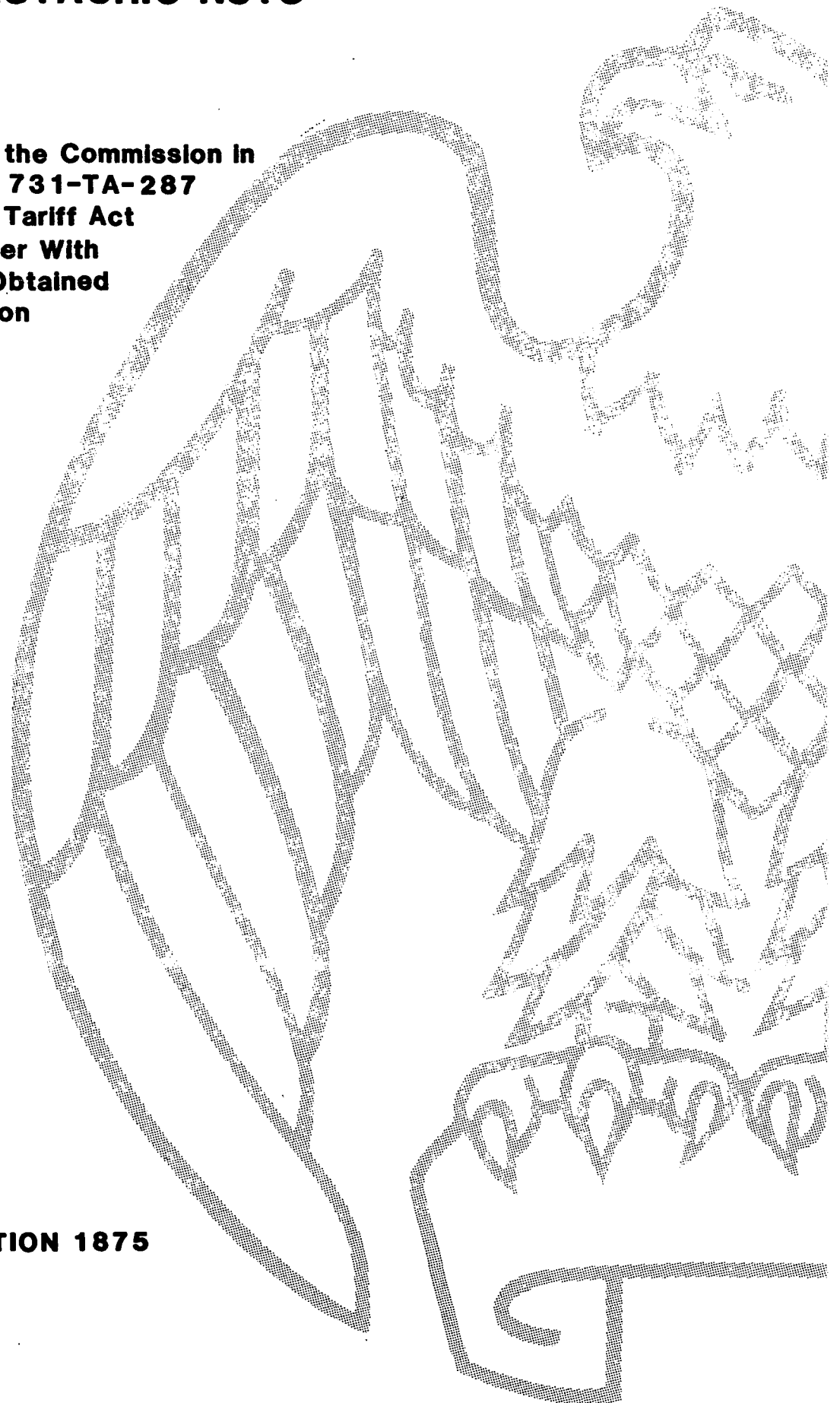


IN-SHELL PISTACHIO NUTS FROM IRAN

**Determination of the Commission in
Investigation No. 731-TA-287
(Final) Under the Tariff Act
of 1930, Together With
the Information Obtained
in the Investigation**

USITC PUBLICATION 1875

JULY 1986



UNITED STATES INTERNATIONAL TRADE COMMISSION

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Stephen McLaughlin, Office of the General Counsel
Robert Eninger, Supervisory Investigator

Address all communications to
Kenneth R. Mason, Secretary to the Commission
United States International Trade Commission
Washington, DC 20436

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Note.--Information that would reveal the confidential operations of individual concerns may not be published and, therefore, has been deleted from this report. Such deletions are indicated by asterisks.

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC

Investigation No. 731-TA-287 (Final)

IN-SHELL PISTACHIO NUTS FROM IRAN

Determination

On the basis of the record 1/ developed in the subject investigation, the Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)), that an industry in the United States is threatened with material injury by reason of imports from Iran of pistachio nuts, not shelled, provided for in item 145.26 of the Tariff Schedules of the United States, which have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV). The Commission further determines that the threat of material injury would not have resulted in actual material injury but for the suspension of liquidation. 2/ In addition, since the Commission finds that there is only a threat of material injury, the question of critical circumstances is not addressed. 3/

1/ The record is defined in sec. 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(i)).

2/ This determination is based on section 735(b)(4)(B) of the Tariff Act of 1930 which states:

If the final determination of the Commission is that there is no material injury but there is threat of material injury, then its determination shall also include a finding as to whether material injury by reason of the imports of the merchandise with respect to which the (Department of Commerce) has made an affirmative determination under subsection (a) of this section would have been found but for any suspension of liquidation of entries of the merchandise.

19 U.S.C. § 1673d(b)(4)(B).

3/ Since the Department of Commerce affirmatively found critical circumstances, section 735(b)(4)(A) of the Tariff Act of 1930 requires that: the final determination of the Commission shall include a finding as to whether the material injury is by reason of massive imports described in subsection (a)(3) to an extent that, in order to prevent such material injury from recurring, it is necessary to impose the duty imposed by section 731 retroactively on those imports.

19 U.S.C. § 1673d(b)(4)(A). Since we do not find that there is "material injury" but only threat of material injury, the statute does not allow us to reach the question of imposing retroactive antidumping duties.

Background

The Commission instituted this investigation effective March 11, 1986, following a preliminary determination by the Department of Commerce that imports of certain in-shell pistachio nuts from Iran were being sold at LTFV within the meaning of section 731 of the Act (19 U.S.C. § 1673). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of April 2, 1986 (51 F.R. 11359). The hearing was held in Washington, DC, on May 21, 1986, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on July 8, 1986. The views of the Commission are contained in USITC Publication 1875 (July 1986), entitled "In-Shell Pistachio Nuts from Iran: Determination of the Commission in Investigation No. 731-TA-287 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

VIEWS OF VICE CHAIRMAN BRUNSDALE, COMMISSIONER STERN,
COMMISSIONER ECKES, COMMISSIONER LODWICK, AND COMMISSIONER ROHR

We determine that an industry in the United States is threatened with material injury by reason of imports of pistachio nuts from Iran that are being sold at less than fair value (LTFV). ^{1/} Our determination in this investigation is based upon a number of factors. First, the condition of the domestic industry has deteriorated steadily throughout the period of investigation. Second, imports from Iran have increased rapidly both in absolute terms and as a percentage of domestic consumption. Third, there has been a substantial increase in inventories of imported pistachios. Fourth, Iran has the ability to continue to increase imports in the future. Finally, imports from Iran have had, and will continue to have, a significant depressing effect on U.S. prices.

We further determine that the threat of material injury would not have resulted in actual material injury "but for" the suspension of liquidation. ^{2/} Our determination on this issue is based on our examination of the rate that imports of raw, in-shell pistachios from Iran were entering the country and changes in the condition of the domestic industry.

^{1/} Material retardation is not at issue in this investigation and will not be discussed further.

^{2/} 19 U.S.C. § 1673d(b)(4)(B).

The like product and the domestic industry ^{3/}

Like product--The imported product which is the subject of this investigation is raw, in-shell pistachio nuts from Iran. The imported nuts have been semi-processed, that is, the imported nuts have been hulled, washed, dried, and graded, but not salted and/or dyed or roasted.

Pistachio nuts are a tree crop that yield nuts on an alternate bearing cycle in which one year's heavy crop is followed the next year by a light crop. The trees do not bear a significant crop until they are seven to ten years of age, when a tree should yield between 25-100 pounds of nuts per harvest. They reach full maturity at 20 years of age, and continue to bear at full capacity for up to 40 years. ^{4/}

When harvested, pistachios consist of an edible nutmeat surrounded by a hard shell which is enclosed within a soft hull. The term "in-shell" pistachios refers to nuts from which the hull has been removed. The dehulled nuts are dried to a moisture content of 4 to 6 percent to prevent spoilage.

^{3/} Section 771(4)(A) of the Tariff Act of 1930 defines the "domestic industry" as "[t]he domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product." 19 U.S.C. § 1677(4)(A). The statute defines "like product" as "[a] product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to investigation" 19 U.S.C. § 1677(10). Thus, the Commission must first determine the appropriate like product. We then consider which firms in the United States are domestic producers of that product in order to define the domestic industry.

^{4/} Report to the Commission (Report) at A-3-A-4.

Nuts dried to a four to six percent moisture content are termed "raw" by the industry. ^{5/}

Both the imported and domestic raw in-shell pistachios have the same characteristics, although they come in a variety of grades and sizes. There are three U.S. grades based on damage and other defects to the pistachio nuts: U.S. Fancy, U.S. No. 1, and U.S. No. 2. Further, pistachios fall into four size categories: very large (18-22 nuts per ounce), large (21-26), medium (26-30), and small (30-34). ^{6/} Both domestic and imported pistachios have the same use; they are consumed in the United States almost exclusively as snack food.

None of the parties to this investigation has disputed that domestic raw, in-shell pistachios are like imported raw, in-shell pistachios from Iran, nor is there any information of record that suggests that they are not like one another. Therefore we conclude that domestic raw in-shell pistachio nuts that have been harvested, hulled, dried to a moisture content of 4-6 percent, and graded are like the imported raw, in-shell pistachio nuts.

Domestic Industry--The first commercial crop of pistachios in the United States was harvested in 1976. Prior to that time imports supplied the entire market. Iran has traditionally been the principal source of imported pistachios. Between 1976 and 1979, the market share of domestic producers increased from 1.3 percent to 14.9 percent. In 1980 imports dropped sharply

^{5/} Id. at A-4.

^{6/} Id. at A-41. While both Iranian and domestic pistachio nuts come in all sizes, domestic pistachos are, on the average, larger than Iranian pistachios. Id. at A-5.

from 24,551,000 pounds to 845,000 pounds due to an embargo on trade with Iran and a severe frost in Iran that drastically cut Iranian production. At the same time domestic production increased from 2,574,000 pounds in 1978 to 11,613,000 pounds in 1980 and captured 93.2 percent of the domestic market. ^{7/} Further, capital expenditures by the domestic pistachio growers increased from \$3,846,000 in 1978 to \$29,020,000 in 1980. ^{8/}

The embargo on trade with Iran was lifted in January, 1981. Between 1981 and 1983 imports from Iran increased slowly but, in 1984, they quadrupled achieving volume levels approximating the level reached prior to the embargo. ^{9/} Between 1980 and 1985 imports from Iran averaged in excess of 90 percent of total imports. ^{10/} Meanwhile, domestic production continued to increase in the heavy crop years from 26,900,000 pounds in 1980 to 63,100,000 pounds in 1984. ^{11/}

The Commission has, under certain circumstances, defined a domestic industry producing a processed agricultural product to include not only processors but also the growers of the unprocessed agricultural raw material as well. The Commission makes that determination on a case-by-case basis by

^{7/} Id. at A-13, Table 3.

^{8/} Id. at A-30. Since trees do not bear a significant crop until they are 7 to 10 years of age, most of the trees planted in the late 1970's are just now beginning to have an effect on domestic production.

^{9/} Id. at A-13, Table 3.

^{10/} Id. at A-38.

^{11/} Id. at A-13, Table 3. Production also increased in the light crop years, 1981-85.

analyzing the nature of the particular industry under investigation. Some of the criteria which the Commission has examined are whether there is a single continuous line of production of the like product and whether there is a common economic interest between the growers and the processors. This second factor has been analyzed by examining such factors as interlocking ownership and the degree of economic integration. ^{12/}

In the preliminary investigation, we included growers in the domestic industry. We concluded that the production process did involve a single, continuous line of production starting with one raw material that yields one product--raw in-shell pistachios. The pistachio nuts are not transformed into a different article throughout the process. The product remains substantially unchanged. Furthermore, the Commission determined that there is a common economic interest between the growers and the processors. Testimony at the hearing indicated that growers own processing companies that account for 40 percent of processing capacity ^{13/} and contractual relationships between growers and processors concerning payment terms exist that demonstrate the requisite common economic interest. None of the parties has contested the fact that growers should be included in the domestic industry nor is there any new information that suggests that growers should not be included.

^{12/} For a more in depth analysis of this issue, see "Legal Issues in Frozen Concentrated Orange Juice from Brazil", Inv. No. 731-TA-326 (Preliminary) GC-J-095 (June 13, 1986).

^{13/} Id. at A-8, n. 2.

We therefore determine that the domestic industry producing the like product consists of those producers that grow pistachio nuts and those firms that process the pistachio nuts from hulling through grading.

Condition of the domestic industry

In addition to our consideration of the traditional indicia of the condition of the domestic industry, ^{14/} we have also considered the special nature of the agricultural product involved, analyzing the raw, in-shell pistachio nut industry in light of the cyclical nature of pistachio trees which results in alternating light and heavy crop years. The unique nature of this industry requires that analysis of much of the relevant data, especially production and shipment data for growers and profitability data for both growers and processors, focus on changes from one heavy crop year to another heavy crop year and from one light crop year to another light crop year. Year to year changes can be misleading. ^{15/}

U.S. production and shipments of pistachios have risen throughout the period of investigation. In 1982, a heavy crop year, production was 43,400,000 pounds, a 61 percent increase over 1980 levels. Production rose an additional 45 percent in 1984, reaching 63,100,000 pounds. Production in the light crop years increased from 14,500,000 pounds in 1981 to 27,100,000 pounds

^{14/} In making a determination as to the condition of the domestic industry, the Commission traditionally considers, among other factors, changes in U.S. production, shipments, consumption, capacity, capacity utilization, market share, employment, wages, and profitability. 19 U.S.C. § 1677(7)(C)(iii).

^{15/} Report at A-3-A-4.

in 1985. ^{16/} Shipments by growers of harvested pistachios increased in the heavy crop years from 18,600,000 pounds in 1980, to 37,500,000 in 1982, and to 45,300,000 in 1984. In the light crop years, growers' shipments increased from 11,300,000 pounds in 1981, to 21,000,000 in 1983, and to 22,600,000 in 1985. ^{17/} Processors' shipments of raw, in-shell pistachios increased annually from 13,765,000 in 1981 to 34,986,000 pounds in 1984. ^{18/}

Between 1980 and 1985 domestic consumption of raw, in-shell pistachios increased rapidly from 12,458,000 pounds in 1980 to 61,061,000 pounds in 1985. ^{19/} Despite these increases in consumption, production and shipments, the domestic industry's market share declined from 93.2 percent in 1980 to 56.3 percent in 1985, while the market share of Iranian imports rose from 6.3 percent to 42.3 percent during that same period. ^{20/}

Domestic processing capacity increased steadily from 37,433,000 pounds in 1982 to 58,841,000 pounds in 1985. Utilization of processing capacity was in excess of 90 percent from 1982 through 1984, before dropping to 52.6 percent in 1985. ^{21/}

^{16/} Id. at A-14.

^{17/} Id. at A-15.

^{18/} Id. at A-17. Shipments by processors did not follow the year-to-year fluctuations of U.S. growers' shipments because processors hold inventories in the heavy crop years for sale in the light crop years.

^{19/} Id. at A-13, Table 3.

^{20/} Id. at A-40, Table 17.

^{21/} Id. at A-16, Table 4.

Data obtained from growers indicate that the average number of workers rose from 1982 to 1983 before declining in 1984 and 1985. Further, wages paid to those workers declined steadily from 1982 to 1985 even though the total hours worked remained relatively stable. ^{22/} For processors, the data indicate steady and significant growth in the average number of workers, hours worked, wages paid, and total compensation from 1982 to 1985. ^{23/}

The financial data obtained from growers, compared on an alternate year basis, show consistent declines in profitability. Net income in the heavy crop years dropped from 31.5 percent of net sales in 1982 to 22.8 percent in 1984. In the light crop years net losses increased from 3.9 percent of net sales in 1983 to 22.2 percent in 1985. ^{24/} Domestic processors' financial performance followed a similar but less extreme pattern with net income in the heavy years declining slightly from 1982 levels to 5.7 percent of net sales in 1984, and in the light years declining from 4.8 percent of net sales in 1983 to a loss of 1.2 percent in 1985. ^{25/}

In summary, despite the growth in consumption, production, and shipments, the condition of the domestic industry has deteriorated steadily throughout the period of the investigation.

^{22/} Id. at A-26, Table 8.

^{23/} Id.

^{24/} Id. at A-28 and Table 10.

^{25/} Id. at A-32, Table 11. The actual figure for 1982 is confidential.

Threat of material injury by reason of LTFV imports from Iran

In making a determination as to whether there is a threat of material injury, the Commission is to consider, among other factors, (1) any rapid increase in market penetration of the imports and the likelihood that such penetration will reach an injurious level, (2) any substantial increase in inventories of the imported product, (3) the likelihood of increased imports in the future because of increased capacity or existing underutilized capacity in the foreign country, and (4) the probability that future imports will have a price depressing or suppressing effect in the domestic market. ^{26/}

Moreover, a finding of threat of material injury must be based on evidence that the threat is real and that the injury is imminent and must not be based upon mere conjecture or supposition. ^{27/}

Imports of raw, in-shell pistachios have increased dramatically since the embargo on trade with Iran was lifted in 1981. From 1982 to 1985 imports from Iran rose steadily from 4,123,000 pounds to 25,841,000 pounds. In January-March, 1986, imports reached 5,429,000 pounds compared with 2,323,000 pounds for January-March, 1985. ^{28/} Market penetration also rose dramatically from 19.8 percent of consumption in 1982 to 42.3 percent in 1985. ^{29/} During this period of rapid increase in both the volume and

^{26/} 19 U.S.C. § 1677(7)(F)(i).

^{27/} 19 U.S.C. § 1677(7)(F)(ii).

^{28/} Report at A-38, Table 15.

^{29/} Id. at A-40, Table 17.

market share of imports, the unit value of those imports declined steadily from \$2.30 in 1982 to \$1.25 in January-March, 1986. ^{30/ 31/}

Yearend inventories of raw, in-shell pistachios imported from Iran declined to 319,000 pounds between 1982 and 1983, before increasing to 913,000 pounds in 1984 and further to 5,461,000 in 1985. The ratio of imports to shipments, after dropping slightly in 1983, rose sharply from 18.9 percent in 1983 to 23.9 percent in 1984, and to 44.3 percent in 1985. ^{32/}

Iran is the world's largest producer of raw, in-shell pistachio nuts. ^{33/} Production of pistachios rose from 49,600,000 pounds in 1982, to 86,000,000 in 1983, and further to 110,000,000 in 1984, more than double the level of apparent U.S. consumption. ^{34/} The percentage of Iranian production sold for export increased significantly between 1980 and 1985. ^{35/}

^{30/} Id. at A-38, Table 15.

^{31/} Vice Chairman Brunsdale and Commissioner Stern note that there is some question about the final LTFV margin of 241.14 percent determined by the Commerce Department. Respondents have alleged that the margin is due solely to the use of official exchange rates proclaimed by the Iranian government (approximately 90 rials to the dollar) instead of commercial exchange rates (approximately 600 rials to the dollar). Petitioners did not contest this allegation. Commerce, in its final determination stated that it must use the rate supplied by the Federal Reserve Bank of New York and that they supplied the official rate. 51 Fed. Reg. 18920-21 (May 23, 1986). The Commission does not have the authority to recalculate the dumping margin supplied by Commerce. Review of Commerce's determination is properly left to the courts.

^{32/} Id. at A-35.

^{33/} Id. at A-36.

^{34/} Id. at A-36, Table 14.

^{35/} Id. The actual figures are confidential.

Available pricing data indicate that prices for imported raw, in-shell pistachios were consistently and significantly below prices for domestic pistachios. Moreover, while direct comparisons of domestic and imported pistachios present some difficulties, ^{36/} the declining trends in prices for both domestic and imported pistachios is unmistakable.

Prices paid by roasters for large-sized imported pistachios dropped steadily from \$2.68 per pound in April-June 1982, to \$1.23 per pound in April-June 1985. Similarly, prices paid by roasters for medium-sized imported pistachios declined from \$2.23 per pound in January-March 1982, to \$1.15 per pound in July-September 1985. ^{37/} Prices received by domestic processors and U.S. importers showed similar trends. ^{38/} Price trends for domestic raw, in-shell pistachios do not follow the same pattern of consistent declines, but prices for large- and medium-sized pistachios in 1985 are significantly lower than in any previous period for which data are available. ^{39/} Thus imports of raw, in-shell pistachios from Iran have had, and will continue to have, a depressing effect on domestic pistachio prices.

^{36/} Id. at A-44. Direct comparisons are difficult because of the wide variety of pistachio sizes and the lack of conformity of size categories. Further, while most domestic pistachios fall into the large category, most Iranian pistachios are in the medium category. Also Iranian pistachios are only roughly graded and often must undergo additional processing after importation to remove foreign debris prior to roasting. Finally, shipment prices have often been set by contract well in advance of actual shipment.

^{37/} Id. at A-49-A-50, Table 21.

^{38/} Subsequent to the filing of the petition in this investigation, import prices have risen somewhat.

^{39/} Id. at A-47-A-48, Table 20.

Given the steadily deteriorating condition of the domestic industry together with the rapid increase in imports from Iran in both absolute and relative terms, the significant build-up of inventories of Iranian pistachios, the enormous capacity of Iran to produce pistachios, the consistent pattern of underselling by Iranian imports, ^{40/} and steadily declining prices, we conclude that the domestic pistachio industry is threatened with material injury by reason of imports of pistachios from Iran. We further determine that the threat of material injury would not have resulted in actual material injury but for the suspension of liquidation.

^{40/} Vice Chairman Brunsdale notes that title VII requires the Commission to "consider whether there has been significant price undercutting by the imported merchandise as compared with the price of like products of the United States . . ." 19 U.S.C. § 1677(7)(C)(ii)(I). She believes, however, that information generally collected by the Commission about "underselling" does not have much bearing on "price undercutting". Accordingly, the Vice Chairman does not generally consider the "underselling margins" set forth in the Commission reports to be particularly persuasive evidence of price undercutting or probative of the issue of causation. In brief, when there are price differences between the foreign and domestic products they are usually explained by differences in the items compared. Rarely will all of the characteristics of the imported product exactly match those of the domestic product. For a more general discussion of underselling, see Memorandum from Director, Office of Economics, EC-J-010 (January 7, 1986) at 8-22.

15
ADDITIONAL VIEWS OF CHAIRMAN LIEBELER

Inv. No. 731-TA-287 (Final)

I determine that an industry in the United States is threatened with material injury by reason of imports of dumped pistachio nuts from Iran. I concur in the result reached by the majority with respect to like product, domestic industry¹ and condition of the industry. I also join in the majority's determination that the threat of material injury would not have resulted in actual material injury but for the suspension of liquidation.

Material Injury by Reason of Imports

In order for a domestic industry to prevail in a final investigation, the Commission must determine that the dumped or subsidized imports cause or threaten to

1

With respect to domestic industry, I agree that the growers should be included as part of the domestic industry. I do not agree that the degree of interlocking ownership is an important factor in this determination. See Live Swine and Pork from Canada, Inv. No. 701-TA-224 (final), USITC Pub. 1733 (Additional and Dissenting Views of Vice Chairman Liebelser).

cause material injury to the domestic industry producing the like product. First, the Commission must determine whether the domestic industry producing the like product is materially injured or is threatened with material injury. Second, the Commission must determine whether any injury or threat thereof is by reason of the dumped or subsidized imports. Only if the Commission answers both questions in the affirmative, will it make an affirmative determination in the investigation.

Before analyzing the data, however, the first question is whether the statute is clear or whether one must resort to the legislative history in order to interpret the relevant sections of the antidumping law. The accepted rule of statutory construction is that a statute, clear and unambiguous on its face, need not and cannot be interpreted using secondary sources. Only statutes that are of doubtful meaning are subject to such statutory interpretation.²

The statutory language used for both parts of the two-part analysis is ambiguous. "Material injury" is

defined as "harm which is not inconsequential, immaterial,

or unimportant."³ This definition leaves unclear what is meant by harm. As for the causation test, "by reason of" lends itself to no easy interpretation, and has been the subject of much debate by past and present commissioners. Clearly, well-informed persons may differ as to the interpretation of the causation and material injury sections of title VII. Therefore, the legislative history becomes helpful in interpreting title VII.

The ambiguity arises in part because it is clear that the presence in the United States of additional foreign supply will always make the domestic industry worse off. Any time a foreign producer exports products to the United States, the increase in supply, ceteris paribus, must result in a lower price of the product than would otherwise prevail. If a downward effect on price, accompanied by a Department of Commerce dumping or subsidy finding and a Commission finding that financial indicators were down were all that were required for an affirmative determination, there would be no need to inquire further into causation.

³

19 U.S.C. sec. 1977(7)(A) (1980).

But the legislative history shows that the mere presence of LTFV imports is not sufficient to establish causation. In the legislative history to the Trade Agreements Acts of 1979, Congress stated:

[T]he ITC will consider information which indicates that harm is caused by factors other⁴ than the less-than-fair-value imports.

The Finance Committee emphasized the need for an extensive causation analysis, stating, "the Commission must satisfy itself that, in light of all the information presented, there is a sufficient causal link between the less-than-fair-value imports and the requisite injury."⁵

The Senate Finance Committee acknowledged that the causation analysis would not be easy: "The determination of the ITC with respect to causation, is under current law, and will be, under section 735, complex and difficult, and is matter for the judgment of the ITC."⁶

⁴ Report on the Trade Agreements Act of 1979, S. Rep. No. 249, 96th Cong. 1st Sess. 75 (1979).

⁵ Id.

⁶ Id.

Since the domestic industry is no doubt worse off by the presence of any imports (whether LTFV or fairly traded) and Congress has directed that this is not enough upon which to base an affirmative determination, the Commission must delve further to find what condition Congress has attempted to remedy.

In the legislative history to the 1974 Act, the Senate Finance Committee stated that the law was designed to prevent unfair price discrimination:

This Act is not a 'protectionist' statute designed to bar or restrict U.S. imports; rather, it is a statute designed to free U.S. imports from unfair price discrimination practices. * * * The Antidumping Act is designed to discourage and prevent foreign suppliers from using unfair price discrimination practices to the detriment of a

7

United States industry.

Thus, the focus of the analysis must be on what constitutes unfair price discrimination and what harm results therefrom:

[T]he Antidumping Act does not proscribe transactions which involve selling an imported product at a price which is not lower than that needed to make the product competitive in the

U.S. market, even though the price of the
imported product is lower than its home market
8
price.

This "difficult and complex" judgment by the
Commission is aided greatly by the use of economic and
financial analysis. One of the most important assumptions
of traditional microeconomic theory is that firms attempt
9
to maximize profits. Congress was obviously familiar
with the economist's tools: "[I]mporters as prudent
businessmen dealing fairly would be interested in
maximizing profits by selling at prices as high as the
10
U.S. market would bear."

An assertion of unfair price discrimination should be
accompanied by a factual record that can support such a
conclusion. In accord with economic theory and the
legislative history, foreign firms should be presumed to
behave rationally. Therefore, if the factual setting in

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Id.

