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Sunset Review
Public Document

MEMORANDUM TO: David M. Spooner
Assistant Secretary
for Import Administration

FROM: Joseph A. Spetrini
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SUBJECT: Issues and Decision Memo for the Sunset Review of the
Agreement Suspending the Antidumping Investigation on Uranium
from the Russian Federation; Preliminary Results

Summary:

We have analyzed the substantive responses and rebuttals of interested parties in the sunset review of the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation (Suspension Agreement). See Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation, 57 FR 49235 (October 30, 1992) (Suspension Agreement). 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 preliminary results of full sunset review for which we received comments and rebuttals by parties:

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 of Commerce (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) (56 FR 63711). On December 10, 1992, the Department received a letter of appearance on behalf of Technabexport Ltd. (TENEX), NUXCO Trading Corporation (NUXCO) and Global Nuclear Services and Supply Ltd. (GNSS). 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, the Russian Federation, 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 (57 FR 23380).

On October 30, 1992, the Department suspended the antidumping duty investigations involving uranium from Kazakhstan, Kyrgyzstan, the Russian Federation, 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 Antidumping; Uranium from Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Ukraine, and Uzbekistan; Suspension of Investigations and Amendment of Preliminary Determinations, 57 FR 49220 (October 30, 1992). The Department also amended its preliminary determination to include highly-enriched uranium (HEU) in the scope of the investigations (57 FR 49220, 49235).

The first amendment to the Russian 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. Id.

The Suspension Agreement was amended a second time, effective on October 3, 1996. The Department and Government of Russia agreed to: (1) permit the sale in the United States of Russian low-enriched uranium (“LEU”) derived from HEU, making the suspension agreement consistent with the USEC Privatization Act; (2) restore previously unused quotas for SWU, and (3) include within the scope of the suspension agreement Russian uranium which has been enriched in a third country. See Amendments to the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation, 61 FR 56665 (November 4, 1996).

According to the amendment, these modifications would remain in effect until the date two years after the effective date of this amendment. Id. 61 FR at 56667.

A third 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 matched sales in that the Department would, effective immediately, use a calendar year quota accounting rather than the previously-used delivery year quota accounting. 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 Notice of 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 antidumping duty suspension agreement would likely 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). On August 22, 2000, the Department published a notice of continuation of the suspension of the antidumping duty investigation on uranium from Russia 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).

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, 2005, the Department of Commerce (“Department”) initiated the second sunset review of the Suspension Agreement pursuant to section 751(c) of the Tariff Act of 1930, as amended (“the Act”). See Notice of Initiation of Five-Year (“Sunset”) Reviews, 70 FR 38101 (July 1, 2005) (Sunset Initiation). The merchandise covered by this order is natural uranium in the form of uranium ores and concentrates; natural uranium metal and natural uranium compounds; alloys, dispersions (including cermets), ceramic products, and mixtures containing natural uranium or

natural uranium compound; uranium enriched in U235 and its compounds; alloys dispersions (including cermets), ceramic products and mixtures containing uranium enriched in U235 or compounds or uranium enriched in U235; and any other forms of uranium within the same class or kind. We invited parties to comment.

On July 18, 2005, we received Notices of Intent to Participate on behalf of Power Resources, Inc. (PRI) and Crow Butte Resources, Inc. (Crow Butte), U.S. producers of natural uranium; USEC Inc. and its subsidiary United States Enrichment Corporation (collectively, USEC), a U.S. producer of uranium products covered by the scope of the suspended investigation and the only U.S. enricher; and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied-Industrial and Service Workers International Union, AFL-CIO, CLC (USW), a domestic interested party.¹

On July 26, 2005, the Department extended the deadline for all interested parties to submit substantive responses from July 31, 2005 to August 30, 2005 and the deadline for rebuttal comments to September 6, 2005. See Memorandum from Sally C. Gannon to Interested Parties.

On August 30, 2005, the Department received complete substantive responses to the Sunset Initiation from USEC, a U.S. producer primarily of enriched uranium hexafluoride (i.e., LEU), and PRI and Crow Butte, U.S. producers of natural uranium. On August 30, 2005, the Department also received a complete substantive response to the Sunset Initiation from the Ad Hoc Utilities Group (AHUG)², which is comprised of owners and operators of nuclear power plants that procure Russian uranium feed and contract for uranium enrichment services (i.e., SWU).³

¹ USW notes that it is the successor-in-interest to the Paper, Allied-Industrial, Chemical & Energy Workers International Union, AFL-CIO, CLC (PACE), following a merger of the two unions on April 12, 2005. Furthermore, USW notes that PACE was the successor-in-interest to the Oil, Chemical and Atomic Workers International Union (OCAW), the original co-petitioner in the antidumping duty investigation, following a merger with the Paperworkers International Union in January 1999.

