

the supplemental response in time to incorporate that information in our preliminary results.

On March 25, 2003, we did not receive the GOI's supplemental questionnaire response. See March 25, 2003 Memorandum to the File from the team. Therefore, as discussed below in the "Use of Facts Available" section of this notice, we have resorted to the facts otherwise available employing an adverse inference. (See section 776 of the Act.)

Also on March 25, 2003, we did not receive the second supplemental questionnaire response from RPPC. See March 25, 2003 Memorandum to the File from the team. Therefore, as discussed below in the "Use of Facts Available" section of this notice, we have resorted to the facts otherwise available, employing an adverse inference. (See section 776 of the Act.)

In accordance with 19 CFR 351.213 (2002), this administrative review covers only those producers or exporters for which a review was specifically requested. Accordingly, this administrative review covers RPPC and nine programs.

Scope of Review

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

Use of Facts Available

During the course of this proceeding, we have repeatedly sought information pertaining to all companies that are cross-owned and/or affiliated with RPPC, the producer of subject merchandise, and RPPC's shareholders. See pages III-3 through III-4 of the Department's June 11, 2002, questionnaire, page 1 of the Department's September 17, 2002, supplemental questionnaire, and page 1 of the Department's March 5, 2003, second supplemental questionnaire. In addition, we have repeatedly requested information concerning the total sales and sales of subject merchandise made by RPPC during the POR. See pages III-3 through III-4 of the Department's June 11, 2002, questionnaire, page 1 of the Department's September 17, 2002 supplemental questionnaire, and page 1 of the Department's March 5, 2003, second supplemental questionnaire.

Moreover, we have repeatedly asked for specific information concerning RPPC's and its members' usage of the following programs: Provision of Fertilizer and Machinery, Provision of Water and Irrigation Equipment, Duty Refunds on Imported Raw or Intermediate Materials Used in the Production of Exported Goods, Program to Improve the Quality of Exports of Dried Fruit, Tax Exemptions, Technical Assistance from the GOI, and Provision of Credit. See pages III-9 through III-12 of the Department's June 11, 2002, questionnaire, pages 3 through 6 of the Department's September 17, 2002, supplemental questionnaire, and pages 3 through 4 of the Department's March 5, 2003, second supplemental questionnaire.

In response to these repeated inquiries relating to affiliation, sales data, and the seven aforementioned programs, RPPC repeatedly failed to answer specific questions, provided incomplete answers, and did not provide useable information regarding these seven programs.

In addition, we have sought, without success, information from the GOI regarding details about RPPC's and its growers' usage of the programs under review. See the Department's June 11, 2002, initial questionnaire. Moreover, we specifically asked the GOI to provide copies of relevant legislation proving that certain programs subject to this administrative review have been terminated. See the Department's February 20, 2003, supplemental questionnaire. The GOI failed to provide the requested legislation and only answered one of the Department's supplemental questions (see the GOI's March 19, 2003, submission).

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, RPPC and the GOI have failed to provide information regarding these programs 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, despite numerous opportunities, the GOI and RPPC have

failed to cooperate to the best of their ability. Therefore, in selecting from among the facts available, the Department determines that an adverse inference is warranted.

When employing an adverse inference in an administrative review, the statute indicates that the Department may rely upon information derived from: (1) The petition, a final determination in a countervailing duty or an antidumping investigation, any previous administrative review, new shipper review, expedited antidumping review, section 753 review, or section 762 review; or (2) any other information placed on the record. See 19 CFR 351.308(c). Thus, in applying adverse facts available, we have used information on the record of this administrative review as well as information from the final determinations of *In-shell Pistachios* and *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*).

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

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

¹ 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.