

MEMORANDUM TO: David M. Spooner
Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum: Final Results of
Countervailing Duty Administrative Review: Certain In-shell
Roasted Pistachios from the Islamic Republic of Iran

SUMMARY:

We have analyzed the comments of interested parties in the final results of the above-mentioned countervailing duty (CVD) administrative review covering the period of review (POR) January 1, 2004, through December 31, 2004. The "Analysis of Programs" section below describes the decisions made in this review. Also below is the "Analysis of Comments" section, which contains the Department of Commerce's (the Department's) response to the issues raised in the briefs. We recommend that you approve the positions we have developed in this memorandum. Below is a complete list of the issues in this review for which we received comments from parties.

Comment 1: Adverse Facts Available Rate
Comment 2: Additional Subsidy Programs

I. Methodology and Background Information

Use of Facts Available

During the course of this proceeding, we sought information from the company subject to this review, Tehran Negah Nima Trading Company, Inc., trading as Nima Trading Company (Nima), and from the Government of Iran (GOI) pertaining to countervailable subsidy programs in Iran and their use by Nima and Nima's growers and producers. Specifically, we asked for information concerning Nima's and its growers' usage of the following programs: Provision of

Fertilizer and Machinery, Provision of Credit, Tax Exemptions, Provision of Water and Irrigation Equipment, Technical Support, Duty Refunds on Imported Raw or Intermediate Materials Used in the Production of Export Goods, Program to Improve Quality of Exports of Dried Fruit, Iranian Export Guarantee Fund, GOI Grants and Loans to Pistachio Farmers, and Crop Insurance for Pistachios. See pages II-3 through II-10 and pages III-6 through III-12 of the Department's January 5, 2006, questionnaire. In addition, we requested information concerning Nima's total sales and its sales of subject merchandise during the POR. See pages II-1 through II-2 and pages III-3 through III-4 of the Department's January 5, 2006, questionnaire.

Neither the GOI nor Nima submitted questionnaire responses. On February 13, 2006, Nima submitted a letter stating that it did not make any shipments of subject merchandise to the United States during the POR. On March 21, 2006, the team placed on the record the results of a U.S. Customs and Border Protection (CBP) data run, which indicated that Nima did in fact make shipments of subject merchandise to the United States during the POR. See March 21, 2006, memorandum to the file from Darla Brown, Case Analyst, Re: Customs Data. Also on March 21, 2006, we sent a letter to Nima, asking the company to explain in writing the apparent discrepancy between its February 13, 2006, letter and the information obtained from CBP. Nima did not respond to our March 21, 2006, letter.

Section 776(a) of the Tariff Act of 1930, as amended (the Act), requires the use of facts otherwise available on the record when an interested party withholds information that has been requested by the Department or when an interested party fails to provide the information requested in a timely manner and in the form required. As described above, by failing to respond to our questionnaire, Nima and the GOI failed to provide information regarding these programs and regarding Nima's sales, in the manner explicitly requested by the Department. Therefore, we must resort to the facts otherwise available.

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

When employing an adverse inference in an administrative review, the Act and regulations indicate that the Department may rely upon information derived from (1) the petition, a final determination in a countervailing duty or an antidumping investigation, any previous administrative review, new shipper review, expedited antidumping review, section 753 review, or section 762 review; or (2) any other information placed on the record. See section 776(b) of the Act and 19 CFR 351.308(c). Thus, in applying adverse facts available, we have used information from Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Roasted In-Shell Pistachios from Iran, 51 FR 35679 (October 7, 1986) (Roasted Pistachios); Certain In-Shell Pistachios and Certain Roasted In-Shell Pistachios from the Islamic Republic of Iran: Final Results of New Shipper Countervailing Duty Reviews, 68 FR 4997 (January 31, 2003) (Pistachios New Shipper Reviews); and Certain In-shell Roasted Pistachios from the Islamic Republic of Iran: Final Results of Countervailing Duty Administrative Review, 71 FR 27682 (May 12, 2006) (2003 Roasted Pistachios).

If the Department relies on secondary information (e.g., data from a petition) as facts available, section 776(c) of the Act provides that the Department shall, "to the extent

practicable," corroborate such information using independent sources reasonably at its disposal.¹ The SAA further provides that to corroborate secondary information means that the Department will satisfy itself that the secondary information to be used has probative value. SAA at 870. See also 19 CFR 351.308(d) (describing the corroboration of secondary information).

