two programs: the Provision of Fertilizer and Machinery and Provision of Water and Irrigation programs.

Petitioners<sup>5</sup> have alleged that under this program the GOI provides fertilizer and machinery to the pistachio industry. Based on information supplied by Nima, we preliminarily determined that the Nima companies did not use this program. See Preliminary Results at 56535.<sup>6</sup> However, events that transpired during verification and comments from interested parties have led us to revise our approach to this program in the Preliminary Results. As further discussed in Comment 7 of the “Analysis of Comments” section of this memorandum, we have determined that the application of adverse facts available is warranted on the grounds that the Nima companies did not adequately document their non-use of this non-recurring program in the years prior to the POR and because they failed to divulge in a timely manner the existence of an additional pistachio farm that is owned and operated by Mr. Maghsoudi.

To calculate the net subsidy rates under this program, we used the rates listed in Raw Pistachios and Roasted Pistachios. Accordingly, the net subsidy rates for this program are 7.11 percent ad valorem for the new shipper review on raw pistachios and 6.65 percent ad valorem for the new shipper review on roasted pistachios.

#### B. Provision of Water and Irrigation equipment

Petitioners have alleged that the GOI undertakes the construction of soil dams, flood barriers, canals, and other irrigation projects on behalf of the agricultural sector. Based on information supplied by Nima, we preliminarily determined that the Nima companies did not use this program. See Preliminary Results at 56535. However, events that transpired during verification and comments from interested parties have led us to revise our approach to this program in the Preliminary Results. As further discussed in Comment 9 of the “Analysis of Comments” section of this memorandum, we have determined that the application of adverse facts available is warranted on the grounds that the Nima companies did not adequately document their non-use of this non-recurring program in the years prior to the POR and because they failed to divulge in a timely manner the existence of an additional pistachio farm that is owned and operated by Mr. Maghsoudi.

To calculate the net subsidy rates under this program, we used the rates listed in Raw Pistachios and Roasted Pistachios. Accordingly, the net subsidy rates for this program are 7.11 percent ad valorem for the new shipper review on raw pistachios and 6.65 percent ad valorem for the new shipper review on roasted pistachios.

#### C. Provision of Credit

Petitioners have alleged that the GOI provides loans at below market interest rates to members of the agricultural sector. Based on information supplied by Nima, we preliminarily determined that the

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<sup>5</sup> Petitioners include the California Pistachios Commission and its members and a domestic interested party, Cal Pure Pistachios, Inc.

<sup>6</sup> The term “Nima Companies” comprises Nima (the exporter), Fallah Pistachios (the supplier), and Maghsoudi Farms (the producer).

Nima companies did not use this program during the POR. See Preliminary Results at 56535. However, events that transpired during verification and comments from interested parties have led us to revise our approach to this program in the Preliminary Results. As further discussed in Comment 6 of the “Analysis of Comments” section of this memorandum, we have determined that the application of adverse facts available is warranted on the grounds that Nima failed to divulge in a timely manner the existence of an additional pistachio farm that is owned and operated by Mr. Maghsoudi.

To calculate the benefit under this program, we first derived the kilogram per hectare yield for the pistachios grown at Maghsoudi Farms. To arrive at this yield, we multiplied Maghsoudi Farm’s total production by its total productive hectares (e.g., the 50 hectares at Maghsoudi Farms that contain pistachio trees bearing marketable nuts). Next, we multiplied this yield rate by 23, the number of hectares at the second farm, to arrive at the second farm’s total production. Next, we calculated the second farm’s total sales by multiplying the derived total production of the second farm by the weighted-average unit price charged on the pistachios grown at Maghsoudi Farms. We then calculated the benefit under this program by multiplying the derived total sales of the second farm by the net subsidy rates calculated for this program in Raw Pistachios and Roasted Pistachios.

To calculate the net subsidy rates for this program, we divided the benefits, described above, by the sum of Maghsoudi Farm’s total sales and the derived total sales of the second farm. For further information regarding our calculations, see the January 24, 2003 Final Calculation Memorandum. Accordingly, the net subsidy rates for this program are 2.24 percent ad valorem for the new shipper review on raw pistachios and 2.10 percent ad valorem for the new shipper review on roasted pistachios.

D. Technical Assistance from the GOI

Petitioners have alleged that pistachio growers receive technical support as part of the GOI’s program to facilitate agricultural development. Based on information supplied by Nima, we preliminarily determined that the Nima companies did not use this program during the POR. See Preliminary Results at 56535. However, events that transpired during verification and comments from interested parties have led us to revise our approach to this program in the Preliminary Results. As further discussed in Comment 10 of the “Analysis of Comments” section of this memorandum, we have determined that the application of adverse facts available is warranted on the grounds that Nima failed to divulge in a timely manner the existence of an additional pistachio farm that is owned and operated by Mr. Maghsoudi.

To calculate the benefit and net subsidy rates for this program, we applied the calculation methodology describe above in the “Provision of Credit” section of this memorandum. Accordingly, the net subsidy rates for this program are 2.24 percent ad valorem for the new shipper review on raw pistachios and 2.10 percent ad valorem for the new shipper review on roasted pistachios.

E. Duty Refunds on Imported Raw or Intermediate Materials Used in the Production of Exported Goods

Petitioners have alleged that pursuant to the Third Five Year Development Plan (TFYDP)

enacted by the GOI, 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. Based on information supplied by Nima, we preliminarily determined that the Nima companies did not use this program during the POR. See Preliminary Results at 56535. However, events that transpired during verification and comments from interested parties have led us to revise our approach to this program in the Preliminary Results. As further discussed in Comment 11 of the “Analysis of Comments” section of this memorandum, we have determined that the application of adverse facts available is warranted on the grounds that Nima failed to divulge in a timely manner the existence of an additional pistachio farm that is owned and operated by Mr. Maghsoudi.

To calculate the benefit and net subsidy rates for this program, we applied the calculation methodology describe above in the “Provision of Credit” section of this memorandum. Accordingly, the net subsidy rates for this program are 2.24 percent ad valorem for the new shipper review on raw pistachios and 2.10 percent ad valorem for the new shipper review on roasted pistachios.

#### F. Program to Improve Quality of Exports of Dried Fruit

Petitioners have alleged that pursuant to the Budget Act of 2001 - 2002, the GOI provides money to exporters of dried fruit and pistachios to assist them in the production of export quality goods. Based on information supplied by Nima, we preliminarily determined that the Nima companies did not use this program during the POR. See Preliminary Results at 56535. However, events that transpired during verification and comments from interested parties have led us to revise our approach to this program in the Preliminary Results. As further discussed in Comment 12 of the “Analysis of Comments” section of this memorandum, we have determined that the application of adverse facts available is warranted on the grounds that Nima failed to divulge in a timely manner the existence of an additional pistachio farm that is owned and operated by Mr. Maghsoudi.

To calculate the benefit and net subsidy rates for this program, we applied the calculation methodology describe above in the “Provision of Credit” section of this memorandum. Accordingly, the net subsidy rates for this program are 2.24 percent ad valorem for the new shipper review on raw pistachios and 2.10 percent ad valorem for the new shipper review on roasted pistachios.

### III. Program Determined to Be Not Countervailable

#### Price Supports and/or Guaranteed Purchase of All Production

Petitioners have alleged that the GOI guarantees the purchase price of certain commodities, including pistachios. Based on information supplied by Nima, we preliminarily determined that the Nima companies did not use this program during the POR. See Preliminary Results at 56535. Information collected during verification has led us to determine that this program is not countervailable. For further discussion of this program, see Comment 5 of the “Analysis of Comments” section of this memorandum.

### IV. Programs Determined to Be Not Used

Petitioners have alleged that the GOI provides tax exemptions and exchange rate benefits to agricultural producers and exporters. Based on record evidence, we preliminarily determined the Nima companies did not use the programs listed below during the POR. See Preliminary Results at 56535. No new information, evidence of changed circumstances or comments from interested parties (see Comments 8 and 13 in the “Analysis of Comments” section of this memorandum) were presented in this review to warrant any reconsideration of these findings. Accordingly, we continue to find that the programs listed below were not used:

- A. Tax Exemptions
- B. Export Certificate Voucher Program

V. Total Ad Valorem Rate

We have revised the net subsidy rates that were calculated in the Preliminary Results. The revised net subsidy rates for the Nima Companies are 23.18 percent ad valorem for Raw Pistachios and 21.68 percent ad valorem for Roasted Pistachios.

