



A-427-818
POR: 2/01/2013-1/31/2014
Public Document
Office VII: AH

DATE: March 2, 2015

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 Preliminary Results of
Antidumping Duty Administrative Review: Low-Enriched
Uranium from France: 2013-2014

SUMMARY

In response to a request from USEC Inc. and United Enrichment Corporation (collectively, USEC) the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on low-enriched uranium (LEU) from France. The review covers Eurodif S.A., AREVA NC, and AREVA NC, Inc. (collectively AREVA) for the period of review (POR) February 1, 2013, through January 31, 2014. We preliminarily find that AREVA sold subject merchandise at less than normal value in the United States during the POR. We preliminarily assign AREVA a weighted-average dumping margin based on adverse facts available (AFA) because AREVA did not provide the information requested by the Department to calculate a weighted-average dumping margin. If these preliminary results are adopted in our final results, will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties based on AFA.¹

BACKGROUND

In response to the Department's initial questionnaire, AREVA submitted a claim that it had no shipments of subject merchandise during the POR.² On June 16, 2014, Global Nuclear Fuels – Americas (GNF-A), an importer of subject merchandise and interested party, submitted a response to the questionnaire separate from the response submitted to the Department by

¹ See, "Facts Available" section of this notice.

² See, letter from AREVA to the Department titled "Low Enriched Uranium from France 2/1/2013-1/31/2014: Response to May 7, 2014 Questionnaire," dated June 16, 2014.



AREVA.³ GNF-A was an importer of subject merchandise during the POR, and processes LEU from France for use by nuclear power plants outside the United States. GNF-A submitted a partial response to the Department's initial questionnaire, on its own behalf, to provide information regarding its own imports intended for re-export, and imports of samples, during the POR. On July 7, 2014, AREVA submitted a supplement to its initial questionnaire response to provide additional documents to the Department.⁴ The Department's customs data query showed entries of LEU from AREVA during the POR.⁵ The Department requested entry documents from U.S. Customs and Border Protection (CBP),⁶ issued additional questionnaires to AREVA on August 13, 2014,⁷ and January 6, 2015⁸ and issued a supplemental questionnaire to GNF-A on October 1, 2014.⁹ AREVA and GNF-A submitted timely partial responses to each of these questionnaires.¹⁰

SCOPE OF THE ORDER

The product covered by the order is all low-enriched uranium. Low-enriched uranium is enriched uranium hexafluoride (UF₆) with a U²³⁵ product assay of less than 20 percent that has not been converted into another chemical form, such as UO₂, 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 U²³⁵ 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 (UO₂), whether or not contained in nuclear fuel rods or assemblies. Natural uranium concentrates (U₃O₈) with a U²³⁵ concentration of no greater than 0.711 percent and natural uranium concentrates converted into uranium hexafluoride with a U²³⁵ concentration of no greater than 0.711 percent are not covered by the scope of the order.

³ See, letter from GNF-A to the Department titled "Low Enriched Uranium from France 2/1/2013-1/31/2014: Response to May 7, 2014 Questionnaire," dated June 16, 2014.

⁴ See, "Low Enriched Uranium from France 2/1/2013-1/31/2014 Administrative Review: Supplement to Response to May 7 Questionnaire," dated July 7, 2014.

⁵ See, Memorandum to the File, from Andrew Huston, "Customs Entries from January 1, 2013 to February 28, 2014," June 17, 2014.

⁶ See, Memorandum to The File, "Entry Documents from U.S. Customs and Border Protection," dated September 9, 2014.

⁷ See, "2013-2014 Administrative Review of Low Enriched Uranium From France Supplemental Questionnaire," dated August 13, 2014.

⁸ 2013-2014 Administrative Review of Low Enriched Uranium From France Supplemental Questionnaire," dated January 6, 2015 (January 6, 2015 Supplemental).

⁹ See, "2013-2014 Administrative Review of Low Enriched Uranium from France: GNF Supplemental Questionnaire," dated October 1, 2014.

¹⁰ See, letter from AREVA to the Department titled "Low Enriched Uranium from France: Response to August 13, 2014 Supplemental Questionnaire," dated August 25, 2014, letter from AREVA to the Department titled "Low Enriched Uranium from France: Response to January 6, 2015 Supplemental Questionnaire," dated January 20, 2015 and letter from GNF-A to the Department titled "Low Enriched Uranium from France: Response to October 1, 2014 Supplemental Questionnaire," dated October 14, 2014.

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 (UO₂) 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.

PRELIMINARY DETERMINATION

Based on the information collected from CBP and information submitted by AREVA and GNF-A, the Department preliminarily determines that AREVA did have shipments of subject merchandise during the POR. AREVA made shipments to the United States that it claimed were sample sales. In reviewing the record evidence, these transactions constitute sales as there was a transfer of ownership for consideration.¹¹ AREVA provided no certifications that these entries were for re-export so they are not subject to the scope re-export exclusion. The Department finds that these entries are part of bona fide sales because, though small in quantity, they are valued at the same price as the commercial transactions with which they are associated.¹² Based on the record evidence, the Department preliminarily finds that these sales are neither samples, nor subject to the re-export scope exclusion and are, therefore, subject to this review.

FACTS OTHERWISE AVAILABLE

Section 776(a)(1) of the Tariff Act of 1930, as amended (the Act), mandates that the Department use facts otherwise available if necessary information is not available on the record of an antidumping proceeding. In addition, section 776(a)(2) of the Act mandates that the Department use facts otherwise available where an interested party or any other person: (A) withholds information requested by the Department; (B) fails to provide requested information by the requested date or in the form and manner requested; (C) significantly impedes an antidumping proceeding; or (D) provides information that cannot be verified.