9

See, e.g., P. Samuelson & W. Nordhaus, Economics 42-45
(12th ed. 1985); W. Nicholson, Intermediate Microeconomics
and Its Application 7 (3d ed. 1983).

10

Trade Reform Act of 1974, S. Rep. 1298, 93rd Cong. 2d
Sess. 179.

which the unfair imports occur does not support any gain to be had by unfair price discrimination, it is reasonable to conclude that any injury or threat of injury to the domestic industry is not "by reason of" such imports.

In many cases unfair price discrimination by a competitor would be irrational. In general, it is not rational to charge a price below that necessary to sell one's product. In certain circumstances, a firm may try to capture a sufficient market share to be able to raise its price in the future. To move from a position where the firm has no market power to a position where the firm has such power, the firm may lower its price below that which is necessary to meet competition. It is this condition which Congress must have meant when it charged us "to discourage and prevent foreign suppliers from using unfair price discrimination practices to the detriment of a United States industry."

In Certain Red Raspberries from Canada, I set forth a framework for examining what factual setting would merit

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an affirmative finding under the law interpreted in light
12
of the cited legislative history.

The stronger the evidence of the following . . .
the more likely that an affirmative determination
will be made: (1) large and increasing market
share, (2) high dumping margins, (3) homogeneous
products, (4) declining prices and (5) barriers
to entry to other foreign producers (low
13
elasticity of supply of other imports).

The statute requires the Commission to examine the volume
of imports, the effect of imports on prices, and the
14
general impact of imports on domestic producers. The
legislative history provides some guidance for applying
these criteria. The factors incorporate both the
statutory criteria and the guidance provided by the
legislative history. Each of these factors is evaluated
in turn. But first I will discuss the condition of the
domestic industry.

Causation analysis

Examining import penetration data is relevant because
unfair price discrimination has as its goal, and cannot

12
Inv. No. 731-TA-196 (Final), USITC Pub. 1680, at 11-19
(1985) (Additional Views of Vice Chairman Liebeler).

13
Id. at 16.

14
19 U.S.C. 1677(7)(B)-(C) (1980 & cum. supp. 1985).

take place in the absence of, market power. Import penetration of raw, in-shell pistachios from Iran as a percentage of U.S. consumption has increased from 20 percent in 1982 to 42 percent in 1985. Imports from Iran thus have captured a large and rapidly increasing market share.

The second factor is a high margin of dumping. The higher the margin, ceteris paribus, the more likely it is that the product is being sold below the competitive

¹⁵ price and the more likely it is that the domestic producers will be adversely affected. The margin of dumping calculated by the Department of Commerce is 241 ¹⁶ percent. This factor is consistent with unfair price discrimination.

The third factor is the homogeneity of the products. The more homogeneous the products, the greater will be the effect of any allegedly unfair practice on domestic

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See text accompanying note 8, supra.

16

Report at A-3. I join with Vice Chairman Brunsdale and Commissioner Stern in their statement about the exchange rates and dumping margins in footnote 32 of the Views of the Commission, supra. I also note that the level of export subsidies (approximately 57 percent) will be subtracted from the dumping margin for cash deposit or bonding purposes.

producers. The parties to this investigation have not contended that there are any substantial differences between the products.

As to the fourth factor, declining domestic prices may indicate that domestic producers are lowering prices to maintain market share in the presence of an unfair price discriminator. There are several different sizes of pistachio nuts and the price trends differ depending on

the size.¹⁷ Thus, the price data is inconclusive.

The fifth factor is barriers to entry (foreign supply elasticity). If there are barriers to entry (or low foreign elasticity of supply) it is more likely that a producer can gain market power. Imports of pistachio nuts from countries other than Iran have been virtually nonexistent.¹⁸ Given the wide fluctuations in the domestic price for pistachio nuts and the absence of imports from other countries, there is little evidence to suggest a high foreign supply elasticity.

¹⁷ Report at Table 20.

¹⁸ Id. at Tables 15 & 17.

These factors must be balanced in each case to reach a sound determination. In this case, all the factors lead in the same direction. Market penetration is large and increasing. The dumping margin is high. There appears to be a low elasticity of foreign supply from countries other than Iran. Thus, the factors when viewed together are consistent with a finding of unfair price discrimination.

Conclusion

Therefore, I conclude that an industry in the United States is threatened with material injury by reason of dumped raw, in-shell pistachio nuts from Iran.

ADDITIONAL VIEWS OF VICE CHAIRMAN BRUNSDALE

I concur with my fellow colleagues in this investigation on like product, condition of industry, and causation. Thus I also determine that an industry in the United States is threatened with material injury by reason of imports of pistachio nuts from Iran that are being sold at less than fair value.

Furthermore, I agree with my colleagues that the appropriate definition of the domestic industry in this investigation includes both processors and growers of raw, in-shell pistachios. However, I reach this result by a somewhat different line of reasoning than that of my fellow Commissioners in the majority opinion.¹

In my view, domestic producers of a raw material that is embodied in the like product should be included in the relevant domestic industry if these producers are subject to potentially significant adverse effects due to dumped imports of the article subject to investigation. In this case, this means that the

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My views are also explained in Frozen Concentrated Orange Juice from Brazil, Inv. No. 731-TA-326 (Preliminary), USITC Pub. 1873 (1986) at note 11.

decision whether to include growers in the domestic industry depends on the likelihood that a decline in the demand for domestic raw, in-shell pistachios will result in a significant decline in the price of harvested pistachios. Based on the evidence in this case I conclude that there is a single industry comprised of processors and growers.

Finally, I believe that my methodology is closely related to past practice of the Commission in other agricultural cases,² which emphasizes such factors as: (i) a continuous line of production from the raw material to the like product and (ii) a common economic interest between producers of the raw material and producers of the like product. However I do not agree that common and interlocking ownership is an important factor.

2

See Memorandum from the General Counsel, Legal Issues in Frozen Concentrated Orange Juice from Brazil, Inv. No. 731-TA-326 (Preliminary) GC-J-095 (June 13, 1986) at 11-20.

INFORMATION OBTAINED IN THE INVESTIGATION

Introduction

On September 26, 1985, petitions were filed with the U.S. International Trade Commission and the U.S. Department of Commerce by counsel for the California Pistachio Commission; Blackwell Land Co.; California Pistachio Orchards; Keenan Farms, Inc.; Kern Pistachio Hulling & Drying Co-Op; Los Ranchos de Poco Pedro; Pistachio Producers of California; and T.M. Duche Nut Co., Inc. The petitions alleged that an industry in the United States is materially injured and threatened with material injury by reason of imports from Iran of raw in-shell pistachio nuts, provided for in item 145.26 of the Tariff Schedules of the United States (TSUS), which are being, or are likely to be, sold in the United States at less than fair value (LTFV). 1/ Accordingly, effective September 26, 1985, the Commission instituted investigation No. 731-TA-287 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there was a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of such merchandise from Iran. 2/

As a result of its preliminary investigation, the Commission on November 12, 1985, notified Commerce that there was a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from Iran of pistachio nuts, not shelled, provided for in item 145.26 of the TSUS, which were allegedly being sold in the United States at LTFV. 3/

On March 11, 1986, Commerce published in the Federal Register (51 F.R. 8342) its preliminary determination that imports from Iran of in-shell pistachio nuts, provided for in item 145.26 of the TSUS, are being, or are likely to be, sold in the United States at LTFV within the meaning of section 733 of the Act (19 U.S.C. 1673b) and that "critical circumstances" exist with respect to such imports. 4/ As a result of Commerce's affirmative preliminary determination of LTFV sales from Iran, the Commission instituted investigation No. 731-TA-287 (Final), effective March 11, 1986, under section 735(b) of the Act (19 U.S.C. 1673d(b)), to determine whether an industry in the United States is materially injured or is threatened with material injury, or whether the establishment of an industry in the United States is materially retarded, by reason of imports of such pistachio nuts from Iran. Notice of the institution of the Commission's final investigation and a public hearing to be

1/ At the same time the cited petitions were filed, the petitioners filed a countervailing duty petition with Commerce concerning imports of such pistachio nuts from Iran. Inasmuch as Iran is not a "country under the Agreement" within the meaning of section 701(b) of the Tariff Act of 1930, as amended (19 U.S.C. 1671(b)), the Commission was not required to make an injury determination.

2/ In-shell pistachio nuts have not been the subject of any previous statutory investigations by the Commission.

3/ In-shell Pistachio Nuts from Iran: Determination of the Commission in Investigation No. 731-TA-287 (Preliminary) . . ., USITC Publication 1777, November 1985.

4/ A copy of Commerce's preliminary determination is presented in app. A.

held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of April 2, 1986 (51 F.R. 11359). 1/

Also on March 11, 1986, Commerce's final affirmative countervailing duty determination with respect to raw in-shell pistachio nuts from Iran was published in the Federal Register. 2/ Commerce determined that certain benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to growers, processors, or exporters in Iran of such pistachio nuts. The estimated net bounty or grant was 99.52 percent ad valorem.

On May 9, 1986, Commerce clarified the scope of its antidumping investigation by publishing in the Federal Register its determination that roasted in-shell pistachio nuts are of the same class or kind as raw in-shell pistachio nuts. 3/ On May 23, 1986, Commerce issued its final determination that imports of raw and roasted in-shell pistachio nuts from Iran are being sold at LTFV and that critical circumstances exist with respect to imports of raw in-shell pistachio nuts from Iran. 4/ However, on June 26, 1986, Commerce published a notice in the Federal Register (51 F.R. 23254) that rescinded the May 9, 1986, clarification and amended the notice of its final determination insofar as it involved roasted in-shell pistachios. Accordingly, the scope of Commerce's antidumping investigation includes only raw in-shell pistachio nuts.

A public hearing was held by the Commission in connection with this final investigation on May 21, 1986, in Washington, DC. 5/ The briefing and vote was held on July 2, 1986.

Nature and Extent of the LTFV Sales

On May 23, 1986, Commerce issued its final determination that certain in-shell pistachio nuts from Iran are being sold at LTFV. Commerce used the best information available to estimate the weighted-average margins because respondents did not submit adequate responses. Commerce determined the U.S. price on the basis of the average f.a.s. value, as derived from the IM 145 statistics compiled by the Bureau of Census, for the 6-month period of investigation--April-September 1985. Commerce used price information provided

1/ A copy of the Commission's Federal Register notice is presented in app. B.

2/ As indicated previously, Iran is not a "country under the Agreement" and the Commission was not required to make an injury determination.

3/ A copy of Commerce's clarification notice is presented in app. A. Imports of roasted in-shell pistachio nuts are classified in TSUS item 145.53. The petition in the instant investigation did not address imports of roasted in-shell pistachio nuts and they were not included within the scope of the Commission's preliminary investigation. Similarly, neither Commerce's preliminary determination nor the Commission's institution notice in this final investigation made reference to imports of pistachio nuts entering under TSUS item 145.53.

4/ A copy of Commerce's final determination is presented in app. A.

5/ A list of witnesses is presented in app. C.

in the petition to determine the foreign-market value. The price provided in the petition is for Iranian raw in-shell pistachio nuts sized at 26 to 28 nuts per ounce, a size representative of the imports from Iran, in May 1985. Petitioners based the foreign-market value on a research study that analyzes price information obtained from various Government sources and special publications containing export data.

Commerce also found that critical circumstances exist with respect to imports of raw in-shell pistachio nuts from Iran within the meaning of section 733(e)(1) of the Tariff Act of 1930. In making this determination, Commerce found (1) that there have been massive imports of the product over a relatively short period of time, 1/ and (2) that the margins calculated were sufficiently large that the importers knew, or should have known, that the merchandise was being sold in the United States at LTFV. Monthly imports of raw in-shell pistachio nuts from Iran during January 1984-April 1986 are shown in appendix D. Since there was no allegation of critical circumstances for imports of roasted in-shell pistachio nuts, Commerce did not make such a determination for roasted in-shell pistachio nuts.

The final weighted-average LTFV margin found by Commerce was 241.14 percent. In accordance with section 733(d) of the Tariff Act of 1930, on March 5, 1986, Commerce directed the U.S. Customs Service to suspend liquidation of all entries of the subject in-shell pistachio nuts from Iran. Liquidation was to be suspended on all unliquidated entries filed for consumption on or after December 11, 1985. On May 23, 1986, liquidation of all entries, or withdrawals from warehouse for consumption, of the subject merchandise was to continue to be suspended, and Customs was directed to collect a cash deposit or bond equal to the estimated weighted-average margin of the entered value of the merchandise.

Article VI. 5 of the General Agreement of Tariffs and Trade provides that "(n)o product . . . shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization." This provision is implemented by section 772(d)(1)(D) of the Tariff Act of 1930. Since the dumping duties cannot be assessed on the portion of the margin attributable to export subsidies, there is no reason to require a cash deposit or bond for that amount. Therefore, the level of export subsidies as determined in the final affirmative countervailing duty determination 2/ on pistachio nuts from Iran will be subtracted from the dumping margin of 241.14 percent for cash deposit or bonding purposes.

The Product

Description and uses

Pistachio nuts are a tree crop. The trees are deciduous (leaf dropping) and dioecious (the male trees are pollen bearing and the female trees are nut bearing); they yield nuts on an alternate bearing cycle in which 1 year's

1/ In determining whether there have been massive imports over a relatively short period of time, Commerce considered the volume and value of the imports and the seasonal trends of the imports.

2/ The estimated net bounty or grant was 99.52 percent ad valorem.

heavy crop is followed the next year by a light crop. 1/ The male flowers open earlier than the female flowers and pollinate the latter as wind carries the pollen. After pollination, the nutmeat rapidly expands and fills the shell, with the hard shell cracking when the nut is mature. The reddish fruits, known as drupes, are borne in clusters. The trees do not bear a significant crop until they are 7 to 10 years of age, when a tree should yield 25 to 100 pounds of nuts per harvest, and they do not reach maturity until they are 20 years of age. Mature pistachio trees bear at full capacity for up to 40 years. The trees thrive in areas which have winters cool enough to break bud dormancy and long, hot summers to ripen the nuts.

Although the trees are able to survive droughts, they need adequate moisture in the summer months. In the drier regions of California, such as the San Joaquin and Sacramento Valleys, irrigation is necessary, primarily by a low pressure drip system or dragline sprinkler system. Although it is necessary to irrigate, pistachio trees do not tolerate prolonged wet conditions that may occur in poorly drained soil.

Pistachio trees are susceptible to verticillium wilt disease (a soil-borne fungus that causes branches to die), which is most prevalent on land previously planted with cotton. As this and other diseases to which the trees are susceptible become known to the industry, research is initiated by plant pathologists at various universities to develop disease-resistant seedlings. One of the responsibilities of the California Pistachio Commission is to fund the research necessary to obtain and disseminate accurate scientific data and information to combat various diseases and increase pistachio nut yields. 2/

When harvested, 3/ pistachios consist of an edible nutmeat surrounded by a hard shell, which is enclosed within a soft hull. The term "in-shell" pistachios refers to nuts from which the hulls have been removed, leaving the inner shell and the edible nutmeat, which is covered with a brown seed coat. Mechanical harvesting of the nuts allows foreign material such as sticks, leaves, rocks, etc., to be included with the nuts. A typical flowchart for cleaning the nuts is shown in figure 1. The dehulled nuts, which contain approximately 45 to 50 percent moisture content, must be dried before storage or exportation to a 4 to 6 percent moisture content to prevent spoilage. The nuts are dried with forced air at 150 to 160 F. Nuts dried to a 4 to 6 percent moisture content are termed "raw" by the industry. 4/

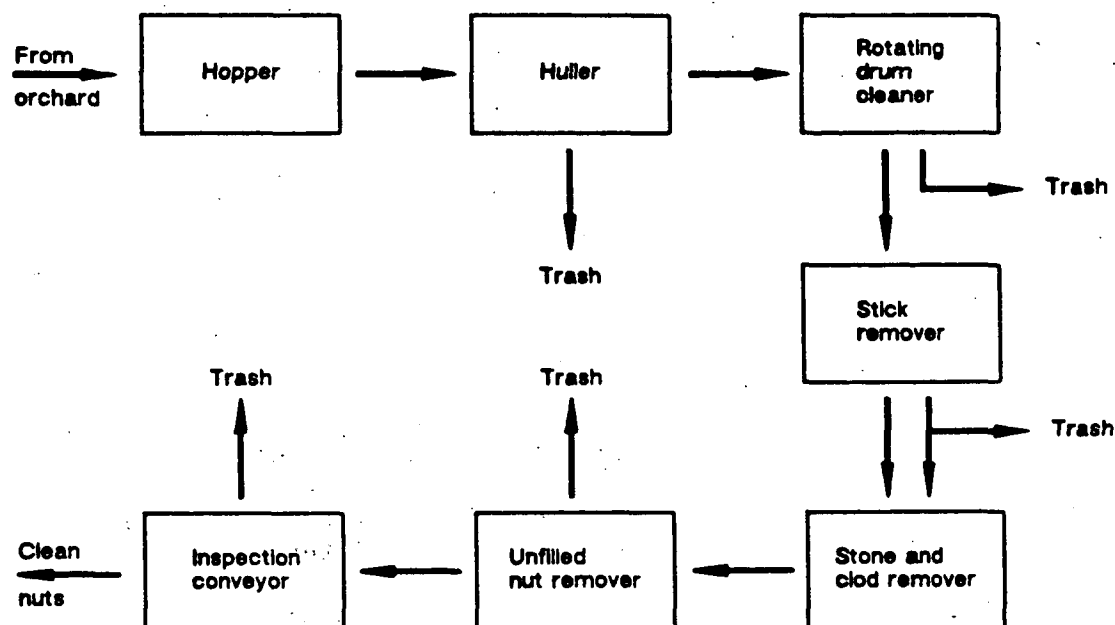
1/ The petition states that the off-year crop of a mature tree averages about 60 percent of the on-year crop size.

2/ The California Pistachio Commission was established in 1981 by a referendum sponsored by the California Pistachio Association to deal with problems that affect tree yield, marketing research and public relations, and to expand domestic demand for pistachio nuts, transcript of the hearing, p. 15.

3/ In the United States, pistachio nuts are mechanically shaken from the trees onto catching frames and then placed in bulk bins.

4/ The pistachio nuts imported from Iran are also raw, having been dried to the 4 to 6 percent moisture content necessary for exportation. In preparation for shipment, the nuts are sorted according to size and packed in bags of approximately 70 kilos each.

Figure 1.—Cleaning flowchart.



Source: Michael O'Brien, Ph.D., P.E., et al., *Principles & Practices for Harvesting & Handling Fruits & Nuts*. (Westport, CT: AVI Publishing Co., Inc.), 1983, p. 604.

Raw in-shell pistachios come in a variety of grades and sizes. There are three U.S. grades for raw, in-shell pistachios: "U.S. Fancy," "U.S. No. 1," and "U.S. No. 2," each with specified tolerances relating to damage and other defects. Most U.S. pistachios range in size from 21 to 24 in-shell nuts per ounce; those from Iran, on the average, are smaller. However, both U.S. pistachios and those imported from Iran are sold in the United States in all sizes and grades.

The raw pistachios, both domestic and imported, must undergo a further drying process (roasting) in which the moisture content is brought down to about 2 percent. 1/ Roasted pistachios also may be salted and dyed before they are sold in the United States. 2/ Pistachios are consumed in the United States almost exclusively as a snack food. According to testimony at the Commission's hearing, there is little demand for pistachios sold out of the shell as nut meats, 3/ and almost 90 percent of the crop is sold to consumers without having had the shell removed.

1/ The petition notes that pistachios can be consumed raw but normally are roasted.

2/ Methods of harvesting and sorting pistachios used by growers in Iran tend to cause shell blemishes. U.S. processors traditionally have dyed these pistachios red to conceal such blemishes. U.S. harvesting and processing methods, by contrast, prevent much of the shell bruising and blemishes, and currently most California pistachios are marketed in their natural state.

3/ Transcript of the hearing, p. 12. Pistachio nutmeats are used as flavorings in such products as ice cream, candy, dessert puddings, and baked goods.

U.S. tariff treatment

Imported raw in-shell pistachio nuts are classified in item 145.26 of the TSUS. The rate of duty for imports of such nuts from countries afforded most-favored-nation (MFN) treatment is currently 0.45 cent per pound; for imports from designated Communist countries, the current rate of duty is 2.5 cents per pound. Imported roasted in-shell pistachio nuts are classified in TSUS item 145.53, as shelled and otherwise prepared or preserved pistachios. The rate of duty for imports of pistachios classified in item 145.53 is 1 cent per pound from MFN countries and 5 cents per pound for imports from designated Communist countries. Imported pistachios classified in items 145.26 and 145.53 from designated beneficiary developing countries are eligible for duty-free treatment under the Generalized System of Preferences, as are imports from Israel and from eligible countries under the Caribbean Basin Economic Recovery Act.

On September 18, 1985, the U.S. Customs Service published in the Federal Register (50 F.R. 37842) a notice rescinding a previous ruling and issuing a new ruling with respect to the marking of imported pistachio nuts. ^{1/} Under the rescinded ruling, imported pistachio nuts that were processed by roasting did not subsequently need to be marked as products of the country of growth, but were instead considered a product of the country where the roasting was performed. After further investigation, Customs decided that roasting; roasting and salting; or roasting, salting, and coloring of pistachio nuts, without further processing, do not result in a substantial transformation of the raw pistachio nuts into new and different articles of commerce. Accordingly, effective October 18, 1985, Customs ruled that the containers of such products must now be marked to indicate the country of origin (growth) of the raw products.

U.S. Growers

Pistachio trees were first introduced into the United States by the Federal Patent Office in 1853-54. The trees first planted in California in 1876 came from France. Nearly all of the U.S. pistachio crop (99 percent) is grown in California, ^{2/} where there are 47,200 acres of trees (31,700 acres of bearing trees and 15,500 acres of nonbearing trees) and where all initial processing of domestic nuts is performed (table 1).

The area devoted to pistachio production in the United States has expanded rapidly since 1976, when the first commercial crop was harvested. ^{3/} Since 1980, total pistachio acreage has increased from 36,832 acres to 47,200 acres in 1985. From 1979 to 1982, new planting of pistachio trees increased by 11,505 acres, or over 3,800 acres annually. However, the expansion in pistachio tree planting has slowed significantly in more recent years. New plantings totaled only 1,569 acres in 1983 and only 186 acres in 1984. New plantings in 1985 were about as large as those in 1984. U.S. growers reported in their questionnaire responses that the vast majority of their trees are

^{1/} The Customs Service's Federal Register notice is presented in app. E.

^{2/} There have been some trial plantings in Arizona and New Mexico.

^{3/} There were 4,350 acres of pistachio-bearing trees in 1976.

Table 1.--California pistachio nuts: Bearing and nonbearing acreage and increase from previous year, 1980-85

Year	Bearing	Nonbearing	Total	Increase from previous year
1980-----	25,430	11,402	36,832	3,108
1981-----	27,514	13,712	41,226	4,394
1982-----	28,400	16,829	45,229	4,003
1983-----	31,060	15,738	46,798	1,569
1984-----	30,597	16,387	46,984	186
1985 <u>1/</u> -----	31,700	15,500	47,200	216

1/ Estimated.

Source: California Crop and Livestock Reporting Service.

between 8 and 16 years old. Industry sources indicated that lower prices for raw in-shell pistachios has been the principal factor influencing growers' decisions not to expand plantings. 1/

There are approximately 500 pistachio growers in the United States, most of them small. The Commission received responses from 40 growers, both large and small, which accounted for over 55 percent of production in crop year 1985, as reported by the U.S. Department of Agriculture (USDA) and the California Pistachio Commission (see page 14). Eight entities 2/ accounted for almost 85 percent of the total production reported by questionnaire respondents during crop year 1985. 3/

U.S. Processors

Data are not available on the exact number of firms that process pistachio nuts, but it is believed that about 30 firms, located principally in California, perform the bulk of the processing. Within 24 hours after harvesting, the hull surrounding the pistachio must be removed to prevent staining and blemishing of the shell. The hull is removed by rolling the nuts between two abrasive rollers, over which water is sprayed to flush the hulls through an opening in the machine. 4/ Processing the hulled nuts consists of floating out the empty or unsplit nuts (called floaters) from those that are split, mechanical sorting of split and unsplit nuts, and the removal of blemished nuts by use of an electronic sorter. The electronic sorter has two counter-rotating rollers that feed the nuts single file into a scanning head with a set norm signal. The nuts are scanned from two sides by photocells; if

1/ Transcript of the hearing, pp. 29-31.

2/ * * *. In the pistachio industry, a "ranch" is the business unit, and it may consist of a number of orchards.

3/ Pistachio nuts are harvested in September and October, so the U.S. crop year runs from Sept. 1 to Aug. 31.

4/ Nut hulls can be used as animal feed and as fuel in the drying operations.

the nuts are lighter or darker than the norm, they are ejected by an air valve down a reject chute. By adjusting the filters in front of the photocells, it is possible to adjust for the desired sort. Hulling and drying are generally performed by processors that purchase directly from the growers. ^{1/} Before distribution for sale to the consumer, pistachios are graded, sized, roasted and salted, and placed in consumer packages. Both of the last two steps may be performed by the original processor or by roasters/salters and "rebaggers."

Although growers and processors perform distinct functions, there is a significant amount of vertical integration. Some processing companies are owned by growers, some processors own pistachio acreage, ^{2/} and some are cooperatives of growers. In 1985, two cooperatives accounted for 18 percent of the acreage devoted to pistachio production and * * * percent of the production, as shown in the following tabulation:

	<u>Number of farms</u>	<u>Total acreage</u>	<u>Production</u> (1,000 pounds)
Kern Pistachio Co-op			
1982-----	20	4,291	***
1983-----	20	4,291	***
1984-----	20	4,291	***
1985-----	20	4,291	***
Pistachio Producers of California			
1982-----	104	3,557	***
1983-----	107	3,786	***
1984-----	107	3,714	***
1985-----	114	4,012	***

Source: California Pistachio Commission.

U.S. Roasters

The Commission does not have complete data concerning firms involved in roasting pistachio nuts, but it received questionnaire responses from 12 roasters located mostly in the Northeast and in California. Of the reporting firms, two are processors/roasters of U.S.-grown pistachio nuts, two are growers and processors/roasters of pistachio nuts grown on their ranches and on other local ranches, one is a grower that has another firm process the nuts before roasting them at its ranch, and seven firms only roast the processed nuts. Most of the seven firms that only roast the nuts reported purchases of U.S.-grown pistachio nuts and Iranian-grown pistachio nuts imported through third countries or through import brokers. As mentioned earlier in the report, most pistachio nuts are sold salted and roasted in-shell for snack food. The nuts are salted by quickly exposing them to a saturated brine

^{1/} Once pistachios have been hulled and dried, they may be stored for up to 1 year.

^{2/} Witnesses for the petitioners testified at the hearing (transcript, p. 13 and pp. 40 and 41) that about 40 percent of the pistachio nuts grown domestically are processed by concerns related through interlocking ownership to the growers of the pistachios they process.

solution and then dryroasting them in ovens, thereby darkening the kernels and making them crunchy. Roasting the pistachio nuts reduces their moisture content to about 2 percent.