VI. Analysis of Comments

**Comment 1: Discovery of Additional Farm Does Not Render Nima Ineligible for a New Shipper Review**

Petitioners contend that the new shipper reviews must be rescinded because Nima has failed to establish its eligibility for a new shipper review. Petitioners point out that during verification the Department discovered for the first time that Mr. Maghsoudi, the owner of Maghsoudi Farms owned a second pistachio farm in Sirjan, Kerman province, of Iran, the same province in which Rafsanjan Pistachio Producer Cooperative’s (RPPC) farms are located. While Mr. Maghsoudi has claimed that, while under his ownership, the land in Kerman province has never been associated with RPPC, petitioners assert that he cannot say if the farm was used for production by RPPC before he purchased the land. Petitioners explain that under the statute, upon receipt of a new shipper review request, an exporter or producer of subject merchandise must certify that it did not export merchandise that was the subject of a CVD order during the POI and that such an exporter or producer is not affiliated with any exporter or producer who exported the subject merchandise to the United States during the POI. Petitioners argue that by failing to divulge the existence of an additional farm, Maghsoudi Farms and, therefore, the Nima companies, failed to meet the requirements under the statute for a new shipper review. On this basis, petitioners contend that the Department should rescind these new shipper reviews.

Petitioners further argue that Maghsoudi’s failure to divulge the existence of the second farm precluded the Department from examining affiliations between any relatives of Mr. Maghsoudi and/or Mr. Fallah that were in the pistachio business during the POI. In addition, petitioners argue that the failure to divulge the existence of the second farm, precluded the Department from conducting its “person test,” an analysis in which the Department determines whether subsidies bestowed to a entity

“passed through” to the buyer of that entity upon the entity’s sale. Petitioners explain that in this analysis, the Department examines whether the “person” to whom the subsidies were given is in fact distinct from the current “person.” See petitioners’ citation to Certain Pasta From Italy: Final Results of the Third Countervailing Duty Administrative Review, 66 FR 11269 (February 23, 2001) (Pasta from Italy). Petitioners contend that if Maghsoudi Farms had properly disclosed the existence of the second farm in Kerman, the Department would have needed to conduct the “person test” described above. In light of Maghsoudi’s untimely disclosure of the second farm, the Department was unable to conduct the new shipper reviews in a manner that is consistent with its administrative practice. On this basis, petitioners assert that the Department should rescind the review.

Nima argues that the fact that Mr. Maghsoudi owned one-third of another farm in the Kerman province was entirely unknown to Nima prior to verification. Additionally, Nima maintains that Mr. Maghsoudi’s lack of affiliation with RPPC, as verified by the Department, pertains to his operations on both farms. Furthermore, Nima emphasizes that all the pistachios Maghsoudi Farms sold to Fallah came exclusively from the farm in Saveh county. Also, Nima argues that the Department’s questionnaires did not specifically inquire about any other farms owned by Mr. Maghsoudi.

Petitioners counter that Nima’s claims that it did not know that Mr. Maghsoudi owned an additional farm are irrelevant. They take issue with Nima’s claim that the Department never directly asked about additional farms operated by Maghsoudi Farms. Petitioners argue that the Department posed numerous questions which plainly required Maghsoudi Farms to provide information about all of its production facilities, all production, and exports. Regarding Nima’s claims that Mr. Maghsoudi’s second farm is not affiliated with RPPC, petitioners argue that Nima has not provided any information to support its assertion.

### ***Department’s Position***

We disagree with petitioners that the newly disclosed farm warrants termination of the new shipper reviews because it is located in the region where RPPC operates and, hence, suggests a possible affiliation between the previous owners of the land and RPPC. We note that Exhibits 5.3 through 5.7 of the Nima Verification Report contain correspondence between RPPC and the GOI’s Ministry of Agriculture in which RPPC confirms that Mr. Maghsoudi, along with the owners of Nima and Fallah Pistachio, are not members of its cooperative. We further note that RPPC directs its remarks on non-membership to Mr. Maghsoudi himself, as opposed to limiting its statement of non-membership to Maghsoudi Farms. Thus, based on the information collected at verification, we determine that Mr. Maghsoudi as well as the land owned and/or operated by Mr. Maghsoudi are not affiliated with RPPC.

We also disagree with petitioners’ contention that Mr. Maghsoudi’s failure to divulge the second farm precludes the Department from conducting its “person test.” During the course of these proceedings, we have learned that only two of the six grower subsidy programs at issue in these proceedings, the Provision of Fertilizer and Machinery and the Provision of Water and Irrigation Equipment, involve benefits that could potentially be allocated over time. Thus, any conceivable application of the Department’s “person test” would be limited to these two programs. Regarding these two programs, as explained above in the “Use of Facts Available” section of this memorandum,

because the Nima companies did not divulge the existence of the second farm and Maghsoudi Farms failed to demonstrate its non-use of the two grant programs in the years prior to the POR, we have determined to apply adverse facts available and calculate net subsidy rates equal to those calculated in Raw Pistachios and Roasted Pistachios. Thus, the fact that the Department is already applying adverse facts available to the Provision of Fertilizer and Machinery and the Provision of Water and Irrigation Equipment programs renders moot the issue of whether Maghsoudi Farms' failure to divulge the second farm precluded the Department from conducting its "person test."

We also disagree with Nima's claim that the Department's questionnaires did not instruct Mr. Maghsoudi to report his ownership of any additional farms. As explained in the "Use of Facts Available" section above, we repeatedly requested information concerning the total sales and sales of subject merchandise made by Maghsoudi Farms during the POR. In addition, we repeatedly sought information pertaining to all companies that were affiliated and/or cross-owned with Maghsoudi Farms.

## **Comment 2: Nima's Sale of Subject Merchandise to the United States Is Bona Fide**

Petitioners claim that Nima's single sale of subject merchandise to the United States was not bona fide. Petitioners argue that in such cases as Fresh Garlic from the People's Republic of China, 67 FR 11283 (March 13, 2002) (Fresh Garlic), the Department has established a practice in new shipper reviews in which ". . . the exporter or producer must . . . show that there was a bona fide first sale in the United States." See page 9 of the March 6, 2002 Issues and Decision Memorandum accompanying Fresh Garlic. They further contend that in cases such as Fresh Garlic, the Department has made clear its intention to review the circumstances of sales made in new shipper reviews in their totality. *Id.* at page 9. Petitioners argue that the totality of the facts surrounding Nima's sale compels the Department to find that the sale was not bona fide.

Petitioners claim that Nima Trading Company (NTC) was not established in compliance with Iranian law, and, in order to avoid Iranian laws, NTC made its initial sales to the United States via airplane through another company, Globex. Petitioners argue that the need to engage in acts that were apparently illegal under Iranian law should create suspicion at the outset as to the legitimacy of any activity in which NC and its successor, Nima, engaged.

Regarding the quantity of the sale, petitioners contend that the sale of subject merchandise to the United States, 70 kilograms of raw pistachios and 70 kilograms of roasted pistachios, is atypical for the industry. They argue that the issue of atypical quantities of sale have been a factor in the Department finding a sale not to be bona fide in past cases. See Certain Cut-to-Length Carbon Steel Plate from Romania: Notice of Rescission of Antidumping Duty Administrative Review, 63 FR 47232 (September 4, 1999) (CTL Plate from Romania), *aff'd*, Windmill International Pte., Ltd. v. United States, 193 F. Supp.2d 1303 (Ct. Int'l Trade 2002) (Windmills). Petitioners argue that the fact that Ann's House of Nuts (AHON) characterized Nima's sale as a "test shipment" on its purchase order indicates that the sale was not one AHON would normally seek, and, thus, it is further grounds for the Department to question the bona fides of the sale.

Concerning shipping, petitioners contend that everything about Nima's sale was artificially driven by concern over the high cost of transporting the subject merchandise by air, a mode of transport that petitioners claim is not the norm in the pistachio industry. Petitioners further argue that

Nima's selected mode of transport was not selected for commercial reasons but rather solely for the purposes of ensuring that subject merchandise would enter the United States within the period required to quality for a new shipper review.

In further support of their contention that Nima's sale was not bona fide, petitioners contend that the terms offered by Maghsoudi Farms (the grower) to Fallah Pistachios (the supplier) and from Fallah Pistachios to Nima (the exporter) were much lower than the sales prices offered to other customers of Maghsoudi Farms and Fallah Pistachios. Specifically, petitioners point out that Maghsoudi Farms offered a price that was 20 percent lower than the ones provided to its other customers. Additionally, petitioners highlight that Fallah Pistachios charged uniform prices to all of its customers, in spite of the fact that Nima's purchase was significantly smaller than the purchases of Fallah Pistachios' other customers. Petitioners contend that the pricing patterns are atypical and constitute terms outside of normal commercial consideration.

