



A-427-818
Administrative Review
POR: 2/01/2013-1/31/2014
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MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: Gary Taverman 
Associate 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:
2013-2014

I. Summary

We analyzed the comments received from interested parties in the administrative review of the antidumping (AD) duty order on low-enriched uranium (LEU) from France covering the period of review (POR) of February 1, 2013, through January 31, 2014. As a result we have revised our determination that Eurodif S.A., AREVA NC, and AREVA NC, Inc. (collectively AREVA) sold subject merchandise in the United States at less than normal value during the POR. The Department determines that AREVA had no shipments of merchandise subject to the AD order on LEU from France during the POR. Upon review of comments from interested parties, the Department is also revising the certifications for re-export required under the scope of the order.

II. Background

On March 9, 2015, the Department published the preliminary results of the administrative review of the AD duty order on LEU from France.¹ In the Preliminary Results we preliminarily found that, while the majority of AREVA's entries of LEU from France were either excluded from the order under the re-export provision of the scope, or not subject to the order, AREVA did have shipments of merchandise subject to the AD order on LEU from France during the POR. The shipments in question, imported by Global Nuclear Fuels-Americas, LLC (GNF-A), were identified as "samples," however the Department found these to be bona fide sales, and therefore

¹ See Low-Enriched Uranium From France; Preliminary Results of Antidumping Duty Administrative Review; 2013-2014, 80 FR 12434 (March 9, 2015) (Preliminary Results) and accompanying Preliminary Decision Memorandum.

subject to AD order.² For the preliminary results, we relied, in part, on facts available. We further preliminarily found that an adverse inference was warranted in accordance with section 776(b) of the Tariff Act of 1930, as amended (the Act), because, pursuant to section 782(e) of the Act, AREVA did not act to the best of its ability to comply with our requests for information and we do not have sufficient sales and cost information on the record to calculate a weighted-average dumping margin for AREVA. Based upon that analysis, we preliminarily found that a weighted-average dumping margin of 30.22 percent on LEU from France existed for the POR.

The Department received a timely case brief from GNF-A on April 16, 2015, and from AREVA on April 22, 2015.³ Centrus Energy Corporation (Petitioner) filed a timely rebuttal brief on April 30, 2015. On June 24, 2015, the Department held a meeting with representatives from GNF-A. The Department issued a supplemental questionnaire to GNF-A and AREVA on July 10, 2015, and July 14, 2015, respectively. AREVA submitted its timely response on July 23, 2015, and GNF-A submitted its timely response on July 24, 2015.

III. 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.

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

² See Preliminary Decision Memorandum at 3.

³ AREVA's original case brief was rejected as untimely as it was submitted without a public version, see Memorandum to the File, "Rejection of Case Brief," dated April 17, 2015. AREVA submitted a request for the Department to reconsider its rejection of its case brief, see letter to Mark Hoadley, "Low Enriched Uranium from France: Rejection of Case Brief, Barcode 3266749-01," dated April 20, 2015. Based on the information in AREVA's request the Department allowed AREVA to re-submit its case brief, see Letter from Mark Hoadley, "2013-2014 Administrative Review of Low Enriched Uranium from France: Reconsideration of Rejection of Case Brief," dated April 21, 2015.

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

Issue 1: Treatment of Samples

AREVA's Comments:

- The preliminary results incorrectly assert that the shipments in question were “sample sales.” These entries were consistently identified by AREVA and GNF-A as “samples” not “sample sales.”
- Samples are used to confirm the characteristics of the corresponding cylinders of LEU imported for processing and fabrication.
- AREVA's provision of samples to GNF-A can only be understood within the context of the overall transaction, which is exempt from the order.
- GNF-A did not pay for the samples, and ownership did not transfer to GNF-A. The foreign end-user owned these samples.
- The quantities involved are within the one percent processing loss specification for material excluded from the order.
- NSK Ltd v. United States⁴ (NSK) considers a transaction as a sale if there was a transfer of ownership to a U.S. purchaser and for the purchaser to provide consideration. In this case the samples were owned and charged to the foreign end-user.
- The importation of these samples, which were destructively analyzed, was entirely to support foreign sales which are exempt from the order, and had no effect on the U.S. market.