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

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

II. Analysis of Programs

On July 7, 2006, in the preliminary results of this review, because the GOI and Nima did not provide the information necessary to conduct an analysis of the programs under review, we made an adverse inference that each of the programs continued to exist, was countervailable, and conferred a benefit upon Nima and/or its grower(s) and supplier(s) during the POR. See Certain In-shell Roasted Pistachios from the Islamic Republic of Iran: Preliminary Results of Countervailing Duty Administrative Review, 71 FR 38622 (July 7, 2006) (Preliminary Results). No new information or evidence has been provided by respondents to warrant a change to our Preliminary Results.

The petitioner, the California Pistachio Commission (CPC), and a domestic interested party, Cal Pure Pistachios, Inc. (Cal Pure), have commented on our Preliminary Results. However, we have not been persuaded by the parties' arguments to make changes to these final results. Therefore, for the purposes of these final results, we continue to find, based on adverse inferences, that each of the programs listed below exists, is countervailable, and conferred a benefit upon Nima and/or its grower(s) and supplier(s) during the POR.

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

A. Provision of Fertilizer and Machinery

In Roasted Pistachios, 51 FR at 35680, the Department found that growers, processors or exporters of pistachios in Iran can obtain fertilizer and machinery from the GOI at preferential prices.

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

To calculate the net subsidy rate under this program, we used the highest rate listed in Roasted Pistachios for this program. Accordingly, we determine that the net subsidy rate for this program is 6.65 percent ad valorem.

B. Provision of Credit

In Roasted Pistachios, the Department found that bounties or grants were provided to Iranian growers, processors, or exporters of pistachios under this program. Specifically, the Department found that agricultural cooperatives in Iran make credit available to their members on terms inconsistent with commercial considerations from funds provided by the GOI. See 51 FR at 35680-1.

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

To calculate the net subsidy rate under this program, we used the highest rate listed in Roasted Pistachios for this program. Accordingly, we determine that the net subsidy rate for this program is 6.65 percent ad valorem.

C. Tax Exemptions

 In Roasted Pistachios, the Department found that bounties or grants were provided to Iranian growers, processors, or exporters of pistachios under this program. Specifically, the Department determined that farmers benefit from legislation that exempts farmers and livestock breeders from paying taxes, provided they follow government agricultural guidelines. See 51 FR at 35681.

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

To calculate the net subsidy rate under this program, we used the highest rate listed in Roasted Pistachios for this program. Accordingly, we determine that the net subsidy rate for this program is 6.65 percent ad valorem.

D. Provision of Water and Irrigation Equipment

In Roasted Pistachios, the Department found that bounties or grants were provided to Iranian growers, processors, or exporters of pistachios under this program. Specifically, the Department determined that pistachio growers in Iran may benefit from the construction of soil dams, flood barriers, canals, and other irrigation projects undertaken by the government to increase agricultural production. See 51 FR at 35681.

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

To calculate the net subsidy rate under this program, we used the highest rate listed in Roasted Pistachios for this program. Accordingly, we determine that the net subsidy rate for this program is 6.65 percent ad valorem.

E. Technical Support

In Roasted Pistachios, the Department found that bounties or grants were provided to Iranian growers, processors, or exporters of pistachios under this program. Specifically, the Department determined that pistachio growers in Iran receive technical support as part of the GOI’s program to support agricultural development, and that this technical support included research projects to improve cultivation techniques, as well as assistance in harvesting, marketing, and the use of fertilizer. See 51 FR at 35681.

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

To calculate the net subsidy rate under this program, we used the highest rate listed in Roasted Pistachios for this program. Accordingly, we determine that the net subsidy rate for this program is 6.65 percent ad valorem.

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

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

As further discussed above in the “Use of Facts Available” section of this notice, we have determined that the application of adverse facts available is warranted on the grounds that Nima

and the GOI did not respond to our request for information. Therefore, we have determined as adverse facts available that this program continues to exist and that Nima and/or its grower(s) and supplier(s) received a countervailable benefit during the POR.