Petitioners argue that the fact Nima did not use ordinary commercial channels in making and converting the foreign currency obtained in the sale is further proof that the sale is not bona fide. Petitioners claim that rather than using banks and the GOI's Export Certificate Program, Nima used a foreign exchange service, A. Khamooshpour Capital Services, for purposes of handling the proceeds from the sale to AHON. Petitioners discount Nima's claim that it was unable to conduct the sale through normal banking channels due to the lack of normal relations between the United States and Iran on the grounds that their claim is contradicted by statements made by the GOI during verification. Petitioners explain that during verification, the GOI stated that in order to prevent capital flight, ". . . Iranian exporters were required to deposit their foreign currency earnings with the Iranian banking system." Petitioners contend that the fact that Nima used a foreign exchange service, as opposed to normal banking channels, is indicative of the fact that Nima's sale was not a genuine commercial transaction.

Petitioners also assert that Nima's sale is not bona fide on the grounds that the company has not had any prior, concurrent, or subsequent commercial activity since its sale of subject merchandise to the United States and appears to have been established for the sole purpose of making a test sale. Petitioners further claim that Nima's lack of formal accounting records suggests that it was not established with the intention of becoming an ongoing concern. In support of this contention, petitioners point to the fact that the last entry in Nima's account book, a payment to Nima's president, plunged the company into a cash loss position.

In summary, petitioners argue that based upon the circumstances of the sale, taken in their totality, the Department should conclude that Nima did not make a bona fide sale during the POR and, thus, rescind Nima's new shipper review.

Nima rebuts petitioners' position, arguing that its sale to AHON was a bona fide sale. Nima contends that the quantity of the exported subject merchandise was directly related to the existing countervailing and antidumping duties and the lack of any normal commercial relations between Iran and the United States during the past two decades. Additionally, Nima contends that the price of the pistachios sold to AHON was not affected by the cost of transportation, as AHON was responsible for the cost of transportation, by air or by sea. Moreover, Nima argues that the price Maghsoudi Farms charged Fallah Pistachios and the price Fallah Pistachios charged Nima were solely determined by the fluctuations in the markets for pistachios in Iran. Respondents point out that such prices may change on

a daily basis, and seasonal price fluctuations before and after the harvest are particularly significant in explaining price differentials.

Furthermore, Nima maintains that, in the absence of regular financial intermediaries between the United States and Iran, Nima did not have any other choice but to transfer the funds through the existing informal channels, *i.e.*, through Khamooshpour Capital Services, which respondents assert was among the few existing channels available to Nima.

### *Department's Position*

The Department disagrees with petitioners' contention that Nima's sales of subject merchandise to the United States were not bona fide.<sup>7</sup> The Department finds that the totality of the evidence on the record of these proceedings supports a finding that Nima's sale to the United States was a bona fide transaction. With respect to petitioners' argument regarding quantity, while we note that the quantity sold by Nima appears to be small compared to stated industry standards, established Department practice provides that the size of a transaction is not sufficient, in and of itself, to warrant a finding that the transaction is not bona fide. The Department has stated that "single sales, even those involving small quantities, are not inherently commercially unreasonable and do not necessarily involve selling practices atypical of the parties' normal selling practices." See Certain Cut-to-Length Carbon Steel from Romania: Notice of Rescission of Antidumping Duty Administrative Review, 63 FR 47234 (September 4, 1998). Moreover, regarding AHON's characterization of the sale as a test sale, the Department has found small quantity sales (*e.g.*, test sales) to be bona fide in previous new shipper reviews. See American Silicon Tech v. U.S., 110 F Supp. 2d. 992, 996 (Ct. Int'l Trade 2000) (American Silicon Tech). While the small quantity of Nima's United States sale is of concern, the Department finds no evidence that Nima's sale to the United States was commercially unreasonable or involved selling practices atypical for a new shipper of pistachios (*see* discussion below). Therefore, the Department finds that the small quantity involved in Nima's United States sale does not, in and of itself, render the sale not bona fide.

Regarding petitioners' argument that Nima is not a legitimate commercial enterprise, the Department finds no evidence on the record to this effect. The fact that a new shipper is a newly formed entity does not mean it is not a legitimate commercial enterprise. Indeed, at verification, the Department confirmed that Nima was a legally registered entity in Iran and that its account book was stamped by the Ministry of Economy and Finance. Nor does the fact that Nima was created to pursue opportunities in the U.S. pistachio market render the entity illegitimate. While it is true that Nima does not have an established history in selling pistachios to the United States, the Department notes that Nima's U.S. customer and the importer of subject merchandise, AHON, is an established distributor of

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<sup>7</sup> Nima's sale of raw and roasted pistachios to the United States was made in a single sales transaction. We note that the portion of this sales transaction covering raw pistachios was analyzed in the Antidumping New Shipper Review of Certain Raw In-Shell Pistachios from Iran. In that proceeding, the Department reached the same conclusion, that Nima's sale of subject merchandise was bona fide. See page 5 of the December 26, 2002 Issues and Decision Memorandum that accompanied the Notice of Final Results of Antidumping Duty New Shipper Review, 68 FR 351 (January 3, 2003).

nuts in the U.S. market. There is no evidence on the record to indicate that the transaction between Nima and AHON was not a commercially reasonable transaction.

While petitioners have argued that Nima's apparent predecessor, NTC, was not established and did not operate in compliance with Iranian law, the Department notes that a formal successor-in-interest analysis was neither requested nor undertaken in these reviews. Moreover, the Department is reviewing only sales by Nima in the instant proceedings. Absent a finding that Nima is the successor-in-interest to NTC, NTC's behavior and sales practices are not relevant in the context of these reviews. With respect to petitioners' arguments that Nima's company funds were depleted after the U.S. sale took place, the Department does not find that this fact necessarily speaks to the bona fides of the U.S. sale. While company officials may have decided for a variety of reasons to draw down company funds, there is no additional evidence that the company is not operational or defunct. Indeed, it is not unreasonable that a new shipper formed solely for the purpose of selling subject merchandise to the United States would await the outcome of the Department's reviews before proceeding with additional sales to the U.S. market. Regarding petitioners' argument that Nima used a foreign exchange dealer rather than a commercial bank to convert its U.S. sale proceeds, the Department accepts respondent's argument that the lack of formal banking and financial relations between the United States and Iran necessitated the involvement of a third-party exchange service.

Regarding petitioners' argument that the prices charged by the grower and supplier of subject merchandise to each other and to Nima appear to be based on preferential terms, the Department does not find this argument persuasive. Many factors in addition to the volume of a given sale may be factored into the price set by the seller. Although a price differential may exist in this case, it does not differ to such a degree that the Department may presume that, on this basis alone, a bona fide commercial transaction did not exist. The fact that prices among these parties may be slightly lower than prices charged to other customers is not, in itself, indicative of affiliation or price collusion, nor is it sufficient to find that the transactions were not at arms-length. There is no evidence on the record to suggest that the sale between Nima and its U.S. customer was made at a commercially unreasonable price. Therefore, we do not find that the prices charged by the grower and supplier to each other and to Nima support a finding that Nima's sale to the United States is not bona fide.

Finally, with respect to the issue of air freight and its effect on price and quantity of the U.S. sale, we acknowledge that the record indicates that transportation costs played a factor in determining the final quantity of the sale. We do not find evidence on the record of these reviews, however, that the unit price established between Nima and AHON was in any way affected by the costs of transportation. It is reasonable that a customer purchasing goods on an FOB basis would consider freight costs in determining the final quantity of goods he intends to purchase, as he is responsible for those costs. Absent any evidence that the unit price of subject merchandise was in some way affected, and/or distorted, by the transportation costs borne by the U.S. customer, we do not find this argument persuasive. As discussed above, the Department has stated and the Courts have upheld that a small quantity test sale/shipment is not necessarily contrary to normal business considerations. See American Silicon Tech, 110 F. Supp. 2d. at 996. Absent evidence that the sale to AHON was distorted or unreflective of normal business practice, the fact that it may have been a small shipment sent via air freight does not warrant a finding that the sale is not bona fide.

In summary, while the Department notes that the small quantity of the U.S. sale is of concern,

and that transportation costs were a factor in establishing the final quantity to be sold, we do not find, based on the totality of evidence on the record, that Nima's sale to AHON was conducted contrary to normal business practices. Given the absence of any evidence that the price between Nima and AHON is distorted or that Nima and AHON are not legitimate enterprises, we do not find the sale in question to be commercially unreasonable. As a result, for purposes of these new shipper reviews, we find Nima's U.S. sale to be a bona fide transaction and have determined that rescission of these reviews is therefore unwarranted.

