



UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

A-821-802
Sunset Review
Public Document
IA/OP/BAU: MP

October 28, 2011

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

FROM: Carole Showers 
Acting Deputy Assistant Secretary
for Policy and Negotiations

SUBJECT: Issues and Decision Memorandum for the Third Sunset Review of the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation; Final Results

Summary:

We have analyzed the substantive responses of interested parties in the expedited sunset review of the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation (“Suspension Agreement”). See Preliminary Determinations of Sales at Less Than Fair Value: Uranium From Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Ukraine and Uzbekistan; and Preliminary Determinations of Sales at Not Less Than Fair Value: Uranium From Armenia, Azerbaijan, Belarus, Georgia, Moldova and Turkmenistan 57 FR 23380 (June 3, 1992) (“1992 Preliminary Determinations”). We recommend that you approve the positions we have developed in the Discussion of the Issues section of this memorandum. Below is the complete list of the issues in this expedited final sunset review for which we received substantive responses by domestic interested parties only:

1. Likelihood of Continuation or Recurrence of Dumping
 - a. Volume of Imports
 - b. Future Likelihood of Dumping and Effect on U.S. Market Prices
2. Magnitude of Margin Likely to Prevail

History of the Suspension Agreement

On December 5, 1991, the Department published in the Federal Register a notice of initiation of the antidumping duty investigation on uranium from the Union of Soviet Socialist Republics (“USSR”). See Initiation of Antidumping Duty Investigation: Uranium from the Union of Soviet Socialist Republics 56 FR 63711 (December 5, 1991). On December 23, 1991, the U.S. International Trade Commission (“ITC”) issued an affirmative preliminary injury determination.



On December 25, 1991, the USSR dissolved and the United States subsequently recognized the twelve newly independent states (“NIS”) which emerged: Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russian Federation (“Russia”), Tajikistan, Turkmenistan, Ukraine, and Uzbekistan. The Department continued the investigations against each of these twelve countries. On June 3, 1992, the Department issued an affirmative preliminary determination that uranium from Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Ukraine, and Uzbekistan was being sold at less-than-fair-value by a weighted-average dumping margin of 115.82 percent, and a negative determination regarding the sale of uranium from Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Turkmenistan. See 1992 Preliminary Determinations.

On October 30, 1992, the Department suspended the antidumping duty investigations involving uranium from Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Ukraine, and Uzbekistan on the bases of agreements by the countries’ respective governments to restrict the volume of direct or indirect exports to the United States in order to prevent the suppression or undercutting of price levels of United States domestic uranium. See 1992 Suspension Agreements. The Department also amended its preliminary determination to include highly-enriched uranium (“HEU”) in the scope of the investigations. See Id.

The first amendment to the Suspension Agreement, effective on March 11, 1994, authorized “matched sales” in the United States of Russian-origin and U.S.-origin natural uranium and separative work units (“SWU”). See Amendment to Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation, 59 FR 15373 (April 1, 1994). The amendment also extended the duration of the Suspension Agreement to March 31, 2004. See Id.

Effective on October 3, 1996, the Department and the Government of Russia agreed to two amendments to the Suspension Agreement. One amendment provided for the sale in the United States of feed associated with imports of Russian low-enriched uranium (“LEU”) derived from HEU, making the Suspension Agreement consistent with the United States Enrichment Corporation Privatization Act (42 U.S.C. 2297h, *et seq.*) (“USEC Privatization Act”). The second amendment restored previously-unused quota for SWU and included Russian uranium which had been enriched in a third country within the scope of the Suspension Agreement. According to this second amendment, these modifications would remain in effect until the date two years after the effective date of the amendment. See Amendments to the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation, 61 FR 56665, 56667 (November 4, 1996).

The next amendment to the Suspension Agreement, effective on May 7, 1997, doubled the amount of Russian-origin uranium that may be imported into the United States for further processing prior to re-exportation, and lengthened the period of time uranium may remain in the United States for such processing to up to three years. See Amendment to Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation, 62 FR 37879 (July 15, 1997).

On July 31, 1998, the Department notified interested parties of a change in the administration of the matched sales quota in that the Department would, effective immediately, use a calendar year basis (*i.e.*, January 1-December 31) rather than the previously-used quota year basis (*i.e.*, April 1-March 31). See Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation, 63 FR 40879 (July 31, 1998).

On August 2, 1999, the Department published a notice of initiation of the first five-year sunset review of the Suspension Agreement. See Initiation of Five-Year (“Sunset”) Reviews, 64 FR 41915 (August 2, 1999). On July 5, 2000, the Department published its notice of the final results of the full sunset review, finding that revocation of the Suspension Agreement would be likely to lead to continuation or recurrence of dumping at a percentage weighted-average margin of 115.82 percent for all Russian manufacturers/exporters. See Notice of Final Results of Full Sunset Review: Uranium from Russia, 65 FR 41439 (July 5, 2000) (“First Sunset Review”). On August 22, 2000, the Department published a notice of continuation of the Suspension Agreement pursuant to the Department’s affirmative determination and the ITC’s affirmative determination that termination of the Suspension Agreement 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 Notice of Continuation of Suspended Antidumping Duty Investigation: Uranium from Russia, 65 FR 50958 (August 22, 2000). See also Uranium from Russia: Corrected Continuation of Suspended Antidumping Duty Investigation 65 FR 52407 (August 29, 2000).