U.S. Importers

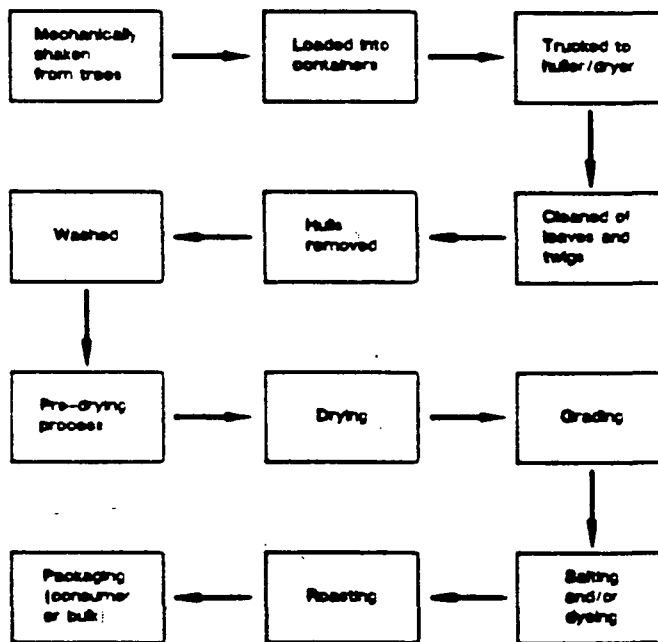
The Commission mailed approximately 75 importer questionnaires to firms listed in the U.S. Custom's net importer file as importers of raw in-shell pistachio nuts from Iran in fiscal years 1983-85 and to roasters selected from the Thomas Grocery Register 1983. 1/ Most of the questionnaires received by the Commission indicate that Iranian raw in-shell pistachio nuts are exported through third countries such as the United Arab Emirates and West Germany, and the firms that purchase pistachio nuts from importers are aware of their country of origin. The Commission received a response from Talos International Corp. showing imports in 1985 of Iranian pistachio nuts that were roasted in * * * prior to importation.

The U.S. Market

Channels of distribution

Figure 2 traces the flow of domestically grown pistachio nuts from the tree to packaging. Once processed to the raw dry stage, the pistachios enter

Figure 2.—Processing flowchart.

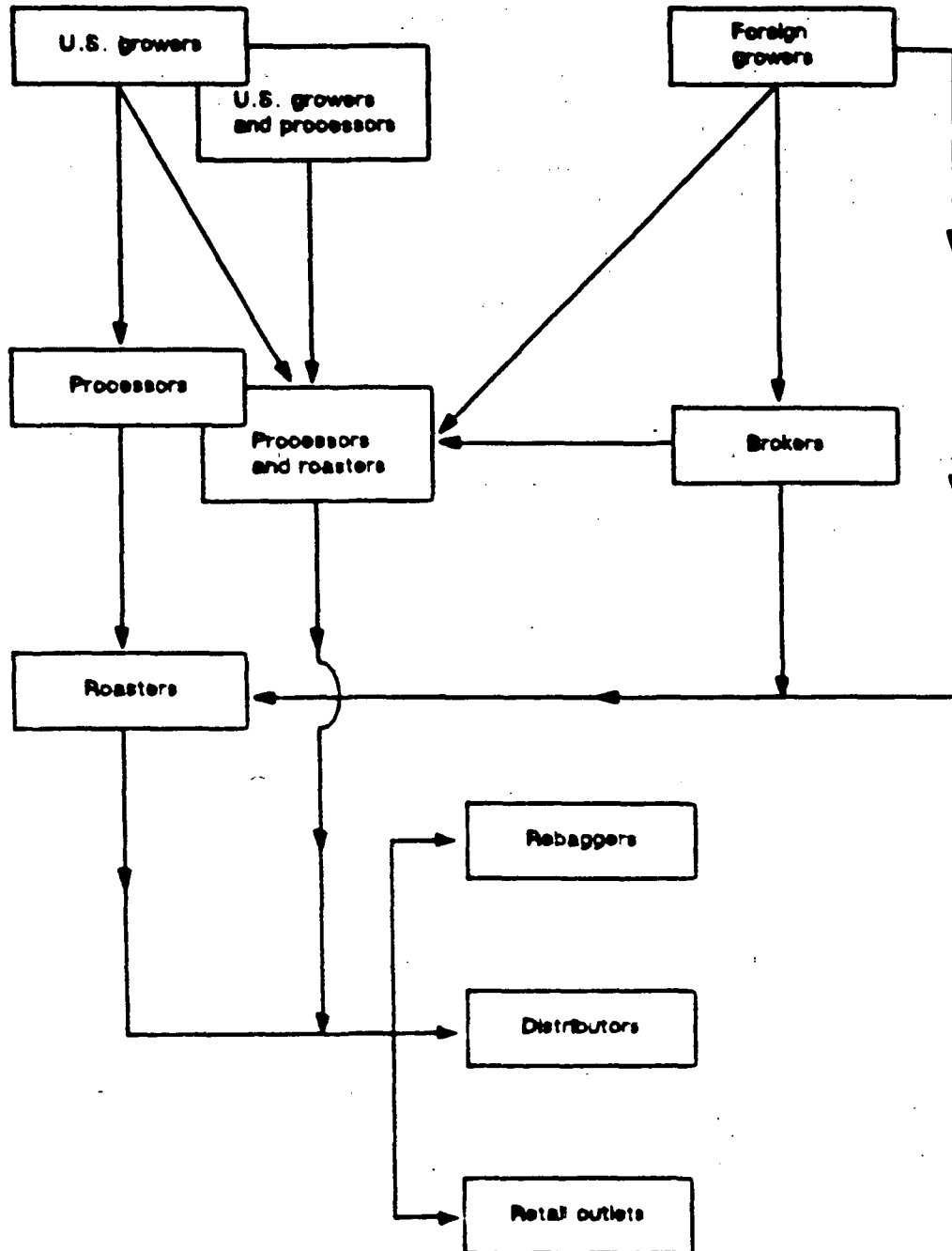


Source: California Pistachio Commission

1/ The Commission sent both roaster and importer questionnaires to firms believed to be roasting in-shell pistachio nuts, since many roasters purchase both imported and domestic raw in-shell pistachio nuts for resale to rebaggers, distributors, and retail outlets. Most of the responses received by the Commission were from roasters.

one of two chains of distribution. Figure 3 illustrates the various market paths for in-shell pistachio nuts. As indicated previously, the hulling and

Figure 3.—Channels of distribution for in-shell pistachio nuts.



drying (to a 4 to 6 percent moisture content) is generally performed by processors that purchase directly from the growers. 1/ More than one-half of U.S.-grown pistachios are subsequently sold by the original processors to roasters that further dry the nuts (to about a 2 percent moisture content) and generally salt and sometimes dye them for ultimate distribution to consumers. Those domestic raw pistachios (i.e., those which have had the hulls removed and have been dried to a 4 to 6 percent moisture content) not sold by the original processor to roasters have similar additional processing operations performed on them by the original processor, which then either sells them to rebaggers, distributors, or retail outlets.

Imports of raw in-shell pistachio nuts from Iran enter the distribution process immediately after the step marked "Grading" on figure 2. 2/ Because these imported nuts need further processing, they are generally entered either by roasters/salters or by importers who in turn sell them to roasters/salters. After further processing (which generally includes dyeing them red in order to cover shell blemishes), 3/ the imported pistachios are sold to rebaggers, distributors, or retail outlets.

Apparent U.S. consumption

Data published by USDA on apparent U.S. consumption of pistachios (including those sold as shelling stock) during crop years 1981-85 (i.e., Sept. 1 of a given year to Aug. 31 of the following year) are shown in table 2. As indicated, such consumption rose from 24 million pounds in crop year 1981 to 44 million pounds in crop year 1983, or by 82 percent. Consumption

1/ A witness for the petitioners (who reported that his firm handles about 25 percent of the U.S. crop) testified at the hearing (pp. 41 and 42) that most contracts with growers are on a 5-year basis, although some run year to year. "The terms of a typical contract provide that we will take and market all, or a particular quantity, or a portion of a grower's crop, for some growers split their crop among several processors, and pay the grower a price dependent on a number of factors. First, we determine an opening price based on the size of the domestic crop, the carryover from the previous crop, competing import crops, and the price of competing nuts other than pistachios. Then we will assess the relative mix among the particular grower's crops, of different grades, qualities, sizes of pistachios, including whether the shell has split or is closed and must be shelled, and whether the shells are clean or stained. We determine an average price for each grade based on what we think we can get in the market for roasted or raw pistachios. Starting with this marketing price, we back out our processing and roasting costs, plus some level of return. The difference is the price we ultimately pay to our growers. Because we market pistachios throughout the year, we do not know the final actual price we will pay the growers until the end of the contract period. Typically, we will establish an initial base price after the year's harvest, which is really based only on an estimate of what we think or hope the price will be."

2/ Imports of roasted in-shell pistachio nuts enter the distribution process at the last step, usually to rebaggers and distributors.

3/ Transcript of the hearing, p. 36.

Table 2.--Pistachio nuts: U.S. production, imports, exports, change in stocks, and apparent consumption, crop years 1981-85 1/

Crop year	U.S. pro- duction	Imports	Exports	Change in stocks	Apparent con- sumption	Ratio of imports to con- sumption
				1,000 pounds		Percent
1981-----	14,550	4,541	1,071	-6,400	24,420	18.6
1982-----	43,430	7,046	6,537	10,399	33,540	21.0
1983-----	26,455	16,704	4,120	-5,406	44,445	37.6
1984-----	63,052	18,210	5,679	10,582	65,001	28.0
1985 <u>2/</u> -----	24,912	22,046	4,189	-14,771	57,540	38.3

1/ The crop year begins on Sept. 1 of the year shown and ends on Aug. 31 of the following year.

2/ Estimated.

Source: U.S. Department of Agriculture, Foreign Agricultural Service, Horticultural and Tropical Products Division.

again increased sharply in crop year 1984, rising to 65 million pounds, or 46 percent greater than consumption in crop year 1983. Apparent consumption is projected to decline in crop year 1985 to 58 million pounds, or by 11 percent.

Data on apparent U.S. consumption of raw in-shell pistachio nuts on a calendar-year basis during 1974-85 are shown in table 3. 1/

Consideration of Alleged Material Injury to an Industry in the United States

The petitioners maintain that "Because the supply is fixed for any crop year, the domestic industry can respond to an influx of lower priced imports only by lowering prices. Thus, some of the usual indicators used by the ITC are inappropriate for pistachios. Inappropriate indicators include production levels, shipments and employment levels. Other indicators of injury are quite appropriate. These indicators of injury include financial results of growers and investment trends. The inappropriateness of some of the usual indicators

1/ These data were obtained from table A-4 of exhibit 7 of the petition. Because data on processors' shipments were not available prior to crop year 1981 and because the petitioners did not have estimates of importers' inventories, they used two alternative methods of computing apparent consumption. One method was based on processors' shipments and the other was based on the annual domestic crop (annual crop deliveries of marketable raw in-shell pistachios minus exports). Both methods were adjusted to convert the data from a crop-year basis to a calendar-year basis. The two methods give roughly similar results, but the petitioners maintain that the latter gives a "more reasonable stream of consumption than does the other method, which suffers from swings in estimated inventory levels."

Table 3.--In-shell pistachio nuts: Available domestic crop, imports for consumption, and apparent consumption, 1974-85

Year	Available domestic crop 1/	Imports	Apparent consump- tion	Ratio to consumption--	
				Domestic	Imports
				crop	
	-----1,000 pounds-----			-----Percent-----	
1974-----	0	25,181	25,181	-	100.0
1975-----	0	18,523	18,523	-	100.0
1976-----	264	19,428	19,692	1.3	98.7
1977-----	1,526	22,682	24,208	6.3	93.7
1978-----	2,571	16,311	18,882	13.6	86.4
1979-----	4,307	24,551	28,858	14.9	85.1
1980-----	11,613	845	12,458	93.2	6.8
1981-----	15,821	3,144	18,965	83.4	16.6
1982-----	14,637	6,233	20,870	70.1	29.9
1983-----	25,846	5,713	31,559	81.9	18.1
1984-----	25,374	21,776	47,150	53.8	46.2
1985-----	34,383	26,678	61,061	56.3	43.7

^{1/} Derived from annual crop deliveries of marketable raw in-shell pistachios minus exports, with an adjustment to convert crop year to calendar year deliveries.

Source: Table A-4 of exhibit 7 of the petition.

stems from the fact that supply each crop (year) is fixed. Lower prices, however, should be directly felt in the bottom lines of the growers. If injury is present, we should also expect to see changes in the trends for investment in pistachio acreage. Processors' investments depend on the size of the California crop and will be unaffected by imports, except in the long run." ^{1/}

Moreover, petitioners maintain that "The typical contract between growers and processors places most, if not all, of the risks of unfair import competition on the growers. Most U.S. growers sell their pistachios to the processors right off the tree, unhulled and undried. The typical grower-processor contract does not promise the grower a fixed price for the crop. Instead, the processor undertakes only to pay a price to the grower based on market conditions. In other words, the price the processor can get in the market. If imports have depressed the market price for processed pistachios, the growers will bear the loss in terms of the price they receive from the processor." ^{2/}

^{1/} Transcript of the hearing, p. 52. The petitioners contend that the relevant domestic industry consists of growers, the processors that hull and dry, and the processors that hull, dry, and roast the pistachios. Petitioners also state that variable costs associated with pistachio cultivation constitute only 25 percent of total production costs, and add that supply is fixed by the size of each year's crop, which, in turn, depends on investment decisions made 10 or more years earlier (transcript of the hearing, pp. 48-50).

^{2/} Transcript of the hearing, pp. 12 and 13, and posthearing brief, p. 2.

Counsel for respondents maintains that if there is any injury or price suppression, it is due to a tremendous increase in U.S. production in the 1980's and to poor management decisions that caused an increase in the amount of shelled pistachios 1/ in 1984. 2/ A witness testified at the hearing that demand for pistachio nuts is price elastic. In the on-years, when larger crops are produced, prices go down and the crop sells well. In addition, pistachio nuts are interchangeable in the consumer's mind with many other types of nuts, such as cashews and peanuts, and when pistachio nut prices are low, they will command a large market. 3/

U.S. production

As indicated previously, the first commercial crop of pistachio nuts in the United States was harvested in 1976. Since that time, U.S. production has expanded greatly. Yield per acre also increased significantly as the trees matured and became more productive. In 1982, a heavy crop year, production was up 61 percent from that in 1980. In 1984, production rose an additional 45 percent from that in 1982. In 1985, a light crop year, production was up 3 percent from that in 1983 (compiled from data published by the USDA and the California Pistachio Commission), as shown in the following tabulation: 4/

<u>Crop year</u>	<u>Production 1/ (1,000 pounds)</u>	<u>Bearing trees (Acres)</u>	<u>Yield per acre (Pounds)</u>
1976-----	1,500	4,350	344
1977-----	4,500	8,830	510
1978-----	2,500	13,150	190
1979-----	17,200	20,880	824
1980-----	26,900	25,430	1,058
1981-----	14,500	27,514	527
1982-----	43,400	28,400	1,528
1983-----	26,400	31,060	850
1984-----	63,100	30,597	2,062
1985-----	27,100	31,700	855

1/ In-shell basis (includes pistachios sold as nutmeats).

1/ Petitioners testified at the hearing that, on a comparable weighted-average basis, shelled pistachios have a lower value than in-shell pistachios (transcript, p. 12).

2/ Petitioners stated in their posthearing brief that "Growers cannot have profits on in-shell production when they have losses over-all because nutmeats are a by-product of in-shell production and, therefore, the profitability of in-shell production determines overall performance." (Posthearing brief, pp. 5 and 6).

3/ The petitioners estimated demand elasticity by looking at the role of cashews as a substitute product. In every instance, they found that the price of cashews had no significant effect on the demand relationship between price and consumption of pistachios (transcript of the hearing, p. 63). Petitioners found a U.S. price elasticity of demand of about 1.5 (exhibit A, p. 3).

4/ Data obtained from questionnaire responses are presented in app. F.

U.S. growers' shipments

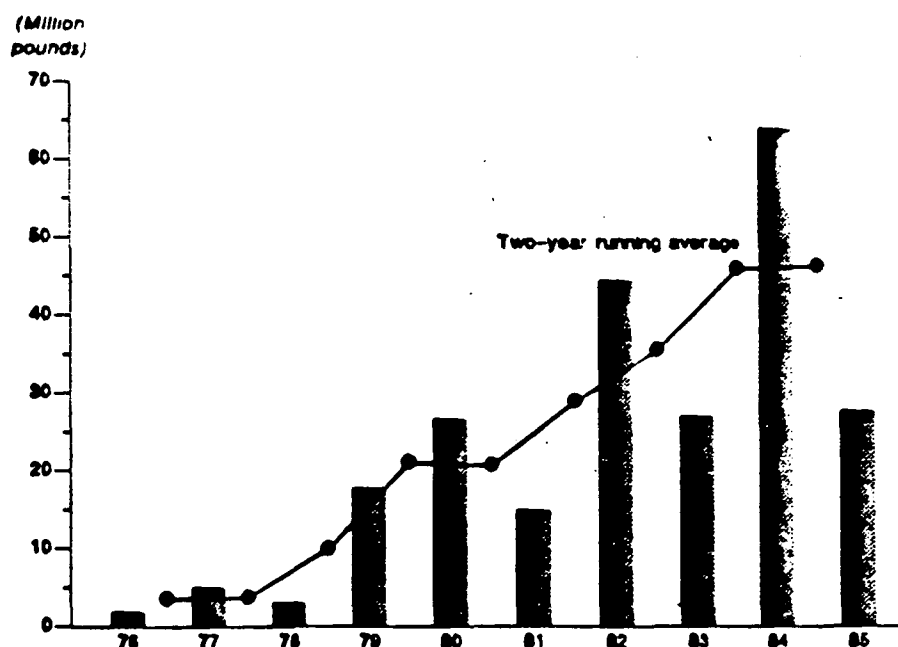
Inasmuch as growers do not normally carry stocks of pistachio nuts, shipments by U.S. growers can be considered to be identical with production. For the heavy crop years, growers' shipments of raw in-shell pistachio nuts in 1982 totaled 37.5 million pounds, double the 18.6 million pounds shipped in 1980. In 1984, shipments reached 45.3 million pounds, up 21 percent from shipments in 1982. For the light crop years, shipments of raw in-shell pistachio nuts by growers in 1983 totaled 21.0 million pounds, up 86 percent from shipments in 1981. In 1985, shipments of raw in-shell pistachio nuts reached 22.6 million pounds, up 8 percent from shipments in 1983. Pistachio nuts sold in the shell accounted for 70 percent or more of U.S. growers' total shipments during crop years 1980-85, as shown in the following tabulation (in thousands of pounds):

<u>Crop year</u>	<u>Sold in the shell</u>	<u>Sold shelled</u>	<u>Total</u>
1980-----	18,600	8,300	26,900
1981-----	11,300	3,200	14,500
1982-----	37,500	5,900	43,400
1983-----	21,000	5,400	26,400
1984 <u>1/</u> -----	45,300	17,800	63,100
1985-----	22,600	4,500	27,100

1/ Due to an exceptionally high production of nuts in 1984, the trees suffered such stress that the maturing process was retarded so that many of the nuts did not split and were sold as shelling stock.

Figure 4 shows U.S. growers' shipments (production) of pistachio nuts (including those sold as shelling stock) during crop years 1976-85. As

Figure 4.—Pistachio nuts: U.S. growers' shipments, crop years 1976-85.



Source: California Pistachio Commission

indicated by the 2-year running average of on- and off-year crops, growers' shipments trended upward throughout the period.

U.S. processors' and processors/roasters' capacity and capacity utilization

The capacity to process raw in-shell pistachio nuts, as reported by nine firms responding to the Commission's questionnaires, increased 57 percent during 1982-85, from 37.4 million pounds in 1982 to 58.8 million pounds in 1985. Conversely, capacity utilization decreased slightly from 92.6 percent in 1982 to 92.4 percent in 1983, then increased dramatically to 109.8 percent in 1984 before dropping to 52.6 percent in 1985. 1/

The roasting capacity, as reported by four processors/roasters, 2/ increased from 25.6 million pounds in 1982 to 28.8 million pounds in 1985, or by 12.3 percent. Capacity utilization increased from * * * percent in 1982 to * * * percent in 1984, and then decreased to * * * percent in 1985 (table 4).

Table 4.--In-shell pistachio nuts: U.S. processors' and processors/roasters' shipments, inventories, capacity, and capacity utilization, 1982-85

Item	1982	1983	1984	1985
Raw in-shell pistachio nuts:				
Shipments-----1,000 pounds--	12,270	10,476	16,908	6,086
Inventories <u>1/</u> -----do-----	22,380	29,181	40,582	24,884
Capacity to process-----do-----	37,433	42,933	52,341	58,841
Capacity utilization <u>2/</u> ----percent--	92.6	92.4	109.8	52.6
Roasted in-shell pistachio nuts: <u>3/</u>				
Shipments-----1,000 pounds--	7,605	11,112	17,370	***
Inventories <u>1/4/</u> -----do-----	***	***	***	***
Capacity to roast-----do-----	25,642	25,642	28,784	28,784
Capacity utilization <u>2/</u> ----percent--	***	***	***	***

1/ As of Dec. 31.

2/ Capacity utilization was computed on the basis of shipments plus inventories.

3/ Data are for 4 processors/roasters.

4/ Data are for 2 firms.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

1/ The equipment used to process and roast in-shell pistachio nuts is used exclusively for that product.

2/ Data submitted by firms that only roast the pistachio nuts they purchase are presented separately in the report.

U.S. roasters' capacity and capacity utilization

U.S. roasters 1/ purchase both domestic and imported raw in-shell pistachio nuts, which they salt and roast for resale to distributors, rebaggers, retail outlets, fruit stands, supermarkets, flea markets, and so forth. U.S. roasters' capacity, as reported by eight firms, increased throughout the period from 15.0 million pounds in 1982 to 24.4 million pounds in 1985, or by 62.1 percent. Capacity utilization was 53.2 percent in 1982, 49.2 percent in 1983, 65.9 percent in 1984, and 62.6 percent in 1985, as shown in the following tabulation: 2/

	<u>1982</u>	<u>1983</u>	<u>1984</u>	<u>1985</u>
Roasted in-shell pistachio nuts:				
Shipments <u>1/</u> -----1,000 pounds--	6,694	8,462	10,656	12,473
Inventories <u>2/</u> -----do-----	1,309	1,071	2,372	2,783
Capacity-----do-----	15,040	19,378	19,778	24,378
Capacity utilization-----percent--	53.2	49.2	65.9	62.6

1/ Includes one firm's shipments of raw in-shell pistachio nuts.

2/ Total inventories of raw and roasted in-shell pistachio nuts as of Dec. 31.

U.S. processors' and processors/roasters' shipments

Domestic shipments of raw in-shell pistachio nuts by U.S. processors increased annually during crop years 1981-84. Shipments by processors did not follow the year-to-year fluctuations of U.S. growers' shipments because processors hold inventories in the heavy crop years for sale in the light crop years. Domestic shipments of U.S.-grown raw in-shell pistachio nuts by processors during crop years 1981-84 and the first two quarters of 1985, as reported by the California Pistachio Commission and the California Crop and Livestock Reporting Service, are shown in the following tabulation (in thousands of pounds):

<u>Crop year</u>	<u>Processors' domestic shipments</u>
1981-----	13,765
1982-----	21,653
1983-----	22,070
1984-----	34,986
1985 <u>1/</u> -----	15,171

1/ Data are for the first two quarters of the crop year, i.e., Sept. 1, 1985, through Feb. 28, 1986.

1/ One is a grower that has another firm process the nuts and then returns them for roasting at the ranch.

2/ Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Data were obtained by questionnaire from five firms that process domestic pistachio nuts and from four firms that process and roast the nuts. One firm processes and roasts all of the pistachio nuts it grows and purchases from other growers, and three firms sell both processed and roasted pistachio nuts. Sales of unroasted processed pistachio nuts are mostly to other roasters; sales of roasted processed nuts are to distributors, rebaggers, retail outlets, etc.

Total shipments by the responding firms increased from 19.9 million pounds in 1982 to 34.3 million pounds in 1984, the year of the largest U.S. crop. Shipments decreased in 1985 to * * * pounds. Shipments of unroasted processed pistachio nuts followed the year-to-year fluctuations in U.S. production, decreasing from 12.3 million pounds in 1982 to 10.5 million pounds in 1983, then increasing to 16.9 million pounds in 1984. Such shipments decreased to 6.1 million pounds in 1985. Shipments of processed and roasted pistachio nuts followed the trend in total shipments by increasing annually from 7.6 million pounds in 1982 to 17.4 million pounds in 1984 and then decreasing to * * * pounds in 1985. Shipments by processors/roasters of roasted pistachio nuts did not follow the year-to-year fluctuations of U.S. processors' shipments of raw pistachio nuts because these firms hold inventories of processed pistachio nuts in the heavy crop years, to roast and sell in the light crop years. Table 5 shows the processors' and processors/roasters' shipments, as well as their purchases of U.S.-grown in-shell pistachio nuts.

U.S. roasters' shipments

Data obtained by questionnaire from eight roasters of U.S.-grown and imported raw in-shell pistachio nuts are shown in table 6. Almost all of the raw in-shell pistachio nuts purchased by the roasters are roasted prior to shipping. Domestic shipments of U.S.-grown roasted in-shell pistachio nuts by these firms increased from 3.9 million pounds in 1982 to 7.7 million pounds in 1984, or by 95.4 percent. Shipments then decreased to 3.6 million pounds in 1985.

U.S. exports

U.S. exports of pistachio nuts decreased from 3.9 million pounds in 1983 to 3.0 million pounds in 1984, or by 24 percent, and then increased to 3.3 million pounds, or by 12 percent, in 1985 (table 7). Exports during January-March 1986 totaled 1.1 million pounds, up 86 percent from exports during the corresponding period of 1985. Principal markets for U.S. exports included Canada, Japan, Australia, Mexico, and the People's Republic of China. Exports to Singapore and Hong Kong are on the rise. As a share of shipments by U.S. growers (based on crop year production data), exports decreased from 15 percent in 1983 to 5 percent in 1984 and then increased to 12 percent in 1985.

Table 5.--In-shell pistachio nuts: U.S. processors' and processors/roasters' purchases and domestic shipments, 1982-85

Item	1982	1983	1984	1985
Purchases from U.S. growers: 1/				
Quantity-----1,000 pounds--:	32,083	23,077	46,037	16,843
Value 2/-----1,000 dollars--:	49,524	37,217	54,651	27,184
Unit value 3/-----per pound--:	\$1.54	\$1.61	\$1.19	\$1.61
Purchases from other sources: 4/				
Quantity-----1,000 pounds--:	858	870	684	71
Value-----1,000 dollars--:	958	2,059	1,287	88
Unit value-----per pound--:	\$1.12	\$2.37	\$1.88	\$1.24
Total purchases:				
Quantity-----1,000 pounds--:	32,941	23,947	46,721	16,914
Value-----1,000 dollars--:	50,482	39,276	55,938	27,272
Unit value-----per pound--:	\$1.53	\$1.64	\$1.20	\$1.61
Domestic shipments by processors and processors/roasters: 5/				
Quantity-----1,000 pounds--:	12,270	10,476	16,908	6,086
Value-----1,000 dollars--:	22,705	22,081	26,586	11,649
Unit value 6/-----per pound--:	\$1.85	\$2.11	\$1.57	\$1.91
Domestic shipments by processors/ roasters of roasted nuts:				
Quantity-----1,000 pounds--:	7,605	11,112	17,370	***
Value-----1,000 dollars--:	21,223	32,994	44,500	***
Unit value 6/-----per pound--:	\$2.79	\$2.97	\$2.56	***
Total domestic shipments:				
Quantity-----1,000 pounds--:	19,875	21,588	34,278	***
Value-----1,000 dollars--:	43,928	55,075	71,086	***
Unit value 6/-----per pound--:	\$2.21	\$2.55	\$2.07	***

1/ Data include growers' transfers of pistachio nuts from the orchards to the processing plant for 5 firms with processing capability.

2/ Value is understated because 1 firm could not provide the value of its intracompany purchases.

3/ Average value paid to growers.

4/ These purchases were mostly from other processors.

5/ Shipments of processed but not roasted nuts; does not include transfers from processing operations to roasting operations for those firms that process and roast pistachio nuts.