² The Department does not consider AHUG an interested party, as defined in section 771(9) of the Act and 19 CFR § 351.312, because its members are not foreign manufacturers, producers, or exporters, or the United States importers, of subject merchandise. However, because AHUG is an industrial user of the subject merchandise, the Department is considering AHUG's comments in this sunset review. See Memorandum from Sally C. Gannon to Ronald K. Lorentzen entitled "Sunset Review of Uranium from the Russian Federation: Adequacy of Domestic and Respondent Interested Party Responses to the Notice of Initiation and Decision to Conduct Full Sunset Review" (January 17, 2006).

³ The following companies are members of AHUG: Ameren UE, Arizona Public Service, Constellation Energy Group, Inc., Dominion Energy Kewaunee, Inc., Dominion Nuclear

The Department did not receive a substantive response to the Sunset Initiation from the Ministry of the Russian Federation for Atomic Energy (MINATOM), the original Russian government signatory to the Suspension Agreement, its successor agency, the Russian Federal Atomic Energy Agency (Rosatom), or any Russian exporter of subject merchandise. On September 9, 2005, USEC and AHUG submitted rebuttal comments regarding the August 30, 2005 substantive responses.

On November 10, 2005, the Department determined that the sunset review of the Agreement was extraordinarily complicated and required additional time for the Department to complete its analysis. Therefore, the Department extended the deadlines in this proceeding, stating that it intended to issue either the preliminary results of the full sunset review on January 17, 2006, and the final results on May 30, 2006, or the final results of the expedited review on January 27, 2006. See Extension of Time Limit for Sunset Review of the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation, 70 FR 68397 (November 10, 2005) (Review Extension).

On January 13, 2006, AHUG submitted a letter to the Department with respect to recent court actions which occurred in the case of Eurodif v. United States (U.S. Court of Appeals for the Federal Circuit (CAFC) Case Nos. 01-1209, -1210 (Fed. Cir. 2004)) (Eurodif). In its letter, AHUG states that the Department should remove SWU transactions from the scope of this Russian sunset review and the underlying restrictions imposed on uranium from Russia to be consistent with the CAFC's legal holdings in Eurodif v. United States and the direction of the U.S. Court of International Trade (CIT) on remand to the Department.

On January 17, 2006, the Department determined that it would conduct a full sunset review in this case. See Memorandum from Sally C. Gannon to Ronald K. Lorentzen entitled "Sunset Review of Uranium from the Russian Federation: Adequacy of Domestic and Respondent Interested Party Responses to the Notice of Initiation and Decision to Conduct Full Sunset Review" (January 17, 2006). The Department also determined on January 17, 2006, that it needed an additional 30 days to complete the preliminary results of this full sunset review. See Extension of Time Limit for Sunset Review of the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation, 71 FR 3824 (January 24, 2006). On January 26, 2006, the Department notified the ITC of its decision to conduct a full review. See Letter from Sally C. Gannon to Robert Carpenter (January 26, 2006). On February 24, 2006, the Department extended the deadline for the preliminary results of this sunset review by an additional 35 days, until no later than March 24, 2006. See Extension of Time Limit for Sunset Review of the Agreement Suspending the Antidumping Investigation on Uranium from the

Connecticut, Inc., Duke Energy Corp., Entergy Services, Inc., Exelon Corp., Florida Power & Light Co., FPL Energy Seabrook, LLC, Nebraska Public Power District, Nuclear Management Company, Pacific Gas & Electric Company, PPL Susquehanna, LLC, Progress Energy Carolinas, Inc., Progress Energy Florida, Inc., Southern California Edison Co., Southern Nuclear Operating Co., and TXU Generation Company LP, Virginia Electric & Power Co.

Russian Federation, 71 FR 9522 (February 24, 2006).

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.

Below we address the comments and rebuttals of interested parties.