### **Comment 3: Application of Adverse Facts Available to Grower-Related Subsidies**

If the Department determines that Nima made a bona fide sale of subject merchandise during the POR, petitioners argue that the Department should apply adverse facts available to all grower-related subsidies alleged in the new shipper reviews and calculate net subsidy rates equal to those calculated in Raw Pistachios and Roasted Pistachios. Petitioners argue that the Department is justified in applying adverse facts available because Nima repeatedly failed to provide information regarding Maghsoudi Farms' production facilities. Petitioners point out that the Department requested information on Maghsoudi Farms' production facilities in three separate questionnaires. However, in spite of these repeated inquiries, petitioners charge that it was not until verification that the Department became aware of the fact that Maghsoudi Farms owns a second 23 hectare pistachio farm in Sirjan, in the Kerman province of Iran. See page 11 of Nima's December 4, 2002 Verification Report (Nima Verification Report). Petitioners further add that Nima never notified the Department of any difficulty in answering such questions, nor requested assistance in answering these questions. Therefore, petitioners contend that Nima and Maghsoudi Farms failed to cooperate to the best of their ability. As Nima and Maghsoudi Farms failed to divulge the existence of the additional farm, petitioners argue that the Department should determine, on the basis of adverse facts available, that all grower-related subsidy programs alleged in these new shipper reviews are countervailable and, accordingly, calculate net subsidy rates equal to those applied in the original Raw Pistachios and Roasted Pistachios.

The Nima companies did not comment on this issue.

### ***Department's Position***

The Department agrees with petitioners that respondents failed to provide complete information regarding the existence of the additional farm, and, therefore, the application of adverse facts available is warranted. As explained above in the "Use of Facts Available" section of this memorandum, we are applying adverse facts available and using net subsidy rates equal to those calculated in Raw Pistachios and Roasted Pistachios for two of the six grower programs at issue in these new shipper reviews, the Provision of Fertilizer and Machinery and the Provision of Water and Irrigation Equipment, on the grounds that Maghsoudi Farms failed to disclose the existence of its second farm and because Maghsoudi Farms failed to demonstrate that its 250 hectare plot did not benefit from the programs in the nine years preceding the POR.

However, with respect to the remaining four grower subsidy programs, the Department was able to confirm during verification that Maghsoudi Farms (e.g., the farmland containing the 250 hectare

plot previously reported to the Department) did not use these programs and, thus, has determined that the application of total adverse facts available to these programs is inappropriate.<sup>8</sup> Regarding the use of certain information obtained during an administrative proceeding, we note that section 782(e) of the Act provides that:

In reaching a determination. . . the administering authority and the Commission shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority or the Commission if -

- (1) the information is submitted by the deadline established for its submission
- (2) the information can be verified
- (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination
- (4) the interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by the administering authority or the Commission with respect to the information, and
- (5) the information can be used without undue difficulties

In this case, we determine that the Nima companies met the criteria necessary for us to consider the information they submitted regarding Maghsoudi Farms' 250 hectare plot. Specifically, we find that the information the Nima companies submitted regarding this land was (1) timely, (2) verifiable, (3) able to serve as a reliable basis on which to base our Final Results, (4) provided in a manner that demonstrated that the Nima companies were acting to the best of their ability to meet the requirements established by the Department, and (5) was not unduly difficult to use. Thus, because the information pertaining to Maghsoudi Farms' 250 hectares of land meets the requirements enumerated by section 782(e) of the Act, the Department has determined to limit its application of adverse facts available to the second farm, the existence of which was not divulged prior to verification. Thus, with respect to the remaining four grower subsidy programs, we have limited our application of adverse facts available to the additional 23 hectares of land and have apportioned the net subsidy rates calculated in Raw Pistachios and Roasted Pistachios accordingly. For more information on the subsidy calculations, see the January 24, 2003 Final Calculation memorandum.

#### **Comment 4: Undisclosed Benefits Relating to Maghsoudi Farms' Land Title**

Petitioners assert that Mr. Maghsoudi was able to obtain his 250 hectare plot of farmland without having to pay 200 million rials for the official title. See Nima Verification Report at page 10.

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<sup>8</sup> The remaining four grower subsidy programs are: Provision of GOI Credit, Technical Assistance from the GOI, Duty Refunds on Imported Raw or Intermediate Materials Used in the Production of Exported Goods, and the Program to Improve the Quality of Dried Fruit.

They argue that this lack of payment to the GOI constitutes a benefit in the form of debt forgiveness. On the matter of specificity, while the Department's regulations provide that agricultural subsidies are not deemed to be specific solely because they are bestowed to the agricultural sector, petitioners contend that there is no indication that the 200 million rial subsidy pertained to the agricultural sector. They further contend that there is no question that the subsidy was specific to the 250 hectares of farmland in question.

In addition, petitioners argue that the Department asked the GOI in its questionnaire whether it provided direct or indirect benefits/subsidies to any of the Nima companies. See, e.g., the Department's January 18, 2002 initial questionnaire. Because Nima and Maghsoudi Farms did not disclose the fact that Mr. Maghsoudi did not pay the 200 million rial for the land title, petitioners argue that the Department must terminate the new shipper reviews. If, however, the Department determines not to terminate the review, petitioners argue that the Department should find the lack of payment countervailable and calculate net subsidy rates on the basis of adverse facts available. Petitioners argue that in Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Carbon and Certain Alloy Steel Wire Rod from Brazil, 67 FR 55805 (August 30, 2002) (Wire Rod from Brazil), the Department encountered a similar fact pattern involving debt forgiveness that was discovered at verification. Specifically, petitioners claim that in Wire Rod from Brazil the Department applied adverse facts available because the forgiveness of debt was not divulged prior to verification.

The Nima companies did not comment on this issue.

### ***Department's Position***

During verification, we learned that a Mr. Hamidi was the first individual owner of the 250 hectares that are now Maghsoudi Farms. Mr. Hamidi obtained the property from the Seven-Member Land Distribution Committee (SMLDC). The SMLDC is a GOI organization formed in 1979 that redistributes uncultivated land to individuals in Iran. Although Mr. Hamidi received the land for free from the SMLDC, it required a 200 million rial payment for the title, a payment that Mr. Hamidi never made. In 1993, Mr. Hamidi sold the land to Mr. Maghsoudi for 300 million rials. This payment did not include the title. Since that time, Mr. Maghsoudi has operated the land as his own, despite the fact that he has not paid the GOI 200 million rials for the title. See pages 10 and 11 of the Nima Verification Report.

Petitioners argue that the fact that Mr. Maghsoudi was able to obtain the land without having to pay for the 200 million rial title constitutes a countervailable subsidy. We disagree on the grounds that the facts on the record do not indicate that the alleged subsidy is specific. Section 351.502 of the Department's CVD Regulations states that the Department will not regard a subsidy as specific under section 771(5A)(D) of the Tariff Act of 1930, as amended, solely because the subsidy is limited to the agricultural sector. The Preamble to the CVD Regulations goes on to state that in order for an agricultural subsidy to be countervailable, it must be specific within the agricultural sector itself. See Preamble, Countervailing Duties; Final Rule, 63 FR at 65359 (November 25, 1998). Thus, in order for the outstanding payment on the title to be countervailable, the SMLDC would have to offer such terms of sale in a manner that is specific to the Iranian pistachio industry. However, nothing on the

record of these proceedings indicates that the terms of the SMLDC's land redistribution scheme conferred benefits that were specific to the pistachio industry. In fact, pistachio trees were not even planted on the land in question until after Mr. Maghsoudi purchased the land from Mr. Hamidi.

**Comment 5: Application of Adverse Facts Available to the Price Supports and/or Guaranteed Purchase of Production Program**

Petitioners explain that the GOI provided the Department with a document that purportedly established that the pistachio industry did not benefit from this program during the POR. See Exhibit 7 of the GOI's December 4, 2002 Verification Report (GOI Verification Report). However, petitioners claim that this document only details the benefits granted under this program through the year 2000 (a time period covered under the Second Five Year Development Plan (SFYDP), which only includes the first three months of the POR). As the GOI has provided no information covering the last nine months of the POR to support its contention that it provided no benefits to the pistachio industry, petitioners contend that the Department must apply adverse facts available and, accordingly, find that Nima received countervailable benefits under this program in an amount equal to the net subsidy rates calculated in Raw Pistachios and Roasted Pistachios.

The Nima companies did not comment on this issue.

***Department's Position***

We disagree with Petitioners. Specifically, at verification we learned that the GOI has a system in place that ensures price floors on certain commodities, limited to essential goods, in Iran. GOI officials provided us copies of the relevant legislation. We noted that commodities to which the price floors applied did not include the pistachio industry. See page 4 and Exhibit 7 of the December 4, 2002 GOI Verification Report (GOI Verification Report). Thus, based on information collected during verification, we determine that this program does not provide benefits to the pistachio industry and, therefore, is not countervailable. As such, petitioners' assertion, that Exhibit 7 of the GOI Verification Report leaves nine months of the POR unsupported in terms of proving that it provided no benefits, is irrelevant.