6/ Average value received by processors and processors/roasters.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Table 6.--In-shell pistachio nuts: U.S. roasters' purchases and domestic shipments, 1982-85

Item	1982	1983	1984	1985
Purchases from U.S. growers:				
Quantity-----1,000 pounds--	***	8,772	8,463	2,918
Value-----1,000 dollars--	***	15,654	11,921	5,708
Unit value-----per pound--	***	\$1.78	\$1.41	\$1.96
Purchases from Iran: 1/				
Quantity-----1,000 pounds--	1,386	1,919	2,639	9,646
Value-----1,000 dollars--	3,218	3,779	4,500	14,391
Unit value-----per pound--	\$2.32	\$1.97	\$1.71	\$1.49
Purchases from other sources: 2/				
Quantity-----1,000 pounds--	***	***	***	0
Value-----1,000 dollars--	***	***	***	-
Unit value-----per pound--	***	***	***	-
Domestic shipments by roasters of U.S.- grown in-shell pistachio nuts: 3/				
Quantity-----1,000 pounds--	3,927	6,263	7,673	3,638
Value-----1,000 dollars--	12,370	18,676	20,485	9,003
Unit value-----per pound--	\$3.15	\$2.98	\$2.67	\$2.47
Domestic shipments by roasters of Iranian-grown in-shell pistachio nuts: 3/				
Quantity-----1,000 pounds--	2,492	1,649	2,583	8,787
Value-----1,000 dollars--	6,534	4,669	6,771	17,253
Unit value-----per pound--	\$2.62	\$2.83	\$2.62	\$1.96
Domestic shipments by roasters of other foreign-grown in-shell pistachio nuts: 3/				
Quantity-----1,000 pounds--	***	***	***	***
Value-----1,000 dollars--	***	***	***	***
Unit value-----per pound--	***	***	***	***

1/ One roaster reported direct imports from Iran in 1985.

2/ * * * was the main source.

3/ All domestic shipments are roasted in-shell pistachio nuts.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Table 7.--Pistachio nuts: U.S. exports ^{1/} of domestic merchandise, by principal markets, 1983-85, January-March 1985, and January-March 1986

Market	1983	1984	1985	January-March	
				1985	1986
	Quantity (1,000 pounds)				
Canada-----	282	570	380	75	99
Japan-----	274	317	283	126	11
Australia-----	230	311	195	69	28
Mexico-----	21	207	423	79	352
People's Republic of China--	132	201	120	40	221
France-----	480	185	58	37	60
Israel-----	416	138	0	0	0
Taiwan-----	5	135	80	17	9
United Kingdom-----	227	132	205	53	48
Belgium-----	24	122	739	0	0
West Germany-----	548	92	202	44	6
All other-----	1,243	542	628	55	275
Total-----	3,881	2,951	3,313	596	1,108
	Value (1,000 dollars)				
Canada-----	676	1,286	838	173	208
Japan-----	538	766	638	299	31
Australia-----	580	751	415	157	56
Mexico-----	31	346	707	125	552
People's Republic of China--	136	138	60	20	188
France-----	1,112	408	105	77	122
Israel-----	1,019	73	-	-	-
Taiwan-----	7	87	173	35	12
United Kingdom-----	649	292	406	95	135
Belgium-----	56	232	1,016	-	-
West Germany-----	1,249	198	370	87	24
All other-----	2,750	1,318	1,230	156	566
Total-----	8,802	5,896	5,957	1,222	1,895

See footnote at end of table.

Table 7.--Pistachio nuts: U.S. exports ^{1/} of domestic merchandise, by principal markets, 1983-85, January-March 1985, and January-March 1986--
Continued

Market	1983	1984	1985	January-March	
				1985	1986
	Unit value (per pound)				
Canada-----	\$2.40	\$2.26	\$2.21	\$2.29	\$2.10
Japan-----	1.96	2.42	2.26	2.36	2.87
Australia-----	2.52	2.42	2.13	2.28	1.99
Mexico-----	1.53	1.68	1.67	1.59	1.57
People's Republic of China--	1.03	.69	.50	.50	.85
France-----	2.32	2.21	1.79	2.10	2.03
Israel-----	2.45	.53	-	-	-
Taiwan-----	1.48	.64	2.15	2.00	1.29
United Kingdom-----	2.86	2.21	1.98	1.80	2.82
Belgium-----	2.30	1.90	1.37	-	-
West Germany-----	2.28	2.16	1.84	1.95	3.83
All other-----	2.21	2.43	1.96	2.84	2.06
Average-----	2.27	2.00	1.80	2.05	1.71

^{1/} Includes Schedule B Nos. 145.3520, 145.5720, and 145.7520.

Source: Compiled from official statistics of the U.S. Department of Commerce.

Note.--Due to rounding, figures may not add to the totals shown.

U.S. processors' and processors/roasters' inventories

Inventory data for processed pistachio nuts were obtained by questionnaire from seven firms and data for inventories of processed and roasted pistachio nuts were obtained from two firms. Inventories of processed pistachio nuts held by the responding firms increased annually from 21.7 million pounds at yearend 1982 to 38.8 million pounds at yearend 1984, the year of peak U.S. production. Inventories declined to 20.3 million pounds at yearend 1985. Yearend inventories, as reported by responding firms, were much greater than inventories reported as of August 31, before the harvesting of each year's crop. Since the crop is harvested in September and October, yearend inventories increase dramatically before shipping begins in the following year. In addition, one processor/roaster has shelling equipment and a sizeable share of its processed in-shell inventory includes shelling stock. Many processors maintain inventories in order to supply their customers

following light crop years. 1/ As a share of shipments 2/ by the responding firms, inventories decreased from a high of 411.3 percent in 1982 to 275.9 percent in 1984, before increasing to 370.2 percent in 1985, as shown in the following tabulation:

	<u>Yearend</u> <u>inventories 1/</u> <u>(1,000 pounds)</u>	<u>Shipments 2/</u> <u>(1,000 pounds)</u>	<u>Ratio, inventories</u> <u>to shipments</u> <u>(Percent)</u>
1982-----	21,714	5,279	411.3
1983-----	28,407	9,401	302.2
1984-----	38,822	14,070	275.9
1985-----	20,304	5,484	370.2

1/ As of Dec. 31. One firm that reported inventories during the period did not provide shipment data and is not included in the tabulation. The firm reported inventories of * * * pounds in 1982, * * * pounds in 1983, * * * pounds in 1984, and * * * pounds in 1985.

2/ Shipments by the firms that held inventories. One cooperative was unable to provide shipment data for 1985.

Inventories of roasted domestic pistachio nuts held by the responding firms increased annually from * * * pounds at yearend 1982 to * * * pounds at yearend 1985. Roasted nuts are not usually inventoried by these firms, since the processed nuts are removed from inventory and roasted for shipment upon receipt of customer orders. As a share of shipments by the responding firms, inventories increased irregularly from * * * percent in 1982 to * * * percent in 1985, as shown in the following tabulation:

	<u>Yearend</u> <u>inventories 1/</u> <u>(1,000 pounds)</u>	<u>Shipments 2/</u> <u>(1,000 pounds)</u>	<u>Ratio, inventories</u> <u>to shipments</u> <u>(Percent)</u>
1982-----	***	***	***
1983-----	***	***	***
1984-----	***	***	***
1985-----	***	***	***

1/ As of Dec. 31. Data are for 2 firms.

2/ Shipments by the firms that reported inventories.

U.S. roasters' inventories

Inventory data on U.S.-grown raw in-shell pistachio nuts were received from four firms that accounted for 11 percent of total domestic shipments of

1/ As noted previously, raw pistachio nuts may be held in inventory for up to a year.

2/ The shipments presented in this section do not include intracompany transfers from processing operations to roasting operations for those firms that process and roast pistachio nuts.

U.S.-grown and roasted in-shell pistachio nuts in 1985: 1/ Inventories of domestic raw in-shell pistachio nuts held by the responding firms increased from * * * pounds at yearend 1982 to * * * pounds at yearend 1984, the year of highest U.S. production. Inventories decreased in 1985 to * * * pounds, or by 73 percent.

Inventory data on U.S.-grown and roasted in-shell pistachio nuts were received from only two firms, and accounted for 1 percent of the total domestic shipments of U.S.-grown and roasted in-shell pistachio nuts in 1985. Inventories of roasted pistachio nuts as reported by the responding firms decreased from * * * pounds at yearend 1982 to * * * pounds at yearend 1984. Inventories continued to decrease to * * * pounds at yearend 1985, or by * * * percent. As mentioned earlier in the report, roasted pistachio nuts are not usually held in inventory by roasters or processors/roasters; processed nuts are removed from inventory, roasted, and shipped upon receipt of orders from grocery chains, retail chains, and individual stores.

As a share of domestic shipments by the responding firms, inventories decreased from * * * percent in 1982 to 62.0 percent in 1983, then increased slightly to 63.7 percent in 1984 before falling to 37.0 percent in 1985, as shown in the following tabulation:

	<u>Yearend</u> <u>inventories 1/</u> <u>(1,000 pounds)</u>	<u>Shipments 2/</u> <u>(1,000 pounds)</u>	<u>Ratio, inventories</u> <u>to shipments</u> <u>(Percent)</u>
1982 <u>3/</u> -----	***	***	***
1983 <u>4/</u> -----	1,500	2,421	62.0
1984 <u>5/</u> -----	1,933	3,034	63.7
1985 <u>4/</u> -----	449	1,213	37.0

1/ Inventories of raw and roasted in-shell pistachio nuts as of Dec. 31.

2/ Shipments of raw and roasted nuts by the firms that held inventories.

3/ Data are for 2 firms.

4/ Data are for 4 firms.

5/ Data are for 5 firms.

Employment and wages

Both U.S. growers and processors had difficulty in providing the employment data requested in the Commission's questionnaires. Many of the responding firms are engaged in growing or processing other products and were unable to break out the data for those employees involved in pistachio production. 2/ Also, growers often have contracts or agreements with farm management companies or other growers, such as S&J Ranch, San Joaquin Agronomics, Pacific Agricultural Services, and Golden West Farming Co., to perform the labor.

1/ Inventory data provided by roasters of the imported product are presented in the section of the report that discusses inventories of imported in-shell pistachio nuts.

2/ Other products grown and/or processed include walnuts, almonds, olives, figs, and vegetables.

necessary to cultivate and harvest the trees. These firms provide such services as fertilization, planting and pruning, irrigation, spraying for pest control, soil and leaf analysis, and harvesting the crop.

Data obtained from 15 growers showed that average employment in these firms increased from 206 production and related workers in 1982 to 314 workers in 1983 (table 8). Employment then decreased slightly to 309 workers in 1984 and decreased again to 278 workers in 1985. The majority of these workers are nonseasonal. Nonseasonal employment followed the total employment trend, increasing from 137 workers in 1982 to 164 workers in 1983 and then declining to 161 workers in 1984 and 135 workers in 1985. Average annual hours worked by each production and related worker amounted to 1,602 in 1982; 1,089 in 1983; 1,097 in 1984; and 1,237 in 1985. Hourly wages paid to production workers by the responding growers averaged \$9.05 in 1982; \$8.15 in 1983; \$7.88 in 1984; and \$7.59 in 1985.

Data obtained from questionnaire responses submitted by processors and processor/roasters showed an annual increase in total employment from 771 production and related workers in 1982 to 1,353 workers in 1985, for a total increase of 75.5 percent. Average annual hours worked by each production and related worker amounted to 1,122 in 1982; 1,694 in 1983; 1,692 in 1984; and 1,459 in 1985. Hourly wages paid to such workers averaged \$9.26 in 1982; \$8.34 in 1983; \$8.95 in 1984; and \$9.28 in 1985.

Questionnaire data received from processors and processors/roasters showed an annual increase in employment of workers processing in-shell pistachio nuts from 288 in 1982 to 462 in 1985, an increase of 60.4 percent. Average annual hours worked by production workers processing the nuts were 1,163 in 1982; 1,388 in 1983; 1,544 in 1984; and 1,435 in 1985. Total compensation paid to these workers increased from \$5.73 per hour in 1982 to \$6.34 per hour in 1984, the peak crop year.

Data received from 3 processor/roasters showed an annual increase in employment of workers roasting in-shell pistachio nuts from 29 in 1982 to 39 in 1984, an increase of 34.5 percent. Employment of such workers decreased slightly to 38 in 1985. Average annual hours worked by production workers roasting the nuts were 2,276 in 1982; 2,267 in 1983; 2,051 in 1984; and 1,789 in 1985. Total compensation paid to these workers increased from \$6.45 per hour in 1982 to \$8.19 per hour in 1984, before declining to \$6.38 in 1985.

Financial experience of U.S. growers

Twenty-seven growers furnished usable income-and-loss data on their overall farm operations and their operations growing pistachio nuts.

Overall farm operations.--Net sales from all farm operations declined by 31.3 percent over the 4-year period, from \$218.5 million in 1982 to \$150.0 million in 1985 (table 9). In the aggregate, the growers sustained losses in all 4 years. Losses were \$4.1 million, or 1.9 percent of sales, in 1982; \$31.1 million, or 15.2 percent of sales, in 1983; \$22.8 million, or 12.9 percent of sales, in 1984; and \$35.2 million, or 23.5 percent of sales, in 1985. Twelve growers sustained losses in 1982, 15 growers in 1983, 16 in 1984, and 17 in 1985. The overall cash-flow deficit over the 4-year period was \$10.7 million.

Table 8.--In-shell pistachio nuts: Average number of production and related workers reported by U.S. growers, processors, and processors/roasters, and hours worked by and wages paid to such employees, 1982-85

Item	1982	1983	1984	1985
Production and related workers				
employed by growers: <u>1/</u>				
Average number-----	206	314	309	278
Hours worked-----1,000 hours--	330	342	339	344
Wages paid-----1,000 dollars--	2,988	2,787	2,671	2,612
Total production and related workers				
employed by processors: <u>2/</u>				
Average number-----	771	938	1,114	1,353
Hours worked-----1,000 hours--	865	1,589	1,885	1,974
Wages paid-----1,000 dollars--	8,006	13,245	16,866	18,309
Production and related workers				
processing in-shell pistachio				
nuts: <u>2/</u>				
Average number-----	288	353	445	462
Hours worked-----1,000 hours--	335	490	687	663
Wages paid-----1,000 dollars--	1,724	2,568	3,441	3,890
Total compensation-----do----	1,920	3,042	4,357	4,599
Production and related workers				
roasting in-shell pistachio				
nuts: <u>3/</u>				
Average number-----	29	30	39	38
Hours worked-----1,000 hours--	66	68	80	68
Wages paid-----1,000 dollars--	380	409	543	337
Total compensation-----do----	426	483	655	434

1/ Data are for 15 firms.

2/ Data are for 3 processors and 3 processors/roasters in 1982, and for 3 processors and 4 processors/roasters during 1983-85.

3/ Data are for 3 processors/roasters.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Table 9.--Income-and-loss experience of 26 U.S. growers on the overall operations of their farms on which pistachio nuts are produced, 1982-85

Item	1982	1983	1984	1985
Net sales:				
Pistachio nuts----1,000 dollars--:	38,568	25,738	38,746	24,300
Other crops-----do-----:	122,158	112,255	109,474	107,955
Other income-----do-----:	57,753	53,336	29,208	17,732
Total-----do-----:	218,479	191,329	177,428	149,987
Growing and operating expenses: 1/				
Goods purchased for resale				
1,000 dollars--:	34,894	28,118	7,568	1,048
Hired labor-----do-----:	7,960	9,016	7,916	7,459
Fertilizers and materials--do-----:	5,075	6,102	7,052	7,001
Depreciation-----do-----:	18,873	20,167	20,899	20,559
Taxes and insurance-----do-----:	1,870	1,867	1,969	1,816
Interest-----do-----:	14,693	15,032	15,499	14,901
All other expenses-----do-----:	139,249	142,105	139,343	132,385
Total expenses-----do-----:	222,614	222,407	200,246	185,169
Net income or (loss) before				
income taxes-----1,000 dollars--:	(4,135)	(31,078)	(22,818)	(35,182)
Depreciation-----do-----:	18,873	20,167	20,899	20,559
Cashflow 2/-----do-----:	14,738	(10,911)	(1,919)	(14,623)
Number of firms reporting				
losses-----do-----:	12	15	16	17
Number of firms reporting data-----:	23	25	26	26
As a share of net sales:				
Total expenses-----percent--:	101.9	115.2	112.9	123.5
Net income or (loss) before				
taxes-----percent--:	(1.9)	(15.2)	(12.9)	(23.5)

1/ Several growers did not list individual expenses; their costs are included in all other expenses.

2/ Net income or (loss) before income taxes plus depreciation.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

U.S. growers' pistachio operations.--The income-and-loss experience of 27 U.S. growers on their pistachio nut operations is shown in table 10. Most of the reporting growers combined financial data for both in-shell and shelled pistachio nuts. The data indicate high fixed costs for depreciation and interest. Eleven growers reported losses in 1982 and 1984. In 1983 and 1985, 17 growers reported losses. As previously mentioned, pistachio nuts are a crop that bears more heavily in alternating years and the financial results reflect this condition. The crop year for most growers covers a different period than the accounting year. Thus, comparison of alternate years or a 2-year cycle appears to be more appropriate for this investigation. Comparative data are presented in the following tabulation:

<u>Alternate-year comparisons</u>				
	<u>1982</u>	<u>1984</u>	<u>1983</u>	<u>1985</u>
Net sales-----1,000 dollars--	38,725	38,911	25,776	24,363
Growing and operating expenses-----do----	<u>26,538</u>	<u>30,024</u>	<u>26,783</u>	<u>29,781</u>
Net income or (loss)-----do----	12,187	8,887	(1,007)	(5,418)
Ratio to net sales:				
Growing and operating expenses-----percent--	68.5	77.2	103.9	122.2
Net income or (loss)---do----	31.5	22.8	(3.9)	(22.2)
<u>2-year cycle (average)</u>				
	<u>1982-83</u>	<u>1983-84</u>	<u>1984-85</u>	
Net sales-----1,000 dollars--	32,251	32,344	31,637	
Growing and operating expenses-----do----	<u>26,661</u>	<u>28,404</u>	<u>29,903</u>	
Net income-----do----	5,590	3,940	1,734	
Ratio to net sales:				
Growing and operating expenses-----percent--	82.7	87.8	94.5	
Net income-----do----	17.3	12.2	5.5	

The alternate-year comparisons show a decline in profitability from a net income ratio of 31.5 percent in 1982 to 22.8 percent in 1984, and the net loss ratio increased from 3.9 percent in 1983 to 22.2 percent in 1985. The 2-year cycle indicates a decline in profitability from \$5.6 million in 1982-83 to \$1.7 million in 1984-85. The net income ratio declined from 17.3 percent in 1982-83 to 5.5 percent in 1984-85.

The growers pay an assessment to the California Pistachio Commission. The present assessment is under 3 percent of the gross dollar value of each grower's crop, net of processing costs. The assessment is collected for the Commission by the processors, who withhold the assessed fees from their payments to growers.

Table 10.--Income-and-loss experience of 27 U.S. growers on their operations growing pistachio nuts, 1982-85 ^{1/}

Item	1982	1983	1984	1985
Net sales-----1,000 dollars--:	38,725	25,776	38,911	24,363
Growing and operating expenses: ^{2/} :				
Hired labor-----1,000 dollars--:	1,607	1,514	1,457	1,502
Fertilizers and materials--do----	715	1,002	1,586	1,514
Depreciation-----do-----:	3,995	4,149	4,185	4,377
Taxes and insurance-----do----	391	438	530	608
Water and electricity-----do----	1,698	1,830	2,247	2,557
Interest-----do-----:	3,674	3,396	3,583	3,402
All other expenses-----do----	14,458	14,454	16,436	15,821
Total expenses-----do-----:	26,538	26,783	30,024	29,781
Net income or (loss) before				
income taxes-----1,000 dollars--:	12,187	(1,007)	8,887	(5,418)
Depreciation-----do-----:	3,995	4,149	4,185	4,377
Cashflow ^{3/} -----do-----:	16,182	3,142	13,072	(1,041)
Number of firms reporting losses---	11	17	11	17
Number of firms reporting data----	24	26	27	27
As a share of net sales:				
Total expenses-----percent--:	68.5	103.9	77.2	122.2
Net income or (loss) before				
income taxes-----percent--:	31.5	(3.9)	22.8	(22.2)

^{1/} The accounting year does not coincide with the crop year.

^{2/} Several growers did not list individual expenses; their costs are included in all other expenses.

^{3/} Net income or (loss) before income taxes plus depreciation.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Capital expenditures.--Capital investments for developing a mature pistachio nut crop are made many years prior to full production. The growers reported a total of \$2.3 million in expenditures before 1970. Since that time, the growers have spent over \$90 million for the development of the crop. In 1980, one firm (* * *) made capital expenditures of \$* * *. In 1985, aggregate expenditures were \$2.3 million, the lowest level since 1972 when they were \$2.0 million. Capital expenditures, as reported in response to the Commission's questionnaires, are shown in the following tabulation (in thousands of dollars):

<u>Year</u>	<u>Expenditures</u>
1970-----	4,505
1971-----	2,812
1972-----	1,955
1973-----	10,116
1974-----	5,261
1975-----	***
1976-----	***
1977-----	***
1978-----	3,846
1979-----	2,576
1980-----	29,020
1981-----	3,653
1982-----	8,391
1983-----	4,182
1984-----	5,222
1985-----	2,250
Total-----	93,438

Investment in productive facilities.--Eleven U.S. growers supplied data concerning their investment in assets employed in their pistachio operations. Their investment in such facilities, valued at cost, was \$70.1 million as of yearend 1985 and the book value of such assets was \$49.9 million. The data are shown in the following tabulation (in thousands of dollars):

<u>Year</u>	<u>Original cost</u>	<u>Book value</u>
1982-----	63,398	51,648
1983-----	64,763	51,622
1984-----	69,681	54,100
1985-----	70,149	49,909

Financial experience of U.S. processors and roasters

Eight processors and roasters supplied usable financial data. There is a high degree of vertical and geographic integration in various segments of the industry. Two cooperatives accounted for a major portion of the processing operations.

A large West Coast processor and roaster, * * *. * * *, a large west coast processor, does some roasting and has a small pistachio growing operation. * * * could not provide financial data because they have several product lines that could not be segregated. * * *, a large west coast processor and roaster, * * * a small pistachio growing operation. Other east coast roasters, * * *, are primarily importers. They could not provide financial information because they could not segregate their product lines. Because they are importers of raw in-shell pistachio nuts, it is possible that they would be excluded from the domestic industry in this investigation under the related parties provision in section 771(4)(B) of the Tariff Act of 1930.

A list of the processors and roasters that provided financial data, all of which are west coast concerns, is provided in the following tabulation:

<u>Company</u>	<u>Processors</u>	<u>Roasters</u>
*** 1/-----	X	
*** 1/-----	X	
*** 2/-----	X	X
*** 3/-----	X	
*** 4/-----	X	X
*** 5/-----		X
*** 6/-----		X
*** 7/-----	X	X

1/ Growers' cooperative in California.

2/ *** of the firm's business is processing; approximately *** percent is roasting. It also grows *** of pistachios.

3/ Independent processor.

4/ ***.

5/ Independent roaster. It does roasting for *** and others.

6/ Independent roaster. It does roasting for *** and others.

7/ *** of the firm's business is processing and roasting, although, in 1985, less than *** percent was processing. It also grows *** of pistachios.

In the aggregate, both processors and roasters reported operating income throughout the reporting period. The yearly profitability of the processors and roasters was affected by the fluctuating spread between what they pay growers and the market price that they receive for the final product. Other factors that caused profitability variations were internal reorganizations and new equipment purchases.

Processors (corporations).--Four corporations provided usable financial data on their processing operations. Net sales rose *** percent from \$*** in 1982 to \$9.5 million in 1983 (table 11). In 1985, net sales were \$13.9 million, an increase of 23.3 percent over 1984 sales of \$11.2 million. Operating income was \$*** in 1982, \$808,000 in 1983, \$1.2 million in 1984, and \$870,000 in 1985. The operating income ratios were *** percent in 1982, 8.5 percent in 1983, 10.6 percent in 1984, and 6.3 percent in 1985.

Processors (cooperatives).--Two cooperatives provided financial data on their pistachio nut operations (table 12). Net proceeds of the two concerns *** by *** percent from \$*** in 1983 to \$*** in 1985. The ratio of net proceeds to net sales was *** percent in 1983 and *** to *** percent in 1984. In 1985, the ratio *** to *** percent.

Table 11.--Income-and-loss experience of 4 U.S. corporations on their operations processing in-shell pistachio nuts, 1982-85

Item	1982	1983	1984	1985
Net sales <u>1/</u> -----1,000 dollars--	***	9,545	11,246	13,868
Cost of goods sold-----do-----	***	7,122	9,055	11,820
Gross profit-----do-----	***	2,423	2,191	2,048
General, selling, and administrative expenses-----1,000 dollars--	***	1,615	996	1,178
Operating income-----do-----	***	808	1,195	870
Interest expense-----do-----	***	330	448	519
Other income (expense), net-----do-----	***	(20)	(102)	(512)
Net income or (loss) before income taxes-----1,000 dollars--	***	458	645	(161)
Depreciation and amortization expense included above-----1,000 dollars--	***	274	529	447
Cashflow from operations-----do-----	***	732	1,174	286
As a share of net sales:				
Cost of goods sold-----percent--	***	74.6	80.5	85.2
Gross profit-----do-----	***	25.4	19.5	14.8
General, selling, and administrative expenses-----percent--	***	16.9	8.9	8.5
Operating income-----do-----	***	8.5	10.6	6.3
Net income or (loss) before before income taxes-----do-----	***	4.8	5.7	(1.2)
Number of firms reporting operating losses-----	***	0	1	0
Number of firms reporting net losses---	***	1	1	1
Number of firms reporting data-----	***	3	4	4

1/ * * *.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Table 12.--Income-and-loss experience of 2 U.S. cooperatives on their operations processing in-shell pistachio nuts, 1983-85 1/

* * * * *

Roasters.--Four companies supplied usable financial data for 1983 to 1985. Two companies supplied such data for 1982. An operating profit was achieved in all 4 reporting years (table 13). Income was \$* * * in 1982, or * * * percent of sales; \$3.0 million in 1983, or 11.1 percent of sales; \$3.7 million in 1984, or 10.1 percent of sales; and \$2.2 million in 1985, or 5.8 percent of sales. Net income before taxes was \$* * * in 1982, or * * * percent of sales; \$2.6 million in 1983, or 9.7 percent of sales; \$3.1 million in 1984, or 8.6 percent of sales; and \$1.4 million in 1985, or 3.8 percent of sales.

