



A-507-502  
Sunset Review  
**Public Document**  
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July 29, 2016

MEMORANDUM TO: Ronald K. Lorentzen  
Acting Assistant Secretary  
for Enforcement and Compliance

FROM: Christian Marsh   
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Expedited Sunset  
Review of the Antidumping Duty Order on Certain In-Shell (Raw)  
Pistachios from the Islamic Republic of Iran; Final Results

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### **Summary**

In the sunset review of the antidumping duty order covering certain in-shell (raw) pistachios (pistachios) from the Islamic Republic of Iran (Iran),<sup>1</sup> Wonderful Pistachios & Almonds LLC (WP&A) and American Pistachio Growers (APG) (collectively, the Domestic Interested Parties) submitted an adequate substantive response. No respondent interested party submitted a timely substantive response. In accordance with our analysis of the Domestic Interested Parties' substantive responses, we recommend you approve the positions described in the Discussion of the Issues section of this memorandum. The following is a complete list of issues in the sunset review:

1. Likelihood of continuation or recurrence of dumping; and
2. Magnitude of the dumping margin likely to prevail.

### **Background**

On April 1, 2016, the Department of Commerce (the Department) published the notice of initiation of the sunset review of the antidumping duty order on pistachios from Iran, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).<sup>2</sup> On April 11, 2016, and April 13, 2016, the Department received timely and complete notices of intent to participate in the sunset review from WP&A and APG, respectively.<sup>3</sup> On April 29, 2016, and May 2, 2016,

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<sup>1</sup> See *Antidumping Duty Order; Certain In-Shell Pistachios from Iran*, 51 FR 25922 (July 17, 1986) (*Iran Order*).

<sup>2</sup> See *Initiation of Five-Year ("Sunset") Review*, 81 FR 18829 (April 1, 2016) (*Sunset Initiation*).

<sup>3</sup> See letter from WP&A to the Department concerning "Notice of Intent to Participate Wonderful Pistachios & Almonds LLC in Response to the Department's Notice of Initiation of the Second Sunset Review," dated April 11,



respectively, pursuant to 19 CFR 351.218(d)(3), WP&A and APG filed timely and adequate substantive responses within 30 days after the date of publication of the *Sunset Initiation*.<sup>4</sup> The Department did not receive timely substantive responses from any respondent interested party with respect to the order on pistachios from Iran. The Department received an untimely substantive response from Tehran Negah Nima, trading as Nima Trading Company (Nima), and therefore the Department rejected the untimely submission.<sup>5</sup> As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted an expedited (120-day) sunset review of the antidumping duty order on pistachios from Iran.

### **Scope of the Order**

The products covered by the order are raw,<sup>6</sup> in-shell pistachio nuts from which the hulls have been removed, leaving the inner hard shells, and edible meats from Iran. This merchandise is provided for in subheading 0802.51.00.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

### **History of the Order on Pistachios from Iran**

Since the publication of the previous sunset review of the order on pistachios from Iran,<sup>7</sup> there have been no scope inquiries, administrative reviews, or new shipper reviews that have culminated in preliminary or final results in connection with the antidumping duty order on pistachios from Iran. Parties requested administrative reviews for the 2005-2006 and 2006-2007 review periods, but the reviews were rescinded when the Department found there had been no reviewable shipments during the period of review (POR), and the requests for administrative reviews were withdrawn.<sup>8</sup>

### **Discussion of the Issues**

#### *Legal Framework*

In accordance with section 751(c)(1) of the Act, the Department is conducting this sunset review

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2016; *see also* letter from APG to the Department concerning “Second Five-Year ‘Sunset’ Review: Notice of Intent to Participate,” dated April 12, 2016.

<sup>4</sup> *See* letter from WP&A to the Department concerning “Substantive Response of Wonderful Pistachios & Almonds LLC to the Department’s Notice of Initiation of the Second Sunset Review,” dated April 29, 2016 (WP&A Substantive Response); *see also* letter from APG to the Department concerning “Sunstantive Response to Notice of Initiation,” dated May 2, 2016 (APG Substantive Response).

<sup>5</sup> *See* memorandum from Madeline Heeren, International Trade Compliance Analyst, to the file entitled, “Request to Take Action on Certain Barcodes,” dated May 17, 2016 (Rejection Memo); *see also* letter from Brian Davis, Acting Program Manager, to Nima, dated May 17, 2016 (Rejection Letter).