**Comment 6: Application of Adverse Facts Available to the Provision of GOI Credit Program**

Petitioners explain that the GOI provided the Department with a document from the Bank of Export Promotion stating that it did not provide Nima any loans during the period January 2001 through October 2002. See GOI Verification Report at Exhibit 1. Petitioners argue that the report is incomplete because it does not cover the first three months of the POR and does not address whether Fallah Pistachios and Maghsoudi Farms received any loans from the GOI. Petitioners contend that the GOI's failure to provide information for the entire POR and the lack of evidence pertaining to any loans that may have been issued to Fallah Pistachios and Maghsoudi Farms warrants the application of adverse facts available. Accordingly, petitioners argue that the Department should find the provision of credit program countervailable and calculate net subsidy rates equal to those calculated in Raw

Pistachios and Roasted Pistachios.

Nima argues that Maghsoudi Farms has not received any loans from any bank.

***Department's Position***

We disagree with petitioners. In addition to obtaining information from the GOI that indicates the Nima companies' non-use of this program during the period January 2001 through October 2002, we questioned officials for Nima, Fallah Pistachios, and Maghsoudi Farms regarding any outstanding debt or loans they might have received from the GOI. All responded that they had neither outstanding debt nor loans, from the GOI or any other source. In addition, we reviewed Nima's accounting ledger and bank statement and found no evidence of outstanding debt or loans. See page 15 and Exhibits 1 and 12 of the Nima Verification Report. We also reviewed Fallah Pistachios' cost book, and found nothing to indicate that Fallah Pistachios had any outstanding debt or loans. See page 15 of the Nima Verification Report. Finally, we reviewed Maghsoudi Farms' cost book and found no evidence or outstanding debts or loans for his 250 hectare plot. Id. Based on this evidence, we determine that this program, as it applies to Nima, Fallah Pistachios, and Maghsoudi Farms' 250 hectare plot, was not used during the POR.

The Department agrees with petitioners that respondents failed to provide complete information with respect to Maghsoudi Farms' additional 23 hectare plot, and, therefore, the application of partial adverse facts available is warranted. Accordingly, we have applied the adverse facts available calculation methodology to the second farm as explained in the "Use of Facts Available" and "Provision of Credit" sections above.

**Comment 7: Application of Adverse Facts Available to the Provision of Fertilizer and Machinery Program**

Petitioners charge that the information supplied by the GOI regarding this program is incomplete. While the GOI stated during verification that this program was eliminated in 1992 with the enactment of the SFYDP, the GOI failed to provide documentation corroborating this statement as requested by the Department. See GOI Verification Report at page 4. In addition, petitioners argue that the documents provided by Maghsoudi Farms pertain only to whether it received non-recurring benefits during the POR and, thus, provide the Department with no information on whether it received such benefits during the 9 years preceding the review period. Lacking this critical information from the GOI and Maghsoudi Farms, petitioners contend that the Department should apply the use of adverse facts available. Accordingly, they argue that the Department should find the provision of fertilizer and machine program countervailable and calculate net subsidy rates equal to those calculated in Raw Pistachios and Roasted Pistachios.

The Nima companies did not comment on this issue.

### ***Department's Position***

We agree with petitioners. Prior to verification, the Department believed that the Provision of Fertilizer and Machinery Program was an adequate remuneration program, with recurring benefits, which would be countervailed in full the year they were received. At verification, we discovered that the program had the purpose of providing subsidized machinery and fertilizers to the agricultural industry, including the pistachio industry. See GOI Verification Report at 4. This description renders the program more akin to a grant program, with non-recurring benefits, which would require respondents to provide information for the nine years preceding the POR as well as information pertaining to the POR. During verification, Maghsoudi Farms failed to provide us with information regarding whether it received benefits from the Provision of Fertilizer and Machinery Program for the nine years preceding the review period. Therefore, the Department finds the application of adverse facts available is warranted for the Provision of Fertilizer and Machine program, and has applied the adverse facts available calculation methodology as explained in the "Use of Facts Available" section above.

We note that during verification, the GOI claimed that this program was terminated with the enactment of the SFYDP. However, the GOI was unable to provide the necessary documentation to support its claim by the deadline set by the Department. See page 4 of the GOI Verification Report. The Department will reconsider the GOI's claims regarding the termination of this program in any subsequent proceeding provided that the GOI supports its claim with the appropriate documentation (*i.e.*, copies of the legislation that terminated the program).

### **Comment 8: Application of Adverse Facts Available to the Tax Exemption Program**

Petitioners contend that there is nothing in Nima's accounting ledger or bank statement that indicates that Nima did not have any taxable income during the review period. Petitioners argue that Nima's financial records are a random assortment of expenses and revenues and should not be expected to reflect all of Nima's financial activity during the POR. Thus, petitioners claim that the financial records provided by Nima during verification do not represent an accurate means for determining whether it received a tax exemption. Petitioners further argue that Nima did not provide, nor did the Department request, any confirmation from the Iranian Ministry of Finance and Economy (MOFE) regarding Nima's claim that it did not have taxable income during the POR. Petitioners argue that without confirmation of Nima's tax-loss status by the GOI, the Department is unable to determine whether Nima received benefits under this program. In the absence of this information, which petitioners charge Nima failed to provide, petitioners assert that the Department should apply the use of adverse facts available. Accordingly, they argue that the Department should find the tax exemption program countervailable and calculate net subsidy rates equal to those calculated in Raw Pistachios and Roasted Pistachios.

Respondents rebut petitioners' statements, arguing that Nima's financial records were properly registered and submitted to the Iranian tax authorities. Respondents maintain that Nima did not have any taxable income.

### ***Department's Position***

We disagree with petitioners' contention that Nima's records are so rudimentary as to be unreliable. As further explained in Comments 15 and 16 below, the Department recognizes that the small firms like the Nima companies will have unsophisticated accounting and record-keeping systems. Furthermore, we find that there is no evidence on the record of these proceedings to indicate that the Nima companies' information (*i.e.*, Nima's account book) is inaccurate or distorted.

We also disagree with petitioners that the Department should apply facts available to this program. During verification, we reviewed Nima's account ledger and found nothing to suggest that Nima used this program. See page 15 of the Nima Verification Report. In addition, during verification, we learned that Iranian companies must submit a copy of their account books to the MOFE so that it can confirm that companies have properly reported their taxable income. We note that Nima's account book bears a stamp from the MOFE indicating that it had been submitted to the ministry for review. Thus, based on the information submitted on the record by the Nima companies and on the information collected and reviewed during verification, we find that this program was not used.

### **Comment 9: Application of Adverse Facts Available to the Water and Irrigation Program**

Petitioners contend that, with respect to this program, Nima and the GOI have repeatedly failed to provide the information requested by the Department. Regarding the questionnaire responses of the GOI, petitioners charge that, in addition to refusing to respond to several of the Department's questions, the GOI failed to submit requested translations to the Department. Moreover, petitioners contend that while the GOI claimed that this program was terminated in 1992 with the enactment of the SFYDP, it failed to provide the necessary corroborating documents before the November 25, 2002 deadline established by the Department. In light of Nima's and the GOI's refusal to respond to the Department's questions as well as the GOI's inability to corroborate its claims about this program with the appropriate documentation, petitioners argue that the Department should apply adverse facts available. Accordingly, they argue that the Department should find the Provision of Water and Irrigation Program countervailable and calculate net subsidy rates equal to those calculated in Raw Pistachios and Roasted Pistachios.

The Nima companies did not comment on this issue.

### ***Department's Position***

We agree with petitioners. Though Maghsoudi Farms receives all of its water from wells located on-site (for the 250 hectare plot), officials from Maghsoudi Farms were unable to provide documentation showing that it had not received grants or capital inputs regarding irrigation equipment for its 250 hectare plot in the nine years preceding the POR.<sup>9</sup> In addition, Maghsoudi Farms' failure to

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<sup>9</sup> Regarding the Provision of Water and Irrigation Program, we note that on page 12 of our November 4, 2002 verification outline, we instructed Maghsoudi Farms to be prepared to demonstrate during verification that it had not received any grants or capital inputs related to water and irrigation equipment in the years preceding the

disclose the existence of its second 23 hectare plot prior to verification made it impossible for the Department to adequately determine whether the second farm received non-recurring benefits under this program in the nine years preceding and during the POR. Therefore, we determine that the application of adverse facts available is warranted for the Water and Irrigation Program, and have applied the adverse facts available calculation methodology as explained in the “Use of Facts Available” section above.

We note that during verification, the GOI claimed that this program was terminated with the enactment of the SFYDP. However, the GOI was unable to provide the necessary documentation to support its claim by the deadline set by the Department. See page 6 of the GOI Verification Report. The Department will reconsider the GOI’s claims regarding the termination of this program in any subsequent proceeding provided that the GOI supports its claim with the appropriate documentation (i.e., copies of the legislation that terminated the program).