Table 13.--Income-and-loss experience of 4 U.S. roasters on their operations roasting in-shell pistachio nuts, 1982-85

Item	1982 ^{1/}	1983	1984	1985
Net sales-----1,000 dollars--:	***	27,004	36,242	37,092
Cost of goods sold-----do-----:	***	21,472	29,391	31,328
Gross profit-----do-----:	***	5,532	6,851	5,764
General, selling, and administrative expenses-----1,000 dollars--:	***	2,530	3,185	3,602
Operating income-----do-----:	***	3,002	3,666	2,162
Interest expense-----do-----:	***	180	200	286
Other income (expense), net-----do-----:	***	(209)	(364)	(468)
Net income before income taxes---do-----:	***	2,613	3,102	1,398
Depreciation and amortization expense included above-----1,000 dollars--:	***	486	609	750
Cashflow from operations-----do-----:	***	3,099	3,711	2,148
As a share of net sales:				
Cost of goods sold-----percent--:	***	79.5	81.1	84.5
Gross profit-----do-----:	***	20.5	18.9	15.5
General, selling, and administrative expenses-----percent--:	***	9.4	8.8	9.7
Operating income-----do-----:	***	11.1	10.1	5.8
Net income before income taxes percent--:	***	9.7	8.6	3.8
Number of firms reporting operating losses-----:	***	1	1	2
Number of firms reporting net losses---	***	1	1	2
Number of firms reporting data-----:	***	4	4	4

^{1/} Only 2 firms supplied data.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Summary of processing and roasting operations.--A summary of the net sales of both processors and roasters is shown in the following tabulation (in thousands of dollars):

	<u>1982</u>	<u>1983</u>	<u>1984</u>	<u>1985</u>
Processors:				
Corporations-----	***	9,545	11,246	13,868
Cooperatives 1/----	***	***	***	***
Subtotal-----	***	***	***	***
Roasters-----	***	27,004	36,242	37,092
Total-----	***	***	***	***

Investment in productive facilities.--Four U.S. producers supplied data concerning their investment in productive facilities employed in processing and/or roasting in-shell pistachio nuts. Their investment in such facilities, valued at cost, rose from \$11.1 million as of the end of 1982 to \$15.8 million as of the end of 1985. The book value of such assets was \$10.3 million as of yearend 1985, as shown in the following tabulation (in thousands of dollars):

<u>Year</u>	<u>Original Cost</u>	<u>Book Value</u>
1982-----	11,099	8,608
1983-----	12,238	8,915
1984-----	13,643	9,819
1985-----	15,767	10,336

Capital expenditures.--Four U.S. producers supplied information on their capital expenditures made in connection with processing and/or roasting pistachio nuts. Such expenditures decreased from \$1.4 million in 1982 to \$1.2 million in 1983, then rose sharply to \$2.2 million in 1984. In 1985, spending fell to \$* * *, as shown in the following tabulation (in thousands of dollars):

<u>Year</u>	<u>Capital Expenditures</u>
1982-----	1,363
1983-----	1,213
1984-----	2,175
1985-----	***

Capital and investment

U.S. growers and processors were asked to describe any actual or potential negative effects of imports of pistachio nuts from Iran on their firm's growth, investment, and ability to raise capital. Excerpts from their replies follow.

* * * * *

1/ 1983=1982/83 crop year; 1984=1983/84 crop year; and 1985=1984/85 crop year.

**Consideration of Threat of Material Injury
to an Industry in the United States**

In its examination of the question of the threat of material injury to an industry in the United States, the Commission may take into consideration such factors as the rate of increase in LTFV imports, the rate of increase in U.S. market penetration by such imports, the amounts of imports held in inventory in the United States, and the capacity of producers in the country subject to the investigation to generate exports (including the availability of export markets other than the United States). A discussion of U.S. market penetration of imports of raw in-shell pistachio nuts from Iran is presented in the section of this report entitled "Consideration of the Causal Relationship Between Alleged Material Injury or the Threat Thereof and LTFV Imports." Discussions of the available information concerning inventories of raw in-shell pistachio nuts from Iran and that country's capacity to generate exports follow.

Inventories of imported in-shell pistachio nuts

Nine importers, of which six are roasters and three are import brokers, reported inventories of raw in-shell pistachio nuts from Iran. ^{1/} Inventories, as reported by these firms, increased irregularly from * * * pounds at yearend 1982 to 913,000 pounds at yearend 1984, or by * * * percent, and then rose dramatically to 5.5 million pounds at yearend 1985, representing an increase of 498 percent. As a share of shipments of imported raw in-shell pistachio nuts from Iran, as reported by the responding firms, yearend inventories decreased from * * * percent in 1982 to 18.9 percent in 1983 before increasing to 44.3 percent in 1985, as shown in the following tabulation: ^{2/}

	<u>Yearend</u> <u>inventories 1/</u> <u>(1,000 pounds)</u>	<u>Shipments 2/</u> <u>(1,000 pounds)</u>	<u>Ratio, inventories</u> <u>to shipments</u> <u>(Percent)</u>
1982-----	***	***	***
1983-----	319	1,691	18.9
1984-----	913	3,821	23.9
1985-----	5,461	12,319	44.3

^{1/} As of Dec. 31.

^{2/} Shipments by the firms that supplied inventory data.

^{1/} Inventory and shipment data for 1985 include 1 firm's data as reported in the preliminary investigation for the period January-September 1985.

^{2/} Inventory and shipment data are for 2 firms in 1982, 3 firms in 1983, 5 firms in 1984, and 7 firms in 1985.

Capacity of producers in Iran to generate exports

Iran is the world's largest producer of pistachio nuts. ^{1/} Iran's center for producing raw in-shell pistachio nuts is Rafsajan in Kerman State.

According to data published by the USDA, commercial production of pistachio nuts in Iran averaged about 43 million pounds per year during crop years 1968-77. Although pistachio production displayed its usual alternating cycle during this period, production trended upward. Production peaked at 132 million pounds in crop year 1978, but then plummeted to 22 million pounds in 1979, apparently because of a severe frost during that year. Production partially recovered to 55 million pounds in 1980 and then rose to almost 92 million pounds in 1981 (table 14). In 1982, production dropped to 50 million pounds, then increased in 1983-84 to 86 million pounds and 110 million pounds, respectively. ^{2/}

Table 14.--Pistachio nuts: Iran's production and exports, 1980-84

Item	1980	1981	1982	1983	1984
Production-----1,000 pounds--	55,100	91,500	49,600	86,000	110,000
Exports to:					
United States-----do-----	788	3,075	4,123	5,008	21,309
All others-----do-----	***	***	***	***	***
Total-----do-----	***	***	***	***	***
Ratio to total exports					
of exports to--					
United States-----percent--	***	***	***	***	***
All others-----do-----	***	***	***	***	***
Total-----do-----	100.0	100.0	100.0	100.0	100.0
Ratio of total exports					
to production-----do-----	***	***	***	***	***

Source: Production, compiled from official statistics of the U.S. Department of Agriculture and questionnaire responses to the Department of Commerce; total exports, exhibit 4, table 2.2, of the petition; exports to the United States, official U.S. imports, as reported by the U.S. Department of Commerce.

^{1/} The United States now appears to be the second largest producer; other major producers include Turkey, Greece, Syria, and Italy. In Iran, pistachio nuts are grown on about 50,000 farms that average about 6.2 acres each (respondents' prehearing brief, p. 21). In contrast to the largely mechanized production process in the United States, production methods in Iran are reported to be very labor intensive. Most growers spread cloth under the trees to catch the clusters, which are picked by hand. The hulls are removed by hand and the nuts are dried in the sun. Grading is also done by hand or by shaking the nuts through sieves.

^{2/} On the basis of USDA data, heavy crop years in Iran have traditionally occurred in even-numbered years, the same as in the United States, although the severe frost in Iran in 1979 may have reversed the production cycle.

The respondents reported (prehearing brief, p. 21) that Iran's production in 1985 was 44 million pounds. However, petitioners submitted a confidential analysis of future production of pistachios in Iran with their posthearing brief (p. 8) that claims that Iran's production in 1985 was * * * pounds. Petitioners believe the 44 million pounds to be understated because the data submitted by the Government of Iran to the Department of Commerce were limited to the Rafsajan Cooperative.

Total exports from Iran increased from * * * pounds in 1980 to * * * pounds in 1981, slipped to * * * pounds in 1982, and increased thereafter, reaching * * * pounds in 1984. ^{1/} In their analysis of future production of pistachios in Iran, the petitioners claim that Iran's exports totaled * * * pounds in 1985. Exports to the United States, as a share of total exports from Iran in recent years, rose irregularly from a low of * * * percent in 1980 to a high of * * * percent in 1984. As a share of production in Iran, total exports increased from * * * percent in 1980 to * * * percent in 1982, then decreased to * * * percent in 1983 before increasing to * * * percent in 1984.

Consideration of the Causal Relationship Between Alleged Material Injury or the Threat Thereof and LTFV Imports

U.S. imports

Total U.S. imports of raw in-shell pistachio nuts increased from 845,000 pounds in 1980 ^{2/} to 6.2 million pounds in 1982, then declined to 5.7 million

^{1/} The data shown in table 14 for total exports are those presented in table 2.2, exhibit 4, of the petition. The petition states that such information was obtained on a confidential basis * * *. In the above table, total exports in any year shown are those shown in the petition on the basis of the Iranian year, which begins on Mar. 20. In comparison, exports of pistachio nuts from Iran during Iranian years 1974/75 through 1978/79 were as follows: 1974/75--* * * pounds, 1975/76--* * * pounds, 1976/77--* * * pounds, 1977/78--* * * pounds, and 1978/79--* * * pounds.

^{2/} In November 1979, the United States imposed an embargo on trade with Iran in all but essential articles. It was not until January 1981 that the embargo was lifted and trade with Iran resumed. U.S. imports of raw in-shell pistachio nuts, total and from Iran, during 1971-79 were as follows (in millions of pounds):

<u>Year</u>	<u>Total</u>	<u>From Iran</u>
1971-----	25.2	16.4
1972-----	17.6	11.4
1973-----	33.6	24.2
1974-----	25.2	22.5
1975-----	18.5	14.1
1976-----	19.4	12.4
1977-----	22.7	20.1
1978-----	16.3	14.3
1979-----	24.6	24.1

pounds in 1983. In 1984, they climbed to 21.8 million pounds, nearly four times the level of imports in 1983. This trend continued in 1985, increasing to 26.7 million pounds, or by 23 percent. Such imports increased 159 percent during January-March 1986 compared with imports in the corresponding period of 1985. ^{1/} Iran was by far the principal supplier, accounting for 93 percent of total imports in 1980, 98 percent in 1981, 66 percent in 1982, 88 percent in 1983, 98 percent in 1984, and 97 percent in 1985 (table 15). U.S. imports of shelled and prepared or preserved pistachio nuts, including roasted in-shell pistachio nuts, are presented in table 16.

Table 15.—In-shell pistachio nuts: U.S. imports for consumption, by principal sources, 1980-85, January-March 1985, and January-March 1986

Source	1980	1981	1982	1983	1984	1985	Jan.-March	
							1985	1986
Quantity (1,000 pounds)								
Iran	788	3,075	4,123	5,008	21,309	25,841	2,323	5,429
West Germany	0	0	91	142	170	128	46	0
United Arab Emirates	0	0	126	0	151	431	0	87
Turkey	53	22	1,836	462	146	28	8	85
All other	4	46	57	101	1	250	1/	562
Total	845	3,144	6,233	5,713	21,776	26,678	2,378	6,163
Value (1,000 dollars)								
Iran	2,349	7,392	9,469	11,104	40,289	33,868	3,200	6,794
West Germany	-	-	193	276	263	219	57	-
United Arab Emirates	-	-	298	-	276	597	-	157
Turkey	133	58	3,127	784	308	48	12	136
All other	3	114	137	213	2	295	1	680
Total	2,485	7,564	13,223	12,377	41,139	35,028	3,271	7,767
Unit value (per pound)								
Iran	\$2.98	\$2.40	\$2.30	\$2.22	\$1.89	\$1.31	\$1.38	\$1.25
West Germany	-	-	2.12	1.95	1.55	1.72	1.23	-
United Arab Emirates	-	-	2.36	-	1.83	1.38	-	1.81
Turkey	2.48	2.57	1.70	1.70	2.11	1.71	1.54	1.61
All other	.75	2.45	2.40	2.10	2.68	1.18	4.08	1.21
Average	2.94	2.41	2.12	2.17	1.89	1.31	1.38	1.26

1/ Less than 500 pounds

Source: Compiled from official statistics of the U.S. Department of Commerce.

Note.—Because of rounding, figures may not add to the totals shown.

^{1/} In 1984, the Customs districts of Philadelphia and New York accounted for 62 percent and 38 percent, respectively, of total imports of raw in-shell pistachio nuts from Iran; in 1985, virtually all imports of the product from Iran entered through New York.

Table 16.--Shelled, prepared, or preserved pistachio nuts (including roasted in-shell pistachio nuts): 1/ U.S. imports for consumption, by principal sources, 1983-85, January-March 1985, and January-March 1986

Source	1983	1984	1985	January-March	
				1985	1986
Quantity (1,000 pounds)					
Iran-----	51	91	700	0	213
Turkey-----	63	141	182	31	72
People's Republic of China--	261	0	60	0	34
United Arab Emirates-----	198	0	0	0	0
All other-----	25	32	147	8	1
Total-----	597	264	1,088	39	320
Value (1,000 dollars)					
Iran-----	87	230	1,001	-	374
Turkey-----	225	505	398	27	147
People's Republic of China--	303	-	35	-	21
United Arab Emirates-----	332	-	-	-	-
All other-----	74	93	274	10	2
Total-----	1,021	828	1,708	37	544
Unit value (per pound)					
Iran-----	\$1.71	\$2.52	\$1.43	-	\$1.76
Turkey-----	3.57	3.58	2.19	\$0.87	2.03
People's Republic of China--	1.16	-	.59	-	.61
United Arab Emirates-----	1.68	-	-	-	-
All other-----	2.94	2.90	1.87	1.19	3.47
Average-----	1.71	3.13	1.57	.94	1.70

1/ The data reported in this table are for TSUS item 145.53.

Source: Compiled from official statistics of the U.S. Department of Commerce.

Total U.S. imports of shelled, prepared, or preserved pistachio nuts (including roasted in-shell pistachio nuts) decreased from 597,000 pounds in 1983 to 264,000 pounds in 1984, then increased to 1.1 million pounds in 1985, representing an increase of 82 percent from the level of imports in 1983. Imports continued to increase from 39,000 pounds during January-March 1985 to 320,000 pounds during the corresponding period of 1986, or by 721 percent. Iran accounted for 9 percent of such imports in 1983, 34 percent in 1984, and 64 percent in 1985.

Market penetration by the LTFV imports

The share of the U.S. market for raw in-shell pistachio nuts supplied by imports from Iran increased substantially during 1980-84. The U.S. market share by those imports increased from 6.3 percent in 1980 to 16.2 percent in 1981 and 19.8 percent in 1982, declined to 15.9 percent in 1983, rose to 45.2 percent in 1984, and then declined to 42.3 percent in 1985 (table 17). As indicated previously, prior to 1976, virtually all domestic consumption of pistachio nuts was supplied by imports, principally from Iran, and imports supplied 85 percent or more of consumption during 1976-79 (table 3).

Table 17.--In-shell pistachio nuts: Share of U.S. consumption supplied by Iran, all other countries, and U.S. producers, 1980-85

Item	1980	1981	1982	1983	1984	1985
U.S. consumption						
1,000 pounds--	12,458	18,965	20,870	31,559	47,150	61,061
Share of U.S. consumption						
supplied by--						
Iran-----percent--	6.3	16.2	19.8	15.9	45.2	42.3
All other countries						
percent--	.5	.4	10.1	2.2	1.0	1.4
Total imports---do----	6.8	16.6	29.9	18.1	46.2	43.7
U.S. producers---do----	93.2	83.4	70.1	81.9	53.8	56.3

Source: Compiled from official statistics of the U.S. Department of Commerce and the data shown in table 3.

Note.--Because of rounding, figures may not add to the totals shown.

Prices

Data on wholesale pistachio prices and on returns earned by pistachio growers were collected by the Commission's questionnaires. These data were supplemented by figures reported to the USDA's Crop and Livestock Reporting Service. Wholesale prices for raw in-shell pistachio nuts were obtained from sales by processors (hullers and dryers), from purchases by roasters and importers, and from importer resales. For roasted in-shell pistachio nuts, prices were obtained from roaster sales, from importer purchases and resales, and from distributor purchases.

Data were requested from processors on payments made to growers for green (unprocessed) pistachios and for prices obtained for raw (hulled and dried) nuts sold to domestic roasters. Roasters furnished prices paid to domestic processors for raw in-shell pistachios and to importers for such Iranian nuts. Roasters were also asked to indicate prices they received for sales of roasted pistachio nuts to distributors, and whether they were of domestic or foreign origin. Importers were asked to give prices paid for pistachio nuts from Iran and resale prices if these pistachios were then sold to domestic

roasters. Distributors were asked to provide prices paid to domestic roasters or to importers for roasted pistachio nuts. If respondents engaged in two or more of the foregoing activities, prices were collected only on those transactions that were made at arm's length.

For both raw and roasted in-shell pistachio nuts, prices were requested for the largest transactions in each quarter, from January-March 1982 to January-March 1986 for raw pistachios and from January-March 1985 to January-March 1986 for roasted nuts. 1/ Respondents were asked to provide separate price information for each of four size categories--very large (18/20 and 20/22 count), large (22/24, 24/26, and 21/25 count), medium (26/28, 28/30, and 26/30 count), and small (30/32, 32/34, and other counts). Information was also requested on shipping costs. Usable price information was collected from 9 importers, 13 processors, 16 roasters, and 16 distributors. 2/

Domestic grower returns.--USDA officials began keeping records of domestic production and prices of raw pistachios in 1977. Table 18 presents data on pistachio production and average returns 3/ received by growers in California during crop years 1977-85. Ultimately, growers' average returns will depend on the retail market for in-shell pistachios.

At the retail market level, the demand for in-shell pistachios is price elastic and sensitive to prices of other snack foods, including other nuts. Cashews are thought by the industry to be the pistachio nut's closest rival in demand. The demand for pistachios is also seasonal, with heaviest demand occurring in the December holiday period. On the other hand, the domestic supply of pistachio nuts is highly inelastic. It takes 7 to 10 years for new plantings to begin to bear fruit. Furthermore, domestic production tends to be variable because of the alternating 2-year bearing cycle. Import supply is moderately elastic. Iran has been the world's largest producer, but it also has traditionally consumed most of its own production. Consequently, Iran's supply of pistachio exports to the world market could increase substantially if a fall in domestic demand occurred. Because competition holds markups by processors, roasters, and distributors near their costs, supply conditions at the retail level are likely to feed back to growers. As a result, variations in grower returns result principally from shifts in domestic supply, which in turn are likely to be frequent, as U.S. production is erratic and import supply is not predictable.

1/ However, in most instances, respondents reported the quantity and value of total quarterly transactions.

2/ If firms engaged in several of these activities, they were treated as belonging in each category that applies.

3/ These returns are an average of payments made to growers; under terms of the contract, payments are distributed over the year following each harvest as processors (hulling and drying operators) realize sales to roasters. Most contracts specify quarterly installments based on an estimated final price to the grower. The last payment reflects any adjustments made by the processor based on the final price received for the crop. Grower contracts usually run 5 years, though some growers prefer year to year.

Table 18.--Production of California pistachios and average returns received by growers, 1/ crop years 1977-85

Crop year	Production			Average return to growers
	In-shell	Shelled	Total	
	-----1,000 pounds-----			Per pound
1977-----	4,500	3,800	4,500	\$1.04
1978-----	2,500	2,100	2,500	1.24
1979-----	17,200	13,100	17,200	1.60
1980-----	18,600	8,300	26,900	2.05
1981-----	11,300	3,200	14,500	1.36
1982-----	37,500	5,900	43,400	1.45
1983-----	21,000	5,400	26,400	1.42
1984-----	45,300	17,800	63,100	.95
1985-----	22,600	4,500	27,100	<u>2/</u> 1.32

1/ All pistachios, split and unsplit, in-shell and shelled.

2/ Estimated.

Source: U.S. Department of Agriculture, Statistical Reporting Service.

Because of the nature of grower-processor contracts, grower returns depend directly on the market for raw in-shell pistachio nuts faced by the processor in its sales to roasters (or to distributors, in the case of integrated processors/roasters). However, the individual grower's return also depends on the mix of raw pistachios classified as clear stock, dying stock (open, but blemished), and shelling stock (unopened nuts or loose nut meats), and the distribution of nuts by size. Unsplit nuts may be mechanically split, but at high expense to processors that translates into lower returns for growers. Alternatively, unsplit nuts may be shelled to obtain nutmeats. Shelled pistachios typically command a significantly lower price per pound (in-shell basis) than do in-shell pistachios. 1/ Returns also depend on other quality attributes, summarized by three grade levels (fancy, U.S. No. 1, and U.S. No. 2) applicable to the raw pistachio nuts. Price differences of 2 to 5 cents per pound result from each grade adjustment. These grades are currently being adopted by segments of the California industry on a voluntary basis.

Summarizing the history of average returns to growers, green pistachios commanded an average of \$1.04 per pound for the first commercial crop reported in 1977. Returns rose to \$1.60 in 1979 and then to \$2.05 by 1980 as the supply of imports was interrupted by the trade embargo against Iran. With the resumption of trade in January 1981, grower returns fell to around \$1.40 per

1/ A witness for the petitioners testified during the hearing that "Unlike other nuts, such as walnuts or almonds, there is little demand for pistachios sold out of the shell as nut meats. In fact, contrary to what you might expect, on a comparable weighted basis, shelled pistachios have a much lower value than pistachios in shell." (Transcript, p. 12.)

pound, where they remained for crop years 1981-83. Grower returns then dropped sharply for the 1984 crop, before a partial recovery occurred with the 1985 crop.

For the 1977 crop year, domestic growers received an average return of \$1.04 per pound for about 4.5 million pounds of pistachios of all grades, both in-shell and shelled nuts. For 1978, the domestic supply of in-shell pistachios was estimated at about 2.4 million pounds, compared with imports of over 16 million pounds. 1/ Grower returns on the 1978 crop averaged \$1.24 per pound. With the 1979 crop, domestic production rose sharply to 17.2 million pounds. This coincided with a sharp decline in pistachio imports, to less than 1 million pounds for calendar year 1980, as a result of the embargo placed on U.S. imports from Iran. 2/ Grower returns on this 1979 crop (realized largely in 1980) increased to \$1.60 per pound, and increased further the following year, surpassing \$2.00 per pound. In 1980, the domestic supply of in-shell pistachios, estimated at 11.6 million pounds, was less than one-half of the 24.6 million pounds imported during 1979, the year prior to the embargo.

After the embargo was lifted in January 1981, prices received by domestic growers of pistachios fell to lower levels. Returns averaged around \$1.40 per pound for crop years 1981-83 before dropping to below \$1.00 per pound for the crop of 1984. Growth in domestic production of pistachios, measured between alternate years because of the 2-year bearing cycle for this crop, continued to be substantial during this period, as plantings from the mid-1970s began to bear. Production rose by 61 percent between 1980 and 1982, followed by an increase of 45 percent between 1982 and 1984. Increased domestic output was accompanied by downward pressure on grower returns.

Contrary to grower expectations, 3/ returns to domestic growers have not risen with regularity during off-years relative to the previous on-year. Returns earned on the 1981 (off-year) crop declined markedly from the year before. During 1981, Iran began recouping portions of the U.S. market it lost during the embargo; exports to the United States recovered to over 3 million pounds. Anticipation of a record domestic crop in 1982 probably contributed to the declining returns growers earned on their 1981 crop. The average return earned on the (off-year) crop of 1983 was \$1.42, or 3 cents below the average return from the previous crop year. During 1984, when much of the 1983 off-year crop was being marketed, Iranian imports reached 21 million pounds, a level approximately equal to the average total U.S. imports during 1974-79. Returns earned by domestic growers on the 1984 bumper crop fell to \$.95, as domestic production increased to 63 million pounds, exceeding the record crop of 1982 by almost 20 million pounds. The lower average grower returns, calculated from sales of both in-shell and shelling stock, may have been due in part to the relatively high proportion of unsplit nuts harvested in 1984,

1/ Estimate, California Pistachio Commission. Calculated using 1977 crop estimate, deducting exports, and converting to a calendar-year basis.

2/ Reference was made previously to a severe frost that apparently greatly reduced the production of pistachios in Iran during the 1979 crop year.

3/ Hearing transcript, at p. 25.

as suggested by the percentage of shelled nuts sold--over 28 percent. ^{1/} The return for shelling stock was only \$.21 per pound (in-shell basis) for the 1984 crop, compared with \$1.24 for in-shell nuts. ^{2/} For the 1985 crop year, grower returns were estimated to be \$1.32 per pound, rising 37 cents relative to the previous on-year's crop. The higher average returns that growers are expecting for 1985 would seem to reflect, among other factors, a higher proportion of the crop being marketable as in-shell (83 percent, compared with 72 percent in 1984) and lower (off-year) domestic production. However, the 1985 crop added further to the oversupply of nutmeats, sending returns for shelling stock even lower, to \$0.16 per pound.

Data on apparent U.S. consumption, import supply, and net domestic supply, each pertaining only to in-shell pistachios, are presented in table 19. Also presented is a breakdown of average grower returns into returns on in-shell pistachios and returns on nut meats. Figure 5 relates in-shell supplies to returns earned on in-shell pistachios taken alone. The data indicate that grower returns on in-shell pistachios increased sharply over crop years 1979 and 1980, as imports declined from 22.6 million pounds to 2.6 million pounds. With the 1981 season, grower returns declined to \$1.59 per pound as imports from Iran resumed and a second consecutive year of large domestic supplies became available. Grower returns remained near \$1.60 per pound through the 1983 crop year, even as imports increased sharply, reaching 15.4 million pounds during the 1983 season. Over the period 1981-83, net domestic supplies moved between 13.6 and 19.5 million pounds. Examining data for the 1984 crop year, grower returns on in-shell pistachios declined sharply, from \$1.68 to \$1.24, while imports increased marginally from 15.4 million pounds to 17.1 million pounds. Meanwhile, net domestic supply increased from 16.0 million pounds in 1983 to 39.1 million pounds in 1984. During the 1985 crop year, grower returns rebounded to \$1.55, slightly below the 1981-83 levels, as net domestic supply fell to 26.2 million pounds, somewhat above net supplies during 1981-83. Grower returns recovered during the 1985 crop year despite an increase in imports from 17.1 million pounds to an estimated 25 million pounds.

Raw in-shell pistachio prices.---Direct comparisons of domestic and Iranian pistachio prices are not entirely valid for several reasons. Although both domestic and imported nuts vary widely by size, most domestic pistachios fall into the 21/25 (large) size category, while Iranian pistachios are typically in the 26/28 (medium) size class. Direct comparison of the prices of large pistachios is complicated by a lack of conformity in size categories. Large domestic pistachios are 21/25, while large Iranian nuts are 22/24 and 24/26. Furthermore, shipments of imported Iranian nuts are only roughly graded by size and contain foreign debris that must be removed before roasting. ^{3/} Some added expense must be incurred by the importers and/or roasters before they are closely comparable to domestic pistachio nuts.

^{1/} On the basis of the data in the tabulation on p. A-15, shelled nuts accounted for the following share of total shipments of U.S.-grown pistachios in the following crop years: 1977--16 percent, 1978--16 percent, 1979--24 percent, 1980--31 percent, 1981--22 percent, 1982--14 percent, 1983--20 percent, 1984--28 percent, and 1985--17 percent.

^{2/} Petitioners' prehearing brief, table A-1.

^{3/} Hearing transcript, at p. 106.