AREVA did not provide a complete response to the Department's initial questionnaire, claiming it had "no sales or shipments of LEU from France to customers in the United States." The Department requested in its January 6, 2015 questionnaire, that AREVA respond to sections A-C

¹¹ See, *NSK Ltd. v. United States*, 115 F.3d 965, 975 (Fed. Cir. 1997)

¹² See letter from GNF-A to the Department, "Low Enriched Uranium from France: Response to October 1, 2014 Supplemental Questionnaire," dated October 14, 2014 at Exhibit A and letter from AREVA to the Department, "Low Enriched Uranium from France: Response to January 6, 2015 Supplemental Questionnaire," at 1.

of the original questionnaire, if certain shipments “constitute sales subject to the order.”¹³ In its January 20, 2015 supplemental questionnaire response, AREVA did not respond to this request for sections A-C of the original questionnaire. Because AREVA failed to provide the information requested by the Department, we determine that the use of facts otherwise available is necessary for these preliminary results with respect to AREVA’s suspended entries of subject merchandise during the POR.

In this case, AREVA did not provide the information necessary to calculate a weighted-average dumping margin for these preliminary results. Specifically, AREVA failed to respond to our questionnaires, thereby withholding, under section 776(a)(2)(A) of the Act, among other things, home and U.S. market sales data that are necessary for determining whether AREVA is selling subject merchandise into the United States at less than normal value, pursuant to section 773 of the Act. AREVA’s failure to provide this necessary information has significantly impeded this proceeding pursuant to section 776(a)(2)(C) of the Act. Thus, in reaching our preliminary results, pursuant to sections 776(a)(2)(A), (B), and (C) of the Act, we are relying upon facts otherwise available to make our determination.

ADVERSE FACTS AVAILABLE

Section 776(b) of the Act states that if the Department “finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority . . . , the administering authority . . . may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available.”¹⁴ Adverse inferences are appropriate “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”¹⁵ In selecting an adverse inference, the Department may rely on information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the record.¹⁶

The Department preliminarily finds that AREVA failed to cooperate to the best of its ability in providing the requested information because AREVA withheld requested information, failed to provide the information in a timely manner and in the form requested, and significantly impeded this proceeding. Accordingly, pursuant to sections 776(a)(2)(A), (B), and (C) of the Act and section 776(b) of the Act, we find it appropriate to resort to AFA. By doing so, we ensure that AREVA will not obtain a more favorable result by failing to cooperate than had it cooperated fully in this review.

In selecting a rate based on AFA, the Department selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.¹⁷ In this administrative review, we have selected the

¹³ See, Letter from Mark Hoadley to AREVA, “2013-2014 Administrative Review of Low Enriched Uranium from France Supplemental Questionnaire” dated January 6, 2015

¹⁴ See, Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 316, 103d Cong., 2d Session (1994) at 870; Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review, 72 FR 69663, 69664 (December 10, 2007).

¹⁵ Id.

¹⁶ See section 776(b) of the Act.

¹⁷ See, SAA at 870.

rate of 30.22 percent as the AFA rate applicable to AREVA. This rate is based upon the highest CONNUM-specific rate calculated for AREVA in the original investigation.

Corroboration of Secondary Information

Section 776(c) of the Act requires that, to the extent practicable, the Department corroborate secondary information from independent sources that are reasonably at its disposal. Secondary information is defined as “information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.”¹⁸ As clarified in the SAA, “corroborate” means that the Department will satisfy itself that the secondary information to be used has probative value.¹⁹ To corroborate secondary information, the Department will examine, to the extent practicable, the reliability and relevance of the information.²⁰ As emphasized in the SAA, however, the Department need not prove that the selected facts available are the best alternative information.²¹ Further, independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation or review.²²

The 30.22 percent rate that the Department is preliminarily applying in this review is based on AREVA’s own data, using the highest CONNUM-specific rate from the investigation. No additional information has been presented in the current review which calls into question the reliability of the information.

¹⁸ See, SAA at 870.

¹⁹ Id.

²⁰ See, Tapered Roller Bearings and Parts Thereof, Finished and Unfinished From Japan, and Tapered Roller Bearings Four Inches or Less in Outside Diameter, and Components Thereof, From Japan: Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews, 61 FR 57391, 57392 (November 6, 1996), unchanged in Tapered Roller Bearings and Parts Thereof, Finished and Unfinished From Japan, and Tapered Roller Bearings Four Inches or Less in Outside Diameter, and Components Thereof, From Japan: Final Results of Antidumping Duty Administrative Reviews and Termination in Part, 62 FR 11825 (March 13, 1997).

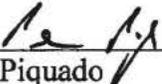
²¹ See, SAA at 869.

²² See, 19 CFR 351.308(d) and SAA at 870; see also, Notice of Preliminary Determination of Sales at Less Than Fair Value: High and Ultra-High Voltage Ceramic Station Post Insulators from Japan, 68 FR 35627, 35629 (June 16, 2003), unchanged in final determination, 68 FR 62560; and Notice of Final Determination of Sales at Less Than Fair Value: Live Swine From Canada, 70 FR 12181, 12183-84 (March 11, 2005).

RECOMMENDATION

We recommend applying the above methodology for these preliminary results.

Agree Disagree



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

2 MARCH 2015
Date