On July 1, 2005, the Department published a notice of initiation of the second five-year sunset review of the Suspension Agreement. See Initiation of Five-year (“Sunset”) Reviews, 70 FR 38101 (July 1, 2005). On June 6, 2006, the Department published its notice of the final results of the full sunset review, finding that termination of the Suspension Agreement would be likely to lead to continuation or recurrence of dumping at a percentage weighted-average margin of 115.82 percent for all Russian manufacturers/exporters. See Final Results of Five-Year Sunset Review of Suspended Antidumping Duty Investigation on Uranium From the Russian Federation 71 FR 32517 (June 6, 2006) (“Second Sunset Review”). On August 11, 2006, the Department published a notice of continuation of the Suspension Agreement pursuant to the Department’s affirmative determination and the ITC’s affirmative determination that termination of the suspended investigation on uranium from Russia 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 Continuation of Suspended Antidumping Duty Investigation: Uranium From the Russian Federation, 71 FR 46191 (August 11, 2006).

On February 1, 2008, the Department and the Government of Russia signed another amendment to the Suspension Agreement instituting new quotas through 2020 for commercial Russian uranium exports sold directly or indirectly to U.S. utilities or otherwise. See Amendment to the Agreement Suspending the Antidumping Investigation on Uranium From the Russian Federation, 73 FR 7705 (February 11, 2008) (“2008 Amendment”). Of particular relevance to this sunset review, Section XII of the 2008 Amendment states in part that:

In addition, the Department shall conduct sunset reviews under 19 U.S.C. 1675(c) in the years 2011 and 2016. All parties agree that the sunset reviews shall be expedited, pursuant to 19 U.S.C. 1675(C)(4) and (C)(3)(B), respectively, at both the Department of Commerce and the International Trade Commission.

See 2008 Amendment, at 7707. The Department issued its memorandum regarding the 2008 Amendment’s prevention of price suppression or undercutting on May 14, 2008. See Memorandum to David M. Spooner, Assistant Secretary for Import Administration, from Ronald K. Lorentzen, Deputy Assistant Secretary for Policy and Negotiations, regarding Prevention of Price Suppression or

Undercutting of Price Levels of Domestic Products by the Amended Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation (May 14, 2008) (“Price Suppression Memo”).

In September 2008, Congress enacted legislation which codified many provisions in the amended Suspension Agreement and instituted import quotas through 2020 that in large part mirror the quotas in the 2008 Amendment. See Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009, H.R. 2638, 110th Cong. Section 8118, p.110-123 (2008) (“Domenici Amendment”).¹ On February 2, 2010, the Department issued its Statement of Administrative Intent which contained guidelines clarifying the Department’s intent with regard to the implementation of the amended Suspension Agreement and to take into consideration the requirements of the Domenici Amendment. See Statement of Administrative Intent, (February 2, 2010) (“SAI”).

There have been no completed administrative reviews of the Suspension Agreement. The Suspension Agreement remains in effect for all manufacturers, producers, and exporters of uranium from Russia.

Background

On July 1, 2011, the Department initiated the third sunset review of the suspended antidumping duty investigation on uranium from Russia, pursuant to section 751(c) of the Act. See Initiation of Five-Year (“Sunset”) Review, 76 FR 38613 (July 1, 2011). The Department received a notice of intent to participate in this sunset review from USEC, on July 13, 2011, and from Power Resources, Inc. (“PRI”), and Crow Butte Resources, Inc. (“Crow Butte”), on July 18, 2011 (collectively, “domestic interested parties”), within the applicable deadline specified in section 351.218(d)(1)(i) of the Department’s regulations. Domestic interested parties claimed interested-party status under section 771(9)(C) of the Act as producers of the domestic like product.

The Department also received complete substantive responses from the domestic interested parties within the 30-day deadline specified in the Department’s regulations under section 351.218(d)(3)(i). The Department did not receive a substantive response from the Russian government or any Russian producer/exporter of the subject merchandise. On August 16, 2011, the Department determined that the substantive responses from the domestic interested parties were adequate, consistent with the requirements of section 351.218(e)(1)(i)(A). See Memorandum to Sally C. Gannon, Director for Bilateral Agreements, Office of Policy, from Maureen Price, Senior Policy Analyst, Office of Policy, regarding Sunset Review of the Agreement Suspending the Antidumping Investigation of Uranium from the Russian Federation: Adequacy Determination (August 16, 2011). Based on the lack of any substantive response from respondent interested parties, the Department also determined to conduct an expedited (120-day) sunset review, in accordance with 19 CFR 351.218(e)(1)(ii)(C)(2). See Id. See also Letter from Barbara E. Tillman, Director, Office 6, AD/CVD Operations, to Catherine DeFilippo, Director, Office of Investigations, International Trade Commission (August 22, 2011).

¹ Section 8118 of the Domenici Amendment amends the USEC Privatization Act.

Discussion of the Issues

In accordance with section 751(c)(1) of the Act, the Department is conducting this sunset review to determine whether termination of the suspended antidumping investigation would likely lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making this determination, the Department shall consider 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 or suspension agreement. 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 or suspension agreement is revoked.

We address the comments received from interested parties below.

1. Likelihood of Continuation or Recurrence of Dumping
 - a. Volume of Imports in Absence of Suspension Agreement

PRI's and Crow Butte's Comments

PRI and Crow Butte begin by emphasizing that, through its key provisions providing for expedited sunset reviews and a finite duration of the Suspension Agreement with the consent of all parties, the Suspension Agreement continues to serve an extremely important function in stabilizing the U.S. market, rendering Russian completion of the Agreement Between the Government of the United States of America and the Government of the Russian Federation Concerning the Disposition of Highly Enriched Uranium Extracted from Nuclear Weapons (“HEU Agreement”) more likely, and providing predictability for the market in the period following the end of the HEU Agreement. PRI and Crowe Butte stress that, particularly in the wake of the uncertainties created by recent events in Japan, the stabilizing impact of the Suspension Agreement is critical and must be taken into account when assessing the likely negative impact of a termination of the Suspension Agreement.

