

Raw In-Shell Pistachios from Iran
Inv. No. 731-TA-287 (2nd Review)
Hearing

Commercial Arman Pegah Co.



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AVOCATS - ATTORNEYS AT LAW

Background - Denis KETABI

US/Iran pistachio industry - State of play

Time to acknowledge change of circumstances

Absence of underselling scenario

Assessing pricing behavior

Lesson learnt in recent years

ROADMAP

*Denis KETABI understands both US and Iran industries
His 30 years experience*

BACKGROUND



US Industry : Strongest worldwide and dependent on Export

Increasing gap between US and Iran industry

Barrier to imports of Iran origin: Update on food safety rules

*Characteristic of Iran production landscape: OECD vs Non OECD
compliant product*

STATE OF PLAY

State of play

*US Industry : Strongest worldwide and dependent on
Export*

- US industry: strongest worldwide, sharply growing trend
- US industry exceeds Iran in terms of production and exports
- US industry increasingly dependent on exports ie. exposed to competition outside the US domestic market
- US actors are much larger and stronger corporations compared to Iranian companies

Increasing gap between US and Iran industries

- Iran follows a stagnation general pattern
 - Uncertainty around removal of trees due to water shortage
 - Whereas the US production will grow further considering non bearing and young age of bearing trees (billion-lbs crops expected)
- Growing gap between US and Iran production capacity

State of play

Update on food safety requirements

- Impact of Aflatoxin regulatory barrier is to be assessed against the following four criteria:
 - Aflatoxin threshold
 - Efficiency of sampling method at addressing heterogeneity of contamination cf. Thomas Whitaker “USDA / IRS” – Annex 27 of our Prehearing Brief.
 - Frequency of control by regulators
 - Documentation and certificate requirements
- EU and US markets operate along similar above standards
- China, by contrast with the US market, is the least demanding market in respect to Aflatoxin requirements: no control is implemented, no certificate of analysis is requested by Chinese buyers.

State of play

OECD vs Non OECD compliant products

- Key characteristic of Iranian production: a clear distinction must be made between OECD and Non-OECD food-safety-compliant productions (defined in Pre-Hearing report)
- Processing facilities and tools in Iran are designed and organised based on this distinction
- OECD eligible raw material is **produced in limited quantity**
- The US counts among those OECD markets with stringent food safety standards, controls at point of entry, and high expectation customers. Therefore, only OECD compliant product can be eligible to US domestic market.
 - In that respect, US cannot be compared to China. See below.

APG & Wonderful's counterfactual approach – Not realistic

New circumstances

TIME TO ACKNOWLEDGE CHANGE
OF CIRCUMSTANCES



TIME TO ACKNOWLEDGE CHANGES OF CIRCUMSTANCES
APG & Wonderful's counterfactual approach – Not realistic

- APG and WP&A claim that if Iran exported 20% of its production to USA in 1984, it would replicate this ratio today if the Order were revoked.
- According to this assumption, Iran would export about 100 million Lbs to the US, which unrealistically represents more than twice what Iran ships to Europe today!
- This demonstration ignores all changes of circumstances which have occurred in the past 30 years

TIME TO ACKNOWLEDGE CHANGES OF CIRCUMSTANCES

New Circumstances

- US Industry is now by far the strongest worldwide
- Iran production is no longer increasing as it was at time of first review
- US industry controls nearly 100% of its domestic market
- New food safety rules in the US (as in other OECD countries) prevents most of Iran production from entering the US market.
- Iran cost of production now exceeds US cost of production: Iran is less competitive
- Iran has become a fragmented industry in which the largest actor represents no more than 5% market share while In 1984, RPPC represented over 50% of the industry

Low substitutability of Iran vs US origins in the US domestic market

No ability for Iranian exporters to undersell US origin in the US market

No incentive for Iranian exporters to undersell US origin in the US market

No real-life example of Iranian exporters actually underselling US origin

ABSENCE OF UNDERSELLING SCENARIO

- Only a portion of the Iranian production is capable of matching OECD standards, ie. worth about 20 percent of the whole Iranian production which can be compared with the US production
- Most of this OECD eligible production consist in small fruits – *Fandoghi* variety (equivalent 30/32 count per ounce) whereas most US customers and consumers expect the typical US 21/25 pistachio with a white shell
- US customers buy on specification basis (stick to specific size, variety origin, quality) whereby small *Fandoghi* from Iran are unlikely to replace larger size Kerman variety from the US

ABSENCE OF UNDERSELLING SCENARIO

Low substitutability of Iran vs US origins into US domestic market (2/2)

- In similar market such as EU, US and Iran origins are marketed according to different contractual terms: long term contracts (for US origin) versus spot sales (for the Iran origin)
 - US and Iran products belong to different market segments
 - US origin is benefiting from large marketing budget – by contrast, there is no investment for marketing made for Iran origin.
- ⇒ Iran origin is not capable of matching the US customer requirements in the same way as US origin is.
- ⇒ Fully supportive of Staff Report finding that substitutability is moderate

