



DATE: April 2, 2013

MEMORANDUM TO: Paul Piquado  
Assistant Secretary  
for Import Administration

FROM: Edward C. Yang *ESY*  
Senior Director  
China/Non-Market Economy Unit

SUBJECT: Issues and Decision Memorandum for the Final Results of the Expedited Sunset Review of the Antidumping Duty Order on Low Enriched Uranium from France

### Summary

We have analyzed the response of the domestic interested party, USEC, Inc. and its subsidiary United States Enrichment Corporation (collectively, "USEC" or "domestic interested party"), in the sunset review of the antidumping duty order covering low enriched uranium ("LEU") from France. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in this sunset review on which we received comments from the domestic interested party.

### Likelihood of Continuation or Recurrence of Dumping

1. Eurodif S.A. and its affiliate AREVA NC's (formerly known as Compagnie Générale des Matières Nucléaires – COGEMA) ("Eurodif/AREVA") continuing dumping margins found by the Department of Commerce ("Department") are indicative of unfair prices; an increased volume of French imports at dumped prices would result if the order were revoked.
2. Large domestic price increases on SWU ("separative work unit") since the issuance of the LEU antidumping order.
3. The order has been essential to enabling USEC to balance its roles as a domestic producer and executive agent to the Russian highly enriched uranium ("HEU") contract.
4. The United States will continue to be the world's largest single user of LEU and imports into other markets are declining.
5. Eurodif/AREVA's worldwide underselling is indicative of future dumping in the United States.



## Magnitude of the Margin Likely to Prevail

6. The dumping margin that is likely to prevail if the order were revoked is the margin determined in the amended final determination in the investigation.

## History of the Order

On February 13, 2002, the Department published its amended final determination and antidumping duty order on LEU from France. See Notice of Amended Final Determination of Sales at Less than Fair Value and Antidumping Duty Order: Low Enriched Uranium from France, 67 FR 6680 (February 13, 2002) ("Order"). The Order established weighted-average dumping margins for Eurodif/AREVA and a rate for "All Others" at 19.95 percent.

Upon publication of the Order on February 13, 2002, USEC challenged the Department's determination in the less than fair value investigation before the U.S. Court of International Trade ("CIT"). Eurodif/AREVA argued that the transactions which involved the enrichment of the uranium (so-called SWU contracts) did not constitute sales of goods but rather should have been considered service transactions which are not subject to the antidumping law. Both the CIT and the U.S. Court of Appeals for the Federal Circuit ("Federal Circuit") agreed with Eurodif/AREVA to rule that SWU contracts constitute sales of enrichment services, not goods, and, therefore, that LEU imported pursuant to SWU contracts was not subject to the antidumping law. See Eurodif S.A., et al. v. United States, 411 F.3d 1355 (Fed. Cir. 2005) ("Eurodif I") and Eurodif S.A., et al. v. United States, 423 F.3d 1275 (Fed. Cir. 2005) ("Eurodif II").

Consistent with the Federal Circuit's decisions and the CIT's specific remand instructions, the Department issued a remand redetermination on March 3, 2006, that removed sales made pursuant to SWU contracts from the calculation of the weighted-average dumping margin. See Eurodif S.A. v. United States, 442 F. Supp. 2d 1367 (Ct. Int'l Trade 2006) ("Eurodif III"). The CIT subsequently ruled that the Department was also required to amend the scope of the Order to exclude, at the time of entry, imports of LEU made pursuant to SWU transactions without an opportunity to conduct an administrative review of the entries in question. See Eurodif S.A. v. United States, 431 F.Supp.2d 1351 (Ct. Int'l Trade 2006) ("Eurodif IV"). On June 19, 2006, the Department issued a remand redetermination that would amend the scope of the Order in accordance with the CIT's order in Eurodif IV.

The Department respectfully disagreed with the courts' conclusions in Eurodif I-IV and sought certiorari before the United States Supreme Court. In January 2009, the Supreme Court unanimously reversed the lower courts. See United States v. Eurodif S.A., 555 U.S. 305 (2009). The Supreme Court based its decision on two general principles: (1) the Department reasonably concluded that the statutory requirement that merchandise "was being sold" in the United States was not limited to sales only for cash; and (2) the Department was not bound by the parties' intent to create transactions that were sales of services. Id. Thus, the Department's final determination and the Order were upheld.