PRI and Crowe Butte contend that the Suspension Agreement now plays a very important role in encouraging further down-blending of HEU, through the provisions of the Domenici Amendment, and in providing a path for integrating Russia into the U.S. commercial nuclear fuel market post-2013, when the HEU Agreement terminates. Further, PRI and Crow Butte assert that the quota limitations in the Domenici Amendment are not meaningful limits unless paired with the detailed anti-circumvention, reporting, and contract approval provisions of the Suspension Agreement. Specifically, PRI and Crowe Butte argue that, absent the Suspension Agreement, the Domenici Amendment quotas could not be meaningfully enforced for a number of reasons, including the fact that they could be readily circumvented through swaps and other book transactions which are fully addressed by the Suspension Agreement’s detailed administrative provisions. PRI and Crow Butte stress that Congress’ assignment of administrative responsibility to the Department for the enforcement of the Domenici Amendment’s quotas reflects the extent to which the Suspension Agreement regime and the Domenici non-proliferation amendment are inextricably linked.

PRI and Crow Butte state that the slow and fragile improvement in the condition of the U.S. uranium mining sector would not have been possible if the Suspension Agreement had not been in effect to

provide a stable market to regulate the large supply of Russian uranium products through the linked provisions of the Suspension Agreement, the HEU Agreement, and the USEC Privatization Act. They argue that, in the absence of the Suspension Agreement, the U.S. market is the primary and immediate focus for a significant volume of low-priced Russian exports. PRI and Crow Butte assert that the critical factors for making the U.S. market such a target are Russia's uranium production capacity, its significant inventories, the restrictions and declining demand in the European Union and Asia, and the overall attractiveness of the U.S. market.

PRI and Crow Butte argue that Russia has considerable uranium production capacity from multiple sources. With respect to natural uranium concentrate alone, PRI and Crow Butte state that Russia's capacity and its declared plans to increase its mining operations in the near future make clear that Russia remains able to substantially increase its exports to the United States in the absence of the Suspension Agreement. PRI and Crow Butte report that Russia's projected uranium production from its current and planned mines will continue to steadily increase in the reasonably foreseeable future. See World Nuclear Association, The Global Nuclear Fuel Market: Supply and Demand 2009-2030 (2009), page 101 ("Supply and Demand"). PRI and Crow Butte also note that Russia continues to hold extensive inventories and stockpiles of uranium products that it could use to quickly increase exports to the United States if the Suspension Agreement and underlying suspended investigation were terminated. While the precise magnitude of Russia's uranium inventory is uncertain, PRI and Crow Butte argue that there is no question that Russia possesses substantial stockpiles of HEU that are available for processing into LEU for export to the United States. See Id., page 120-122. Thus, in the absence of the Suspension Agreement, PRI and Crow Butte contend that Russia would have massive quantities of HEU-derived material available for processing and export to the U.S. market. Further, PRI and Crow Butte hold that Russia has substantial stockpiles of depleted uranium "tails" (depleted UF₆ that is produced as part of the enrichment process) and cite the ITC's explanation that "Russia devotes some of its enrichment capacity to re-enriching uranium tails from its inventory as well as tails from Western European producers, thereby providing another source of uranium." See Id., page 131 and Uranium from Russia, Inv. No. 731-TA-539-C ("Second Review"), USITC Pub. 3872 (Aug. 2006), page 27.

PRI and Crow Butte contend that Russia has the largest enrichment capability in the world, amounting to over 45 percent of the total world's enrichment capacity in 2010, and is the world's largest producer of enriched uranium. See NAC International, Nuclear Industry Status Report-Enrichment (Oct. 2010), Section B-3.1, page 1. Given that Russia has enormous enrichment capacity, PRI and Crow Butte assert that in the absence of the Suspension Agreement, Russia will use its enrichment capacity to export additional enriched uranium to the United States, thus displacing natural uranium.

PRI and Crow Butte further argue that import restrictions exist in Europe and Asia. They contend that these import restrictions, combined with the significantly-reduced demand in Japan and Western Europe (Germany, Switzerland and Italy) due to the Fukushima nuclear accident in March 2011, will make the U.S. market all the more attractive to Russian exports if the Suspension Agreement were to be terminated.

Finally, PRI and Crow Butte note that U.S. utilities have significant "uncommitted" near term demand. See Id., Section F-1, page 1 and Section F-3, page 54. They argue that, in the absence of the

Suspension Agreement, the United States presents the most attractive market for short-term sales. PRI and Crow Butte state that Russian uranium supplier, JSC Techsnabexport ("Tenex"), has made its strong interest in the U.S. market extremely clear by: 1) opening a U.S. office for its wholly-owned subsidiary TENAM Corp. to assist Tenex "in contracting directly with American utilities and on generating NFC-related business opportunities in the country." , 2) concluding 11 contracts with nine utilities for a total of about \$5 billion, and 3) announcing in March 2011 that Tenex and USEC were entering into an arrangement under which USEC will purchase SWU from Tenex equivalent to about half of the annual SWU content of the current HEU Agreement. See TENAM press release, available at <http://tenam-usa.com/news/tenam-official-opening-washington-dc> ("TENAM press release").