Table 19.--Grower returns, imports, net domestic supply, and apparent consumption for in-shell pistachios, crop years 1977-85

Crop year	Grower returns			In-shell pistachios		
	Average	In-shell	Meats	Imports	Net domestic supply 1/	Apparent consumption
	-----Dollars per pound-----			-----Million pounds-----		
1977-----	1.04	2/ 1.16	2/ 0.39	23.0	-2.2	20.8
1978-----	1.24	2/ 1.39	2/ .45	16.7	4.2	20.9
1979-----	1.60	2/ 1.92	2/ .61	22.6	-0.2	22.4
1980-----	2.05	2/ 2.56	2/ .55	2.6	20.9	23.5
1981-----	1.36	1.59	.56	4.1	13.6	17.7
1982-----	1.45	1.60	.52	6.1	19.5	25.6
1983-----	1.42	1.68	.42	15.4	16.0	31.4
1984-----	.95	1.24	.21	17.1	39.1	56.2
1985-----	3/ 1.32	3/ 1.55	3/ .16	3/ 25.0	3/ 26.2	3/ 51.2

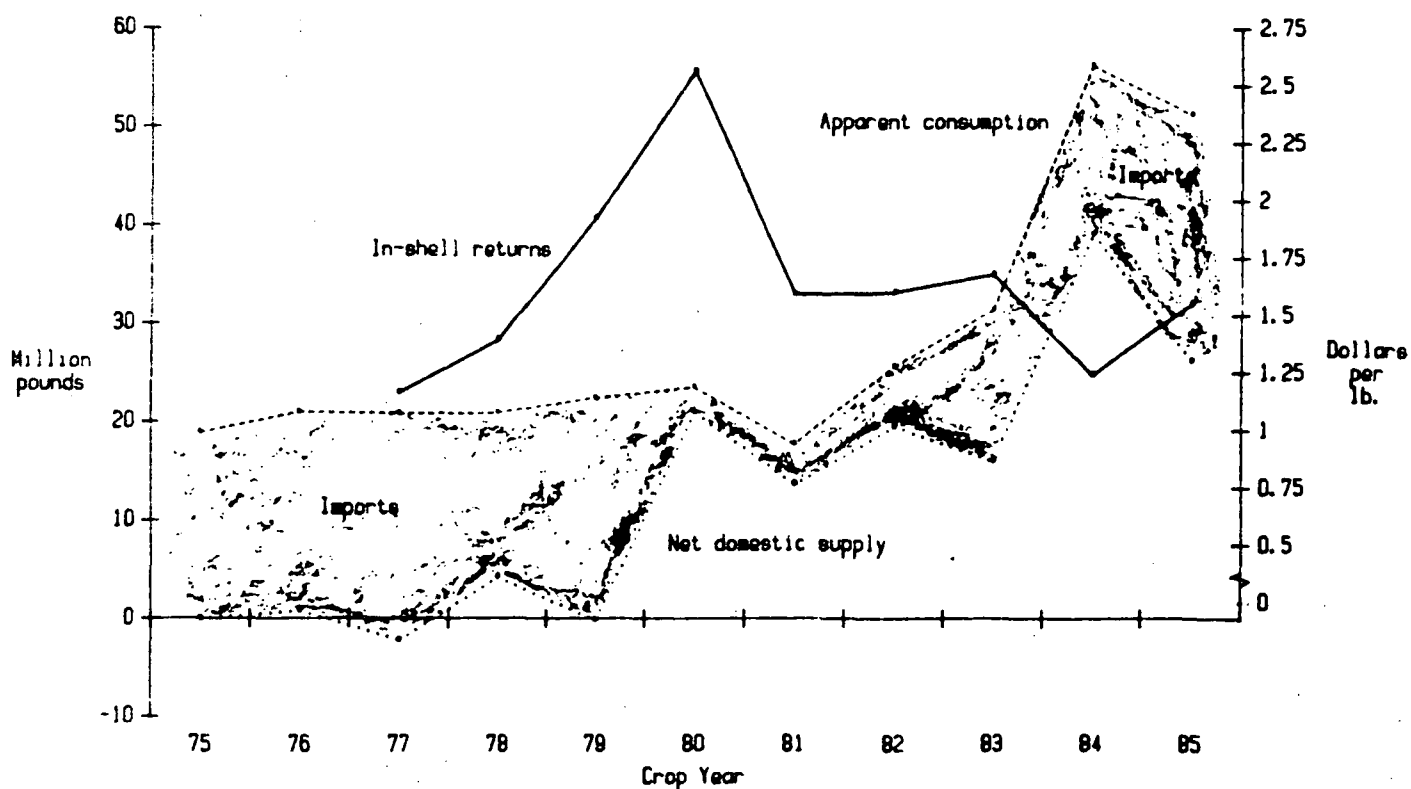
1/ Net domestic supply equals apparent consumption minus imports.

2/ Staff estimate, based on proportion of marketable in-shell production, and historical relationship to returns on nut meats and in-shell pistachios.

3/ California Pistachio Commission estimate.

Source: California Pistachio Commission; California Crop and Livestock Reporting Service; and petition, exhibit A, table 3, and appendix A, table A-1.

Figure 5.--Grower returns, apparent consumption, net domestic supply, and imports of in-shell pistachios, crop years 1975-85



Another problem concerning price comparisons arises because of contract sales. Shipments reported as having occurred in one period are frequently contracted for in a previous period, and at a price agreed upon in the earlier period. Some of the price data, therefore, are likely to misrepresent the prevailing "spot market" prices for the period in question. One processor indicated that it shipped its pistachios to a roaster on consignment, with payments contingent upon the prices received for the pistachios in roasted form.

A comparison of the prices received by domestic processors and importers of Iranian nuts from sales to domestic roasters is presented in table 20 for January-March 1984 through January-March 1986. ^{1/} This and other tables to follow provide ranges in prices reported by all respondents, but weighted-average prices constructed only from those responses that gave total quarterly transactions data. To summarize, these data indicate that domestic raw pistachio prices fell throughout 1984, stabilized early in 1985, and have increased during July-December 1985 and January-March 1986. Prices during January-March 1986 are roughly comparable to those that prevailed during January-March 1984. In general, the prices for imported pistachios were significantly lower than for domestic pistachios. Only for the very large size category were price differences between the domestic and imported pistachios small. Processors reported that shipping raw pistachios to roasters entailed shipping costs between 2 and 12 cents per pound. Most processors indicated that roasters paid these charges.

Table 21 presents data on the same transactions, but instead reports what roasters paid to domestic processors and importers, or prices paid by roasters that import directly. Sufficient data were available to present prices over the period January-March 1982 through January-March 1986. Generally, domestic prices were fairly stable from 1982 through January-June 1984, at which time they began to decline. For example, 18/20 (very large) domestic pistachios declined from an average of over \$2.50 per pound in the first 9 months of 1984 to around \$2.00 per pound during October-December 1984 and into 1985. Prices increased sharply during October-December 1985 and into 1986, and they are currently at or near 4-year highs. For both large- and medium-sized domestic categories, the pattern was similar. On purchases of domestic raw pistachios, most roasters reported paying for shipping, with charges ranging between 1 and 8 cents per pound.

Examining the pattern of prices for imported pistachios, the data are not as conclusive. However, it appears that import prices of large- and medium-sized pistachios began to decline before the price decline on domestic nuts started. For example, roasters paid about \$2.50 per pound for large imported pistachios throughout 1982 and into 1983. By April-June 1984, the price of large Iranian pistachios was down to \$2.08. Medium-sized pistachios from Iran commanded around \$2.20 throughout 1982, but had declined to \$2.05 during April-June 1983 and to \$1.84 by January-March 1984. These contrast with declines in price on domestic raw pistachios that began during June-December 1984. For both large- and medium-sized pistachios, import prices continued to decline during most of 1984 and 1985. For large imported pistachios, prices fell to

^{1/} Data from the questionnaires were inadequate to allow price comparisons for 1982-83.

Table 20.--Prices received by domestic processors and by U.S. importers for raw in-shell pistachio nuts sold to domestic roasters, by sizes and by quarters, January 1984-March 1986

(In dollars per pound)					
Period	Processor sales of : domestic pistachios		Importer sales of : Iranian pistachios		
	Range	Average	Range	Average	
Very large (18/20 and 20/22)					
1984:					
January-March-----	2.60 - 2.75	2.63	2.38	2.38	
April-June-----	2.60 - 2.72	2.70	1/	1/	
July-September-----	2.35 - 2.70	2.46	2.26	2.26	
October-December-----	1.95 - 2.21	2.15	2.09	2.09	
1985:					
January-March-----	1.95 - 2.45	2.15	2.04	2.04	
April-June-----	2.11 - 2.30	2.22	2.02	2.02	
July-September-----	1.95 - 2.34	2.34	1.60 - 1.83	1.71	
October-December-----	2.52 - 2.67	2.67	2.09 - 2.36	2.26	
1986:					
January-March-----	1.85 - 2.75	2.75	2.65	2.65	
Large (22/24, 24/26, and 21/25)					
1984:					
January-March-----	2.02 - 2.65	2.51	1/	1/	
April-June-----	2.50 - 2.65	2.52	2.24	2.24	
July-September-----	1.82 - 2.65	2.48	1.99 - 2.24	2.07	
October-December-----	1.75 - 2.15	1.89	1.53 - 2.18	1.56	
1985:					
January-March-----	1.75 - 2.34	1.83	1.43	1.43	
April-June-----	1.75 - 2.25	1.93	1.45	1.45	
July-September-----	1.75 - 2.80	1.92	1.36 - 1.43	1.37	
October-December-----	1.83 - 2.65	2.37	1.47 - 1.70	1.69	
1986:					
January-March-----	1.87 - 2.55	2.53	1.86	1.86	
Medium (26/28, 28/30, and 26/30)					
1984:					
January-March-----	2.17 - 2.40	2.23	1.82	1.82	
April-June-----	2.40 - 2.50	2.43	1.50 - 2.23	2.10	
July-September-----	2.35 - 2.40	2.39	1.50 - 1.85	1.64	
October-December-----	1/	1/	1.50 - 1.72	1.55	
1985:					
January-March-----	2.34	2.34	1.40 - 1.50	1.42	
April-June-----	1.90	1.90	1.22 - 1.31	1.23	
July-September-----	1.90	1.90	1.24 - 1.44	1.26	
October-December-----	1.90	1.90	1.34 - 1.65	1.64	
1986:					
January-March-----	1/	1/	1.26 - 2.04	2.04	

See footnote at end of table.

Table 20.--Prices received by domestic processors and by U.S. importers for raw in-shell pistachio nuts sold to domestic roasters, by sizes and by quarters, January 1984-March 1986--Continued

(In dollars per pound)				
Period	Processor sales of : domestic pistachios		Importer sales of : Iranian pistachios	
	Range	Average	Range	Average
	Small (30/32, 32/34, and other)			
1984:				
January-March-----	1.60	1.60	1.68	1.68
April-June-----	1.54	1.54	1/	1/
July-September-----	1.10	1.10	1/	1/
October-December-----	1.10	1.10	1.31	1.31
1985:				
January-March-----	1.83	1.83	1/	1/
April-June-----	1.84	1.84	1.16	1.16
July-September-----	1.84	1.84	1.16	1.16
October-December-----	2.35	2.35	1.16	1.16
1986:				
January-March-----	2.42	2.42	1/	1/

1/ No transactions were reported.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

\$1.23 during April-June 1985, before recovering to about \$2.00 by January-March 1986. Medium-sized imported pistachios declined in price throughout 1985, to as low as \$1.06 per pound, before prices began to increase during January-March 1986. Importers reported that shipping costs on pistachios typically amounted to 4 to 11 cents per pound. However, most indicated that their prices were c.i.f., with sellers handling payment of freight.

Roasted and salted in-shell pistachio nuts.--Tables 22 and 23 present data on prices for roasted pistachios sold by domestic roasters to distributors. Table 22 provides data on prices roasters reported receiving for their products, while table 23 reports prices distributors paid. Data on prices for roasted pistachios were requested only for 1985 and 1986, as they were collected for the purpose of comparison with prices on recent imports of roasted Iranian pistachios, if any. One very large roaster of domestic pistachios, * * *, with annual sales of over * * * pounds, indicated that it was unable to furnish sales prices on roasted pistachios by size and quarter. * * * supplied only list prices and gross annual sales for all sizes.

Generally, the data suggest that roasted and salted Iranian pistachios command prices at least as high as domestic pistachios, if not substantially higher. However, there are inconsistencies in the data. For example, table 22 indicates that in the large category, Iranian nuts command a premium of roughly \$1.00 per pound. Table 23, on the other hand, suggests that for large

Table 21.--Prices paid by roasters for raw in-shell pistachio nuts purchased from domestic processors and from importers, or purchased as importers, by sizes and by quarters, January 1982-March 1986

(In dollars per pound)					
Period	Processor sales of : domestic pistachios		Importer sales of : Iranian pistachios		
	Range	Average	Range	Average	
Very large (18/20, and 20/22)					
1982:					
January-March-----	1/	1/	1/		1/
April-June-----	1/	1/	2.36		1/
July-September-----	1/	1/	1/		1/
October-December-----	2.58	2.58	2.53		2.53
1983:					
January-March-----	2.46	2.46	2.50		2.50
April-June-----	2.41	2.41	1/		1/
July-September-----	1.98 - 2.35	2.29	1/		1/
October-December-----	2.53 - 2.72	2.53	1/		1/
1984:					
January-March-----	2.45 - 2.70	2.51	2.43		2.43
April-June-----	2.60 - 2.67	2.63	1/		1/
July-September-----	2.26 - 2.66	2.62	1/		1/
October-December-----	2.00 - 2.10	2.03	1/		1/
1985:					
January-March-----	1.88 - 2.20	2.04	1/		1/
April-June-----	2.16 - 2.27	2.25	1/		1/
July-September-----	1.81 - 2.16	2.04	1.81 - 2.08		2.07
October-December-----	2.36 - 2.65	2.36	1.94		1.94
1986:					
January-March-----	2.65 - 2.77	2.77	1/		1/
Large (22/24, 24/26, and 21/25)					
1982:					
January-March-----	1/	1/	2.45		2.45
April-June-----	1/	1/	2.51 - 2.68		2.68
July-September-----	2.25	1/	2.54		2.54
October-December-----	2.41	2.41	2.35		2.35
1983:					
January-March-----	2.33	2.33	2.50		2.50
April-June-----	2.14	2.14	1/		1/
July-September-----	2.11 - 2.20	2.11	1/		1/
October-December-----	2.59 - 2.60	2.59	1/		1/
1984:					
January-March-----	2.58 - 2.75	2.58	2.12		2.12
April-June-----	2.42 - 2.58	2.51	2.06 - 2.09		2.08
July-September-----	2.35 - 2.52	2.49	1.55 - 2.09		1.57
October-December-----	1.90 - 1.96	1.90	1.41 - 2.13		1.59

See footnote at end of table.

Table 21.--Prices paid by roasters for raw in-shell pistachio nuts purchased from domestic processors and from importers, or purchased as importers, by sizes and by quarters, January 1982-March 1986--Continued

(In dollars per pound)				
Period	Processor sales of : domestic pistachios		Importer sales of : Iranian pistachios	
	Range	Average	Range	Average
Large (22/24, 24/26, and 21/25)				
1985:				
January-March-----	1.65 - 1.91	1.83	1.34 - 1.57	1.36
April-June-----	1.65 - 1.91	1.90	1.21 - 1.34	1.23
July-September-----	1.94 - 2.10	1.96	1.27 - 2.06	1.51
October-December-----	1.74 - 2.00	1.87	1.73	1.73
1986:				
January-March-----	1.71 - 2.65	2.39	1.80 - 2.18	2.02
Medium (26/28, 28/30, and 26/30)				
1982:				
January-March-----	1/	1/	2.23	2.23
April-June-----	1/	1/	1/	1/
July-September-----	1/	1/	2.24 - 2.31	2.24
October-December-----	2.36	2.36	2.18 - 2.20	2.18
1983:				
January-March-----	2.36	2.36	2.23	2.23
April-June-----	2.15	2.15	2.03 - 2.05	2.05
July-September-----	2.08 - 2.13	2.08	1/	1/
October-December-----	2.19	2.19	1/	1/
1984:				
January-March-----	2.50	2.50	1.77 - 2.05	1.84
April-June-----	2.43	2.43	1.60 - 1.92	1.71
July-September-----	1/	1/	1.45 - 1.71	1.57
October-December-----	1/	1/	1.32 - 1.53	1.46
1985:				
January-March-----	1.88 - 2.40	2.36	1.29 - 1.48	1.40
April-June-----	1.83 - 2.40	1.95	1.11 - 1.29	1.17
July-September-----	1.82 - 1.90	1.84	1.06 - 1.27	1.15
October-December-----	1.90	1.90	1.13 - 1.33	1.29
1986:				
January-March-----	1/	1/	1.26 - 2.05	1.57

1/ No transactions were reported.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Table 22.--Prices received by roasters for roasted and salted in-shell pistachio nuts from the United States and Iran, by sizes and by quarters, January 1985-March 1986

(In dollars per pound)					
Period	Roaster sales of domestic nuts		Roaster sales of Iranian nuts		
	Range	Average	Range	Average	
Very large (18/20, and 20/22)					
1985:					
January-March-----	2.08 - 2.35	2.35	1/		1/
April-June-----	2.30 - 2.45	2.35	1/		1/
July-September-----	2.37 - 2.65	2.37	1/		1/
October-December-----	2.45 - 3.36	3.18	1/		1/
1986:					
January-March-----	2.48 - 2.95	2.48	1/		1/
Large (22/24, 24/26, and 21/25)					
1985:					
January-March-----	1.85 - 2.85	1.94	3.00 - 3.50		3.10
April-June-----	2.10 - 2.30	2.10	3.00 - 3.50		3.38
July-September-----	2.08 - 2.89	2.09	3.00 - 3.50		3.34
October-December-----	2.23 - 2.97	2.23	3.00 - 3.50		3.23
1986:					
January-March-----	2.50 - 3.15	2.61	3.35 - 3.50		3.45
Medium (26/28, 28/30, and 26/30)					
1985:					
January-March-----	2.16	2.16	1.90 - 2.60		2.56
April-June-----	2.20	2.20	1.90 - 2.15		2.14
July-September-----	2.19	2.19	1.74 - 2.25		2.24
October-December-----	2.12 - 2.65	2.47	1.80 - 2.40		2.39
1986:					
January-March-----	3.00	3.00	1.75 - 2.75		2.66
Small (30/32, 32/34, and other)					
1985:					
January-March-----	1.95	1.95	2.25 - 2.40		2.29
April-June-----	1/	1/	1.65 - 2.05		1.97
July-September-----	1/	1/	1.70 - 2.05		1.96
October-December-----	1/	1/	1.72 - 2.20		2.12
1986:					
January-March-----	1.94	1.94	2.25 - 2.50		2.32

1/ No transactions were reported.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Table 23.--Prices paid by distributors for roasted and salted in-shell pistachio nuts from the United States and Iran, by sizes and by quarters, January 1985-March 1986

(In dollars per pound)					
Period	Distributor purchases of domestic pistachios		Distributor purchases of Iranian pistachios		
	Range	Average	Range	Average	
	Very large (18/20, and 20/22)				
1985:					
January-March-----	1.95 - 2.64	2.32	2.93	2.93	
April-June-----	2.14 - 2.30	2.21	2.80	2.80	
July-September-----	1.89 - 2.54	2.31	2.95	2.95	
October-December-----	1.98 - 2.99	2.87	3.00	3.00	
1986:					
January-March-----	2.59 - 2.95	2.85	1/	1/	
	Large (22/24, 24/26, and 21/25)				
1985:					
January-March-----	1.75 - 2.29	2.10	2.19 - 2.30	2.27	
April-June-----	1.80 - 2.29	2.14	1.71 - 2.30	2.08	
July-September-----	1.80 - 2.50	2.14	1.70 - 2.50	2.35	
October-December-----	1.85 - 2.99	2.15	1.76 - 2.50	2.41	
1986:					
January-March-----	2.59 - 2.90	2.63	2.15 - 2.60	2.18	
	Medium (26/28, 28/30, and 26/30)				
1985:					
January-March-----	2.14 - 2.52	2.17	1.69 - 2.11	1.84	
April-June-----	1.99	1.99	1.71 - 2.10	1.87	
July-September-----	1.77 - 1.85	1.78	1.69 - 1.89	1.81	
October-December-----	1.75 - 1.80	1.76	1.79 - 1.95	1.86	
1986:					
January-March-----	2.34	2.34	1.85 - 1.87	1.87	
	Small (30/32, 32/34, and other)				
1985:					
January-March-----	1/	1/	1.84	1.84	
April-June-----	1/	1/	1.84	1.84	
July-September-----	1/	1/	1.84	1.84	
October-December-----	1/	1/	1.80	1.80	
1986:					
January-March-----	1/	1/	2.35	2.35	

1/ No transactions were reported.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

pistachios, domestically roasted pistachios of domestic and foreign origin are roughly comparable in price. Table 23 also suggests that prices are comparable on roasted pistachios of medium size. The discrepancy between prices reportedly received by roasters, compared with those paid by distributors, may be due to differences in the market level to which various roasters sell their product. It is known that some roasters package some of their own pistachios and market them directly to retailers, rather than through distributors. If prices received by roasters included such transactions, roaster sales prices would be higher than distributor payments. However, roaster sales to retailers could not be identified reliably in the questionnaire responses. Roasters reported that delivery charges on roasted and salted pistachios have recently ranged between 3 and 24 cents per pound. Exports account for the higher figures in this range. Although roasted pistachio prices are usually quoted f.o.b., several roasters indicated that they incurred delivery costs.

Imports of roasted and salted pistachio nuts were reported by only two respondents. The importer of the larger quantity reported paying \$* * * per pound for Iranian pistachios of medium size, roasted in the United Kingdom, for sale to various grocers and retailers. These shipments occurred between July 1985 and March 1986, and incurred * * * cents per pound for ocean freight. As these sales were not to distributors, any comparisons with other tabulated prices would not be valid. The other importer paid \$* * * per pound during January-March 1986 for a shipment of very large Iranian pistachios roasted in West Germany.

Exchange rates

Iran imposes comprehensive exchange controls to regulate its foreign trade. As a result, the Iranian currency, the rial, is virtually non-convertible. Most commercial banks throughout the world will not quote rial exchange rates. There are commercial banks in Turkey, the United Arab Emirates, and in Pakistan that will accept rials, but only rarely, and in small quantities for favored customers. 1/ Also, the central bank of Turkey periodically sets an exchange rate between the Turkish lira and the rial. 2/ However, by declaring the rial nonconvertible, it retains sole legal authority to conduct rial transactions. Nevertheless, fairly active trade in rials occurs in each of these countries, extra legally, at rates dictated by market forces.

Officially, the Islamic Republic of Iran has fixed the value of the rial at 92.3 rials per SDR, a basket of five major currencies heavily weighted towards the dollar. As a result, the official rate of exchange between the rial and the dollar has fluctuated narrowly around 80 to 90 rials per dollar in recent years. In addition to the official rate, a preferential rate of

1/ Facsimiles of State Department cables from U.S. embassy sources in Ankara, Islamabad, and Abu Dhabi supplied to ITC staff.

2/ The lira/rial rates set by the central bank of Turkey on Feb. 28, 1986, were 0.67 lira per rial (buying) and 0.81 (selling). With the lira/dollar rates close to 670 lira per dollar, the effective rial/dollar rates compute to 1,009 rials per dollar (buying) and 818 rials per dollar (selling).

exchange has recently been applied to foreign currency conversions from non-oil exports, including pistachios, at an 11 percent premium over the official rate. It is this rate of exchange that the Department of Commerce used to determine that Iran was selling pistachios at LTFV, in the amount of 241 percent ad valorem. The International Monetary Fund (IMF) has recently recognized the existence of a still higher rate, above 200 rials per dollar, that is available to Iranian tourists. 1/ Other documents have also been submitted that refer to 'free market' rates of exchange, ranging between 600 and 670 rials per dollar, that are consented to among private individuals and then registered by banks within Iran. 2/ Still higher rates, up to 850 rials per dollar, may be available on the black market, without benefit of registry.

In an attempt to clarify matters regarding these exchange rates, the staff consulted by telephone with the Federal Reserve Bank of New York, the authority ultimately responsible for confirming exchange rate series for official use by Federal agencies, including the Department of Commerce. Because diplomatic relations between the United States and Iran have not been restored, Federal officials have so far been unable to confirm the nature of pistachio export transactions. However, what they believe may be occurring is as follows. Assume that an Iranian firm exports pistachios and receives payment in a foreign currency such as the dollar. The exporter remands these dollars to the Bank Markazi (the central bank of Iran) for conversion into rials, receiving the official (preferred) exchange rate of about 100 rials to the dollar. However, the exporter also receives a foreign exchange settlement certificate, or a "warisnameh," that entitles the bearer to an allocation of foreign exchange. This certificate may be used to import goods (at the official rate of exchange of 80 to 90 rials per dollar), or it may be sold privately to other importers at rates equivalent to 250 to 360 rials per dollar, 3/ on the average. 4/ Thus, the total remuneration on each dollar of pistachio exports may more accurately be valued at 330 to 450 rials.

However, because of Iran's currency inconvertibility and the bureaucracy that surrounds foreign-exchange allocations, a considerable share of Iran's commerce with foreign countries has recently been conducted through bilateral clearing arrangements that amount to commodity barter. This precludes the need for currencies to be converted, either at official rates or otherwise. Reliable estimates of the scope of Iran's reliance on countertrade are not available, especially with specific regard to pistachios. However, various

1/ IMF, International Financial Statistics, May 1986.

2/ Exhibit 1, submitted by counsel for respondents at the hearing (letter, dated Mar. 3, 1986, to G.B. Kaplan at the U.S. Department of Commerce from D. Roberts, Iranian desk officer at the U.S. Department of State).

3/ The IMF publication Exchange Arrangements and Exchange Restrictions: Annual Report 1985 contains the following extract on Iran: "Exporters of non-oil goods may import authorized goods up to the value of goods exported. Such exporters may transfer the declared foreign exchange earnings to another individual for import of goods."

4/ Hearing transcript, at p. 97. The range of value for the warisnameh was obtained from a facsimile of a telex from Bank Markazi to the Federal Reserve Bank of New York supplied to the ITC staff by counsel for importers.

specialists on countertrade ^{1/} have indicated that from one-third to "most" of Iran's trade is of the barter variety. Dubai, in the United Arab Emirates, is a major clearinghouse for Iranian trade. For example, pistachios destined for export are purchased on credit by an Iranian exporter who delivers them to Dubai, where they might be bartered for rice, coffee, lamb, refrigerators, or whatever available products are in demand in Iran. Trading companies in Dubai then contract to sell these pistachios to buyers from West Germany, the United States, or Japan. Turkey has also become a major staging point for Iranian pistachio exports to the world market. It is believed that no direct shipments of Iranian pistachios to the United States are presently occurring.

With respect to the official exchange rate for the rial, quarterly data reported by the IMF indicate that between January 1982 and December 1985 the nominal value of the Iranian rial depreciated relative to the U.S. dollar by 5.3 percent (table 24). ^{2/} After adjusting for relative differences in inflation rates using the respective Producers Price Index of each country, the international purchasing power of the Iranian currency reportedly appreciated by nearly 24 percent relative to the U.S. dollar over the period ending December 1985. From July 1983 through March 1985, the real rial/dollar-exchange rate was relatively stable. Rapid escalation of prices in Iran prior to July 1983 and the dollar's nominal depreciation since March 1985 explain most of the 24-percent increase observed overall.

Lost sales

Three U.S. processors/roasters of in-shell pistachio nuts reported 21 instances of alleged lost sales to imports from Iran.

Lost sales allegations by * * *.---* * * made 10 allegations of lost sales totaling * * * pounds. All the allegations concerned lost sales of roasted and salted in-shell pistachio nuts.

* * * was cited as purchasing * * * pounds of imported raw pistachio nuts in * * * at a price of \$* * * per pound, rejecting the competing domestic price quotation of \$* * * per pound for roasted and salted in-shell pistachio nuts. * * * could not recall the cited lost sale but noted that purchases of imported pistachio nuts have increased, primarily in 1986, and that price was the predominant factor.

* * * was cited in a lost sale of * * * pounds of pistachio nuts in * * *. * * * claimed that its quote of \$* * * per pound was rejected in favor of a price of \$* * * per pound for the Iranian raw pistachio nut. * * * stated that his firm buys only the imported product because of its superior quality and taste. He stated that his firm does not solicit prices from U.S. companies and the countervailing duty imposed on the imported nuts "has hit his firm hard."

^{1/} Telephone conversations with John Walker, USDA; Donna Voight, CRS; Pompiliu Verzariu, Department of Commerce; and Ann Roberts, Arab Report. Also Middle East Economic Digest, Dec. 14, 1985, p. 36; and Review 1985/Preview 1986, p. 52.

