

May 5, 2003, we received a case brief from petitioners.¹ In their May 5, 2003, case brief, petitioners requested a hearing. On May 14, 2003, petitioners withdrew their request for a hearing. We did not receive case or rebuttal briefs from respondents.

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 for the period of review (POR) January 1, 2001, through December 31, 2001.

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. In addition, we have repeatedly requested information concerning the total sales and sales of subject merchandise made by RPPC during the POR. 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 Preliminary Results*.

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 in the paragraph above and in our *Preliminary Results*, RPPC and the

GOI have failed to provide information regarding cross-ownership, affiliation, sales, and the programs named above 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* section 776(b) of the Act. Thus, in applying adverse facts available, we have used information on the record of this administrative review as well as information regarding the programs and exchange rates 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*).

Specifically, for the Export Certificate Voucher Program, we used publicly available data from the *Pistachios New Shipper Reviews* in order to calculate a benefit. With respect to the other seven programs determined to confer subsidies, we relied on the rates calculated for each of those programs in the original investigation of *In-shell Pistachios*. The Department's selection of the information used as adverse facts available is discussed in more detail in the program-specific sections of the "Issues and Decision Memorandum: Final Results of Countervailing Duty Administrative Review: Certain In-Shell (Raw) Pistachios from the Islamic Republic of Iran" (Decision Memorandum) dated August 2, 2003, which is hereby adopted by this notice.

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.² The SAA further provides that to corroborate secondary information means that the Department will satisfy itself that the secondary information to be used has probative value. *See also*, 19 CFR 351.308(d).

Thus, in those instances in which it determines to use secondary information, 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. *See Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From Argentina*, 66 FR 37007 (July 16, 2001). However, unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there typically are no independent sources for data on company-specific benefits resulting from countervailable subsidy programs. The only source for such information normally is administrative determinations. In the instant case, no evidence has been presented or obtained which contradicts the reliability of the evidence relied upon in previous segments of this proceeding.

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render benefit data not relevant. *See Cotton Shop Towels from Pakistan: Final Results of Countervailing Duty Administrative Review*, 66 FR 42514 (August 13, 2001) at "Use of Facts Available Section" of the Final Issues and Decision Memorandum (where the Department used the subsidy rate found for a program in the last administrative review conducted for the order). 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

¹ Petitioners include the California Pistachios Commission and its members and a domestic interested party, Cal Pure Pistachios, Inc.

² 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.