USEC's Comments

USEC states that the United States is, and will continue to be, the world's most dominant user of uranium for nuclear fuel, representing approximately 27 percent of the world's nuclear power generation capacity. See <http://world-nuclear.org/info/reactors.html>. USEC reports that import restrictions in the European Union and Asia and the tragic recent events in Japan have resulted in a contraction in Russian sales of uranium in Japan and a decreasing demand for nuclear fuel in other parts of the world, including several European countries. USEC contends that this contraction makes the U.S. market increasingly attractive to the dumping of uranium due to the loss of anticipated deliveries to non-U.S. markets.

USEC asserts that Russia is seeking to aggressively increase its worldwide market share in general and its U.S. market share in particular. USEC cites press releases and newspaper articles illustrating what USEC believes is Russia's plan to grow market share and focus on the U.S. market. See Nuclear Industry in Russia Sells Safety, Taught by Chernobyl, New York Times (March 22, 2011); Tenex to boost export orders over 50% in 10 yrs, Interfax (July 2, 2010); Russia's Tenex could take up over half direct U.S. uranium quota in 2010-2011, Interfax (June 7, 2010); Russia breaks "wall" into U.S. nuclear market, Reuters (May 26, 2009) (available at <http://www.reuters.com/article/2009/05/26/us-russia-usa-uranium-idUSTRE54P4S220090526>).

USEC asserts that the significant number of commercial sales in the United States since 2009, made pursuant to the amended Suspension Agreement, demonstrates Russia's intent to expand its presence in the United States. Further, USEC reports that TENEX opened a subsidiary office in Washington, D.C., in October 2010 which it considers ". . . not only as an instrument for expanding TENEX businesses, but as a sort of trade mission of the Russian nuclear industry in the region." See TENAM press release.

USEC reports that Russia is currently the largest world supplier of uranium and continues to have the world's largest capacity to produce enriched uranium for nuclear fuel. See Energy Resources International ("ERI") 2010 Report, page 4-70. Russia, USEC asserts, has sufficient quantities of natural uranium to supply its enrichment plants and has ready access to Kazakhstan, the world's largest supplier of natural uranium, and other NIS states that produce uranium, such as Uzbekistan. See Enrichment capacity at Angarsk to be boosted, World Nuclear News (June 25, 2007), available at <http://www.world-nuclear-news.org/print.aspx?id+13604> and ERI 2010 Update Report, page 4-4. USEC notes that, according to the Suspension Agreement, Kazakh and Uzbek natural uranium takes on Russian origin if enriched in Russia. USEC asserts that analysts report Russia's substantial enrichment capacity is underutilized and much of it is available for

additional commercial exports. USEC points out that Russia's internal demand for both natural uranium and SWU is relatively low and maintains that Russia is nonetheless expanding its already significant natural uranium production and enrichment capacity. See Id., pages 6-6. If the Suspension Agreement is terminated and the U.S. restrictions lifted, USEC asserts that Russia will have substantial available enrichment capacity to target at the United States to secure an even greater share of the U.S. market than it is permitted to supply under the Suspension Agreement.

In addition, USEC argues that, even if Russia had no open production capacity, its significant inventories of uranium products would be sufficient to permit Russia to increase its exports to the United State substantially in the absence of the Suspension Agreement. USEC maintains that Russia possesses large commercial uranium inventories and HEU inventory, as well as enrichment tails (which can result in a larger amount of uranium re-enriched using Russia's excess enrichment capacity). See Id., page 4-6. USEC contends that the Department should include Russia's huge inventories of uranium products in its assessment of future subject import volumes in this review.

Finally, USEC asserts that Russia will need to replace sales under the HEU Agreement, the largest single contract for the purchase of SWU in history, which is due to expire at the end of 2013. According to USEC, the LEU derived from Russian HEU supplies approximately one-half of U.S. enrichment demand annually. USEC contends that Russia faces a significant loss of sales volume from the U.S. market beginning when the HEU contract expires. USEC asserts that the quotas imposed under the Suspension Agreement and the Domenici Amendment are intended to shield the market from the risk that Russia would use underselling to retain its current market share and that, were the Suspension Agreement terminated, Russia could use underselling to replace the volume of sales lost as a result of the expiration of the HEU Contract. USEC notes that it recently entered into a contract with TENEX for the supply of LEU from TENEX to USEC from 2013 through 2022. USEC contends that the quantities covered by this contract will help replace some of the sales volume that will be lost when the HEU contract expires, that the sales will be delivered in the market under USEC contracts and will not compete with domestic production, and that any imports of the LEU into the United States under the supply contract will be subject to the terms of the Suspension Agreement.

Finally, USEC affirms that the effectiveness of the quotas in the Suspension Agreement and the Domenici Amendment depends on the Department's ability to enforce them. USEC states that the Suspension Agreement provides the tools to mitigate the risk that Russia could undersell to pursue a larger share of the U.S. market (i.e., to replace the volumes of sales lost as a result of the expiration of the HEU Agreement). Specifically, USEC maintains, the Department's requirement that imports for domestic consumption under the Suspension Agreement be intended for specific end-users ensures that Russia cannot simply import unsold LEU for future sale. USEC asserts that, if the latter were allowed, Russia could accumulate inventories to be sold in future years, resulting in volumes larger than the Suspension Agreement quotas permit in those years. Finally, USEC points to the Suspension Agreement's prohibitions on circumvention which ensure that offshore swaps are not used to circumvent the quota.