ABSENCE OF UNDERSELLING SCENARIO

No ability for Iranian exporter to undersell US origin in the US market

- High cost of production:
 - Financial costs
 - Expensive industrial investments do not allow for underselling practices
- Iran has to improve the quality of its production to handle increasingly stringent aflatoxin/food safety requirements
- No ability to shift China-intended products to the US – US food safety barrier and importers expectations would disqualify any China intended product, irrespective of its price.
- No ability to ship EU rejected lots into US, as EU legislation imposes those lots to return to country of origin.

ABSENCE OF UNDERSELLING SCENARIO

No incentive for Iranian exporter to undersell

- No spare capacity
 - Iran crop and in particular OECD eligible product is sold out every year
 - No marketable end-of-year inventory
- No perspective of growth in Iran's production capacity
 - Dripping irrigation (pressurized irrigation system) does not increase yields and therefore production capacity
- No incentive to shift exports from EU to US
 - EU and US prices similar
 - Product is already marketed and channelled into the EU at premium price.
 - Absence of any food safety regulatory incentive considering existence of systematic USDA control at US point of entry.

ABSENCE OF UNDERSELLING SCENARIO

No real-life example of underselling

- Consumer price reports in Mena and EU do not suggest underselling
- APG & Wonderful take wrong approach to assess pricing behaviour of Iranian exporters
 - Inadequate product comparison basis
 - Irrelevant geographic frame of reference
 - Inaccurate source of data

- APG and Wonderful compare prices of US extra number 1 21/25 with average price of a blend of all Iranian pistachios
=> This cannot found a demonstration of dumping
- Right approach: comparing prices within the same product range (same size, quality and food safety standards).
=> This diversity of Iranian supply is recognized in the Staff Report

ASSESSING PRICING BEHAVIOUR

Irrelevant geographic frame of reference

- Absent any imports of Iran origin into the US, pricing assessment should refer to markets with similar characteristics, importers' requirements and consumer behavior
- Contrary to WONDERFUL's submission, HK/China market is not the right benchmark
- The most relevant benchmark is the EU – EU and US buyers/consumers have similar behaviors and expectations

- APG’s price assessment: (page 32-33 of Prehearing brief, Exhibit 16 “underselling analysis”)
 - i. APG uses consignment values declared by exporters on the basis of prices which are pre-established by Iran customs for purely administrative purposes and which do not reflect invoiced prices. (cf Iran Customs web platform screenshot)
 - ii. The quarterly average of these consignment values actually covers a mix of 15 different pistachio related products, which prices range from 6 to 12 USD per kg - irrespective of sizes, varieties, qualities, naturally opened, artificially opened and closed shells.
- This approach leads APG to conclusion that Iran is underselling US products in all its export markets – This conclusion is neither reliable nor verifiable in the markets

Iran Customs web platform screenshot

ردیف	تاریخ مصوبه	شماره مصوبه	واحد	نوع کالا
تعمین قیمت	۱۳۹۵ / ۵ / ۲۴	۲۰۷ / ۲۴۱۳	دلار	پسته طبیعی خندان ۲۰-۲۲
تعمین قیمت	۱۳۹۵ / ۵ / ۲۴	۲۰۷ / ۲۴۱۳	دلار	پسته مکانیک خندان ۲۲-۲۴ و ۲۲-۲۲
تعمین قیمت	۱۳۹۵ / ۵ / ۲۴	۲۰۷ / ۲۴۱۳	دلار	پسته فندق یا بادامی (کشیده) ۲۲-۲۴ و ۲۲-۲۲
تعمین قیمت	۱۳۹۵ / ۵ / ۲۴	۲۰۷ / ۲۴۱۳	دلار	پسته فندق یا بادامی (کشیده) ۲۶-۲۴
تعمین قیمت	۱۳۹۵ / ۵ / ۲۴	۲۰۷ / ۲۴۱۳	دلار	پسته مکانیک خندان ۲۶-۲۲
تعمین قیمت	۱۳۹۵ / ۵ / ۲۴	۲۰۷ / ۲۴۱۳	دلار	پسته دهن بست
تعمین قیمت	۱۳۹۵ / ۵ / ۲۵	۹۵ / ۲۱۱	دلار	پوست پسته سبز- نارنجی
	۱۳۹۵ / ۱۵ / ۵		دلار	پسته طبیعی خندان
	۱۳۹۵ / ۱۵ / ۵		دلار	پسته مکانیک خندان
	۱۳۹۵ / ۱۵ / ۵		دلار	پسته فندق یا بادامی (کشیده)
	۱۳۹۵ / ۱۵ / ۵		دلار	پسته فندق یا بادامی (کشیده)
	۱۳۹۵ / ۱۵ / ۵		دلار	پسته مکانیک خندان
	۱۳۹۵ / ۱۵ / ۵		دلار	پسته دهن بست
	۱۳۹۵ / ۱۵ / ۲۶	۲۴ / ۲۰۷	دلار	پسته فندق یا بادامی کشیده
	۱۳۹۵ / ۱۵ / ۲۶	۲۴ / ۲۰۷	دلار	پسته مکانیک خندان