### **Comment 10: Application of Adverse Facts Available to the Technical Assistance Program**

Petitioners contend that Nima and the GOI have repeatedly failed to respond in a meaningful way to the Department’s questions on this program. Moreover, petitioners assert that in those instances where the GOI has chosen to respond, it has either concluded, on its own, that the program is “not specific,” as it in its July 1, 2002 supplemental questionnaire response, or merely claimed, as it did at verification, that it is not necessary to provide technical assistance to members of an industry as uncomplicated as pistachios. See page 7 of the GOI’s Verification Report. Petitioners argue that Nima’s and the GOI’s refusal to adequately respond to the Department’s questionnaires as well as the GOI’s inability to corroborate its claims as they pertain to this program warrant the application of adverse facts available. Accordingly, petitioners contend that the Department should find the Technical Assistance program countervailable and calculate net subsidy rates equal to those calculated in Raw Pistachios and Roasted Pistachios.

The Nima companies did not comment on this issue.

### ***Department’s Position***

We disagree with petitioners that, with respect to this program, the Department should apply adverse facts to Maghsoudi Farms’ 250 hectare plot. During verification, we reviewed the financial records of Nima, Fallah Pistachios, and Maghsoudi Farms (with respect to its 250 hectare plot), and found nothing to indicate use of this program. See Nima Verification Report at 16.

We agree with petitioners that respondents failed to provide complete information with respect to Maghsoudi Farms’ additional 23 hectare plot, and, therefore, the application of partial adverse facts available is warranted for this program. Accordingly, we have applied the adverse facts available calculation methodology to the second farm as explained in the “Use of Facts Available” and “Provision of Credit” sections above.

**Comment 11: Application of Adverse Facts Available to the Program for Imported Raw or Intermediate Materials Used in the Production of Exported Goods**

Petitioners explained that at verification the GOI confirmed that this program was in effect during the POR and that imports used in the production of agricultural goods, including pistachios, would be exempted from import duties as long as the imports were materials for intermediate goods. See GOI Verification Report at page 7. While the GOI claimed that agricultural sector would not need to import fertilizer, an input used in the production of pistachios and covered by the program, petitioners claim that the GOI has failed to provide any documentation substantiating these claims. Petitioners argue that the GOI's inability to substantiate its claims regarding this program warrant the application of adverse facts available to Maghsoudi Farms as a whole and a countervailable finding.

The Nima companies did not comment on this issue.

***Department's Position***

We disagree with petitioners' contention that the Department should apply adverse facts available to both the 250 hectare and 23 hectare plots. At verification, we reviewed Maghsoudi Farms' cost book and found nothing to indicate that it had used any imported raw or imported intermediate materials in the production of his pistachios at the 250 hectare plot. In fact, our review of Maghsoudi Farms' financial records indicates that it hires out most of his labor and machinery. See Nima Verification Report at 16.

The Department agrees with petitioners that adverse facts available is warranted with respect to the second farm because Maghsoudi Farms failed to report the existence of the farm prior to verification. Accordingly, we have applied the adverse facts available calculation methodology to the second farm as explained in the "Use of Facts Available" and "Provision of Credit" sections above.

**Comment 12: Application of Adverse Facts Available to the Program to Improve Quality of Exports of Dried Fruit**

Petitioners argue that the GOI has repeatedly failed to respond to the Department's questions that pertain to this program. While the GOI agreed to try to provide the Department with a translated section of the law governing this program before the Department's November 25, 2002, deadline, it failed to do so. Absent any documentation from the GOI regarding this program, petitioners assert that the Department must apply the use of adverse facts available to the Nima companies as a whole and find this program countervailable.

Respondents maintain that the provision to draft and implement this program was stipulated in the Budget Act of 2001-2002. Moreover, they assert that there is no doubt that the GOI will eventually provide the Department with the requested information, as the GOI has proven its good faith and full cooperation in response to the instant reviews.

### ***Department's Position***

We disagree with petitioners' contention that the Department should apply adverse facts available to Nima, Fallah Pistachios, and Maghsoudi Farms' 250 hectare plot. We reviewed Nima's accounting ledger and sales invoices, and found nothing that indicated use of this program. See Nima Verification Report at Exhibit 1 and 3. We also reviewed Fallah Pistachios' cost book and sales records, and found no evidence to suggest use of this program. See Nima Verification Report at Exhibit 15. In addition, we reviewed Maghsoudi Farms' sales invoices and cost book for the 250 hectare plot and, again, found nothing to indicate use of this program. See Verification Report at Exhibit 7.

However, the Department agrees with petitioners that respondents failed to provide complete information with respect to Maghsoudi Farms' additional 23 hectare plot, and, therefore, the application of partial adverse facts available is warranted for this program. Accordingly, we have applied the adverse facts available calculation methodology to the second farm as explained in the "Use of Facts Available" and "Provision of Credit" sections above.

We note that during verification, the GOI claimed that the enacting legislation clearly demonstrates that this program pertained exclusively to dried fruit, which is non-subject merchandise. However, the GOI was unable to provide the necessary documentation to support its claim by the deadline set by the Department. See page 7 of the GOI Verification Report. The Department will reconsider the GOI's claims regarding the scope of this program in any subsequent proceeding provided that the GOI supports its claim with the appropriate documentation (*i.e.*, copies of the legislation that describes the products and industries covered by the program).

### **Comment 13: Application of Adverse Facts Available to the Export Certificate Voucher Program**

Petitioners explain that throughout the proceeding Nima has claimed that it did not receive an export certificate voucher, or variznameh, for its sale to AHON during the POR. However, petitioners contend that Nima's translated accounting ledger contains a line item titled "variznameh." See Exhibit 1 of the Nima Verification Report. Petitioners state that it appears that during verification the Department used Nima's bank statements to determine whether the company used the program rather than reviewing its account ledger. Petitioners contend that without the clarification that a more thorough review of Nima's account ledger would have provided, the Department must assume that Nima used this program and benefitted from exchange rate gains and early deposit rewards during the POR.

Nima argues that it did not use the variznameh program. In addition, it argues that, as verified by the Department, there were three exchange rates in effect in Iran during the POR. In addition, Nima asserts that it did not use any variznameh during the POR. Nima further contends that the exchange rate it utilized was the free market rate of approximately \$1 to 8000 rials.

Petitioners take issue with Nima's claim that it did not use the variznameh program. Petitioners

point out that Nima's translated account book contains a specific line item for a variznameh. Given this discrepancy between Nima's questionnaire response and its business records, the Department must assume that Nima participated in the program and benefitted from the exchange rate gains and/or early deposit reward.

### ***Department's Position***

In our Preliminary Results, we found that this program was not used. At verification, we closely examined this issue and confirmed that the Nima companies did not receive or use any export certificates during the POR (see Nima Verification Report at 14). Therefore, we continue to find that this program was not used.

Regarding petitioners' contention that Nima's translated accounting ledger contains a line item titled "variznameh" and that the Department should have reviewed the company's account ledger instead of its bank statements, we note that we conducted a thorough and accurate review of pertinent documents while at verification. Moreover, as explained by Nima in its questionnaire responses, this line item refers to the fee paid for an export certificate pursuant to an agreement companies enter into with the Iranian Central Bank to return their foreign currency earnings to the government, and not to a benefit-earning export voucher. (See, e.g., page 3 of the GOI's August 26, 2002, supplemental questionnaire response; page 6 of Nima's August 9, 2002, supplemental questionnaire response; and pages 15-17 of Nima's July 1, 2002, supplemental questionnaire response).

We note that throughout these proceedings, the GOI has submitted information that it claims indicates the unification of its exchange rate system as of March 21, 2002. They further claim that this policy change effectively terminated the Export Certificate Voucher Program. For example, in its July 1, 2002 supplemental questionnaire response, the GOI submitted a letter from the Central Bank of Iran that notified the International Monetary Fund (IMF) that Iran's exchange rate system was unified as of March 21, 2002. Additionally, at verification, GOI officials provided us with a copy of Section E of the Budget Law of Year 1380, which indicates the GOI's intention to present a bill to the Majlis (*i.e.*, the Iranian Parliament) that would unify the exchange rate system.<sup>10</sup> In addition to the information provided by the GOI, publicly available information from the IMF indicates that Iran's exchange rate system was, indeed, unified in March 2002. See the January 24, 2003 Memorandum to the File, "Information from International Monetary Fund Regarding the Unification of Iran's Exchange Rate System," a public document on file in room B-099 of the Main Commerce Building. Therefore, based on information provided by the GOI and on publically available information placed on the record of this proceeding, we find that the Export Certificate Voucher Program has been terminated.