Department's Position

Consistent with the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("SAA"), H.R. Doc.

No. 103-316, vol. 1 (1994), the House Report, H. Rep. No. 103-826, pt. 1 (1994) (House Report), and the Senate Report, S. Rep. No. 103-412 (1994) (Senate Report), the Department's determinations of likelihood will be made on an order-wide basis. Pursuant to 752(c)(1) of the Act, in making this determination, the Department considers the margins determined in the investigation and subsequent reviews, and the volume of imports of the subject merchandise for the period before and after the issuance of the suspension agreement.

In addition, the Department normally will determine that revocation of an order or termination of a suspension agreement 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 or the suspension agreement, (b) imports of the subject merchandise ceased after the issuance of the order or the suspension agreement, or (c) dumping was eliminated after the issuance of the order or the suspension agreement and import volumes for the subject merchandise declined significantly. The Department also explained that, in the case of a suspension agreement, the data pertaining to weighted-average dumping margins and import volumes may not be conclusive in determining the likelihood of future dumping. Thus, in the context of the sunset review of a suspended investigation, the Department may be more likely to take other factors into consideration, provided good cause is shown. Therefore, in accordance with 752(c)(2) of the Act, the Department shall also consider such other price, cost, market, or economic factors as it deems relevant when good cause is shown.

The Suspension Agreement, as amended in February 2008, currently allows for imports under Section IV.M of down-blended Russian HEU pursuant to the HEU Agreement; imports under Sections IV.G and H of Russian uranium products which will be re-processed and re-exported; imports under Section IV.B.1 of Russian uranium products for domestic consumption; and imports under Section IV.B.2 for the supply of initial cores in the United States. The volumes of the imports of LEU down-blended from HEU are governed by the terms of the HEU Agreement and its implementing contract and allowed entry pursuant to the Suspension Agreement. With respect to the re-export provision, imports of up to six million pounds U₃O₈ equivalent are allowed entry for 12- or 36-month periods, for re-processing, but then must be re-exported; thus, these imports are not for consumption in the U.S. market. Section IV.B.1 provides an export quota for Russian uranium for consumption in the United States.

The Domenici Amendment subsequently codified in large part the Suspension Agreement's Section IV.B.1 export quota limits but on the basis of *import* quota limits. The Suspension Agreement is the vehicle through which the Secretary of Commerce, as authorized by Congress, enforces the import limitations under the Domenici Amendment. In addition, the February 2, 2010, SAI contains guidelines clarifying the Department's intent with regard to the implementation of the amended Suspension Agreement and to take into consideration the requirements of the Domenici Amendment.

For these reasons, and as also determined in the final results of the First Sunset Review and Second Sunset Review, we do not believe that the import trends for imports under these provisions of the Suspension Agreement are particularly indicative of the likelihood of continued dumping in the absence of the Suspension Agreement. Therefore, we have determined to consider the additional information submitted by the parties with respect to future volumes of imports.

We agree with PRI and Crow Butte's statements that the Suspension Agreement, including its provisions providing for expedited sunset reviews and a finite duration and its inter-relationship with the HEU Agreement, has provided predictability and a stabilizing effect on the U.S. uranium market. We also agree that the Suspension Agreement and the Domenici Amendment are inextricably linked. The Suspension Agreement ensures that Russia's down-blended HEU material, pursuant to the HEU Agreement, and imports for domestic consumption, pursuant to the both the Suspension Agreement and Domenici Amendment, can enter the U.S. market in an orderly and predictable manner. In addition, the Suspension Agreement provides the tools for monitoring the entry and re-export of Russian uranium under the re-export provision in the most efficient manner possible. Also inter-related is the successful and measured entry into the U.S. market of returned natural uranium feed from down-blended HEU pursuant to the USEC Privatization Act. See Procedures for Delivery of HEU Natural Uranium Component in the United States, 64 FR 42925 (August 6, 1999).

We acknowledge that the import limitations provided under the Domenici Amendment will stand even in the event that the Suspension Agreement is terminated. However, we strongly agree with PRI and Crow Butte and USEC that the Suspension Agreement provides the critical tools necessary to enforce the Domenici Amendment's quotas and maintain the integrity and stability of the U.S. uranium market. The fact that the import limits under the Domenici Amendment in large part mirror the export limits in the 2008 Amendment, and the fact that Congress gave the Secretary of Commerce the responsibility for enforcing the Domenici import quotas, are indicative of Congress' reliance upon the Suspension Agreement as inextricably linked with the Domenici Amendment.

The Suspension Agreement, but not the Domenici Amendment, provides for comprehensive monitoring and reporting with respect to both the domestic consumption (Section IV.B.1) and the re-export (Sections IV.G and H) quotas. Without such monitoring and reporting, the continuing stability and predictability created by the inter-relationship between the Suspension Agreement and the HEU Agreement in the U.S. uranium market is jeopardized. In addition, the Suspension Agreement contains various other explicit enforcement tools not contained in the Domenici Amendment which makes it indispensable for administering the export and import quota limitations in the Suspension Agreement and Domenici Amendment, respectively. Without these tools, Russia itself may not have the ability to monitor its own exports which subsequently enter the United States under the Domenici Amendment, surely not the intent of Congress.