- C: Product description
- E: Unit: Kg
- F: Currency : \$
- G: Custom value

- Right source of data : invoice prices of both origins at EU point of entry on same incoterms (Eurostat – Exhibit 15 of APG Prehearing brief).
- According to this set of data (2012-2016), Iran did not undersell US prices in Europe. In the contrary, Iran even overpriced US prices for 3 years out of 5 years.

ASSESSING PRICING BEHAVIOUR

Correct source of data

		Eurostats Data based (Exhibit 15 APG)							
		US		IR					
		\$/kg	Avg/year	\$/kg	Avg/year				
2012	Q1	8,18 USD	8,24 USD	7,63 USD	7,83 USD				
	Q2	7,96 USD		7,56 USD					
	Q3	8,45 USD		8,12 USD					
	Q4	8,38 USD		8,03 USD					
2013	Q1	8,21 USD	8,93 USD	8,83 USD	9,49 USD	Iran Customs data based (Exhibit 16 APG)		Difference between Exhibit 15 and 16 datas	
	Q2	8,84 USD		9,46 USD		IR			
	Q3	9,10 USD		9,51 USD		\$/kg	Avg/year		
	Q4	9,55 USD		10,15 USD					
2014	Q1	10,02 USD	9,52 USD	9,98 USD	10,11 USD	7,70 USD	7,87 USD	22%	
	Q2	8,95 USD		10,29 USD		7,84 USD			
	Q3	9,62 USD		9,99 USD		7,98 USD			
	Q4	9,50 USD		10,20 USD		7,96 USD			
2015	Q1	8,95 USD	9,27 USD	9,41 USD	9,69 USD	8,05 USD	7,95 USD	18%	
	Q2	9,68 USD		9,90 USD		7,98 USD			
	Q3	9,12 USD		9,75 USD		7,74 USD			
	Q4	9,35 USD		9,70 USD		8,03 USD			
2016	Q1	11,36 USD	10,91 USD	9,79 USD	9,25 USD	8,03 USD	8,08 USD	13%	
	Q2	11,64 USD		9,70 USD		7,92 USD			
	Q3	11,23 USD		9,42 USD		7,97 USD			
	Q4	9,42 USD		8,10 USD		8,40 USD			

AVERAGE RATE OF ERROR DUE TO INAPPROPRIATE DATA:

18%

Price setting mechanism : US in the driver's seat

Artificially high prices scenario

Bumper crop and low prices scenario

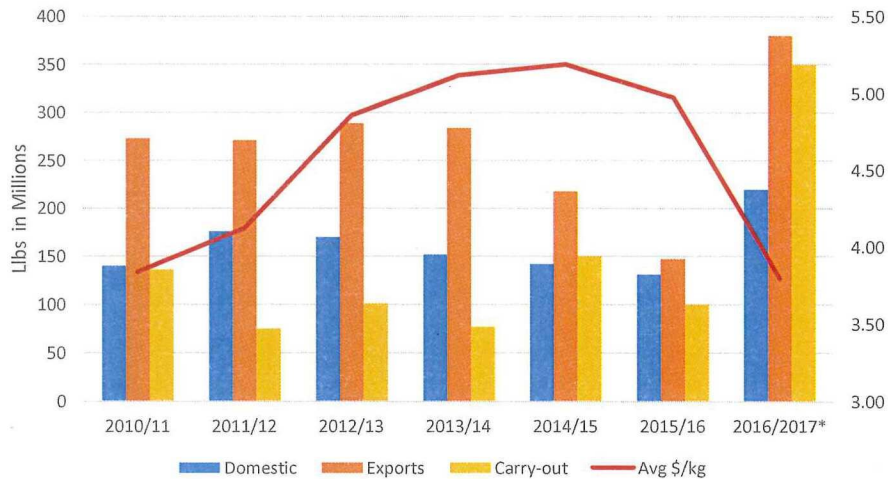
Irrespective of the US scenario, Iran adjusts to supply and demand

CONCLUSIVE REMARKS

WHAT WE LEARN FROM RECENT YEARS?

Impact of the price on US industry

Source: Arman Pegah Prehearing brief - Annex 7 and Annex 17



Raw In-shell pistachio price history/ LB History in Europe 2010/2017

(Arman Pegah Prehearing Brief Annex 17)