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 argue that, in the absence of the Suspension Agreement, Russia would significantly increase its exports to the United States. They contend that the imports of low-enriched uranium (LEU) blended down from highly-enriched uranium (HEU) pursuant to 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), and permitted by the Suspension Agreement, have captured a substantial share of the U.S. nuclear fuel market, both with respect to natural uranium and SWU demand. PRI and Crow Butte maintain that an equilibrium has been reached as the market has both factored in these supplies and discounted the uncertainty that large additional Russian stockpiles would find their way into the U.S. market, causing the disruption that ensued in the early 1990s when massive Russian inventories entered the U.S. commercial marketplace.

PRI and Crowe Butte further argue that, because the Suspension Agreement is a critical aspect of the stabilizing regime currently in place, its termination would undoubtedly disrupt the U.S. uranium market, threaten the current recovery of the domestic uranium industry, and undermine the operation of the HEU Agreement which has been so important for the market's stability. They first maintain that the Suspension Agreement ensures that any Russian uranium stockpiles in addition to the weapons-grade material currently covered by the HEU Agreement will only enter the U.S. market in accordance with the Suspension Agreement requirements and that these significant additional quantities of HEU-derived material would rapidly be available for sale in the U.S. market absent the Suspension Agreement. According to PRI and Crow Butte, the

availability of this material, which they indicate is believed to be approximately 900 tons of HEU, in the U.S. market, would have a significant and negative impact on prices, market perceptions and the fragile recovery of the U.S. mining sector without the discipline of the Suspension Agreement.

PRI and Crow Butte argue that, secondly, there are other significant sources of Russian uranium available for shipment to the United States, in addition to weapons grade uranium, including stockpiles of uranium tails. They note that these stockpiles are believed to contain 545,000 tons of depleted uranium and are reported to be substantially in the form of UF₆, leaving open all options for future use. PRI and Crow Butte further argue that enrichment of tails is an economically viable production option for Russia because of its extremely large and highly underutilized enrichment capacity. They maintain that, with the added SWU capacity from Russia's planned increases in enrichment capacity in the near term, Russia will be able to produce even more commercial uranium products from depleted tails, which will further add to its available export volume to the United States in the absence of the Suspension Agreement. PRI and Crow Butte further contend that Western European enrichers have been shipping, and are expected to continue shipping, substantial quantities of their depleted uranium tails to Russia in recent years and that these tails are predominantly used to produce natural uranium and some LEU, which further increases the availability of commercial uranium in Russia for export to the United States. They further note that an industry analyst has estimated that Russia is currently able to produce 14 million pounds of U₃O₈ annually via its re-enrichment of tails and that this figure will increase to 18 million pounds of U₃O₈ by 2010.

PRI and Crow Butte next argue that Russia has the largest enrichment capability in the world, amounting to 45 percent of the total world's enrichment capacity, and is the world's largest producer of enriched uranium. They further contend that Russia's enrichment plants are currently undergoing a program of modernization and replacement, with older centrifuges being replaced with newer, higher output centrifuges. They note that this modernization is projected to result in an increase of 25 to 30 percent in Russia's total plant output by 2010, indicating that Russia's SWU capacity will grow from 20 to 26 million SWU. PRI and Crow Butte argue, however, that even though under the HEU Agreement and the Suspension Agreement, Russian enrichment already accounts for almost 40 percent of U.S. enrichment deliveries, Russian enrichment capacity is significantly underutilized from a commercial standpoint. They note, in support, that domestic demand for Russia's enrichment accounts for less than approximately 15 percent of its current enrichment capacity and that commercial export sales are estimated to total 7.8 million SWU, including the 5.5 million SWU to be delivered under the U.S.-Russia HEU Agreement.

PRI and Crow Butte argue that, although Russia is currently believed to be using its remaining enrichment capacity to re-enrich depleted uranium tails, if Russia could export additional enriched uranium, enrichment of tails would not be the most economically beneficial use of Russia's enrichment capacity. They maintain that, since re-enrichment of tails produces a significantly lower volume of enriched uranium product per SWU than enriching natural

uranium, at least some of Russia's current enrichment capacity would quickly be re-directed to enriching additional natural uranium for commercial export if Russia gained unrestricted access to the U.S. market. PRI and Crow Butte further argue that, because of Russia's massive enrichment capacity, Russia is highly-motivated to make commercial enrichment sales, to be delivered in the form of LEU, in the United States beyond those under the HEU Agreement. Therefore, according to PRI and Crow Butte, there is a significant likelihood of large-scale shipments of Russian-enriched uranium to the United States in the absence of the Suspension Agreement which would displace U.S. uranium sales and depress prices to the detriment of U.S. industry.