Further, Section VII of the Suspension Agreement provides anti-circumvention provisions which prohibit any arrangements, swaps, or other exchanges designed to circumvent the export limitations established by the agreement. This provision was included in the Suspension Agreement precisely because of the unique nature of this industry and the fungibility of the product at issue. In the absence of the Suspension Agreement, there is the potential for the U.S. market to be flooded with uranium swapped or displaced by transactions involving Russian uranium exported to third countries. Finally, as noted by USEC, the HEU Agreement is due to expire in 2013. In the absence of the Suspension Agreement and with no HEU Agreement, we believe that Russia has a strong incentive to seek additional commercial sales to compensate for lost revenue.

We have considered the compelling arguments and evidence placed on the record by the parties regarding Russia's considerable uranium production capacity and its massive inventories. In 2010,

Russia produced nearly 9.4 million pounds of U_3O_8 which it intends to significantly increase by 2015. See International Business Relations, LLC ("IBR™"), Moscow (Department of Nuclear Power & Nuclear Fuel Cycle), Russian Nuclear Materials & Enrichment Services in the World Nuclear Fuel Market in 2010-2030. Rosatom's plans and IBR's Forecasts (June 2011), page 51 and World Nuclear Association, Supply and Demand, page 101. In addition, Russia has the largest enrichment capacity in the world, amounting to over 45 percent of the total world's enrichment capacity in 2010, yet Russia's domestic demand for enrichment accounts for only 12 percent of its current enrichment capacity, leaving a significant portion available for export. See NAC International, Nuclear Industry Status Report- Enrichment (Oct. 2010), Section B-3.1, page 1 and Section F-1, page 27 ("Nuclear Industry Status Report").

With respect to inventories, Russia possesses large stockpiles of depleted uranium or tails which it re-enriches. In 2010, it was estimated that Russia produced seven million pounds of U_3O_8 through re-enrichment of tails. See Ux Consulting, Uranium Market Outlook Q2 2011, page 142 (table B-15 - Non-Traditional Supply Sources 2008-2020). Russia uses capacity to re-enrich depleted uranium tails; however, as noted by the parties, this is not the most economically-viable use of its capacity, in comparison with enriching natural uranium for commercial SWU sales. Thus, in the absence of the Suspension Agreement, we believe it is highly likely that Russia would redirect its enrichment capacity to commercial export sales of uranium products which in turn could be swapped or exchanged for material to be entered into the United States. Further, as noted by the parties, the HEU Agreement currently covers the down-blending of 500 metric tons of HEU material, but it is estimated that Russia maintains an additional inventory of around 900 tons of HEU material. See World Nuclear Association, Supply and Demand, page 107.

In March 2011, the earthquake and tsunami that struck Japan not only destroyed four nuclear reactors in Japan, but was also immediately followed by decisions to take other reactors off line for safety inspections and enhancements and to slow or halt construction of new reactors. The accident has far-reaching consequences for the uranium market. As PRI and Crow point out, the accident has placed, and will continue to place, downward pressure on Japan's demand, and, therefore, effectively restrict the volume of uranium products Russia will be able to sell or deliver to Japanese utilities in the foreseeable future. Also, within Western Europe, certain countries have decided to end their nuclear energy programs altogether or to slow them down considerably as they contemplate whether to continue them in the future, with a potential significant negative impact on global demand. See Ux Consulting, Uranium Market Outlook Q2 2011, page I, 12, 13 and 53. In addition, USEC, PRI and Crow Butte present compelling arguments regarding the restrictions on the imports of Russian uranium in other third-country markets, such as the European Union and Asia. The decreased demand from the Japan nuclear accident and the limited access to other third-country markets makes it even more likely that Russia would redirect its uranium exports to the U.S. market through swaps or other arrangements in the absence of the Suspension Agreement.

It is also clear from the record evidence that the United States is the largest market for uranium products in the world and accounts for approximately a quarter of the world's requirements. In addition, as pointed out by PRI and Crow Butte, U.S. utilities have significant "uncommitted" near term demand. See NAC International, Nuclear Industry Status Report, Section F-1, page 1 and Section F-3, page 54. Further, USEC and PRI and Crow Butte have noted that Tenex, the commercial nuclear sales arm of the Russian nuclear complex, recently opened a U.S. office for its

wholly owned subsidiary TENAM Corp. with the purpose of generating business, and USEC cited press releases and newspaper articles describing Russia's plans to aggressively increase market share in the U.S. market.

Based on the record evidence, we determine that there is a likelihood that Russia would significantly increase its future exports of uranium products through swaps, exchanges, or other arrangements into the U.S. market in the absence of the Suspension Agreement. The U.S. market is unquestionably the largest market in the world for uranium products, and Russia clearly has the world's largest enrichment capacity and a significant production capacity for uranium ore (and these capacities are growing), as well as significant inventories of uranium. These facts, accompanied by the evidence regarding decreased global demand due to the Japanese nuclear disaster and other third-country market restrictions, lead us to conclude that it is highly likely that Russia would seek sales opportunities in the U.S. market for uranium products, including for natural and enriched uranium and/or SWU, if the restrictions of the Suspension Agreement and its significant enforcement tools were no longer in place. Therefore, we find that there is a likelihood that future import volumes of uranium products into the U.S. market, whether directly or indirectly, would increase in the absence of the Suspension Agreement.

b. Future Likelihood of Dumping and Effect on U.S. Market Prices

PRI and Crow Butte's Comments

PRI and Crow Butte assert that uranium remains an extremely fungible commodity with restricted or decreasing demand outside the United States, as noted in the Volume of Imports in Absence of Suspension Agreement Section above. They contend that Russia has made its aggressive pricing practices and interest in expanding its export markets clear and that Rosatom claims to be able to undercut world prices by 30 percent. See Nuclear Society of Russia, Nuclear Exports Trade is Russia's Growing 'Cash Crop', March 14, 2000, (quoting Yevgeni Adamov) and World Nuclear Association, Russia's Nuclear Fuel Cycle, (updated July 2011), page 18, available at <http://www.world-nuclear.org/info/default.aspx?id=28646&lerns=Russia>. In the absence of the Suspension Agreement, given uranium's fungibility and factors limiting demand outside the United States, PRI and Crow Butte argue that large volumes of additional Russian uranium would be quickly directed to the U.S. market. Given these factors, PRI and Crow Butte assert, Russian uranium would quickly be sold at below-market prices in the U.S. market, underselling U.S. producers, depressing U.S. uranium prices, and expanding Russia's already significant market share.