<sup>6</sup> *See Certain In-Shell Pistachios From Iran; Clarification of Scope in Antidumping Duty Investigation*, 51 FR 23254 (June 26, 1986).

<sup>7</sup> *See Certain In-Shell Pistachios from Iran; Final Results of the Expedited Sunset Review of the Antidumping Duty Order*, 70 FR 57855 (October 4, 2005) (2005 Expedited Sunset Review).

<sup>8</sup> *See Certain In-Shell Raw Pistachios from Iran: Notice of Rescission of Antidumping Duty Administrative Review*, 71 FR 76272 (December 20, 2006); *see also Certain In-Shell Raw Pistachios from Iran: Rescission of Antidumping Duty Administrative Review*, 73 FR 9292 (February 20, 2008).

to determine whether revocation of the antidumping duty order would be likely to lead to a continuation or recurrence of dumping. Sections 752(c)(1)(A) and (B) of the Act provide that, in making these determinations, the Department shall consider both the weighted-average dumping margins determined in the investigation and subsequent reviews, and the volume of imports of the subject merchandise for the periods before, and the periods after, the issuance of the antidumping duty order.

As explained in the *Statement of Administrative Action* (SAA) accompanying the Uruguay Round Agreements Act, the Department normally determines that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping when: (a) dumping continued at any level above *de minimis* after issuance of the order; (b) imports of the subject merchandise ceased after issuance of the order; or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly.<sup>9</sup>

Alternatively, the Department normally will determine that revocation of an antidumping duty order is not likely to lead to continuation or recurrence of dumping where dumping was eliminated after issuance of the order and import volumes remained steady or increased.<sup>10</sup> In addition, as a base period of import volume comparison, it is the Department's practice to use the one-year period immediately preceding the initiation of the investigation, rather than the level of pre-order import volumes, as the initiation of an investigation may dampen import volumes and, thus, skew comparison.<sup>11</sup>

Further, section 752(c)(3) of the Act states that the Department shall provide to the International Trade Commission (ITC) the magnitude of the margin of dumping likely to prevail if the order were revoked. Generally, the Department selects the margin(s) from the final determination in the original investigation, as this is the only calculated rate that reflects the behavior of exporters without the discipline of an order in place.<sup>12</sup> However, the Department may use a rate from a more recent review, if this rate may be more representative of a company's behavior in the absence of an order (*e.g.*, where a company increases dumping to maintain or increase market share with an order in place).<sup>13</sup>

In February 2012, the Department announced that it was modifying its practice in sunset reviews such that it will not rely on weighted-average dumping margins that were calculated using the methodology found to be World Trade Organization (WTO)-inconsistent.<sup>14</sup> In the *Final*

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<sup>9</sup> See SAA, H.R. Rep. No. 103-316, Vol. 1 (1994), at 889-90; see also, *Folding Gift Boxes from the People's Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order*, 72 FR 16765 (April 5, 2007), and accompanying Issues and Decision Memorandum at Comment 1.

<sup>10</sup> See *Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) (*Sunset Policy Bulletin*).

<sup>11</sup> See, *e.g.*, *Stainless Steel Bar from Germany; Final Results of the Sunset Review of the Antidumping Duty Order*, 72 FR 56985 (October 5, 2007), and accompanying Issues and Decision Memorandum at Comment 1.

<sup>12</sup> See SAA at 890 and *Sunset Policy Bulletin* at section II.B.1. See, *e.g.*, *Persulfates From the People's Republic of China: Notice of Final Results of Expedited Second Sunset Review of Antidumping Duty Order*, 73 FR 11868 (March 5, 2008), and accompanying Issues and Decision Memorandum at Comment 2.

<sup>13</sup> See SAA at 890-91; *Sunset Policy Bulletin* at section II.B.2.

<sup>14</sup> See *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Anti-dumping Duty Proceedings; Final Modification*, 77 FR 8101, 8103 (February 14, 2012) (*Final Modification for Reviews*).

*Modification for Reviews*, the Department stated that “only in the most extraordinary circumstances” would it rely on margins other than those calculated and published in prior determinations.<sup>15</sup> The Department further stated that apart from the “most extraordinary circumstances,” it would “limit its reliance to margins determined or applied during the five-year sunset that were not determined in a manner found to be WTO-inconsistent” and that it “may also rely on past dumping margins that were not affected by the WTO-inconsistent methodology, such as dumping margins recalculated pursuant to Section 129 proceedings, dumping margins determined based on the use of total adverse facts available, and dumping margins where no offsets were denied because all comparison results were positive.”<sup>16</sup>

Finally, pursuant to section 752(c)(4)(A) of the Act, a dumping margin of “zero or *de minimis* shall not by itself require” the Department to determine that revocation of an antidumping duty order would not be likely to lead to a continuation or recurrence of sales at less-than-fair-value (LTFV). Our analysis of the comments submitted by the Domestic Interested Parties follows.