Since the issuance of the Order, the following events have occurred. The Department conducted three administrative reviews during the first sunset review period. See Notice of Amended Final

Results of Antidumping Duty Administrative Review: Low Enriched Uranium from France, 69 FR 58128 (September 29, 2004); Notice of Amended Final Results of Antidumping Duty Administrative Review: Low Enriched Uranium from France, 70 FR 61253 (October 21, 2005); Low Enriched Uranium from France: Final Results of Antidumping Duty Administrative Review, 71 FR 52318 (September 5, 2006) (“Third LEU Administrative Review”). During the Third LEU Administrative Review, the Department found a weighted-average dumping margin of 12.62 percent for Eurodif/AREVA.

In addition, there has been one changed circumstances review which modified the scope exclusion for one specific entry. See Low Enriched Uranium from France: Final Results of Antidumping Duty Changed Circumstances Review, 77 FR 19642 (April 2, 2012). There have been no duty absorption findings, scope clarifications or rulings concerning the Order. No Harmonized Tariff Schedule categories have been added to or deleted from the scope of the Order. The Order remains in effect for all manufacturers, producers, and exporters of the subject merchandise.

On May 10, 2007, the Department conducted the first sunset review on LEU from France pursuant to section 751(c) of the Tariff Act of 1930, as amended (“the Act”), and found that revocation of the Order would be likely to lead to continuation or recurrence of dumping and that the magnitude of the margins of dumping likely to prevail would be at the same rates as found in the original investigation. See Final Results of Expedited Sunset Review: Countervailing Duty Order on Low Enriched Uranium from France, 72 FR 26593 (May 10, 2007). The U.S. International Trade Commission (“ITC”) determined, pursuant to section 751(c) of the Act, that revocation of the Order would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. See Low Enriched Uranium from France, 72 FR 71954 (December 19, 2007), and USITC Publication 3967 (December 2007), (Inv. No. 731-TA-909) (Review). Thus, the Department published the notice of continuation of the Order. See Continuation of Antidumping Duty Order on Low Enriched Uranium From France, 73 FR 449 (January 3, 2008).

On December 3, 2012, the Department published the notice of initiation of the second sunset review of the Order on LEU from France pursuant to section 751(c) of the Act. See Initiation of Five-Year (“Sunset”) Review, 77 FR 71626 (December 3, 2012). The Department received a notice of intent to participate from the domestic interested party, USEC, on December 6, 2012, claiming domestic interested party status under section 771(9)(C) of the Act as a producer of LEU. The Department received a substantive response from USEC on January 3, 2013. See “Low Enriched Uranium from France (Antidumping): Substantive Response to the Notice of Initiation of Second Five-Year Review,” dated January 3, 2013 (“Substantive Response”).

No respondent interested party responded to the Department’s notice of initiation. Therefore, pursuant to section 751(c)(3)(B) of the Act, the Department is conducting an expedited (120-day) sunset review of the Order.

## **Discussion of the Issues**

In accordance with section 751(c)(1) of the Act, the Department conducted this sunset review to determine whether revocation of the Order would be likely to lead to continuation or recurrence of dumping. In making this determination, sections 752(c)(1)(A) and (B) of the Act provide that the Department shall consider both the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping duty order. In addition, section 752(c)(3) of the Act provides that the Department shall provide to the ITC the magnitude of the margin of dumping likely to prevail if the order were revoked. Below we address the comments of the interested party.

Additionally, the Department has recently announced that in sunset reviews, it will comply with WTO dispute findings against “zeroing” by “not rely{ing} on weighted-average dumping margins that were calculated using the methodology determined by the Appellate Body to be WTO-inconsistent,” and for which the United States has come into compliance. See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification, 77 FR 8101, 8103 (February 14, 2012) (“Final Modification for Reviews”). Based on our analysis of the weighted-average dumping margins from the investigation and the Third LEU Administrative Review, the Department finds that the calculated margins were determined with WTO-consistent methodology. See Memorandum to the File from Hilary E. Sadler, Esq., Senior International Trade Compliance Analyst, AD/CVD Operations, Office 6, regarding “Second Sunset Review of the Antidumping Duty Order on Low Enriched Uranium from France: Documentation Showing Calculated Margins from the Investigation and the Third LEU Administrative Review” (“LEU Calculated Margins Memorandum”) dated concurrently with this memorandum. If the WTO-consistent weighted-average dumping margins indicate that dumping continued with the discipline of the order in place, then those weighted-average dumping margins alone can form the basis for a determination that dumping is likely to continue or recur if the order were to be revoked. See Final Modification for Reviews, 77 FR at 8103. Additionally, if weighted-average dumping margins declined over the five-year sunset period, or if there are no weighted-average dumping margins during the five-year sunset period, decreased volumes may provide another basis to determine that dumping is likely to continue or recur if the discipline of the order is removed. Id.