PRI and Crow Butte note that, in its First Sunset Review, the ITC recognized that Russian uranium exports would displace sales of U.S. uranium, conversion and SWU and, in the Second Sunset Review, the ITC observed that there was strong evidence of likely underselling by Russian uranium suppliers. See Uranium from Russia, Ukraine and Uzbekistan, Inv. Nos. 731-TA-539-C, E, and F (Review), USITC Pub. 3334 (Aug. 2000), page 28, and Uranium from Russia, Inv. No. 731-TA-539-C (Second Review), USITC Pub. 3872 (Aug. 2006), page 85.

PRI and Crow Butte maintain that the conditions cited by the Department in its pricing analysis in the First Sunset Review have not changed and that the Department's conclusion in that review, as follows, continues to be true:

. . .absent the Suspension Agreement, imports of Russian uranium and SWU would likely undercut and depress or suppress U.S.-market prices for uranium products. . . {U}ranium is a fungible commodity for which purchasing decisions are based almost exclusively on price. . . {w}e determine in these final results that, due to the fungible nature of uranium products and the likely increase of supply of Russian uranium products into the U.S. market absent the Suspension Agreement, the likely outcome of the termination of the Suspension Agreement would be the decline of prices for uranium products, and a continuation or recurrence of dumping, in the U.S. market” continues to be true.

See Issues and Decision Memorandum for the Sunset Review of Uranium from Russia; Final Results, dated July 5, 2000 (“First Sunset Review Decision Memorandum”) at “Likelihood of Continuation or Recurrence of Dumping.”

USEC’s Comments

USEC contends that Russia’s inventories, its underutilized uranium enrichment capacity, its significant expansion plans, and limits on its ability to look to the European Union or Asia as outlets for Russian LEU production provide compelling evidence that Russia is likely to increase the volume of its exports to the United States if the Suspension Agreement is terminated and, as a result, the Department’s ability to enforce the Domenici Amendment quota is compromised. USEC argues that these increased volumes will put downward pressure on prices. At the same time, USEC notes that there is historic evidence of Russia underselling other uranium producers and points to past statements by the former Atomic Energy Minister of Russia in 2000 that “we shall always supply our fuel at 30% less than western producers” to illustrate Russia’s intentions regarding aggressive pricing. See Suspension Agreement on Uranium from the Russian Federation, Final results of Redetermination Pursuant to Court Remand, Techsnabexport v. United States, Cons. Court No.06-00228, Slip Op. 07-143 (Sept. 26, 2007) (“DOC 2nd Sunset Remand”), page 41 (quoting Nuclear Export Trade is Russia’s Growing ‘Cash Crop, Nuclear Society of Russia (March 14, 2000).

USEC argues that, under the Suspension Agreement, the Department is better equipped (than it is under the Domenici Amendment) with the necessary tools to ensure that the purposes of the quotas are achieved. However, were the Suspension Agreement to be terminated and the Department did not have these tools, USEC contends that Russia could use underselling to pursue a larger share of the U.S. market to replace the volumes of sales lost as a result of the expiration of the HEU contract. According to USEC, the Suspension Agreement mitigates this risk by ensuring that exports of Russian LEU for domestic consumption are limited to the specific quota amounts and are imported only for identified users.

USEC asserts that all of the conditions of competition that led the Department to make an affirmative determination in the First Sunset Review and the Second Sunset Reviews remain true in this review. These conditions included that uranium products were fungible and sold on the basis of price and that the Suspension Agreement has had a stabilizing effect on the U.S. uranium market, among other factors. USEC notes that, in those reviews, the Department concluded, based on these facts, that the most likely outcome of the termination of the Suspension Agreement was an increase in the volume of subject merchandise imported into the United States and that this additional supply would cause prices for uranium products to decline. According to USEC, the Department further concluded in each of these prior reviews that termination of the Suspension Agreement would lead to a recurrence

or continuation of dumping and the Department should reach the same conclusion in this review.

Department's Position

As noted above in the Department's Position under Volume of Imports in Absence of Suspension Agreement, in accordance with 752(c)(2) of the Act, the Department shall also consider such other price, cost, market, or economic factors as it deems relevant when good cause is shown. In this sunset review, as in the First Sunset Review and Second Sunset Review, other factors play a significant role due to the unique nature of the product and industry at issue. In particular, because uranium is a fungible commodity, the potential price effects which may result in the absence of the Suspension Agreement are worthy of consideration in the context of our likelihood determination.

