



A-427-818  
Administrative Review  
POR: 2/01/2012-1/31/2013  
Public Document  
Office VII: AH

DATE: September 22, 2014

MEMORANDUM TO: Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

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

SUBJECT: Decision Memorandum for the Final Results of Antidumping Duty  
Administrative Review: Low-Enriched Uranium from France:  
2012-2013

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## I. Summary

We analyzed the comments received from interested parties in the administrative review of the antidumping duty order on low-enriched uranium (LEU) from France covering the period of review February 1, 2012, through January 31, 2013. There is no change to the Department of Commerce's (the Department's) determination that the respondent, Eurodif S.A., AREVA NC, and AREVA NC, Inc. (collectively AREVA) had no shipments of merchandise subject to the antidumping order on LEU from France during the period of review (POR). The Department determines that shipments of LEU from France for which the importer certifies that the LEU will be re-exported within 18 months (and meets all other criteria outlined in the scope of the order) shall be suspended as antidumping duty entries with a cash deposit requirement of zero percent ad valorem. To ensure proper enforcement of the antidumping duty order, the Department is adopting appropriate procedures to enable the examination of these entries for purposes of determining whether they meet the conditions for exclusion from the scope of the order before the Department orders their liquidation. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum.

## II. Background

On March 24, 2014, the Department published the preliminary results of the administrative review of the antidumping duty order on LEU from France.<sup>1</sup> In the Preliminary Results the Department made a preliminary determination that AREVA had no shipments subject to the

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<sup>1</sup> See Low-Enriched Uranium From France: Preliminary Results of Antidumping Duty Administrative Review: 2012-2013, 79 FR 15955 (March 24, 2014) (Preliminary Results).



antidumping order on LEU from France. In the Preliminary Results the Department also noted irregularities associated with AREVA's filing of the certifications required for exclusion from the scope of the order (see SCOPE OF THE ORDER section below). To ensure proper enforcement of the order, the Department made a preliminary determination that shipments of LEU from France for which the importer certifies that the LEU will be re-exported within 18 months (and meets all other criteria outlined in the scope of the order) shall be suspended as antidumping entries with a cash deposit requirement of zero percent ad valorem. The Department received timely case briefs from USEC and AREVA on April 23, 2014. Petitioners, AREVA and Global Nuclear Fuel –Americas, LLC (GNF-A) filed timely rebuttal briefs on April 28, 2014. The Department found that AREVA's case brief contained untimely new factual information, and rejected their submission on September 16, 2014. AREVA resubmitted its case brief on September 16, 2014.

### **III. Scope of the Order**

The product covered by the order is all low-enriched uranium. Low-enriched uranium is enriched uranium hexafluoride ( $UF_6$ ) with a  $U^{235}$  product assay of less than 20 percent that has not been converted into another chemical form, such as  $UO_2$ , or fabricated into nuclear fuel assemblies, regardless of the means by which the LEU is produced (including low-enriched uranium produced through the down-blending of highly enriched uranium).

Certain merchandise is outside the scope of the order. Specifically, the order does not cover enriched uranium hexafluoride with a  $U^{235}$  assay of 20 percent or greater, also known as highly-enriched uranium. In addition, fabricated low-enriched uranium is not covered by the scope of the order. For purposes of the order, fabricated uranium is defined as enriched uranium dioxide ( $UO_2$ ), whether or not contained in nuclear fuel rods or assemblies. Natural uranium concentrates ( $U_3O_8$ ) with a  $U^{235}$  concentration of no greater than 0.711 percent and natural uranium concentrates converted into uranium hexafluoride with a  $U^{235}$  concentration of no greater than 0.711 percent are not covered by the scope of the order.

Also excluded from the order is low-enriched uranium owned by a foreign utility end-user and imported into the United States by or for such end-user solely for purposes of conversion by a U.S. fabricator into uranium dioxide ( $UO_2$ ) and/or fabrication into fuel assemblies so long as the uranium dioxide and/or fuel assemblies deemed to incorporate such imported low-enriched uranium (i) remain in the possession and control of the U.S. fabricator, the foreign end-user, or their designed transporter(s) while in U.S. customs territory, and (ii) are re-exported within eighteen (18) months of entry of the low-enriched uranium for consumption by the end-user in a nuclear reactor outside the United States. Such entries must be accompanied by the certifications of the importer and end user.

The merchandise subject to this order is classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 2844.20.0020. Subject merchandise may also enter under 2844.20.0030, 2844.20.0050, and 2844.40.00. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this proceeding is dispositive.