### *Analysis*

#### 1. Likelihood of Continuation or Recurrence of Dumping

##### Interested Party Comments

The Domestic Interested Parties argue that revocation of the antidumping duty order on pistachios from Iran would be likely to lead to the continuation or recurrence of sales at LTFV in the United States. According to the Domestic Interested Parties, revocation would also result in significant increases in the volume of dumped imports. Specifically, the Domestic Interested Parties contend that during the one completed administrative review and one new shipper review, dumping was shown to continue at rates exceeding *de minimis* levels of 0.5 percent since the issuance of the order.<sup>17</sup> In addition, the Domestic Interested Parties assert that since the imposition of the order, the import volumes of pistachios into the United States from Iranian producers and exporters have generally declined.<sup>18</sup> The Domestic Interested Parties also argue that there have been no completed reviews since the Tehran Negah Nima Trading Company, Inc./Razi Domghan Agricultural and Animal Husbandry Company 2002-2003 review, which was published in 2005.<sup>19</sup> Additionally, there have been only 6,069 kilograms (kgs) of subject merchandise imported into the United States from Iran between 2005 and September 2010.<sup>20</sup>

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<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> See APG Substantive Response at 7.

<sup>18</sup> *Id.*; see also APG Substantive Response at 8-9 and Exhibit 3. Specifically, WP&A argues that there were “virtually no imports {of subject merchandise} into the United States from Iran between September 2005 and September 2010, which is when the most recent import ban became effective.” See WP&A Substantive Response at 7. APG argues that imports during the “second embargo-free period (*i.e.*, from April 28, 2000, through September 28, 2010)” were significantly lower than during the six months preceding the Department’s affirmative preliminary determination of sales at LTFV. See APG Substantive Response at 8-9.

<sup>19</sup> See WP&A Substantive Response at 6-7; see also APG Substantive Response at 6-7.

<sup>20</sup> *Id.*, at Exhibit 3.

## The Department's Position

As explained in the Legal Framework section above, the Department's determination concerning whether revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping is based, in part, upon guidance provided by the legislative history accompanying the Uruguay Round Agreements Act (*i.e.*, the SAA; House Report, H. Rep. No. 103-826, pt. 1 (1994) (House Report); and Senate Report, S. Rep. No. 103-412 (1994) (Senate Report)). Consistent with the SAA, the Department will make its likelihood determination on an order-wide basis.<sup>21</sup> Further, when determining whether revocation of the order would be likely to lead to continuation of dumping, sections 752(c)(1)(A) and (B) of the Act instruct the Department to consider: (1) the weighted-average dumping margins determined in the investigation and subsequent reviews; and (2) the volume of imports of the subject merchandise for the period before and after the issuance of the antidumping duty order.

As part of its determination of whether revocation of an antidumping order is likely to lead to the continuation or recurrence of dumping, the Department will examine whether: (a) dumping continued at any level above *de minimis* after the issuance of the order or suspension agreement; (b) imports of the subject merchandise ceased after the issuance of the order or the suspension agreement; and (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined.<sup>22</sup>

In the instant review, for the reasons stated below, we find that revocation of the antidumping duty order on pistachios from Iran would likely result in the continuation or recurrence of dumping in the United States.

Pursuant to 752(c)(1)(B) of the Act, the Department considers the volume of imports in determining whether revocation of the *Iran Order* would likely lead to continuation or recurrence of dumping. The Department's practice is to compare import volumes during the year preceding initiation of the underlying investigation to import volumes since the last continuation notice.

We examined import volumes from the ITC's Trade Dataweb for 2005 through 2010,<sup>23</sup> which is the five-year period that follows the five-year period examined in the *2005 Expedited Sunset Review*, and we compared this to the import volumes in the pre-investigation period. The import volumes from Iran for the POR were 6,069 kgs in 2006 and zero in all remaining years in the five-year period.<sup>24</sup> By contrast, the import volumes for 1984, the year immediately preceding the initiation of the *Iran Order*, was 9.66 million kgs.<sup>25</sup> In the five-year period since the publication of the *2005 Expedited Sunset Review* and the *Continuation of the Antidumping*

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<sup>21</sup> See SAA at 879.