This program was alleged for the first time in the Pistachios New Shipper Reviews, and thus was not among the programs addressed in Roasted Pistachios. However, lacking any information from Nima and the GOI on the record of the instant review, we find that the net subsidy rate of 6.65 percent, the highest rate established for an industry-wide program in Roasted Pistachios, is the only available information on the record and is therefore, as adverse facts available, the appropriate rate to apply to this program. Accordingly, we find that the net subsidy rate for this program is 6.65 percent ad valorem.

G. Program to Improve Quality of Exports of Dried Fruit

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

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

This program was alleged for the first time in the Pistachios New Shipper Reviews, and thus was not among the programs addressed in Roasted Pistachios. However, lacking any information from Nima and the GOI on the record of the instant review, we find that the net subsidy rate of 6.65 percent, the highest rate established for an industry-wide program in Roasted Pistachios, is the only available information on the record and is therefore, as adverse facts available, the appropriate rate to apply to this program. Accordingly, we find that the net subsidy rate for this program is 6.65 percent ad valorem.

H. Iranian Export Guarantee Fund

In Certain In-shell Pistachios from the Islamic Republic of Iran: Final Results of Countervailing Duty Administrative Review, 70 FR 54027 (September 13, 2005) (2003 In-shell Pistachios), we found that petitioners had provided sufficient evidence to support their allegation that the GOI pays a “prize” in the form of an export subsidy to exporters; these prizes are payable commensurate with the added value of export goods and services. See the October 27, 2004, Memorandum to Melissa G. Skinner from the Team, re: New Subsidy Allegations, contained in the August 8, 2006, Memorandum to the File from the Team, re: Placing Memos on the Record.

As further discussed above in the “Use of Facts Available” section of this notice, we have determined that the application of adverse facts available is warranted on the grounds that Nima and the GOI did not respond to our request for information. Therefore, we have determined as adverse facts available that this program continues to exist and that Nima and/or its grower(s)

and supplier(s) received a countervailable benefit during the POR.

This program was alleged for the first time in 2003 In-shell Pistachios, and thus was not among the programs addressed in Roasted Pistachios. However, lacking any information from Nima and the GOI on the record of the instant review, we find that the net subsidy rate of 6.65 percent, the highest rate established for an industry-wide program in Roasted Pistachios, is the only available information on the record and is therefore, as adverse facts available, the appropriate rate to apply to this program. Accordingly, we find that the net subsidy rate for this program is 6.65 percent ad valorem.

I. GOI Grants and Loans to Pistachio Farmers

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

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

This program was alleged for the first time in 2003 In-shell Pistachios, and thus was not among the programs addressed in Roasted Pistachios. However, lacking any information from Nima and the GOI on the record of the instant review, we find that the net subsidy rate of 6.65 percent, the highest rate established for an industry-wide program in Roasted Pistachios, is the only available information on the record and is therefore, as adverse facts available, the appropriate rate to apply to this program. Accordingly, we find that the net subsidy rate for this program is 6.65 percent ad valorem.

J. Crop Insurance for Pistachios

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

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

This program was alleged for the first time in 2003 In-shell Pistachios, and thus was not

among the programs addressed in Roasted Pistachios. However, lacking any information from Nima and the GOI on the record of the instant review, we find that the net subsidy rate of 6.65 percent, the highest rate established for an industry-wide program in Roasted Pistachios, is the only available information on the record and is therefore, as adverse facts available, the appropriate rate to apply to this program. Accordingly, we find that the net subsidy rate for this program is 6.65 percent ad valorem.

III. Total Ad Valorem Rate

The total net subsidy rate for Nima for the review period 2004 is 66.50 percent ad valorem.

IV. Analysis of Comments

Comment 1: Adverse Facts Available Rate

In its case brief, the CPC, petitioner in the instant review, asserts that for the purposes of these final results, the Department should apply an ad valorem rate of 317.89 percent to Nima as adverse facts available. The CPC argues, given that Nima and the GOI failed to cooperate to the best of their abilities in responding to the Department's request for information, the Department should apply the 317.89 percent net subsidy rate from the original investigation in order to ensure better cooperation in the future from respondents in administrative reviews of this order.