### **Comment 14: Application of a Combination Rate Limited to Production Exported by Nima from the Single Farm Disclosed by Maghsoudi**

Petitioners argue that if the Department determines to calculate net subsidy rates in these

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<sup>10</sup> The year 1380 in the Iranian calendar equates to 2001.

proceedings, it should apply a combination rate to the specific producer/exporter combination of Nima/Maghsoudi. Petitioners allege that it appears from Nima's comments during these proceedings that it intends to abuse the rate it may obtain these new shipper reviews to ship large quantities of pistachios produced by Iranian producers other than Maghsoudi into the United States. For example, petitioners cite to page 8 of Nima's July 1, 2002 questionnaire response in which it indicates that in the event of a successful outcome it would be able to purchase supplies from other suppliers or producers. Petitioners argue that in order to prevent this outcome, the Department must limit the rates in these new shipper reviews to merchandise that has been produced by Maghsoudi and exported by Nima. Petitioners further argue that 19 CFR 351.107(b) supports this approach, especially with respect to CVD proceedings. See petitioners' citation to the Preamble at 62 FR 27296.

Petitioners acknowledge that the Department has never applied a combination rate in a CVD proceeding and that in CVD proceedings where the issue of combination rates has arisen, the Department has opted not to apply such rates on the grounds that combination rates would serve no practical purpose. See, e.g., Carbon Welded Carbon Steel Pipes and Tubes From Turkey: Final Results of Countervailing Duty Administrative Review, 65 FR 49230 (August 11, 2000), Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon Quality Steel Plate from the Republic of Korea, 64 FR 73176 (December 29, 1999), and Final Negative Countervailing Duty Determination: Stainless Steel Plate in Coils from the Republic of Korea, 64 FR 15530 (March 31, 1999). Petitioners argue that in cases such as these, the Department reached its conclusion based on the fact that the majority, if not all, of the subsidies conferred upon subject merchandise were received by the producers, meaning that the subsidies attributable to other exporters in the sales chain were insignificant. Petitioners contend that the facts of these proceedings (i.e., new shipper reviews involving a single exporter) distinguish them from all other CVD proceedings in which the combination rate issue has been addressed. Thus, petitioners argue that these proceedings are not only quintessential cases in which combination rates should be applied but would also serve as a means of establishing the most accurate rates for the specific producer/exporter combination of Nima/Maghsoudi Farms, even if such rates were zero percent.

Nima argues against the imposition of a combination rate for several reasons. First, respondents assert that, as established by the facts of the instant reviews, the pistachio industry in Iran is a healthy and lucrative industry, and, therefore, the GOI does not subsidize, either directly or indirectly, pistachio farmers. Next, Nima argues that the fact that Nima likely will be reviewed again in the next three years ensures that it will not risk purchasing from any producers who could have benefitted from any countervailable GOI programs.

Nima argues that the imposition of a combination rate would render futile all efforts and financial resources expended by Nima to reach its objective of exporting to the United States. Nima asserts that there has never been any association between Nima and Maghsoudi. Nima further argues that it did not choose Maghsoudi Farms as the producer of its pistachios. Instead, Nima claims only by virtue of Maghsoudi Farm's non-membership in RPPC and Fallah Pistachio's purchase of its pistachios from Maghsoudi Farms did Nima come into contact with Maghsoudi Farms. Nima claims had it known that its purchases might be limited to Maghsoudi's Farms, it would not have chosen Maghsoudi Farms as the producer of its pistachios because Nima requires a larger volume producer in order to make a profit. Thus, Nima argues that it should not be subjected to a combination rate because the

circumstances leading to the imposition of a combination rate were outside of Nima's control.

Nima notes that the Preamble to the Department's regulations states that with respect to 19 CFR 351.107:

. . .the Department believes that there are situations where it may be inappropriate and/or impractical to establish combination rates. . .In addition, it may not be practicable to establish combination rates when there are a large number of producers, such as in certain agricultural cases. The Department make such exception to combination rates on a case-by-case basis.

See 62 FR 27295 at 27303. Nima argues that the situations described in the Department's regulations are applicable in these new shipper reviews and, thus, contends that a combination rate should not be applied to Nima.

Nima also argues that the fact that it will undoubtedly be reviewed again in the course of the next three years, and that duties imposed are retroactive, will ensure that it will not risk purchasing from producers who received countervailable subsidies from the GOI.

Nima proposes in its case brief that in exchange for not utilizing a combination rate, the Department can implement an import tax equal to the all others rate that would become effective after Nima ships a total of 300 tons of pistachios to the United States. As an alternative, Nima requests that the Department limit the application of the combination rate to its shipments of raw in-shell pistachios.

Petitioners rebut that Nima does not dispute that, as a general rule, a combination rate is regarded as the most accurate. See the Preamble to the Department's Procedural Regulations, 62 FR 27295 at 27303 (May 19, 1997). They state that, instead, Nima argues that an exception should be made in these reviews. Petitioners assert that Department's regulations apply to trading companies, regardless of whether such companies have exercise poor judgement in choosing the producer or producers upon whose experience the subsidy rate is determined.

Petitioners further argue that the proper way to look at the combination rate regulation in the context of these new shipper reviews is to consider its purpose in comparison to the purpose of a cash deposit rate that allows an exporter to import the production of an unlimited number of unspecified Iranian producers. They further argue that the starting point for this consideration must necessarily be the results of the original investigation. Petitioners claim that, by definition, a new shipper like Nima seeks relief from a rate that it alleges is not representative of its own experience. And, if it seeks to export the products of numerous foreign producers then they, too, are being relieved of the effects and scope of the original order. To grant such broad relief, the Department, in order to prevent the abuse of the new shipper review provision, must ensure that it does not become a loophole through which subsidized producers will attempt to jump. However, petitioners contend that the Department has not received the necessary information to conduct new shipper reviews of the Nima companies, let alone the other producers from which Nima apparently intends to purchase in the future. Thus, petitioners assert that there is no basis for the Department to conclude that the subsidy margins that Nima urges it to adopt are accurate as to the particular respondents, much less representative of all Iranian producers that Nima might seek to purchase from in the future.

Petitioners also take issue with Nima's claim that the likelihood of being reviewed in the course of the next three years is grounds for not applying a combination rate since Nima will not risk

purchasing subject merchandise from a subsidized producer. Petitioners argue that there is no reason or factual basis to accept Nima's statement of what it will or will not do in the future, nor does Nima's statement have any relevance to the combination rate issue.

Petitioners further argue that, contrary to Nima's assertions, the Department's regulations do not establish a blanket exemption from combination rates in cases involving agricultural products. Rather, petitioners argue that the regulations suggest only that agricultural cases are an instance in which the number of producers may be so large that it would be impracticable to calculate rates that are specific to each of them. Petitioners opine that such circumstances are not present in these proceedings, as the Department is not calculating individual rates for a large number of pistachio producers.

Regarding Nima's proposal for applying quantitative restrictions in return for not utilizing a combination rate, petitioners rebut that there is no statutory authority under which the Department could implement such an arrangement. In addition, petitioners argue that Nima has provided no reason for the Department to assign a combination rate that applies only to shipments of raw in-shell pistachios.

Respondents counter that regarding petitioners' examples of previous instances where the Department applied a combination rate, all such references involved companies in the industrial and manufacturing sectors, except for the Fresh Garlic case. Therefore, argue respondents, it seems that the Department has no precedence for applying a combination rate in the case of an agricultural product produced by a large number of producers in relatively small quantities.

### ***Department's Position***

The Department agrees with petitioners that a combination rate is appropriate in these new shipper reviews. Where subject merchandise is exported to the United States by a company that is not the producer of the merchandise, the Department may establish a "combination" cash deposit rate for each combination of the exporter and its supplying producer(s). See 19 CFR 351.107(b).<sup>11</sup> The Preamble to the Procedural Regulations states that in order to ensure the proper application of deposit rates, the Department believes that it should establish, where appropriate, individual rates for non-producing exporters in combination with the particular supplier or suppliers from whom the exporter purchased the subject merchandise. Additionally, the Preamble explains that the Department will make exceptions to the application of combination rates on a case-by-case basis. See the Preamble to the Department's Procedural Regulations, 62 FR 27295 at 27303 (May 19, 1997). The facts in the instant reviews do not warrant such an exception.

Furthermore, for purposes of a new shipper review, it is reasonable to limit an alleged new shipper only to the combination of the producer/exporter being reviewed. Once the review is complete, it is reasonable to apply the new shipper rate only to the producer/exporter combination which provided the appropriate certifications, pursuant to 19 CFR 351.214(B)(2)(ii), and subsequently

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<sup>11</sup> The Department has applied combination rates in recent new shipper reviews. See Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty New Shipper Review, 67 FR 72139 at 72140 (December 4, 2002), Notice of Final Results of Antidumping Duty New Shipper Review: Certain In-Shell Raw Pistachios from Iran, 68 FR 353 at 354 (January 3, 2003), and Certain Forged Stainless Steel Flanges from India: Final Results of Antidumping Duty New Shipper Review, 68 FR 351 (January 3, 2002).

were reviewed by the Department.