<sup>22</sup> See, e.g., *Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe from Argentina, Brazil, and Germany: Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders*, 71 FR 59079 (October 6, 2006) and accompanying Issues and Decision Memorandum at 1.

<sup>23</sup> See Attachment I to this memorandum.

<sup>24</sup> These import volumes are based on the following HTS number: 0802.50.20.00.

<sup>25</sup> *Id.*

*Order*,<sup>26</sup> the import volumes have declined and, as noted above, were zero for all but one year when compared to the pre-investigation period.

Since the imposition of the *Iran Order* and after the publication of the *2005 Expedited Sunset Review* and the *Continuation of the Antidumping Order*, we find that during the five-year POR (*i.e.*, July 1, 2005 through June 30, 2010) import volumes declined, and were zero for 2005, 2007, 2008, 2009, and 2010. In 2006, the volume of imports of pistachios from Iran were merely 6,069 kgs.<sup>27</sup> In addition, since the issuance of the *Iran Order* until June 30, 2010, the end of the POR, import volumes of pistachios into the United States from Iran declined significantly and remained below pre-order volumes.<sup>28</sup> We have not premised any part of our analysis on the years during which the trade embargo against Iran was in effect.<sup>29</sup>

In this particular case, the record for Iran demonstrates that import volumes for the subject merchandise declined significantly. The SAA and the House Report state that “{u}nder new section 752(c)(4), the existence of zero or *de minimis* dumping margins at any time while the order was in effect shall not in itself require Commerce to determine that there is no likelihood of continuation or recurrence of dumping. Exporters may have ceased dumping because of the existence of an order or suspension agreement. Therefore, the present absence of dumping is not necessarily indicative of how exporters would behave in the absence of the order or an agreement.”<sup>30</sup>

Because import volumes from July 1, 2005 until June 30, 2010 declined from the pre-order levels and continued to decline following the publication of the *2005 Expedited Sunset Review* and the *Continuation of the Antidumping Order*, and because no party has submitted any evidence to the contrary, pursuant to section 752(c)(1) of the Act, we find that dumping is likely to continue or recur if the *Iran Order* is revoked.

## 2. Magnitude of the Dumping Margin Likely to Prevail

### Interested Party Comments

To provide the ITC with the margin that is likely to prevail should the order be revoked, the SAA instructs that the Department should normally select the rate from the original investigation, because that is the only calculated rate that reflects the behavior of exporters without the discipline of an order or suspension agreement in place.<sup>31</sup> The Domestic Interested Parties

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<sup>26</sup> See *Continuation of Antidumping Duty Order on Certain In-Shell Pistachios from Iran*, 71 FR 94 (January 3, 2006) (*Continuation of the Antidumping Order*).

<sup>27</sup> See Attachment I to this memorandum.

<sup>28</sup> *Id.*

<sup>29</sup> Due to a trade embargo against Iran, imports of Iranian pistachios into the United States were banned, effective September 29, 2010, by the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, 111 Pub. L. 195, sec. 103(b). See *Iranian Transactions Regulations*, 75 FR 59611 (Department of Treasury, September 28, 2010). Those sanctions were lifted in January 2016. See *Iranian Transactions and Sanctions Regulations*, 81 FR 3330 (Department of Treasury, January 21, 2016) (providing a general license to import, among other things, Iranian pistachios).

<sup>30</sup> See SAA at 890.

<sup>31</sup> See APG Substantive Response at 9; see also WP&A Substantive Response at 8; see also SAA at 889-90.

suggest that the Department should report to the ITC the antidumping duty margin calculated in the investigation of pistachios from Iran, which is in accordance with the *Sunset Policy Bulletin*, and which is set forth in the “History of the Order on Pistachios from Iran” section above.<sup>32</sup>

Additionally, according to the Domestic Interested Parties, when a company was not specifically investigated in the original investigation or did not begin shipping until after the order was issued, the Department will normally select a margin based on the “All-Others” rate from the original investigation.<sup>33</sup>

Furthermore, the Domestic Interested Parties argue that good cause does not exist for the Department to consider factors under section 752(c)(2) of the Act because there are no factors, such as price, cost, market, or other economic factors, that would contradict the record of significant dumping margins and minimal or zero import volumes since issuance of the order.<sup>34</sup>