^{2/} International Financial Statistics, March 1986.

Table 24.--U.S.-Iranian exchange rates: 1/ Nominal-exchange-rate equivalents of the Iranian rial in U.S. dollars, real-exchange-rate equivalents, and producer price indicators in the United States and Iran, 2/ indexed by quarters, 1982-85

Period	U.S. Producers Price Index	Iranian Producers Price Index	Nominal- exchange- rate index	Real- exchange- rate index 3/
			-----US\$ per Rial-----	
1982:				
January-March-----	100.0	100.0	100.0	100.0
April-June-----	100.1	103.8	98.1	101.8
July-September-----	100.5	103.6	95.5	98.4
October-December---	100.6	108.7	94.6	102.3
1983:				
January-March-----	100.7	116.3	95.9	110.8
April-June-----	101.0	123.7	94.7	116.0
July-September-----	102.0	119.1	92.6	108.1
October-December---	102.5	118.5	92.5	106.8
1984:				
January-March-----	103.6	125.6	92.1	111.7
April-June-----	104.3	131.9	92.0	116.3
July-September-----	104.1	128.0	89.0	109.5
October-December---	103.8	128.4	87.4	108.1
1985:				
January-March-----	103.6	135.3	84.9	110.9
April-June-----	103.7	139.1	87.2	116.9
July-September-----	103.0	131.3	90.1	114.9
October-December---	103.6	135.4	94.7	123.8

1/ Exchange rates expressed in U.S. dollars per Iranian rial.

2/ Producer price indicators--intended to measure final product prices--are based on average quarterly indexes presented in line 63 of International Financial Statistics.

3/ The real value of a currency is the nominal value adjusted for the difference between inflation rates as measured here by the Producer Price Index in the United States and in Iran. Producer prices in the United States increased 3.6 percent between January 1982 and December 1985 compared with an increase of 35.4 percent in Iran during the same period.

Source: International Monetary Fund, International Financial Statistics, April 1986.

Note.--January-March 1982=100.0.

*** claimed that in *** it was unable to sell *** pounds of pistachio nuts to *** for \$*** per pound, because the company purchased Iranian pistachio nuts for \$*** per pound. An employee in the purchasing department of *** stated that his firm does not purchase imported nuts, although the vendors he purchases from may import pistachio nuts.

*** cited a lost sale of *** pounds of pistachio nuts priced at \$*** to *** because it purchased the imported raw pistachio nuts for \$*** per pound. A spokesman for *** said that it purchases both domestic and imported pistachio nuts and price is the determining factor. He thinks the taste of the Iranian nut is superior, but the size and appearance of the California nut is better. He stated that the price gap between U.S. pistachio nuts and imported nuts has narrowed since the imposition of the countervailing duty and his firm will probably have to buy more U.S. pistachio nuts this year.

*** cited a lost sale of *** pounds priced at \$*** per pound to *** to Iranian raw pistachio nuts priced at \$*** per pound. A spokesman for *** stated that he was selling California nuts until a few months ago when he shopped around and bought Iranian pistachio nuts because the price was lower. He commented that his firm is not selling many pistachio nuts now because the price of the Iranian product has gone up.

Lost sales allegations by ***.---*** made three lost sales allegations totaling *** pounds of pistachio nuts. Two of the three customers were not identified. The third customer denied the allegation and added that his firm was no longer buying pistachio nuts, domestic or foreign.

Lost sales allegation by ***.---*** made eight lost sales allegations--four concerned sales of roasted and salted pistachio nuts, totaling *** pounds, and four concerned raw pistachio nuts, totaling *** pounds. Four of the customers were located in ***. As neither phone numbers nor contact persons were provided, none of these allegations could be investigated. The remaining domestic firms were unable to confirm or deny the veracity of these claims without knowledge of the dates, quantities, and the supplier in question.

Lost revenues

Two firms responding to the processor/roaster questionnaire made allegations of price suppression. ***'s allegations, which covered the period ***, involved approximately *** pounds and five purchasers. Although the firm was unable to quantify these losses, the staff contacted the purchasers and the allegations are summarized below.

Allegations of lost revenue by ***.---*** stated that the bulk of his firm's purchases are California pistachio nuts. He imported pistachio nuts for the first time in 1985 but has not tried to use the price of imported nuts to negotiate a lower price because the pistachio nuts are so different. He prefers the size and quality of the California nuts but thinks the Iranian nuts are more flavorful.

* * * stated that his firm does not buy or use the imported product. This is because the Iranian nut is smaller than the California nut and he prefers the looks of the California product. He added that the Iranian nuts do not compete in the market with the larger California pistachio nuts. His firm is very supportive of a competitive market and will use domestic producers' prices to try to negotiate a lower price.

* * * stated that he sells both California and Iranian pistachio nuts and that domestic nuts outsell Iranian nuts five to one. The Iranian nuts typically retail at \$* * * per pound and the California nuts retail at \$* * * per pound. He has never used the imported price to negotiate a lower price with domestic producers, but has asked U.S. producers to lower prices to enable him to maintain his retail margin. He added that the U.S. nuts and Iranian nuts have separate markets and are different nuts; therefore, there is no need to compare the prices.

* * * stated that his firm does not buy imported pistachio nuts. He has approached U.S. growers to reduce their prices in light of substantially lower priced imports, but could not recall specific instances of price suppression.

A spokesman for * * * stated that he was unaware of any price suppression due to lower priced imports. * * * orders for pistachio nuts are issued by its branch offices to numerous local suppliers.

Allegations of lost revenue by * * * -- * * * stated that he buys only California-grown pistachio nuts. He is a rebagger and also has equipment to shell pistachio nuts. He does not handle imported nuts because their quality is poor and exporters will present samples of high quality pistachio nuts and then ship inferior quality pistachio nuts.

APPENDIX A

COMMERCE'S FEDERAL REGISTER NOTICES

United States Department of Commerce,
14th Street and Constitution Avenue,
NW., Washington, DC 20230; telephone:
(202) 377-1788.

Preliminary Determination

We have preliminarily determined that certain in-shell pistachios from Iran are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733(b) of the Tariff Act of 1930, as amended (19 U.S.C. 1673b(b) (the Act)). We found that all sales during the period of investigation were at less than fair value. The weighted-average margin is 182.54 percent. We have preliminarily determined that "critical circumstances" exist with respect to pistachios from Iran.

Case History

On September 28, 1985, we received a petition from the California Pistachio Commission, Blackwell Land Co., California Pistachio Orchards, Keenan Farms, Inc., Kern Pistachio Hulling & Drying Co-op, Los Ranchos de Poco Pedro, Pistachio Producers of California, and T.M. Duché Nut Co., Inc. in compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleges that imports of certain in-shell pistachios (pistachios) from Iran are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act and that these imports are materially injuring or threaten material injury to a United States industry. After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We notified the ITC of our action and initiated an investigation on October 15, 1985 (50 FR 42978). On November 12, 1985, the ITC determined that there was a reasonable indication that imports of pistachios from Iran were materially injuring or threatening material injury to a U.S. industry (USITC Publication 1777).

On October 25, 1985, we presented a questionnaire to the Rafsanjani Pistachio Cooperative since it was the only known seller of pistachios from Iran. We received a response on November 20, 1985 from the Government of the Islamic Republic of Iran through the Embassy of the Democratic and Popular Republic of Algeria. We requested additional information since the initial response was inadequate for use in a preliminary determination. On January 10, January 15, and January 24, 1986, we received additional responses to the initial October 25, 1985 questionnaire. By

(A-807-882)

Certain In-Shell Pistachios From Iran Preliminary Determination of Sales at Less Than Fair Value

AGENCY: International Trade
Administration, Import Administration,
Commerce

ACTION: Notice

SUMMARY: We have preliminarily determined that certain in-shell pistachios from Iran are being, or are likely to be, sold in the United States at less than fair value, and have notified the U.S. International Trade Commission (ITC) of our determination. We have directed the U.S. Customs service to suspend the liquidation of all entries of the subject merchandise as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make our final determination by May 19, 1986.

EFFECTIVE DATE: March 11, 1986

FOR FURTHER INFORMATION CONTACT:
Mary S. Clapp, Office of Investigations.

correspondence of January 30, 1986, the Department declared the combined additional responses of January 10, January 15, and January 24, 1986, to be inadequate for purposes of a preliminary determination since the respondent did not know the destination of the pistachios it sold. On January 30, 1986, the Department sent questionnaires to the Rafsanjan Pistachio Cooperative to be forwarded to their customers who export the subject merchandise to the United States. If timely and complete responses are received from these customers, they will be used for our final determination.

Product Under Investigation

The product covered by this investigation is in-shell pistachio nuts from which the hulls have been removed, leaving the inner hard shells and the edible meat, as currently provided for under item number 145.28 of the *Tariff Schedule of the United States* (TSUS). The period of investigation is April 1, through September 30, 1985.

Fair Value Comparisons

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price, based on the best information available, with the foreign market value, also based on the best information available. We used the best information available as required by section 776(b) of the Act, because appropriate responses were not submitted.

United States Price

For purposes of our preliminary determination, we have not used sales data presented by respondents to calculate United States price since it did not contain data regarding specific quantities and prices for pistachios sold for export to the United States. We determined United States price on the basis of the average F.A.S. values for the six month period of investigation as derived from the IM 145 statistics compiled by the Bureau of Census.

Foreign Market Value

We have used price information provided in the petition, as the best information available, pursuant to section 776(b) of the Act since we did not have specific data relative to quantities and prices for pistachios sold in the home market. The price information used from the petition was the price for a representative grade in May 1985.

Preliminary Affirmative Critical Circumstances Determination

Petitioners have alleged that imports of certain in-shell pistachio nuts present "critical circumstances" within the meaning of section 733(e)(1) of the Act. Critical circumstances exist when the Department has a reasonable basis to believe or suspect that: (a) There is a history of dumping in the United States or elsewhere of the merchandise under investigation, or (b) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise under investigation at less than its fair value; and (c) there have been massive imports of the merchandise under investigation over a relatively short period. In determining whether there have been massive imports over a relatively short period, we normally consider the following factors: (1) The volume and value of the imports; (2) seasonal trends; and (3) the share of domestic consumption accounted for by the imports. Based on our analysis of the first two of these three factors, we have determined that imports from Iran have been massive.

In preliminarily determining whether there is a history of dumping pistachios from Iran in the United States or elsewhere, we reviewed past antidumping findings of the Department of the Treasury as well as past Department of Commerce antidumping duty orders. We also reviewed the antidumping actions of other countries made available through the Antidumping Code Committee established by the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade. We found no final determination on pistachios from Iran. Therefore, we did not find the requisite history of dumping of the class or kind of merchandise.

The second criterion is whether the importers knew, or should have known, that the exporter was selling the merchandise at less than fair value. We normally consider margins of 25 percent or more to constitute constructive knowledge of sales at less than fair value. Since the margins in this case exceed this level, we find that knowledge of sales at less than fair value can be imputed to the importers.

For the reasons described above, we preliminarily determine that critical circumstances exist with respect to Pistachios from Iran.

Verification

If timely and complete submissions are provided, in accordance with section 776(a) of the Act, we will verify them for use in our final determination by using standard verification procedures, including examination of relevant sales, financial and cost records of the companies.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to suspend liquidation of all entries of certain in-shell pistachios from Iran. Liquidation shall be suspended on all unliquidated entries filed for consumption on or after December 11, 1986. The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated amount by which the foreign market value of the merchandise subject to the investigation exceeds the United States price. In the case of in-shell pistachios the amount is 192.54%. This suspension of liquidation will remain in effect until further notice.

Article VI.5 of the General Agreement of Tariffs and Trade provides that "[n]o product . . . shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization." This provision is implemented by section 772(d)(1)(D) of the Act. Since the dumping duties cannot be assessed on the portion of the margin attributable to export subsidies, there is no reason to require a cash deposit or bond for that amount. Accordingly, the level of export subsidies as determined in the final affirmative countervailing duty determination on Pistachios from Iran will be subtracted from the dumping margin for deposit or bonding purposes.

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports are materially injuring, or are threatening material injury to, a U.S. industry before the later of 120 days after we make our preliminary affirmative determination or 45 days

after we make our final determination in accordance with § 353.47 of our regulations (19 CFR 353.47). If requested we will hold a public hearing to afford interested parties an opportunity to comment on these preliminary determinations at 2:00 p.m. on April 2, 1986, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary, Import Administration, Room B-099, at the above address within 10 days of this notice's publication. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by March 25, 1986. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within 30 days of publication of this notice at the above address in at least 10 copies.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

John L. Evans,

Acting Deputy Assistant Secretary for Import Administration.

March 8, 1986.

(FR Doc. 86-5251 Filed 3-10-86 8:45 am)

DELTABO CODE 25 10-00-0

17220

Notices

Federal Register

Vol. 51, No. 90

Friday, May 8, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

International Trade Administration

(S-507-502)

Certain In-Shell Pistachios From Iran; Notice of Clarification of Scope in the Antidumping Duty Investigation

AGENCY: International Trade Administration/Import Administration/Department of Commerce.

ACTION: Notice.

SUMMARY: We have determined that roasted in-shell pistachios are properly within the scope of the antidumping duty investigation of in-shell pistachios from Iran. This is based upon our finding that roasted in-shell pistachios are of the same class or kind as raw in-shell pistachios. We will instruct the Customs Service to suspend liquidation on all shipments of roasted in-shell pistachios from Iran, as of the date of the publication of the preliminary determination.

EFFECTIVE DATE: May 9, 1988.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Shimabukuro (202-377-5332), or Mary S. Clapp (202-377-1769), Office of Investigations, United States Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Background

On September 28, 1985 petitioners filed a petition requesting that the ITA investigate shipments of in-shell pistachios from Iran, item 145.28 of the Tariff Schedules of United States (TSUS), to determine whether they are being sold in the United States at less than fair value. We initiated this investigation on October 16, 1985. On November 20, 1985, the ITC issued its preliminary affirmative determination of injury to a U.S. industry covering raw in-shell pistachios from Iran. The ITA published its preliminary determination

determination of sales at less than fair value of in-shell pistachios from Iran on March 11, 1986. We instructed the Customs Service to suspend liquidation of imports of in-shell pistachios from Iran which were imported under TSUS item 145.28.

The ITA has received inquiries as to whether roasted in-shell pistachios were covered by the preliminary determination. In response, we are issuing this clarification of the scope of the investigation.

Products Under Investigation

Roasted in-shell pistachios are covered by TSUS classification number 145.53. The Department has determined that the scope of this investigation includes both raw and roasted in-shell pistachios from Iran. Raw and roasted are within the same class or kind. The Department has not differentiated between the two in its investigation and has consistently sought information from the Iranian producers/sellers regarding sales of all in-shell pistachios from Iran. Accordingly, the Department has not limited its investigation to the product in its raw form. The Department notes that in-shell pistachios are sold either raw or roasted. Therefore, the Department, by specifying in previous notices that its investigation, covered in-shell pistachios, intended to include all forms of that product. The Department's use of TSUS classification number 145.28 does not limit its investigation cases where it discovers that an additional classification number would be appropriate to cover products already under investigation. *Royal Business Machines v. United States*, 1 CIT 60, 507 F. Supp. 1007 (1980), *aff'd* 60 CCPA 61, 669 f. 2d 602 (1982).

Suspension of Liquidation

Since we have determined that roasted in-shell pistachios are properly included in the class of in-shell pistachios being investigated, we are directing the United States Customs Service to suspend liquidation on all shipments of roasted in-shell pistachios from Iran as of the date of publication of the preliminary determination on March 11, 1986 (51 Fed. Reg. 8342). There is no allegation of "critical circumstances" with respect to roasted in-shell pistachios from Iran, therefore, the determination of critical circumstances

determination does not apply to roasted in-shell pistachios.

This notice is published pursuant to section 733(f) of the Tariff Act of 1930, as amended (19 U.S.C. 1673b(f)).

John L. Evans,

Acting Deputy Assistant Secretary for Import Administration.

May 7, 1988.

[FR Doc. 88-10804 Filed 5-8-88; 8:45 am]

STANDARD CODE 3910-08-0

SUPPLEMENTARY INFORMATION:**Final Determination**

We have determined that in-shell pistachios from Iran are being, or are likely to be sold, in the United States at less than fair value, as provided in section 725(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act). We found that all sales during the period of investigation were at less than fair value, and the weighted-average margin is 241.14 percent. We have determined that "critical circumstances" exist with respect to raw in-shell pistachios from Iran.

Case History

On September 26, 1985, we received a petition filed in proper form from the California Pistachio Commission, Blackwell Land Co., California Pistachio Orchards, Kern Pistachio Hulling & Drying Co.-op., Los Rancho de Poco Pedro, Pistachio Producers of California, and T.M. Duche' Nut Co., Inc., on behalf of the industry consisting of domestic pistachio growers and processors of domestically grown pistachios. In compliance with the filing requirements of § 353.36 of the Commerce regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Iran are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act (19 U.S.C. 1673); and that these imports are materially injuring, or threatening material injury to, a U.S. industry. The petitioners also alleged that "critical circumstances" exist with respect to raw pistachios.

After reviewing the petition we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We initiated the investigation on October 15, 1985 (50 FR 42976), and notified the ITC of our action.

On November 12, 1985, the ITC found that there is a reasonable indication that imports of pistachios from Iran are threatening material injury to a U.S. industry (U.S. ITC Pub. No. 177, November 1985).

On October 25, 1985, we presented a questionnaire to the Raisanjan Pistachio Cooperative, the only known seller of pistachios from Iran. On January 10, 15, and 24, 1986, we received responses to our questionnaire. By letter dated January 30, 1986, we informed the Embassy of Algiers that the information it submitted to us on behalf of the Government of Iran was inadequate for purposes of a preliminary determination since the respondent did not know the destination of the pistachios it sold. On January 30, 1986, the Department sent questionnaires to the Raisanjan

Pistachio Cooperative to be forwarded to its customers who export pistachios to the United States. We did not receive any further responses.

We published the preliminary determination of sales at less than fair value on March 11, 1986 (51 FR 6342). A hearing, requested by the petitioners and importers, was held on April 8, 1986. Arguments raised in the briefs of all parties were considered for the final determination.

Scope of Investigation

The products covered by this investigation are certain raw and roasted in-shell pistachio nuts from which the hulls have been removed, leaving the inner hard shells and the edible meat, currently classifiable in the Tariff Schedules of the United States Annotated (TSUSA) under items 145.2800 and 145.5300. The period of investigation is April 1 through September 30, 1985.

Scope of Investigation Issues

In the present investigation questions arose at the time of the Department's preliminary determination as to whether roasted in-shell pistachios were included within the scope of its investigation. It was brought to the Department's attention that the TSUSA item included in its notices, 145.2800, covered only one variety of in-shell pistachios, raw, that was being imported into the United States. Inasmuch as the Department seeks to include all products that are of the same class or kind within the scope of its investigations as are necessary to ensure that it investigates all imports that may be sold within the United States at less than fair value, we requested comments to help in determining whether the Department's intent to include roasted in-shell pistachios within its scope was made apparent throughout the investigation. In addition, we requested comments on the issue of whether roasted in-shell pistachios are within the same class or kind as raw in-shell pistachios and as such, properly within the scope of this investigation.

Importers of raw in-shell pistachios from Iran argued (1) that prior notices have specifically referred to in-shell pistachios provided for under TSUSA item 145.2800 and (2) the ITC limited its preliminary determination to raw in-shell pistachios. The principal importer of roasted in-shell pistachios from Iran, who accounted for eighty percent of the imports of such pistachios from September through December 1985, argued (1) that its imports were not an

(A-807-502)

**Certain In-Shell Pistachios From Iran
Final Determination of Sales at Less
Than Fair Value**

AGENCY: International Trade Administration, Import Administration, Commerce

ACTION: Notice

SUMMARY: We have determined that certain in-shell pistachios (pistachios) from Iran are being, or are likely to be sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination. We have directed the U.S. Customs Service to confine, with the suspension of liquidation of all entries of pistachios from Iran that are entered or withdrawn from warehouse for consumption on or after the date of publication of this notice and to require a cash deposit or bond for each entry in an amount equal to the estimated dumping margin as described in the "Continuation of Suspension of Liquidation" section of this notice. The ITC will determine within 45 days of the date of this determination whether these imports are materially injuring, or are threatening material injury to, a U.S. industry.

EFFECTIVE DATE: May 23, 1986

FOR FURTHER INFORMATION CONTACT: Kenneth G. Shimabukuro (202-377-6332) or Mary S. Clapp (202-377-1768), Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

attempt at circumvention and there is little possibility of substantial circumvention in the future because of the limited roasting facilities in Europe, where the roasting is done, and (2) that since it has relied on prior determinations and notices, with respect to roasted in-shell pistachios from Iran, to include such pistachios in the scope of the investigation at this time would be an unfair denial of due process.

The importers of raw in-shell pistachios and the importer of roasted in-shell pistachios argue (1) that the Department's determinations of product scope in other investigations do not support inclusion of roasted pistachios in this investigation, and (2) that the roasted in-shell pistachios were previously sold in the free market of Europe and therefore are exports from Europe.

In-shell pistachios are marketed as a snack food and are generally roasted for this purpose. Thus the ultimate use of roasted and raw in-shell pistachios, as well as the expectations of the consumer, are the same for the two products. Additionally, both products are part of the same channel of trade, the end purpose of which is to provide for consumption a roasted edible nut. Roasting of raw in-shell pistachios is not a substantial transformation of that product since roasting is essentially a preparation of the product for use as a snack food. Though the Department is not bound by Customs Service determinations regarding substantial transformation, we note that in its notice of September 18, 1985, *Country of Origin Markings for Pistachio Nuts* (50 FR 57842), the Customs Service found roasting not to be a substantial transformation. The Customs Service also found that the cost of transforming raw in-shell pistachios to roasted in-shell pistachios was insignificant, the process costing 2.5 cents to 3 cents per pound. Based upon these reasons, the Department has determined that roasted and raw in-shell pistachios are within the same class or kind.

The Department further notes that it has never limited the scope in the investigation to raw in-shell pistachio nuts. The Department recognized the need to clarify the scope in this case because of its use of the single TSUSA item 145.2800 in its notices. TSUSA items serve as aids in describing products under investigation but are not binding upon the Department in scope determinations. In fact, the Department may add an item number to cover a product under investigation where the omission of that item would be

inconsistent with the products under investigation.

With respect to the parties' point regarding country of exportation, the Department considers pistachios grown in Iran as products of Iran, whether or not they have been sold or roasted in the European market. Both parties have referred to section 778(g) of the Tariff Act of 1930, as amended. That provision deals with the exportation from an intermediate country. That provision states that if a reseller purchases merchandise from a producer who does not know at the time of the sale the destination of the merchandise, and that merchandise is initially exported by or on the behalf of the reseller to a country other than the United States, where it is not substantially transformed, and the merchandise is subsequently exported to the United States, that merchandise will be treated for purposes of that section, which deals with foreign market value, as an export from that intermediate country.

The provision is not relevant to the issue of whether in-shell pistachios are properly classified as products of Iran. The provision provides that the intermediate country will be considered as the country of exportation for foreign market value calculations. In *Synthetic Methionine from Japan* (47 FR 18622, April 12, 1982), an administrative review two years before the provisions was added to the antidumping law, the Department explained its policy at that time with regard to intermediate country exportation as not removing certain products from the scope of a proceeding because they were exported from a third country. Accordingly, the Department does not consider roasted in-shell pistachios as imports from Europe for purposes of the scope of these proceedings.

Regarding the allegation of the importer of roasted in-shell pistachios that it was denied due process, we note that all interested parties were aware that the Department was considering clarification of the scope regarding roasted in-shell pistachios shortly after the preliminary determination. At that time the only known importer of roasted in-shell pistachios entered appearance as an interested party and had the opportunity to comment upon all aspects of the investigation, including matters not involving scope.

Fair Value Comparisons

To determine whether sales of the subject merchandise in the United States were made at less than fair value we compared the United States price based on the best information available, with foreign market value, also based on

the best information available. We used the best information available, as required by section 778(b) of the Act, because appropriate responses were not submitted.

United States Price

For our determination we did not use sales data presented by respondents to calculate United States price since they did not include data regarding specific quantities and prices for pistachios sold for export to the United States. We determined United States price on the basis of the average F.A.S. value for the six-month period of investigation as derived from the IM145 statistics compiled by the Bureau of Census.

Foreign Market Value

We used price information provided in the petition, as the best information available, pursuant to section 778(b) of the Act since we did not have specific data regarding quantities and prices for pistachios sold in the home market. The price information used from the petition was the price for a representative grade in May 1985.

Petitioners' Comment

Comment: Petitioners argue that, for the preliminary determination, the Department inadvertently based foreign market value on an average price for the period March 1984 to March 1985, instead of the price of a representative grade in May 1985.

DOC Response: We agree. Foreign market value for the final determination is based on the May 1985 price of a representative grade within the period of review.

Importers' Comment

Comment: Importers argue that the sales price of in-shell pistachios in Iran was converted to U.S. dollars at an improper rate of exchange. The law requires that such conversion be made at a rate which reflects the actual market value of the currency and not at the rate proclaimed by the foreign government when that rate has no relation to the actual value of the currency. Further, the law does not contemplate that agencies of the U.S. government blindly accept values reported by the Federal Reserve Bank when there is evidence that the reported rate is grossly overstated or understated.

DOC Response: Section 522 of the Trade Act of 1930 requires the Department to use the exchange rate furnished by the Federal Reserve Bank of New York. The applicable regulation and statutory provision do not grant the

Department the authority to disregard exchange rate information furnished by the Federal Reserve Bank of New York.

Verification

Verification in accordance with section 776(a) of the Act was not conducted since timely and complete responses were not filed.

Final Affirmative Determination of Critical Circumstances

Petitioners have alleged that imports of certain raw in-shell pistachio nuts present "critical circumstances" within the meaning of section 735(a)(3) of the Act. Critical circumstances exist when the Department finds that: (a) There is a history of dumping in the United States or elsewhere of the merchandise under investigation, or (b) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise under investigation at less than its fair value; and (c) there have been massive imports of merchandise under investigation over a relatively short period. In determining whether there have been massive imports over a relatively short period, we normally consider the following factors: (1) The volume and value of the imports; (2) seasonal trends; and (3) the share of domestic consumption accounted for by the imports. Based on our analysis of the first two of these three factors, we have determined that imports from Iran have been massive.

In determining whether there is a history of dumping of pistachios from Iran, in the United States or elsewhere, we reviewed past antidumping findings of the Department of Treasury as well as past Department of Commerce antidumping duty orders. We also reviewed the antidumping actions of other countries made available through the Antidumping Code Committee established by the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade. We found no final determination on pistachios from Iran. Therefore, we did not find the requisite history of dumping of the class or kind of merchandise.

The second criterion is whether the importers knew, or should have known, that the exporter was selling the merchandise at less than fair value. We normally consider margins of 25 percent or more to constitute constructive knowledge of sales at less than fair value. Since the margin in this case exceeds this level, we find that knowledge of sales at less than fair value can be imputed to the importer.

For the reasons described above, we determine that critical circumstances exist with respect to raw in-shell pistachios from Iran. Since, however, there was no allegation of critical circumstances for roasted in-shell pistachios, we did not make such a determination for roasted in-shell pistachios.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to continue to suspend liquidation of all entries of raw in-shell pistachios from Iran that are entered, or withdrawn from warehouse, for consumption, on or after December 11, 1985. Suspension of liquidation shall be continued for all entries of roasted in-shell pistachios from Iran that are entered, or withdrawn from warehouse, for consumption on or after March 11, 1986, the date of publication of the preliminary determination (51 FR 8342). The U.S. Customs Service shall continue to require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price. In the case of in-shell pistachios from Iran the rate is 241.14 percent. This suspension of liquidation will remain in effect until further notice.