PRI and Crow Butte contend that, without the Suspension Agreement in effect, restrictions in other third-country markets, such as the European Union and Asia, would shift any additional Russian supply to the U.S. market, threatening ongoing investment and production by the U.S. industry. Citing to the ITC's report in the first sunset review, they note that the ITC recognized then that termination of the investigation would likely result in increased exports to the United States due to barriers to the entry of Russian uranium into Europe by the Euratom Supply Agency (EURATOM). PRI and Crow Butte contend that the European market continues to be protected by quantitative restrictions which limit imports of enriched uranium to about 20 percent of the European market. They also contend that, although Japanese nuclear utilities have begun purchasing some Russian-origin enriched uranium, barriers to Russian supply in Japan still exist given the absence of a formal nuclear cooperation treaty.

According to PRI and Crow Butte, these third-country restrictions are significant, first, because the United States currently accounts for 29 percent of the world's uranium demand and is the largest single uranium market in the world. They maintain that, between 2006 and 2010, the United States is projected to account annually for 37 to 49 percent of the world's *uncommitted* U3O8 demand, leaving the U.S. market as an extremely vulnerable target for increased Russian exports in the absence of the Suspension Agreement. Second, PRI and Crow Butte argue, if the Suspension Agreement were to be terminated, with import restrictions in place for Russian uranium in the two largest markets outside of the United States (the European Union and Japan), Russia would be driven by its large excess capacity to target the U.S. market. Third, they contend that, even without restrictions in third countries, the United States is unquestionably the most attractive market for Russian uranium in the near term because U.S. utilities contract for fuel supply on a much shorter-term horizon than buyers in Europe and Asia. Therefore, according to PRI and Crow Butte, because U.S. utilities have significantly greater uncommitted near-term demand, they would quickly purchase lower-priced Russian supply, making the U.S. market likely the primary and immediate focus for Russian exports in the absence of the Suspension Agreement.

PRI and Crow Butte further argue that the Department should consider the negative impact of terminating the Suspension Agreement on the HEU Agreement and the consequent destabilizing impact such termination would have on the market. First, PRI and Crow Butte point out that as the most important non-proliferation initiative, the HEU Agreement is intertwined in a number of

respects with the Suspension Agreement. According to PRI and Crow Butte, the Suspension Agreement was amended in 1996 to ensure that HEU feed could be delivered into the United States without violating the Suspension Agreement and that this feed could be used in matched sales transactions. Additionally, PRI and Crow Butte note that the USEC Privatization Act similarly references the Suspension Agreement, and allows for disposition of HEU feed under the terms of the Suspension Agreement.

Second, PRI and Crow Butte point out the legal inter-relationship between the HEU Agreement and the Suspension Agreement. They contend that the USEC Privatization Act constituted a “statutory amendment” to the Suspension Agreement, which was in turn amended to be consistent with the law. Furthermore, PRI and Crow Butte explain that in the USEC Privatization Act, Congress gave the Department the authority to administer the HEU quotas, and the Department included in its amendment to the Suspension Agreement the requirement that shipments permitted under the HEU Agreement and the USEC Privatization Act be reported to the Department.

Third, PRI and Crow Butte contend that the HEU Agreement has been instrumental in bringing stability to the market, while at the same time creating a significant and predictable market presence for Russian uranium products. PRI and Crow Butte allege that the HEU Agreement creates market stability only because it is a large exception to the limits of the Suspension Agreement. In the absence of the Suspension Agreement, PRI and Crow Butte point out, the increased sales that Russia will almost certainly make outside of the HEU Agreement will undermine the stabilizing influence of the HEU Agreement. Moreover, PRI and Crow Butte avouch that it is likely to undermine the operation of the HEU Agreement itself, as the “exception” created by the Suspension Agreement will no longer be necessary.

In conclusion, PRI and Crow Butte state that the Department must recognize the likely effects of termination of the suspended investigation on the operation of the HEU Agreement, and the consequent negative impact on the U.S. uranium market. In their view, the termination of the suspended investigation would end the equilibrium that has been carefully achieved, resulting in sales of large quantities of Russian uranium in the U.S. market at less than fair value.