PRI and Crow Butte and USEC have put forth compelling arguments concerning the impact on prices in the U.S. market for both natural uranium and SWU absent the Suspension Agreement. We agree with these parties that, absent the Suspension Agreement, imports of uranium and SWU would likely undercut and depress, or suppress, U.S.-market prices for uranium products. As the parties stated and the Department has consistently agreed, uranium is a highly fungible commodity for which purchasing decisions are based almost exclusively on price. See First Sunset Review Decision Memorandum, Comment 3. Further, section 734(l) of the Act requires that the Suspension Agreement prevent the suppression or undercutting of the price levels of domestic products by imports of the subject merchandise. While the Department previously determined that imports of Russian uranium products limited by the quota limitations in the 2008 Amendment would not cause price suppression or undercutting of domestic uranium prices (see Price Suppression Memo), the Suspension Agreement provides the mechanisms to review and address, possibly via an amendment, potential price suppression or undercutting.² By contrast, the Domenici Amendment legislation provides no such mechanisms either to review or address price suppression or undercutting, and, thus, these mechanisms are not available, absent an act of Congress. Therefore, absent the Suspension Agreement and left only with the Domenici Amendment import limitations, this legal requirement with respect to price levels of domestic products would no longer apply.

The likely outcome of the removal of the restrictions of the Suspension Agreement would be the increase in the availability and supply of Russian uranium products that could be traded through any arrangements, swaps, or other exchanges which resulted in increased availability and supply of uranium products in the U.S. market. Such an increase in supply would, in turn, drive down prices for U.S. uranium products, in addition to any price declines related to the lifting of the requirements of section 734(l), as noted above. The Department has already determined in at least two previous cases that the basic laws of supply and demand suggest that an increase in supply, all else being equal, would be accompanied by downward pressure on prices. See Preliminary Results of Full Sunset Review: Silicomanganese From Ukraine, 65 FR 34440, (May 30, 2000), and accompanying Issues and Decision Memorandum, and also Preliminary Results of Five-year Sunset Review of Suspended Antidumping Duty Investigation on Ammonium Nitrate from the Russian Federation, 70 FR 61431 (October 24, 2005), and accompanying Issues and Decision Memorandum (Ammonium Nitrate from Russia). In Ammonium Nitrate from Russia, the Department found that "removal of the Suspension Agreement on ammonium nitrate from Russia will likely cause Russian producers to

² Interested parties may request a review of the Suspension Agreement under 19 C.F.R. 351.213.

increase import levels of ammonium nitrate in the U.S. market and lower their prices.”

Therefore, we find that, due to the fungible nature of uranium products, the lifting of the requirements of section 734(l), and the likely increase of supply of uranium products into the U.S. market absent the Suspension Agreement, the likely outcome of termination the Suspension Agreement would be the decline of prices for uranium products, and a continuation or recurrence of dumping, in the U.S. market.

2. Magnitude of Margin Likely to Prevail

PRI and Crow Butte’s Comments

PRI and Crow Butte state that, in accordance with the SAA and the Department’s own Policy Bulletin, and as in the First Sunset Review and Second Sunset Review, the Department should provide the ITC with the margin of 115.82 percent from the preliminary determination which is the only margin on the record in the underlying investigation on uranium from Russia and the only margin that reflects the Russian exporters’ behavior without the discipline of a suspension agreement in place. See SAA, page 890 and Policies Regarding the Conduct of Five-Year (“Sunset”) Reviews of Antidumping and Countervailing Duty Orders: Policy Bulletin, 63 FR 18873. PRI and Crow Butte assert that the Department cannot select a more recently calculated rate because there are no other rates from which the Department could select; no administrative reviews of the Suspension Agreement have been subsequently completed, and the investigation never reached the final stage. Therefore, the margin of 115.82 percent from the preliminary determination is the only appropriate margin for the Department to provide to the ITC.

USEC’s Comments

USEC maintains that Russia alone inherited all of the USSR’s enrichment capacity when it dissolved, thus assuming the mantle of the margin for the suspended investigation. USEC states that, while Russia is now considered a market economy for the Department’s purposes, the uranium sector in Russia is still state-owned and controlled, much as it was in the Soviet era. Therefore, USEC asserts that, while Russia has undergone dramatic changes, those changes have not impacted the likelihood of dumping of uranium products as much as they might have done for other industries in Russia. USEC believes that, if anything, the changes in the form of consolidation of uranium production and sales make it more likely that Russia would sell at dumped prices.

USEC contends that in its preliminary determination in 1992, the Department found that uranium from Russia was being dumped at a margin equal to 115.82 percent. See 1992 Preliminary Determinations, at 23,380. USEC notes that no Russian entity has requested an administrative review or provided information in a sunset review to enable the calculation of a new margin and that political and economic changes in Russia have not invalidated the basis for this margin. Accordingly, as in the First Sunset Review and Second Sunset Review, USEC argues that the 115.82 percent margin is what the Department should determine is the dumping margin likely to prevail if the Suspension Agreement were terminated.

Department’s Position

The Department normally will provide to the ITC the margin that was determined in the final determination in the original investigation. In addition, where the Department did not issue a final

determination because the investigation was suspended and continuation was not requested, we may use the margin that was determined in the preliminary determination in the original investigation.

Therefore, because it is the only Department-determined margin on the record of this proceeding, we find that the margin determined in the original investigation is probative of the behavior of Russian manufacturers/exporters of the subject merchandise were the Suspension Agreement to be terminated. As such, the Department will report to the ITC the rate from the original underlying investigation as the magnitude of the margin likely to prevail if the Suspension Agreement were terminated.

Recommendation:

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of review in the Federal Register.

Agree Disagree



Paul Piquado
Assistant Secretary
for Import Administration



Date