Article VI.5 of the General Agreement of Tariffs and Trade provides that "(n)o product . . . shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization." This provision is implemented by section 772(d)(1)(D) of the Act. Since the dumping duties cannot be assessed on the portion of the margin attributable to export subsidies, there is no reason to require a cash deposit or bond for that amount. Accordingly, the level of export subsidies as determined in the final affirmative countervailing duty determination on pistachios from Iran, will be subtracted from the dumping margin for deposit or bonding purposes.

ITC Notification

In accordance with section 735(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information publicly or under an administrative protective order without

Assistant Secretary for Import Administration

The ITC will determine whether these imports materially injure, or threaten injury to, a U.S. industry within 45 days of the date of this determination. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. If the ITC, however, determines that such injury does exist, we will issue an antidumping duty order directing the U.S. Customs Service to assess an antidumping duty on pistachios from Iran which were entered, or withdrawn from warehouse, for consumption after the suspension of liquidation, equal to the amount by which the foreign market value exceeds the United States price, less the amount of the countervailing duty.

This determination is being published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Paul Froendberg,

Assistant Secretary for Trade Administration,
May 19, 1986.

[FR Doc. 86-11083 Filed 5-22-86; 8:45 am]
BILLING CODE: 3510-06-0

APPENDIX B

THE COMMISSION'S FEDERAL REGISTER NOTICE

(Investigation No. 731-TA-287 (Final))

In-Shell Pistachio Nuts From Iran

**AGENCY: International Trade
Commission**

ACTION: Institution of a final antidumping investigation and scheduling of a hearing to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731-TA-287 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) to determine whether the industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Iran of pistachio nuts, not shelled, provided for in item 145.26 of the Tariff Schedules of the United States, which have been found by the Department of Commerce, in a preliminary determination to be sold in the United States at less than fair value (LTFV). Unless the investigation is extended, Commerce will make its final LTFV determination on or before May 19, 1986, and the Commission will make its final injury determination by July 8, 1986 (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673d(b))).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: March 11, 1986.

FOR FURTHER INFORMATION CONTACT: Valerie Newkirk, (202-523-0165), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002. Information may also be obtained via electronic mail by accessing the Office of Investigation's remote bulletin board system for personal computers at 202-523-0103.

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of in-shell pistachio nuts from Iran are being sold in the United States at less than fair value within the meaning of section 731 of the act (19 U.S.C. 1673). The investigation was requested in a petition filed on September 28, 1985, by counsel on behalf of the California Pistachio Commission, Blackwell Land Co., California Pistachio Orchards, Kern

Farms, Inc., Kern Pistachio Hulling & Drying Co.-Op, Los Ranchos de Poco Pedro, Pistachio Producers of California, and T.M. Duche Nut Co., Inc. In response to that petition the Commission conducted a preliminary antidumping investigation and, on the basis of information developed during the course of that investigation, determined that there was a reasonable indication that an industry in the United States is threatened with material injury by reason of imports of the subject merchandise (50 FR 47852, Nov. 20, 1985).

Participation in the investigation.—Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the Federal Register. Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list.—Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance in accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3). Each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Staff report.—A public version of the prehearing staff report in this investigation will be placed in the public record on May 9, 1986, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing.—The Commission will hold a hearing in connection with this investigation beginning at 10:00 a.m. on May 21, 1986, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on May 14, 1986. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on May 14, 1986, in room 117 of the U.S. International Trade

Commission Building. The deadline for filing prehearing briefs is May 18, 1986.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written submissions.—All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on May 28, 1986. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before May 28, 1986.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.6 of the Commission's rules (19 CFR 201.6). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR § 201.6).

Authority

This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

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Federal Register / Vol. 51, No. 63 / Wednesday, April 2, 1986 / Notices

21361

Issued March 20, 1986

Kenneth R. Mason,

Secretary

[FR Doc 86-7317 Filed 4-1-86, 8:45 am]

GILLING CODE 7000-00-00

APPENDIX C
LIST OF WITNESSES

CALENDAR OF PUBLIC HEARING

Those listed below appeared as witnesses at the United States International Trade Commission's hearing:

Subject : In-Shell Pistachio Nuts From Iran

Inv. Nos. : 731-TA-287 (Final)

Date and time : May 21, 1986 - 10:00 a.m.

Sessions were held in connection with the investigation in the Hearing Room of the United States International Trade Commission, 701 E Street, N.W., in Washington.

In support of the imposition of
Antidumping duties:

Fried, Frank, Harris, Shriver & Jacobson— Counsel
Washington, D.C.
on behalf of

California Pistachio Commission
Blackwell Land Co.
California Pistachio Orchards
Keenan Farms, Inc.
Kern Pistachio Hulling & Drying Co-op
Los Ranchos de Poco Pedro
Pistachio Producers of California
T.M. Duche Nut Co., Inc.
Coopers & Lybrand Associates

Ron Khachigian, Chairman of the California Pistachio Commission
and Senior Vice President of Blackwell Land Co.

H.P. Anderson, III, President of the River West Inc. and
Chairman of the Marketing Committee, California Pistachio
Commission

John Feder, President of the T.M. Duche Nut Co.

Lawrence H. Easterling, Jr., President of Pistachio Producers
of California and Managing General Partner of King Pistachio
Growers

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In support of the imposition of
Antidumping duties: cont'd

Dr. Lucinda Lewis, Coopers & Lybrand Associates

Jack Nightingale, Coopers & Lybrand Associates

Robert Schramm, Schramm & Associates

Dr. Martin Miller, University of California at Davis

Dr. Beth Teviotdale, University of California Cooperative
Extension, Kearney Agriculture Center

David E. Birenbaum)
Edward J. Buthusiem) --OF COUNSEL
Alan Kashdan)

In opposition of the imposition of
Antidumping duties:

Harris & Berg—Counsel
Washington, D.C.
on behalf of

Pistachio Group of the Association of Food Industries, Inc.
and its constituent members, including American Pistachio
Corporation; Andre L. Causse; J.F. Braun & Sons, Inc.;
Franklin Trading Company; Ludwig Mueller Co., Inc.;
Zenobia Company and Ziba Nut, Inc.

Ira S. Agress, President, Zenobia Co.

Joshua Setton, President, Setton International Foods, Inc.

Herbert E. Harris, II)
Cheryl Ellsworth) --OF COUNSEL

Oppenheimer, Wolff, Foster, Shepard and Donnelly—Counsel
Washington, D.C.
on behalf of

Talos International Corporation

Timothy A. Harr)—OF COUNSEL

APPENDIX D
IMPORTS FROM IRAN

Table D-1.--Monthly imports of raw in-shell pistachio nuts from Iran,
January 1984-April 1986

Period	Quantity	Value
	<u>1,000 pounds</u>	<u>1,000 dollars</u>
1984:		
January-----	376	697
February-----	607	1,074
March-----	1,093	2,093
April-----	2,286	4,294
May-----	1,433	2,671
June-----	305	566
July-----	1,597	3,202
August-----	4,991	9,390
September-----	1,549	2,718
October-----	6,709	12,929
November-----	150	253
December-----	212	404
1985:		
January-----	375	507
February-----	170	280
March-----	1,778	2,413
April-----	280	431
May-----	1,254	1,766
June-----	1,143	1,446
July-----	1,897	2,437
August-----	1,019	1,200
September-----	3,682	4,464
October-----	3,249	4,147
November-----	6,813	8,943
December-----	4,179	5,833
1986:		
January-----	1,564	2,045
February-----	2,683	3,242
March-----	1,182	1,507
April-----	0	0

Source: Compiled from official statistics of the U.S. Department of Commerce.

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APPENDIX E

THE CUSTOMS SERVICE'S FEDERAL REGISTER NOTICE

DEPARTMENT OF THE TREASURY**Customs Service****19 CFR Part 134**

ITD: 85-1581

Country of Origin Marking of Pistachio Nuts**AGENCY:** U.S. Customs Service
Department of the Treasury.**ACTION:** Revision of rulings

SUMMARY: Customs previously ruled that imported pistachio nuts which are processed by roasting, need not subsequently be marked as products of the foreign country where grown, but become a product of the country where the roasting is performed.

Customs has received a request to rescind these rulings because the roasting process does not substantially transform pistachio nuts which have otherwise attained the character in which they will be sold to consumers prior to importation. Specifically, it has been called to Customs' attention that pistachio nuts which are grown in Iran are then roasted elsewhere than in Iran. These roasted pistachio nuts are then sold without any indication that the nuts are products of Iran, and under brand names which imply that they are products of California. Customs has decided that the roasting, roasting and salting, or roasting, salting and coloring of pistachio nuts, without more, does not result in a substantial transformation. Accordingly, the previous rulings are being rescinded and the containers of such products must be marked to indicate the country of origin of the raw products.

EFFECTIVE DATE: October 15, 1985**FOR FURTHER INFORMATION CONTACT:**

Lorne R. Rodbart, Entry Procedures and Penalties Division, U.S. Customs Service, 1301 Constitution Avenue, NW, Washington, D.C. 20229 (202-566-5765).

SUPPLEMENTARY INFORMATION:**Background**

Section 304 of the Tariff Act of 1930 as amended (19 U.S.C. 1304) provides that all articles of foreign origin or their containers, imported into the U.S. shall be marked in a conspicuous place with the English name of their country of origin to indicate to an ultimate purchaser in the U.S., the country of origin of the article. This statute was enacted to make consumers aware of the country of origin of articles so that they can choose between buying domestic or foreign articles. Part 134 Customs Regulations (19 CFR Part 134) sets forth the country of origin marking

requirements of 19 U.S.C. 1304 Section 134.1(b). Customs Regulations (19 CFR 134.1(b)), defines "country of origin" as "the country of manufacture, production, or growth of any article of foreign origin entering the United States." An article which is grown or manufactured in a particular country and processed prior to its sale to a retail purchaser is considered to be the product of the country in which it was grown or manufactured unless the processing substantially transforms the article. A substantial transformation has traditionally been defined as a change which results in a new and different article of commerce with a new name, character, or use. Although trade usage and opinion are important in making this determination, it is Customs' position that a substantial transformation will not occur with a resultant change in country of origin, if the process is merely a minor one which leaves the identity of the article intact. To hold otherwise would thwart the purposes for which country of origin determinations must be made, and would be inconsistent with recent court decisions and the purposes for which Congress enacted the marking statute.

Customs' previous rulings on the significance of the roasting process have been questioned by domestic producers. In ruling #724350 dated June 4, 1984 and ruling #726412 dated September 25, 1984, the issue before Customs was whether the process of roasting imported raw pistachio nuts substantially transformed these goods into a new and different article of commerce. Customs held that the roasting was a substantial transformation.

Customs has been requested to rescind these rulings on the basis that the roasting of these products does not result in a substantial transformation, both because it does not result in a new and different article of commerce with a new name, character, or use, and because roasting is not a substantial manufacturing or processing operation. Customs determined that a review of the above rulings was warranted and published a notice in the Federal Register on February 11, 1985 (50 FR 5629), soliciting public comments before any change was made.

Discussion of Comments

Sixty-six comments were received in response to the notice. The issues raised by the commentators are analyzed under the following six topics:

The Statute

Section 1304, Tariff Act of 1930 as amended (19 U.S.C. 1304), requires that "every article of foreign origin (or its container, as provided in subsection (h) hereof) imported into the United States shall be marked . . . in such manner as to indicate to an ultimate purchaser in the United States the English name of the country of origin of the article" (emphasis added).

According to *United States v. Friedlander & Co., Inc.*, 27 CCA 307, 302, C.A.D. 104 (1910), the purpose of the statute is to "mark the goods so that at the time of purchase the ultimate purchaser may, knowing where the goods were produced, be able to buy or refuse to buy them, if such marking should influence his will". Cited in *Globemaster, Inc. v. United States*, 188 Cust. Cl. 77, 89, C.D. 4340, 340 F. Supp. 974, 976 (1972) and *United States v. Ury*, 106 F.2d 28, 29, (2d Cir. 1939). In addition, as to imported products from competing foreign sources, it was recognized that particular foreign origin is relevant. This is based upon the general reputation for quality, the political and social conditions in the country, and the national origin of the particular consumer. See, generally, *United States v. Friedlander & Co., Inc.*, *supra*.

As stated in the notice of February 11, 1985 (50 FR 5629), the impetus for this solicitation of comments came from a group of domestic pistachio nut growers who are competing with foreign pistachios, primarily from Iran. The notice provided by a country of origin marking on a retail package is necessary to give a retail purchaser the information needed to make a choice between products of different countries.

The Need for Marking

The language of 19 U.S.C. 1304 makes it plain that imported merchandise must be marked, as much as the nature of the article permits, in a way which will reach the ultimate purchaser. If an imported product is substantially transformed, the person who transforms the article is the ultimate purchaser of the article. If the imported article is repacked after this substantial transformation, the container in which it is repacked and in which it is purchased by a retail purchaser does not have to bear a country of origin marking. The substantial transformation of an imported article ends its status as a product of that foreign country of origin for Customs purposes. This is permissible pursuant to 19 U.S.C. 1304 and judicial precedent such as *United States v. Gibson-Thomson Co., Inc.*, 27

CCA 317, C.A.D. 90 (1940) and *Midwood Industries, Inc. v. United States*, 64 Cust. Cl. 499, C.D. 4026, 315 F. Supp. 931 (1970), appeal dismissed, 57 CCA 141 (1970).

A number of commenters have argued that Customs need not be concerned with country of origin marking on retail containers of imports for the following reasons:

1. Labeling is more appropriately dealt with by other governmental bodies such as the Food and Drug Administration (FDA) and the Federal Trade Commission (FTC) and by the use of other legal remedies such as private redress in section 43(a) of the Lanham Act (15 U.S.C. 1125(a)) and public remedies such as antidumping and countervailing duty provisions.

2. The cost and difficulty of keeping track of different imports from different countries which are combined before a retail product is made from these imports is substantial.

We do not agree that the legislative intent behind 19 U.S.C. 1304 is similar to that behind most of the other statutes cited. FTC requirements are directed toward providing information which the consumer should be aware of such as content and care labels. The antidumping provisions are directed toward preventing unfair economic competition in the international marketplace. None of these statutes is intended to give a purchaser notice of the country where a particular article was produced.

Thus, rather than treating these statutes as directed toward the same legislative concerns, Customs views each to be addressed to a separate and distinct legislative concern. However, FDA requirements are directed toward country of origin marking pursuant to 21 U.S.C. 36-343. These requirements are in addition to those Customs enforces pursuant to 19 U.S.C. 1304.

Moreover, we do not agree with the suggestion that Customs is free to ignore the clear requirements of a statute. The efficacy of a statute and the wisdom of its enactment are proper concerns of the legislature. Once a statute is enacted, agencies of the Executive Branch are not free to repeal it administratively by refusing to enforce it, or by enforcing it only in those circumstances in which the outcome is believed to be desirable. Although Customs retains some limited discretion to interpret the language of the statute, we cannot go beyond the language to a question of whether to enforce or not enforce it.

The cost of compliance is noted by commenters as the third reason for non-enforcement. The statutory language

allows limited exemptions from the marking requirement where the expense of marking is economically prohibitive. This subject is discussed below in more detail, in the section entitled "Validity of Compliance."

Scope of Proposal

The notice solicited comments concerning the processing of pistachio nuts.

One commenter contends that any marking of retail packages should await the receipt of enough information on the processing done to each product. We agree. The wording of the notice was designed to afford importers of a wide variety of agricultural goods an opportunity to provide information to enable us to decide whether various agricultural products are substantially transformed by the processes they undergo. The concept of substantial transformation is particularly fact oriented, and the facts in the record determine the ultimate decision.

Substantial Transformation

Judicial precedent, such as *United States v. Gibson-Thomson Co., Inc.*, *supra*; *Midwood Industries, Inc. v. United States*, *supra*, are most recently, *Unproven, Inc. v. United States*, 3 CIT 279, 432 F. Supp. 1026 (1982) concern the importation of articles which are then "processed" in the U.S. The question involved in each case was, even though the imported article was processed after importation, did the imported article need to be marked under the statute.

To arrive at this conclusion, the courts in each case had to determine if an article produced as a result of this processing was a new and different article of commerce with a new name, character, or use. In making this determination, it is necessary to examine the changes wrought by the U.S. processing to determine whether U.S. processing is substantial and creates a new and different article of commerce, or alternatively is insignificant and leaves the identity of the imported articles intact.

This distinction between a minor change and a change in the basic character of an article, has been incorporated in Part 134, Customs Regulations. Section 134.1(d)(1) provides, "If an imported article will be used in manufacture, the manufacturer may be the ultimate purchaser if he subjects the imported article to a process which results in a substantial transformation of the article." Section 134.1(d)(2) provides, "If the manufacturing process is merely a minor one which leaves the identity of the

imported articles intact, the consumer or user of the article, who obtains the article after the processing, will be regarded as the "ultimate purchaser."

In determining whether an imported article has been subjected to substantial manufacturing or processing operations in the U.S. which transforms it into a new and different article of commerce, or only to insignificant processing which leaves the identity of the article intact, Customs will consider the following factors:

(1) The physical change in the article as a result of the manufacturing or processing operations in each foreign country or U.S. insular possession, and in the U.S.

(2) The time involved in the manufacturing or processing operations in each foreign country or U.S. insular possession, and in the U.S.

(3) The complexity of the manufacturing or processing operations in each foreign country or U.S. insular possession, and in the U.S.

(4) The level or degree of skill and/or technology required in the manufacturing or processing operations in each foreign country or U.S. insular possession, and in the U.S.

(5) The value added to the article in each foreign country or U.S. insular possession, compared to value added in the U.S.

These criteria are not exhaustive, and one or more criteria may be determinative.

Substantial Transformation Applied

We received several comments on pistachio nuts: some on behalf of domestic growers, others on behalf of importers. The comments on behalf of the domestic growers stress that the moisture in pistachio nuts is reduced from a range of 40 to 60 percent to a range of 4 to 8 percent before roasting. The "roasting" process dries the pistachio nuts further to a moisture content between 2 and 4 percent. This decrease in the moisture is accomplished by drying the pistachio nuts for 25 to 50 minutes in a belt dryer or rotary drum by a person who is unskilled or semiskilled, and this reduction in the moisture costs 2.5 to 3 cents per pound. The final, dried nuts are crispier and may be a different shade of green, but according to these comments, there is no substantial change in the taste or appearance of the nut. According to some producers, pistachio nuts are eaten by consumers both before and after the roasting. However, it should be noted that expert sources consulted by Customs indicated that there is no significant market for unroasted pistachio nuts, particularly for

"snack" consumption. See Woodruff, J.G., *Tree Nuts*, Second Edition, AVI Publishing Co. (1979) at page 168.

The comments for the importers stress that inshell (unshelled) raw pistachio nuts are shelled, screened and sorted, roasted, salted, and in most cases colored red with food color. The roasting of these nuts for 20 to 30 minutes brings the internal temperature of the nut to 280 degrees Fahrenheit, and substantially changes the chemical composition of the nut. It also destroys mold, spores, and bacteria. After roasting, the nuts are cooled and packaged. Once roasted, the nuts must be protected or else they will become rancid. The value added by roasting is over 100 percent.

The submissions on behalf of the domestic growers and importers do not present a substantially different description of the processing to which pistachio nuts are subjected. Rather, they conflict on the very basic issue of the significance of the changes to the physical and commercial character of the nuts which result from this processing. The domestic producers conclude that the pistachios are merely further dried, and the importers conclude that the heat applied to these nuts changes their fundamental character. Since the conclusions are contradictory, we believe it is appropriate to look to the sufficiency of the evidence presented.

The description of the roasting process by the importers concludes with the statement that this processing substantially changes the chemical composition of the nuts. This change is claimed to necessitate the protection of these nuts from the air. Two appendices were submitted, one for "dried" nuts, the other for "dry roasted" nuts, each of which contains lists of quantities for various components of the nuts. Some of the differences are striking; others do not appear to be of much consequence. For example, the changes in the amount of fiber, phosphorus, and sodium are minimal. The changes in the amount of water, protein, carbohydrates, iron, magnesium, ascorbic acid, and amino acids are substantial.

The submissions on behalf of the domestic growers characterize the application of heat to the pistachios as a drying rather than a substantial transformation. This characterization of the processing is based upon expert opinion by Professor Martin W. Miller of the University of California at Davis, which includes a very complete description of the processing of the nuts and the results of such processing. This expert opinion provides the link between the recorded data and the

conclusions as to changes in the physical and commercial character of the nuts. According to this expert, the pistachio nut, after roasting, is merely crispier. The nuts' taste remains the same, and if the color of the nut is changed at all, the change is not noticeable.

After reading all the submissions on this point, it is Customs' view that the physical and commercial changes which occur in the pistachio nuts as a result of roasting are not significant, and that the identity and use of the pistachio nut remains intact. Authoritative sources consulted by Customs indicated no commercial uses for green pistachio nuts, and if such uses exist, they are apparently negligible. Roasting appears to be, like picking, sorting, and bagging, simply one of several processing steps to which all pistachio nuts are subjected, no one of which alters or limits the intended or potential commercial use. In view of this, we conclude that there has been no change in the commercial designation or identity, in the fundamental character, or commercial use of the article. So characterized, we believe that the pistachio nuts are not changed into a new and different article by virtue of roasting or other similar incidental processing. Thus, they are not substantially transformed.

Problems of Compliance

Many of the comments focus on the problems created by a conclusion that no substantial transformation of these imported goods has taken place. This conclusion requires that each container of pistachio nuts which, for example, contains pistachio nuts from a number of different countries, be marked with the name of each country from which the pistachio nuts originate. The concern expressed is that such a container would have to contain the names of a large number of countries.

The commenters suggest some options: (1) Standardize labels to include the English name of every country of origin from which the pistachio nuts originate and (2) print a number of different labels and keep track of the countries from which pistachio nuts in a particular container are packaged. The first option is criticized by these commenters because the labels might not accurately reflect the country of origin of the pistachio nuts except coincidentally. They point out that any container which does not include pistachio nuts from each country specified on the container will be incorrectly labelled. According to the commenters, the adoption of the second

option will necessitate an elaborate system of tracking the pistachio nuts from each country to determine in which particular container they have been placed. This, according to the comments, is an extremely difficult and costly process. Because the pistachio nuts are fungible, it is difficult to determine if the countries from which the contents of a specific container originate match the marking of the containers in which the pistachio nuts are packaged.

Customs is not convinced by the argument that country of origin marking on a container of pistachio nuts precludes the pistachio nut purchaser from purchasing from other countries. The economic and marketing factors that impel purchasers to buy from particular countries far outweigh any influence on these decisions that the cost of compliance with the marking law might have. Customs believes that in every instance the buyer must compare the economic advantages resulting from purchasing from a new source country, with the cost of compliance with the country of origin marking law.

Customs has not required that an importer track the origins of each pistachio nut in a particular container. A listing on the container of the countries which provides the constituents of the blend at the time of packing is sufficient. We believe that such a rule of reason eliminates the necessity for tracking each individual pistachio nut while permitting compliance with the marking requirement with a minimum of interference.

Given the flexibility which Customs has allowed by permitting "shotgun" marking, we do not believe that any of the commenters has shown that compliance with the marking law would be excessively costly.

Action

Accordingly, this document rescinds ruling 8724350, dated June 4, 1984 and ruling 8726412, dated September 23, 1984. We do not view this to be a change in an "established and uniform practice" which entails the protections of section 134(d), Tariff Act of 1930 (19 U.S.C. 1315(d)). The roasting, or roasting and salting of pistachio nuts, without more, is not a substantial transformation of the raw pistachios into new and different articles of commerce. Therefore, the containers of pistachio nuts, which have been roasted, salted, or blended, or any combination of the three processes must be marked to indicate the country of origin of the raw products in accordance with Part 134 Customs Regulations.

Certification Requirements

In many instances, an importer of these articles does not sell them directly to the ultimate purchaser i.e. the articles are repacked after their release from Customs custody and sent forward for further distribution. In view of this, Customs believes that to further ensure that an ultimate purchaser in the U.S. is aware of the country of origin of these articles, importers must comply with the certification requirements of § 134.25, Customs Regulations (19 CFR 134.25), set forth in T.D. 83-155, published in the Federal Register on July 28, 1983 (48 FR 33860). Section 134.25 requires importers to certify to the district director having custody of the articles that (a) if the importer does the repacking, the new container must be marked in accordance with applicable law and regulations; or (b) if the article is sold or transferred, the importer must notify the subsequent purchaser or repacker, in writing, at the time of sale or transfer, that any repacking of the article must conform to the marking requirements.

Drafting Information

The principal author of this document was Glen E. Vereb, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

William van Raab

Commissioner of Customs

Approved September 4, 1985

John M. Walker, Jr.

Assistant Secretary of the Treasury

[FR Doc. 85-22408 Filed 9-17-85 8:45 am]

BILLING CODE 4820-02-M

APPENDIX F

**DATA RECEIVED FROM U.S. GROWERS IN RESPONSE TO
QUESTIONNAIRES OF THE INTERNATIONAL TRADE COMMISSION**

The on-year and off-year production trends and the yield per acre for crop years 1981-85, are shown in the following tabulation:

<u>Crop year</u>	<u>Production 1/</u> <u>(1,000 pounds)</u>	<u>Bearing trees</u> <u>(acres)</u>	<u>Yield per</u> <u>acre</u> <u>(pounds)</u>
1981-----	8,172	14,567	561
1982-----	27,491	17,468	1,573
1983-----	16,156	17,508	923
1984-----	37,952	17,699	2,144
1985-----	15,072	17,728	850

1/ Includes both in-shell and shelled pistachio nuts.

U.S. growers' estimated their future production for 1986-1990, as shown in the following tabulation:

<u>Year</u>	<u>Quantity</u> <u>(1,000 pounds)</u>
1986-----	38,067
1987-----	22,864
1988-----	41,030
1989-----	26,146
1990-----	44,796

U.S. growers' domestic shipments of in-shell and shelled pistachio nuts for crop years 1980-85, are shown in the following tabulation: 1/

	<u>1980</u>	<u>1981</u>	<u>1982</u>	<u>1983</u>	<u>1984</u>	<u>1985</u>
In-shell pistachio nuts:						
Quantity--1,000 pounds---	9,131	5,834	20,530	11,955	24,991	9,984
Value----1,000 dollars---	3,991	3,453	25,514	13,360	24,771	11,874
Unit value per pound-----	\$.44	\$.59	\$1.24	\$1.12	\$.99	\$1.19
Shelled pistachio nuts:						
Quantity--1,000 pounds---	942	629	1,101	1,217	4,818	814
Value----1,000 dollars---	200	228	889	721	1,845	280
Unit value per pound-----	\$.21	\$.36	\$.81	\$.59	\$.38	\$.34

1/ Data do not include intracompany shipments.

U.S. growers' estimated shipments to related and unrelated domestic processors for crop years 1982-85, are shown in the following tabulation:

<u>Year</u>	<u>Related processors</u> (1,000 pounds)	<u>Unrelated processors</u> (1,000 pounds)
1982-----	6,178	19,918
1983-----	3,018	12,437
1984-----	8,326	27,491
1985-----	3,856	10,573

Total nonbearing acres and its share of total acreage for crop years 1981-85, are shown in the following tabulation:

<u>Year</u>	<u>Acreage</u>	<u>Percent</u>
1981-----	1,144	7.3
1982-----	2,051	10.6
1983-----	2,601	13.0
1984-----	2,510	12.5
1985-----	2,800	13.7

UNITED STATES
INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C. 20436

OFFICIAL BUSINESS

ADDRESS CORRECTION REQUESTED

Postage And Fees Paid
U.S. International Trade Commission



ITC-653

ADDRESS CHANGE

- ☐ Remove from List
 - ☐ Change as Shown
- Please detach address
label and mail to address
shown above