USEC’s Comments

USEC argues that Russia is the world’s largest producer of enriched uranium, with an enrichment capacity representing approximately 45 percent of the world level and estimated to be around 20 million SWU per year. It further argues that Russia’s enrichment capacity is underutilized since Russia’s internal demand for enriched uranium is comparatively low (in the range of 2.5 to 3 million SWU) and Russia has committed slightly more than 5 million SWU per year to third-country exports. In addition, according to USEC, Russia utilizes approximately 4 million SWU to re-enrich depleted uranium tails for use in down-blending HEU for delivery to USEC. Regarding Russia’s remaining capacity, USEC contends that it is used to re-enrich tails under commercial contracts and also to produce the equivalent of natural uranium for Russia’s own

UF6 stockpiles. However, USEC explains that this is not the most economic use of Russia's capacity when compared with commercial SWU sales, which are in the range of \$80-\$90 per SWU.

USEC states that its analysis of Russian production capacity and current requirements demonstrates that Russia could, and likely would, re-direct up to 6.8 million SWU of annual enrichment capacity from domestic tails re-enrichment activities (not including the production of HEU down-blending material) to the production of commercial-grade LEU for export primarily to the United States if the Suspension Agreement were terminated today. According to USEC, this represents about 52 percent of the total annual U.S. consumption which is a substantial volume of subject merchandise. USEC further maintains that, if TENEX's contracts for re-enriching tails were discontinued, an estimated 2.2 million additional SWU would be freed up, and Russia's stated increase in capacity to 26 million SWU by 2010 would add another five million SWU for commercial LEU production. In total, USEC maintains that, by 2010, Russia could have an additional 14 million SWU of capacity available for LEU exports to Western and other markets. USEC further argues, however, that if Russia continued to use its excess enrichment capacity to produce equivalent natural uranium through the re-enrichment of tails, it would be able to sell this additional volume of natural uranium in the United States; therefore, according to USEC, whether Russia uses its excess enrichment capacity to produce equivalent natural uranium (through tails stripping) or LEU (through the enrichment of natural uranium), it clearly has the capacity to produce a substantial quantity of subject merchandise.

USEC next argues that Russia maintains massive inventories of uranium products which are sufficient to permit it to increase its exports to the United States substantially in the absence of the Suspension Agreement. USEC states that Russia is believed to have inherited 1,400 metric tons of HEU at the break-up of the Soviet Union, which will leave 900 metric tons remaining inventory after the blending down of 500 metric tons pursuant to the HEU Agreement. USEC notes that the natural uranium contained in this quantity of HEU is 288 million KgU as UF6, and the enrichment component exceeds 166 million SWU. USEC notes that the Department must take these huge inventories into account as it assesses future subject import volumes in this sunset review.

USEC further argues that Russia is investing in new uranium production capacity even though its current production capacity is underutilized. USEC notes, with respect to LEU, that Russia has announced plans to increase its capacity by 2010 by 30 percent, to 26 million SWU per year, but that world consumption of uranium products is projected to remain flat. Therefore, according to USEC, Russia will need to supplant existing suppliers in order to sell this increased output and will likely move quickly to secure sales if the Suspension Agreement were terminated. USEC also contends that all indications point to Russia increasing its natural uranium production significantly from current levels in the near and longer term. USEC further argues that Russia has a clear need to make export sales because of its weak economy and need to generate hard currency earnings. USEC maintains that, in the past, Russia's uranium industry relied on hard currency derived from its uranium exports (particularly of LEU) during difficult economic times

and that commentators have recently reiterated the ongoing significance of these hard currency exports to the Russian uranium industry.

USEC contends that Russia faces export restrictions in third-country markets and will almost certainly look to the United States, which currently has the greatest amount of open demand, to generate needed exports. Furthermore, USEC states, the likelihood that Russian uranium exports would be targeted toward the United States is all the greater because Russia continues to face restrictions in the other major uranium markets in Europe and Asia. USEC notes that the policy of EURATOM limits the amount of uranium material originating from Russia that can be purchased by European utilities. In addition, USEC states that important countries in the Asian market also restrict imports of Russian uranium products. USEC notes that Japan and Russia have ongoing territorial disputes and no formal nuclear cooperation treaty; according to USEC, relatively small-volume sales of Russian-origin material have been made to Japanese customers but at discounted prices to market. USEC further contends that Russia's ability to make sales in South Korea is limited by utility restrictions and that direct sales of Russian-enriched uranium products to Taiwan, another major Asian consumer of nuclear fuel, are opposed.