The Domestic Interested Parties contend that the rate from the original investigation, 241.14 percent, should be reported to the ITC as the margin of dumping that would likely prevail in the absence of the *Iran Order*.<sup>35</sup> According to the Domestic Interested Parties, this rate was determined on the basis of “best available information” and requires no adjustment by reason of the Department’s previous practice of “zeroing.”<sup>36</sup>

#### Department’s Position

Normally, the Department will provide the ITC the company-specific, weighted-average dumping margin from the LTFV for each company.<sup>37</sup> The Department selects a rate from the LTFV because it is the only calculated rate that reflects the behavior of exporters without the discipline of an order or suspension agreement in place.<sup>38</sup> For companies not investigated individually, or for companies that did not begin shipping until after the order was issued, the Department will normally provide a rate based on the “All-Others” rate from the investigation.<sup>39</sup>

The Department has determined that the weighted-average dumping margin established in *Iran LTFV*,<sup>40</sup> represents the magnitude of the margin of dumping most likely to prevail if the *Iran*

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<sup>32</sup> See APG Substantive Response at 10; see also WP&A Substantive Response at 8.

<sup>33</sup> See APG Substantive Response at 9; see also WP&A Substantive Response at 8; see also *Sunset Policy Bulletin* at 18873.

<sup>34</sup> See WP&A Substantive Response at 8.

<sup>35</sup> *Id.*; see also APG Substantive Response at 10.

<sup>36</sup> See *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101 at 8103 (February 14, 2012); see also APG Substantive Response at 8.

<sup>37</sup> See *Eveready Battery Co., Inc. v. United States*, 77 F. Supp. 2d 1327, 1333 (CIT 1999); see also APG Substantive Response at 10.

<sup>38</sup> *Id.*; see also SAA at 890.

<sup>39</sup> See *Certain Hot-Rolled Carbon Steel Flat Products from Argentina, the People’s Republic of China, India, Indonesia, Kazakhstan, Romania, South Africa, Taiwan, Thailand, and Ukraine; Final Results of Expedited Sunset Reviews of the Antidumping Duty Orders*, 71 FR 70506 (December 5, 2006) and accompanying Issues and Decision Memorandum at Comment 2.

<sup>40</sup> See *Certain In-Shell Pistachios From Iran Final Determination of Sales and Less Than Fair Value*, 51 FR 18919 (May 23, 1986) (*Iran LTFV Investigation*).

*Order* were revoked. We have further determined that the margin was not affected by the denial of offsets in accordance with the *Final Modification for Reviews*.<sup>41</sup> Specifically, the Department calculated the dumping margins in the *Iran LTVF Investigation* on the basis of best available information and were determined without employing the “zeroing” methodology.<sup>42</sup>

**Final Results of Review**

We determine that revocation of the antidumping duty order on pistachios from Iran would be likely to lead to continuation or recurrence of dumping and that the magnitude of the margin of dumping likely to prevail would be weighted average margins up to the following:

Exporter/Producer Weighted-Average Margin (percent)

<b>Exporter/Producer</b>	<b>Margin (percent)</b>
Rafsanjan Pistachios Cooperative	241.14
Tehran Negah Nima Trading Company, Inc./ Maghsoudi Farms	241.14
Tehran Negah Nima Trading Company, Inc./ Razi Domghan Agricultural and Animal Husbandry Company	241.14
All-Others Rate	241.14

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<sup>41</sup> As stated in the *Final Modification for Reviews*, “{i}f the dumping margins determined in a manner not found to be WTO-inconsistent in these disputes indicate that dumping continued with the discipline of the order in place, those dumping margins alone can form the basis for a determination that dumping will continue or recur if the order were to be revoked.” See *Final Modification for Reviews*, 77 FR at 8103. The Department announced it would cease zeroing in investigations on December 26, 2006. See *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification*, 71 FR 77722 (December 27, 2006).

<sup>42</sup> See the Department’s memorandum to the file, “Final Results of Expedited Sunset Review of the Antidumping Duty Order on Certain In-Shell (Raw) Pistachios from Iran: Data Supplement,” dated concurrently with this memorandum (Data Supplement).

**Recommendation**

Based on our analysis of the substantive responses received, we recommend adopting each of above positions. If these recommendations are accepted, we will publish the final results of the sunset review in the *Federal Register*, and notify the ITC of our findings.

AGREE

DISAGREE



Ronald K. Lorentzen  
Acting Assistant Secretary  
for Enforcement and Compliance

July 29, 2016  
Date

ATTACHMENT I