#### IV. Discussion of the Issues

##### **Comment 1:** Preliminary Finding of “No Shipments”

###### *USEC’s Comments*

- AREVA, having made sales of LEU under long-term contracts, may be evading the requirements of the order.
- AREVA maintains a sizable share of the U.S. market for LEU; it supplies many nuclear reactors in North America; and it continues to sign substantial contracts with U.S. utilities for the supply of LEU.
- AREVA did not answer questions in the Department’s initial questionnaire regarding how AREVA was satisfying these contracts based on its claim of “no shipments.”
- The Department should “look behind” AREVA’s claim of “no shipments” in this and future reviews to ensure that the claim of “no shipments” is supported by the record.

###### *AREVA’s Rebuttal*

- The Department “scrupulously” reviewed, at USEC’s request, U.S. Customs and Border Protection (CBP) information regarding entries of LEU from France by issuing two supplemental questionnaires.
- USEC submitted nothing that undermines the preliminary determination that AREVA had no shipments during the POR.
- If USEC had a factual allegation to make, it would be untimely under 19 CFR 351.301 (b)(2).

**Department Position:** The questionnaire responses and CBP data reviewed by the Department provided sufficient information for the Department to make a determination that AREVA had no shipments of subject merchandise during the POR. There is no record information that would support reversing this determination.

##### **Comment 2:** Filing of Entry Documents

###### *USEC’s Comments*

- USEC supports the Department’s proposed revised entry requirements for entries made under the re-export exclusion of the scope.
- USEC proposes that importers file and serve their entry documents with the Department and interested parties shortly after entry, so these entries can be reviewed as they occur. This requirement has been used under the suspension agreement on uranium from the Russian Federation.

###### *AREVA Rebuttal Comments*

- It is not necessary or warranted to have importers file entry documents with the Department and interested parties shortly after entry.

- The Russian Suspension Agreement is an agreement between the Department and the Russian Federation.
- In contrast, the antidumping duty order on LEU from France involves duties determined by the Department, but imposed by CBP.
- There is no need to superimpose the function of CBP on Department and interested parties.

*GNF-A Rebuttal Comments*

- Filing entry documents with the Department is unnecessary and adds an administrative burden for importers and the Department. A party's failure to file the required certifications can be addressed under CBP regulations.

**Department Position:** Reviewing individual entries at the time of entry is not necessary for proper administration of the AD order on LEU from France. Based on the administrative process described below, the Department can monitor and administer entries entered for processing and re-export.

**Comment 3:** Administrative Review Process for Merchandise Conditionally Excluded from the Scope of the Order

*AREVA's Comments*

- Liquidation should be suspended for entries made under the scope exclusion provision.
- Entries made under this provision that are re-exported within the specified time frame (18 months, or as extended) should be liquidated as entered.
- Entries that do not ultimately qualify for the exclusion from the scope of the order should be liquidated at the most recently calculated company specific duty rate in effect at the time of entry.
- Because the time for re-export will not necessarily have expired by the time the administrative review is completed, performing a dumping analysis and instructing CBP to liquidate in accordance with the review is unworkable.
- The Department should not routinely unleash the burdens of detailed dumping analysis for entries destined for re-export.
- Imposition of duties at the rate in effect is a potent mechanism to enforce the re-export exclusion.
- The Department has developed mechanisms to determine whether entries meet the criteria for exclusion from the scope, which have been utilized in this review and can be utilized in future review.

*USEC Rebuttal Comments*

- Entries of LEU that do not meet the re-export exclusion requirement are by their very nature subject merchandise and therefore the Department should determine a margin for that subject merchandise based on standard antidumping analysis.

- The Department may not be able to determine whether an entry is truly non-subject merchandise until after completion of the administrative review for the POR in which it entered. In such cases, the Department can address those entries in a subsequent review, recognizing that they merchandise may have become subject merchandise in a later period, or otherwise deal with this anomaly on a case by case basis.
- The Department has the discretion under 19 CFR 351.13(e) to determine the POR to allow for coverage of such entries.

*GNF-A Rebuttal Comments*

- Using the administrative review process for assessing compliance with the 18-month re-export requirement would lead to perpetual administrative reviews which would be unduly burdensome to importers.
- The Department should avoid establishing a perpetual administrative review cycle.

**Department Position:** Because the Department will now be suspending entries of LEU that are destined for re-export at a zero cash deposit rate, the Department has developed the following approach for determining the appropriate liquidation of these entries in the context of an administrative review and when no administrative review is requested.