AHUG's Comments

Regarding volume of imports, AHUG argues that, in this case, the Department cannot find likelihood of continued dumping based on its practice of evaluating whether import volumes declined significantly after the issuance of an order or suspension agreement. According to AHUG, the Suspension Agreement currently blocks all sales of commercially-produced Russian uranium and only two provisions continue to authorize imports—the re-export provision and the provision for imports of SWU associated with the LEU blended down from HEU. AHUG contends that, in the first sunset review, the Department considered the volume of imports in making its likelihood determination and concluded that volume would not be a good indicator of likelihood because suspension agreements are unique. AHUG further contends that, because the Suspension Agreement now serves as a ban on all commercial sales of uranium, there is no volume data for the Department to presently evaluate, other than HEU-derived SWU and HEU feed sales pursuant to the HEU Agreement and the USEC Privatization Act quota, respectively. Thus, AHUG contends, the Department cannot now rely on declining volumes as a justification for finding likelihood of continued dumping, and revocation of the Suspension Agreement would not lead to the continuation or recurrence of dumping.

AHUG's Rebuttals

AHUG responds to PRI's and Crow Butte's claim that removal of the restrictions of the Suspension Agreement would negatively impact their still-fragile recovery in the last year by stating that the restrictions on Russian uranium have had no impact on the recovery of the U.S. mining industry and that such a recovery will continue regardless of the removal of the restrictions. According to AHUG, the recovery of the U.S. miners is attributable to completely unrelated events, including the lack of production in relation to demand, problems at individual

mines which have been large supply sources in the past, speculation on the spot market, and dwindling secondary supply sources. AHUG further contends that Cameco (the owner of PRI and Crow Butte) has indicated there will be a shortfall by 2015 of 1.4 billion pounds of uranium, or 35 percent of world demand, and, even if all potential supply sources were tapped (including the HEU stockpiles), there would still be a shortfall of 500 million pounds.

AHUG rebuts the claims by PRI, Crow Butte and USEC that Russia has the motive and means to dump large amounts of Russian uranium in the U.S. market, stating that this is totally unsupported and is inconsistent with Russia's actions to date. AHUG contends that Russia has not used the existing quota available to it for supply to the U.S. market of Russian HEU feed under the USEC Privatization Act. According to AHUG, Russia recently declined to renew an option available to the "Cogema/Cameco/Nukem consortium" that would have provided additional supply of HEU feed material that could have been exported to the United States under the quota. In addition, AHUG contends that Russia terminated its HEU feed supply contracts with GNSS and only renewed those contracts with the U.S. utility customers for the duration of that original supply obligation because TENEX needs the material for its own demand.

AHUG disputes PRI's and Crow Butte's claim that the uranium market has reached an equilibrium, and that removal of the restrictions on Russia would undermine it, by stating that its members do not view the tripling of the uranium price in a year and a half as an "equilibrium" in the market. Instead, AHUG, contends, if the price continues at this level, it is leading to an increase in fuel costs of \$1 billion annually in the U.S. market at a time when energy costs are reaching all-time highs. AHUG argues that there is no basis to continue artificial market barriers on Russian uranium because the "equilibrium" in price levels is due to factors unrelated to the restrictions on Russia.

AHUG disagrees with PRI, Crow Butte and USEC that Russia has limitless capacity to produce uranium and SWU that it would then dump in the U.S. market. AHUG states that the assertion that tails re-enrichment is an economically-viable production option for uranium is incorrect because, given the market price of SWU, the opportunity cost of choosing to use SWU capacity for uranium production results in uranium produced through tails re-enrichment costing per pound almost double the current market price of uranium. AHUG further argues that Russia cannot use the same SWU capacity to re-enrich tails and to enrich existing uranium and, thus, the extent of the impact of tails re-enrichment and SWU overcapacity is vastly overstated by PRI, Crow Butte and USEC.