Petitioner points out that in the Preliminary Results, the Department applied, as adverse facts available, information from the original investigation. Petitioner also states that the 6.65 percent ad valorem program rates applied in the Preliminary Results were also applied by the Department in the Pistachios New Shipper Reviews and yet the respondents, fully aware of the consequences, still failed to cooperate with the Department in the instant review. Therefore, petitioner concludes, the 6.65 percent ad valorem program rates appear to be of an insufficient magnitude to persuade Nima and the GOI to cooperate. Petitioner maintains that the 317.89 percent net subsidy rate from the original investigation can be corroborated and should be applied in these final results.

Respondents did not submit a case or rebuttal brief.

The Department's Position:

As explained above in the "Use of Facts Available" section, because Nima and the GOI did not cooperate to the best of their abilities in the instant review, we are applying an adverse inference when calculating the net subsidy rate for Nima. The rate we have calculated for Nima and its growers/processors for the POR is 66.50 percent ad valorem. We disagree with the CPC that we must apply the rate of 317.89 percent ad valorem from the original investigation because Nima and the GOI failed to respond to our requests for information in the instant review. Although neither Nima nor the GOI responded to our requests for information, we know from previous reviews of this order that several programs found countervailable in the original investigation have been terminated or are no longer countervailable. The rate of 317.89 percent ad valorem does not accurately reflect those changes.

In applying adverse facts available, section 776(c) of the Act requires the Department to corroborate secondary information used as adverse facts available. To be considered corroborated, information must be found to be both reliable and relevant. We cannot corroborate countervailable rates on programs that no longer exist, because for purposes of that program, any rate selected would no longer be relevant. On the other hand, the rate of 66.50 percent ad valorem accurately reflects the existence of programs that are known to still exist, reflects the termination of other programs in Iran since the investigation, is still an adverse facts available rate, and can be corroborated pursuant to section 776(c) of the Act. Therefore, for the purposes of these final results, we continue to apply the rate of 66.50 percent ad valorem.

Comment 2: Additional Subsidy Programs

A domestic interested party, Cal Pure, in its case brief, argues that in calculating the adverse facts available rate for Nima in the Preliminary Results, the Department inadvertently overlooked two additional subsidy programs that it had previously found to confer countervailable benefits on producers of the subject merchandise: the price supports program and the foreign exchange benefits program.

Cal Pure argues that, in the original investigation of roasted in-shell pistachios, in addition to the programs included and found countervailable in the Preliminary Results, the Department also found the foreign exchange rate benefits program and the price support program to be countervailable. See Roasted Pistachios, 51 FR at 35680.

Cal Pure states that, in the past new shipper review of this order, the Department found that the price support program was not countervailable because at verification it had reviewed legislation implementing the Second Five-Year Plan, which confirmed that pistachios were not among the products that benefitted from this program. See Pistachios New Shipper Reviews at Comment 5. Moreover, Cal Pure acknowledges that the Department also found the foreign exchange benefits program to be terminated. Cal Pure states that although it does not dispute the accuracy of the Department's findings in the Pistachios New Shipper Reviews with respect to the terminated programs, the Department must include these programs in its application of adverse facts available in the instant review.

Cal Pure argues that the Department cannot disregard these programs in the instant review because, in determining the amount of the countervailable benefit, the Department must allocate the benefit to a particular time period. Specifically, Cal Pure maintains that in the original investigation, the Department found that these two programs conferred benefits in the form of bounties or grants. See Roasted Pistachios, 51 FR at 35680. Cal Pure asserts that, pursuant to 19 CFR 351.524(c)(1), the Department will normally treat grants as providing non-recurring benefits, and, thus, the relevant period for the Department's analysis extends for a defined period before 2004, the POR.

Cal Pure argues that although the Department found that the price supports and foreign exchange benefits programs ended in 2000 and 2002, respectively, it must consider benefits awarded under those programs in prior years, extending back to 1995. Cal Pure states that as respondents have refused to provide any information with respect to these two programs, the Department must apply adverse facts available in determining the benefit from each program and incorporate the rates from the original investigation for the price supports and foreign exchange benefits programs into the total ad valorem rate for the final results.

Respondents did not submit a case or rebuttal brief.