## **Likelihood of Continuation or Recurrence of Dumping**

### **Domestic Interested Party Comments**

USEC believes that revocation of the Order would likely lead to a continuation or recurrence of dumping by the producers and exporters of the subject merchandise. See, generally, Substantive Response.

Comment 1: Eurodif/AREVA’s continuing dumping margins found by the Department are indicative of unfair prices; an increased volume of French imports at dumped prices would result if the Order were revoked.

- The Department issued an antidumping duty order in which it established weighted-average dumping margins for all producers and exporters of subject merchandise equal to 19.95 percent, and in every subsequent administrative review it has found that LEU has continued to be dumped in the United States. See Substantive Response at 13, 29.
- Based on its determination in the original investigation and subsequent administrative reviews, the Department should find likelihood of a continuation or recurrence of dumping if the Order were revoked. Id.

Comment 2: Large domestic price increases on SWU since the issuance of the LEU antidumping order.

- Revoking the Order will enable Eurodif/AREVA to sell French LEU at dumped prices, quickly causing domestic prices to decline and market instability. Id. at 11.
- SWU prices rose more than forty percent after the issuance of the Order. Id. at 14. The price increase allows the U.S. industry to cover the increasing LEU production costs, thus, allowing the domestic industry to become more competitive in the LEU market. Id. at 14-15.

Comment 3: The Order has been essential to enabling USEC to balance its roles as a domestic producer and executive agent to the Russian HEU contract.

- The Order has allowed USEC to become more competitive by being able to import significant quantities of Russian SWU as the U.S. government's executive agent under a 20-year contract to facilitate the destruction of Russian nuclear weapons through the use of Russian weapons grade HEU. Id. at 15.
- USEC is also able to supply LEU and make significant equity investments in the American Centrifuge Project that is creating new enrichment technology in participation with the U.S. government. Id. at 15-19.
- USEC's viability as a domestic producer and the executive agent to the Russian HEU will be threatened if USEC would have to compete against unfairly priced French LEU imports. Id. at 20.

Comment 4: The United States will continue to be the world's largest single user of LEU and imports into other markets are declining.

- United States is the world's most dominant user of LEU for nuclear fuel and its demand will continue to grow, given that the United States is building new nuclear reactors and extending the licenses of existing U.S. nuclear power plants. Id. at 21-23.
- Eurodif/AREVA has lost customers in Europe and Japan, where it traditionally has had sales, due to the Fukushima Daiichi accident after the earthquake and tsunami in Japan, and the decreasing demand for nuclear fuel in other parts of the world. This gives Eurodif/AREVA more incentive to target the U.S. market in the absence of the Order. Id. at 5, 23.
- Even potential LEU growth markets, such as the People's Republic of China and Russia, will produce their own LEU, such that the U.S. market for LEU will be more attractive to Eurodif/AREVA. Id. at 26.

- USEC estimates that Eurodif/AREVA currently maintains a significant market share and has the capacity to increase its sales to the United States. Id. at 27-28.

Comment 5: Eurodif/AREVA's worldwide underselling is indicative of future dumping in the United States.

- Based on Eurodif/AREVA's past and present behavior in the marketplace, Eurodif/AREVA would continue to undersell LEU in the U.S. market if the Order were revoked and cause the price of LEU to decline. See Substantive Response at 28-29.
- Nuclear Intelligence Weekly articles indicate that Eurodif/AREVA has bid significantly lower than normal market prices for delivery to Korea Hydro & Nuclear Power. Id. at 30-31, and Exhibits 16-17 (Nuclear Intelligence Weekly, "Market: Cameco and USEC Retrench" (Nov. 2, 2012), and "Market: More Activity in Term Market" (Nov. 7, 2012)). This is an example of the market behavior that Eurodif/AREVA could exhibit if the Order were revoked. Id. at 30-31.
- Revoking the Order could enable Eurodif/AREVA to sell LEU at dumped prices in the United States causing lower contract bids or locking domestic producers out of new contracts which in turn could decrease the U.S. prices and market share. Id. at 11.

### **Department's Position**

Consistent with the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act, specifically the Statement of Administrative Action ("SAA"), H. R. Doc. 103-316, vol. 1 (1994), the House Report, H. Rep. No. 103-826, pt. 1 (1994), and the Senate Report, S. Rep. No. 103-412 (1994), the Department normally determines that revocation of an antidumping order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly. In addition, pursuant to section 752(c)(1)(B) of the Act, the Department considers the volume of imports of the subject merchandise for the period before and after the issuance of the Order.