GNF-A's Comments

- NSK requires both a transfer of ownership to an unrelated party and consideration. The samples in question meet neither of these requirements.
- NSK requires a bargained for exchange. Per precedent and Department practice, ownership is dispositive based on the identities of the parties to the relevant contract, not to whom the good is delivered. In this case AREVA had a contract with the foreign end-user, and the samples are charged to the foreign end-user.
- The Department's reasoning that samples were valued at the same price as the commercial transactions with which they were associated confuses “customs value” with

⁴ NSK Ltd v. United States, 115 F. 3rd 965 (Fed. Cir. 1997).

what GNF-A actually paid. The pro-forma invoices show “value for customs purposes only.”

- NSK’s requirement that there be a transfer of ownership has not occurred here. The sample agreement provided by AREVA shows the samples remain the property of the customer (i.e., end-user).
- GNF-A identified itself as the end-user merely because the samples were analyzed and destroyed by GNF-A, not because GNF-A had ownership of the samples.
- Neither GNF-A or AREVA represented these transactions as sales.
- The manner of shipment, purpose, status and quantity demonstrate that these are samples. These entries are shipped by air, for testing, destructively analyzed and are of miniscule quantities.
- The Department stated that these entries were not subject to the re-export scope exclusion. Regardless of how these were imported, they are samples associated with non-scope merchandise. GNF-A could have imported the samples under the re-export provision, i.e., obtained the necessary certifications, however the mandatory re-export procedures would have been complicated and burdensome.

Petitioner did not comment on this issue.

Department Position: Upon review of comments from interested parties, the Department has revised its determination in the Preliminary Results that AREVA had entries subject to the AD order. The Department finds that the two entries in question are samples without separate consideration. In addition, we find that the samples are small and entirely consumed in the testing process such that they fall within the one percent processing loss in the re-export certificate. As a result, we find that AREVA had no reviewable entries during the POR. Therefore the Department finds that there were no shipments of subject merchandise during the POR and will instruct U.S. Customs and Border Protection (CBP) to liquidate all entries for AREVA during the POR without regard to AD duties.

To address the issue of samples in the future, the Department will now require the following paragraph to be added to the importer certification of any entries of samples, or including samples:

E. {Insert name of fabricator} will ensure that all samples of enriched uranium hexafluoride not consumed during testing will be either reprocessed and re-exported from the United States, or destroyed in the United States within 36 months.

Issue 2: Re-export Certifications

GNF-A’s Comments

In its case brief GNF-A asked the Department to address the issue of “negative balances” in the final results. This issue was not addressed in the Preliminary Results.

- It is industry practice to import full cylinders of LEU, though utility customers’ orders of processed LEU are often greater than a full cylinder. This can result in situations where

the export of some processed LEU occurs prior to the physical import of LEU. This is referred to as a negative balance.

- The Department should determine that negative balances are not inconsistent with the re-export provision, and revise the certifications to account for negative balances.
- The record of this review demonstrates situations in which negative balances can occur (*i.e.*, situations where the re-export of LEU occurs prior to the physical import of LEU).
- Negative balances are not inconsistent with the letter or intent of the re-export provision.
- The Department should revise the re-export certification to allow for imports of LEU when the re-export has already been made.

Petitioner's Comments

- Petitioner submitted a comment that they did not oppose the revised certification language GNF-A proposed.

Department Position: The Department has revised the importer certification to allow GNF-A to make certain future entries under the re-export proceeding of the scope in a previous changed circumstances review (CCR),⁵ and did not find that this undermined or contravened the AD order. The Department will allow revised certifications to allow imports of subject merchandise to replenish negative balances. The Department will issue instructions with revised certifications to CBP.

V. Determination of No Shipments

The Department determines that AREVA had no shipments of subject merchandise during the POR.

VI. Revised Entry Certifications

The Department will issue revised certifications to CBP to allow imports of subject merchandise to replenish negative balances.

⁵ See Low Enriched Uranium From France: Preliminary Results of Changed Circumstances Review, 79 FR 59475 (October 2, 2014) and accompanying proprietary memorandum "Preliminary Results Changed Circumstances Review: Analysis of GNF-A Proprietary Information," unchanged in the final results.

Notification to Interested Parties

These final results of administrative review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

4 SEPTEMBER 2015
Date