Regarding these new shipper reviews, the Department has determined “combination rates” are appropriate in these instant reviews, as Nima is not the producer of the subject merchandise. Therefore, the Department will include in its cash deposit instructions to customs appropriate language to enforce these final results on the basis of “combination rates” involving Nima/Maghsoudi.

In response to Nima’s argument that the application of “combination rates” will prevent it from conducting all future transactions with other producers, we do not believe that the facts on the record support such a claim. Once the Department has conducted an administrative review for Nima, the applicable cash deposit rate set in the Final Results of these new shipper reviews will no longer apply. At that time, the Department will assess Nima’s exports to the United States at a new, “non-combination rate.” Thus, to the extent the “combination rates” affect Nima’s current U.S. transactions, these rates will no longer even exist if Nima receives its own calculated rate in future administrative reviews.

Regarding Nima’s proposals for applying quantitative restrictions and/or excluding roasted pistachios from the final results of these new shipper reviews, we agree with petitioners that there is no statutory authority under which the Department could implement such arrangements.

#### **Comment 15: Completeness and Accuracy of Data Reported by Nima**

Petitioners argue that throughout the proceedings, Nima, Fallah Pistachios, and Maghsoudi Farms have not been forthcoming in their questionnaire responses and, instead, have provided the bare minimum necessary to pass muster under the Department’s rules and practices. Moreover, they claim that the information that reported by the Nima companies should lead the Department to question its accuracy and integrity. As an example, petitioners point to the fact that the Nima failed to record its sales to its domestic customer, Bakshie, in its account book, an omission that petitioners contend represents 30 percent of Nima’s total sales volume. Other aspects of Nima’s response that, according to petitioners, demonstrates Nima’s unreliable record keeping practices include; its failure to record a \$35 service charge incurred on its sale of subject merchandise to AHON, an \$8.50 “rounding error” in the revenue recorded for its sale to AHON, the fact that Fallah Pistachios did not submit its revised sales information onto the record of the CVD proceeding until the discrepancy was discovered at the CVD verification, and the refusal of the Nima Companies and the GOI to disclose any information concerning subsidies that may have been provided to pistachio processing terminals.

While petitioners acknowledge that the Department’s evaluation of a company’s ability to respond should reflect a consideration of the company’s particular circumstances and resources, they assert that the Department must be able to conclude that its calculations are based on accurate and complete data, regardless of the company’s size or level of sophistication. See petitioners’ citation to Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From Venezuela, 67 FR 62119 (October 3, 2002) and Certain Cut-to-Length Carbon Steel Plate From Sweden: Final Results of Antidumping Duty Administrative Review, 62 FR 18396 (April 15, 1997).

Petitioners argue that when companies do not prepare financial statements in the ordinary course of business, as is the case with the Nima companies, then they must provide an alternative

means of confirming the accuracy and completeness of their submitted data. Petitioners contend that one such means is a tax return. See Chrome-Plated Lug Nuts From Taiwan; Final Results of Antidumping Duty Administrative Review, 64 FR 17314 (April 9, 1999). Petitioners point out that, by the Nima companies' own admission, they did not file tax returns during the POR. Thus, petitioners argue that it was incumbent on the Nima companies to demonstrate, using financial records maintained in the ordinary course of business, that its submitted data was accurate and complete. Petitioners claim that the numerous inaccuracies and discrepancies in the Nima companies' response indicate that they failed to demonstrate to the Department the accuracy and completeness of their submitted data.

Petitioners maintain that, in light of the unreliable information submitted by the Nima companies, the Department must reject all of the information submitted and terminate the new shipper reviews. As an alternative to rescinding the new shipper reviews, petitioners assert that the Department should resort to facts available, which, in the absence of any other evidence, should be the rates calculated in the investigations. Petitioners claim that the failure to adopt one of these two approaches will seriously undermine the standard to which it has always required respondents to adhere.

Nima argues that its focus all along has been to export to the United States. Therefore, Nima maintains that, in the ordinary course of business, Nima entered the data with respect to the sale to AHON in its accounting system. Nima asserts that this sale was geared toward the new shipper reviews, and that the accuracy of the entries in Nima's "final account book" filed with the GOI was verified by the Department.

Petitioners point out that Nima itself concedes that the firm was established for the sole purpose of obtaining a low subsidy rate. They argue that Nima has prepared and maintained its books with this goal in mind, an approach that petitioners claim has led Nima to report only self-serving data.

Nima explains that the Bakshie sale that it did not record in its account book was not within the scope and objective of the company. However, Nima argues that all of the costs and revenues related to the Bakshie sale are reflected in Nima's consolidated financial statements.

Regarding Nima's claims on the Bakshie sale, petitioners assert that Nima's own statements indicate that the company has, in fact, not sought to provide full disclosure of all factual information during these proceedings but, has instead opted to submit only such information that is relevant and helpful toward obtaining low rates. In addition, petitioners further argue that Nima's failure to include certain sales in its account book further demonstrates Nima's lack of knowledge of its regulatory obligations and is indicative of a pattern of negligent conduct that, taken as a whole, should require termination of the new shipper reviews.

Respondents rebut petitioners' arguments, stating that Nima, Fallah, Maghsoudi, and the GOI have submitted accurate and sufficient information for the Department to conduct these CVD new shipper reviews.

### ***Department's Position***

The Department disagrees with petitioners that the quality of the Nima companies' questionnaire responses warrants the termination of the new shipper reviews. The Department recognizes that the Nima companies are small and have unsophisticated accounting and record-keeping systems. In addition, we find that the evidence on the record of these proceedings indicates that the

Nima companies have cooperated with the Department and responded to requests for information in a timely manner and in accordance with Department procedures and regulations.

With respect to petitioners' arguments regarding the Bakshie sales, we note that Nima has stated from the beginning of these proceedings that the Bakshie sales were not part of its ordinary course of business and were not likely to be repeated in the future. We accept Nima's explanation that the unusual nature of these one-time sales resulted in Nima's decision not to include the transactions in its books and records. We further note that respondents did report the existence of the sales to the Department in accordance with Departmental instructions.

Regarding the discrepancies in reported revenue and service charges, we note that these are insignificant differences and not unexpected in light of the rudimentary accounting systems in place.

In summary, as there is no evidence on the record of these proceedings that the information provided by the Nima companies is inaccurate or distortive, the Department has determined to rely on sales and expense information submitted by these parties for purposes of these final results.

#### **Comment 16: Reliability of Sales Information Submitted by Fallah Pistachios**

Nima claims that Fallah Pistachios' revised sales figures were reported to the Department in its June 3, 2002, antidumping duty questionnaire response. Nima states that the antidumping submission contained final and accurate information and that it mistakenly believed that the information was going to be shared with the analysts conducting the CVD new shipper reviews.

Petitioners argue that, contrary to Nima's claim that the June 3, 2002 submission contained final and accurate information, the Nima Verification Report indicates that the June 3, 2002, submission provided only approximate data, which differed from the actual data seen at verification. Petitioners claim that Nima tacitly confirms this view by stating in its case briefs that the information submitted by Fallah Pistachios on June 3, 2002 represented "estimated" monthly expenses.

Nima contends that Fallah Pistachios' seven total sales during the POR are accurately reflected in Fallah Pistachios' financial statement, which was submitted in its June 3, 2002 antidumping duty questionnaire response. Nima further contends that this information was verified by the Department. Nima also points out that, as verified by the Department, the owner of Fallah Pistachios is a part-time pistachio broker who does not maintain daily records. However, Nima maintains that the monthly expenses reported by Fallah Pistachios in the June 3, 2002, submission are an accurate reflection of its monthly expenses as reported in its books.

Petitioners rebut that Fallah Pistachio provided only estimated data. They further argue that the information submitted by Fallah Pistachios on the record of the new shipper reviews was not corrected prior to verification and was not found to be accurate at verification.

#### ***Department's Position***

The Department disagrees with petitioners that Fallah Pistachios' sales data are unreliable. At verification, the Department reviewed all of the invoices that Fallah Pistachios issued during the POR and traced the sales values to the corresponding entries in the company's sales book. See page 5 and 6 of the Nima Verification Report. Based on the information reviewed at verification, we find that the

sales data presented by Fallah Pistachios' are reliable and accurate.

**RECOMMENDATION:**

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the Final Results of the determination in the Federal Register.

\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

\_\_\_\_\_  
Faryar Shirzad  
Assistant Secretary  
for Import Administration

\_\_\_\_\_  
Date