If a review is requested, in addition to examining entries of subject LEU for purposes of determining and assessing antidumping duties, the Department will examine the re-export entries to determine if they satisfied the exclusion criteria: proper certification and re-export within 18 months of entry. The Department will review entries made under the scope exclusion provision during the POR and for the 18 months prior to the POR. For all re-export entries which have met the exclusion criteria, the Department will order liquidation without regard to antidumping duties upon completion of the review. If there are re-export entries which have not been re-exported but for which the 18-month re-export deadline has not passed, the Department will order the continued suspension of those entries. For all re-export entries which appear to have deficient or no certifications, or do not appear to have been re-exported within 18 months of entry, the Department may initiate a changed circumstances review to address the treatment of those entries that appear to have failed to meet the re-export exclusion requirements.

In the absence of a request for administrative review, the Department will proceed to issue automatic liquidation instructions directing CBP to liquidate the entries as entered, as described below. For entries that entered under the re-export exclusion provision, the Department will order liquidation of entries during the 12-month period ending 18 months prior to the last day of the relevant POR. For example, to apply this approach to the POR February 1, 2014 through January 31, 2015, the Department would automatically liquidate the re-export entries made during the period August 1, 2012 through July 31, 2013. By limiting the automatic liquidation to this period, the Department will be ordering the automatic liquidation only of entries for which the 18-month re-export deadline had passed. In the absence of a request for review, the presumption will be that these entries met the conditions for re-export exclusion from the scope of the order, and the Department will instruct CBP to liquidate as entered. All other re-export entries will continue to be suspended and subject to either a subsequent administrative review or,

in the absence of a review, to the appropriate automatic liquidation instructions, as described here.

If, in the future, the Department finds ongoing irregularities or lack of compliance with the conditions for scope exclusion, the Department will consider whether it is appropriate to require cash deposits of estimated antidumping duties at the company-specific rate or all-others rate, as appropriate.

#### **V. Determination of No Shipments**

Consistent with the preliminary results of review, the Department determines that AREVA had no shipments of subject merchandise during the POR.

#### **VI. Revised Entry Requirements**

Based upon the evidence on the record of this review, the Department determines that the entries examined are entries of non-subject merchandise. These entries were made under a provision in the scope of the order that permits LEU to enter as non-subject merchandise: “[A]lso excluded from the order is low-enriched uranium owned by a foreign utility end-user and imported into the United States by or for such end-user solely for purposes of conversion by a U.S. fabricator into uranium dioxide (UO<sub>2</sub>) and/or fabrication into fuel assemblies so long as the uranium dioxide and/or fuel assemblies deemed to incorporate such imported low-enriched uranium (i) remain in the possession and control of the U.S. fabricator, the foreign end-user, or their designed transporter(s) while in U.S. customs territory, and (ii) are re-exported within eighteen (18) months of entry of the low-enriched uranium for consumption by the end-user in a nuclear reactor outside the United States. Such entries must be accompanied by the certifications of the importer and end user.”

Notwithstanding this determination that AREVA had no shipments of subject merchandise during the POR, the Department identified significant problems associated with the filing of the required certifications that identify non-subject merchandise.<sup>2</sup> The Department recognizes that exclusion from the scope of the order under this provision is conditioned on the re-export of the LEU within 18 months. The Department further recognizes the need to ensure that the conditions for exclusion are met before the entries are liquidated without the assessment of AD duties. The Department considers these certifications to be crucial for enforcement purposes; they are necessary to ensure that the remedial function of the antidumping duty order is served. In light of the problems identified on the record of this review, the Department intends to strengthen the enforcement mechanism. Accordingly, all future entries of LEU from France, which are entered under the re-export exclusion from the scope of the order, will be subject to suspension of liquidation and an antidumping duty cash deposit at a rate of zero percent. These entries will be entered under a separate 10-digit case number, as detailed in the instructions to CBP. Importers will be responsible for determining whether a particular shipment of LEU from France will be subject merchandise or will claim the re-export exclusion under the scope of the order, and must declare such entry under the appropriate CBP 10-digit case number.

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<sup>2</sup> See Preliminary Results, 79 FR at 15957.

## RECOMMENDATION

We recommend adopting the above positions. If these recommendations are accepted, we will publish the final results of this review and the final determination of no-shipments for AREVA in the Federal Register.

Agree  Disagree

  
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Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

22 SEPTEMBER 2014  
Date