The Department's Position:

We disagree with Cal Pure that we inadvertently failed to include the price supports program and the foreign exchange benefits program in our adverse facts available rate in the Preliminary Results. As Cal Pure has correctly pointed out, in the Pistachios New Shipper Reviews, we determined, based on documentation collected from the GOI at verification demonstrating that the pistachio industry was not included among the commodities to which price supports applied, that the price supports program does not provide benefits to the pistachio industry, and, therefore, is not countervailable. See Pistachios New Shipper Reviews at Comment 5. It is the Department's longstanding practice not to reexamine the countervailability of a subsidy program in subsequent segments of the proceeding, absent new information on the record.² In the instant review, Cal Pure has provided no new evidence to warrant a change from our prior finding that the price supports program is not countervailable.

Furthermore, Cal Pure has not offered any additional information in the instant review to indicate that the price supports program conferred non-recurring benefits on pistachio producers. Section 351.524(c)(1) of the Department's regulations provides a non-binding illustrative list of recurring and non-recurring benefits. According to the regulations, the Secretary normally will treat price support payments as recurring benefits, *i.e.*, benefits that are expensed in the year of receipt. In Roasted Pistachios, the Department stated with respect to every program that "bounties or grants" were provided to producers of pistachios in Iran. "Bounties or grants" was standard language used at the time and does not signify that each program provided a non-recurring benefit. Therefore, Cal Pure's assertion that this program should be allocated over the useful life is not supported by the facts on the record. Because we found in the Pistachios New Shipper Reviews that the price supports program is not countervailable, we are not including the rate from that program in the total ad valorem rate for the final results.

Moreover, with respect to the foreign exchange benefits program, we determined in the original investigation that, although we had no way of knowing whether pistachio exporters in Iran were benefitting from this program, as best information available, exporters used the program during the period of investigation (POI). See Roasted Pistachios, 51 FR at 29957. We stated in the investigation that one component of this program allowed pistachio exporters to sell retained foreign exchange earned from export sales at the free market rate to anyone in Iran in need of foreign currency. Moreover, we stated that there is a significant difference between the free market U.S. dollar/Iranian rial exchange rate.

Since the time of the original investigation, however, we learned via publicly available sources that Iran's exchange rate system was unified in March 2002. See Certain In-shell Pistachios from the Islamic Republic of Iran: Final Results of Countervailing Duty Administrative Review, 68 FR 41310 (July 11, 2003), and the accompanying Issues and Decision Memorandum at Comment 2 (2001 In-shell Pistachios). See also Pistachios New Shipper Reviews at Comment 13. Based on this fact, we found that the basis for benefits deriving from

² See *e.g.*, Final Results of Countervailing Duty Administrative Reviews: Low Enriched Uranium From Germany, the Netherlands, and the United Kingdom, 69 FR 40869 (July 7, 2004), and the accompanying Issues and Decision Memorandum at Comment 6.

exchange rate differentials in Iran has been eliminated.

There is no evidence on the record to suggest that the foreign exchange benefits program is still in effect in Iran or that it was used by Nima or its grower(s) and supplier(s) during the POR. Cal Pure itself states in its case brief that it does not dispute the Department's finding in the Pistachios New Shipper Reviews that the dual exchange rate system in Iran has been eliminated. As noted above, it is the Department's longstanding practice not to reexamine the countervailability of a subsidy program in subsequent segments of the proceeding, absent new information on the record. Moreover, Cal Pure has provided no evidence that the exchange rate program provided non-recurring benefits to producers in Iran other than the Department's use of the term "bounties or grants" in the original investigation. As stated above, the term "bounties or grants" was standard language used at the time and does not imply that each program provided a non-recurring benefit. Section 351.524(c)(1) of the Department's regulations lists export promotion assistance, the category which this program falls under, as an example of a recurring benefit.

In the instant review, Cal Pure has provided no new evidence to warrant a change from our prior finding that the exchange rate system in Iran has been unified, and therefore, the foreign exchange benefits program is effectively terminated. Moreover, Cal Pure has not provided persuasive evidence to prove that the foreign exchange benefits program provided non-recurring benefits to producers. Therefore, we are not adjusting the adverse facts available rate for these final results to include the foreign exchange benefits program.

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

David M. Spooner
Assistant Secretary
for Import Administration

Date