Pursuant to section 752(c)(1)(B) of the Act, the Department considered the volume of imports of the subject merchandise for the period before and after the issuance of the antidumping duty order. Because the HTS numbers that identify the subject merchandise represent basket categories that include non-subject merchandise, an analysis of import volumes has not been relied upon as a basis for our likelihood analysis in this sunset review.

Pursuant to section 752(c)(1)(A) of the Act, the Department considered the weighted-average dumping margins in the antidumping investigation and subsequent administrative reviews. In the antidumping investigation of this proceeding, the Department found dumping at above de minimis levels for all producers and exporters of the subject merchandise. Further, in the most recently completed administrative review (for the period of February 1, 2004 through January 31, 2005), the Department found dumping at above de minimis levels for Eurodif/AREVA. See Third LEU Administrative Review. Both the results for Eurodif/AREVA from the 2004-05

administrative review and for all other producers and exporters from the antidumping investigation did not rely on zeroing and, therefore, conform to the Department's revised practice of not relying on weighted-average dumping margins in sunset reviews which are based on a methodology which has been found to be WTO-inconsistent and for which the United States has come into compliance. See Final Modification for Reviews. Because dumping has continued at levels above de minimis during the period of this sunset review, it is reasonable to assume that dumping would continue if the order were removed. See SAA at 890. Therefore, the Department has determined that revocation of the Order is likely to lead to continuation or recurrence of dumping.

## **Magnitude of the Margin of Dumping Likely to Prevail**

### Domestic Interested Party Comments

Comment 6: The dumping margin that is likely to prevail if the Order were revoked is the margin determined in the amended final determination in the investigation.

- The Department should determine that the rate likely to prevail if the Order were to be revoked is the same rate as found in the investigation, 19.95 percent. See Substantive Response at 31, citing to the Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) and Final Results of Expedited Sunset Review: Countervailing Duty Order on Low Enriched Uranium from France, 72 FR 26593 (May 10, 2007).

### Department's Position

Normally, as the magnitude of the margins of dumping likely to prevail, the Department will provide to the ITC the company-specific weighted-average dumping margins from the investigation for all producers and exporters of subject merchandise. For companies not investigated specifically, or for companies that did not begin shipping until after the order was issued, the Department normally will provide a rate based on the "all others" rate from the investigation. See, e.g., Certain Polyester Staple Fiber From the People's Republic of China: Final Results of Expedited Sunset Review of the Antidumping Duty Order, 77 FR 54898 (September 6, 2012) and the accompanying Issues and Decision Memorandum at Magnitude of the Margin of Dumping Likely to Prevail. The Department's preference for selecting weighted-average dumping margins from the investigation is based on the fact that these are the only calculated rates that reflect the behavior of producers and exporters without the discipline of an order or suspension agreement in place. Under certain circumstances, however, the Department may select a more recent rate to report to the ITC. See, e.g., Potassium Permanganate from The People's Republic of China; Five-year ("Sunset") Review of Antidumping Duty Order; Final Results, 70 FR 24520 (May 10, 2005) and the accompanying Issues and Decision Memorandum at Magnitude of the Margin.

In this second sunset review, the Department has determined that the weighted-average dumping margins from the amended final determination in the original investigation demonstrated no denied offsets, as all comparison results were positive. See LEU Calculated Margins

Memorandum. Based on this evidence, the Department finds that it is reasonable to conclude that these rates were not affected by the zeroing methodology. Therefore, for purposes of this sunset review, we find that the weighted-average dumping margins from the amended final determination are useable as the magnitude of the margin of dumping likely to prevail consistent with the Final Modification for Reviews.

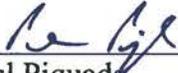
After considering the arguments put forth and the weighted-average dumping margins determined in the investigation, the Department agrees with the domestic interested party that it is appropriate to report the weighted-average dumping margins from the amended final determination to the ITC as the magnitude of the margins of dumping likely to prevail were the Order revoked. These rates are 19.95 percent for Eurodif/AREVA and for all other producers and exporters of subject merchandise to the United States.

**Recommendation**

Based on our analysis of the substantive responses received, we recommend adopting all of the above positions. If this recommendation is accepted, we will publish the final results of this expedited sunset review in the Federal Register and notify the ITC of our findings.

AGREE   ✓  

DISAGREE           

  
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Paul Piquado  
Assistant Secretary  
for Import Administration

  2 APRIL 2013    
Date