AHUG contends that claims that Russia could produce all necessary uranium from tails material, HEU stockpiles and other sources, without newly-mining uranium in Russia or importing from other countries, are baseless. According to AHUG, supplies of tails within Russia and from other countries are limited, and Russia has only one working uranium mine, which does not even satisfy its existing domestic demand. AHUG argues that, without the foreign tails or newly-mined uranium, Russia cannot blend down the HEU stockpile, from which it is required to supply material under the HEU Agreement. AHUG further argues that Russian down-blending

capacity is limited and would require significant investment and several years to increase capacity beyond the 500 metric tons currently covered by the HEU Agreement. In addition, AHUG maintains, even if this capacity is increased, it would not be “dumped” into the U.S. market but would be used to further the non-proliferation goals of the United States and the International Atomic Energy Agency by providing enriched uranium to other countries as an inducement to them to forgo their development of enrichment and reprocessing facilities. Therefore, according to AHUG, the claim that Russia has the motive or means to produce large quantities of enriched uranium for sale to the United States is wholly unsupported by any factual analysis.

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.

Regarding the volume of imports for the period before and after the suspended investigation, we agree with AHUG that it is not appropriate for the Department to find likelihood of continued dumping in this sunset review based on evaluating whether import volumes declined significantly after the issuance of the suspension agreement. The Suspension Agreement currently allows for imports, under Section IV.M, of down-blended HEU pursuant to the HEU Agreement and imports, under Section IV.H, of uranium products which will be re-processed and re-exported. The volumes of the imports of down-blended HEU are governed by the terms of the HEU Agreement and allowed entry pursuant to the Suspension Agreement, which states in

Section IV.M that “[t]his Agreement in no way prevents the Russian Federation from selling directly or indirectly any or all of the HEU in existence at the time of the signing of this Agreement and/or low enriched uranium (“LEU”) produced in Russia from the HEU. . .” (emphasis added). 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 but then must be re-exported; thus, these imports are not for consumption in the U.S. market. For these reasons, 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 first note that we agree with PRI and Crow Butte’s statements with respect to the stabilizing effect that the Suspension Agreement, and its inter-relationship with the HEU Agreement, has had on the U.S. uranium market since its issuance. The Suspension Agreement has provided a vehicle through which Russia’s down-blended HEU material, pursuant to the HEU Agreement, can enter the U.S. market in an orderly and predicatable manner (in addition to the other uranium products allowed entry over the years under the various quota provisions of the Suspension Agreement). Also inter-related, is the measured entry into the U.S. market of returned HEU feed pursuant to the USEC Privatization Act. In the absence of the Suspension Agreement, we believe that the increased commercial sales of uranium products that Russia would almost certainly direct to the U.S. market would undermine this stabilizing influence and also potentially jeopardize the continued effectiveness of the HEU Agreement because additional commercial sales may be more financially and economically attractive overall to Russia.

With respect to the issue of future volumes of imports, we have considered the compelling arguments and evidence placed on the record by the parties regarding Russia’s massive inventories of HEU material and its huge enrichment capacity. 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 “The Global Nuclear Fuel Market: Supply and Demand 2003-2025,” World Nuclear Association (2003), at 107 (Supply and Demand). In addition, it is also evident that Russia is the largest enricher in the world, with an estimated capacity ranging from 20 to 23 million SWU per year. See “Current State and Perspectives on the Development of the Russian Enrichment Industry and Its Impact on the World Uranium Market,” V.M. Korotkevich (Department of Nuclear Fuel Cycle, MINATOM), A.P. Knutarev, G.S. Soloviev (Ural Electrochemical Integrated Plant) (2003), at 3. See also “Another Mountain: The Tails Aspect of Secondary Supply,” RWE Nukem (July 2005), at 8 (Another Mountain). Russia has also made clear that it is planning to increase this capacity by around 6 million SWU, to approx. 26 million SWU, by 2010. See Another Mountain, at 9. See also Supply and Demand, at 143.

In contrast to Russia’s large enrichment capacity and inventories of material, the arguments and evidence presented indicate that Russia’s domestic demand for SWU is quite low in relation to its capacity, i.e., around 2.5 to three million SWU. See “NAC’s Nuclear Industry Status Report -

Enrichment,” NAC International (February 2005), Sect. F-3 at 27. In addition, as USEC indicated, Russia will utilize slightly more than five million SWU for third-country exports, and it uses around four million SWU to re-enrich tails for use in down-blending HEU for delivery to USEC. See USEC’s August 31, 2005, Substantive Response, at 13. Russia evidently is using its remaining 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.

There are also indications that Russia will increase its mining of uranium in the coming years. See Supply and Demand, at 100. See also “The Russian Nuclear Industry: The Need for Reform,” Bellona Report Volume 4 (2004), at 35. Given this evidence and the estimations of Russia’s massive HEU inventories and its capacity for the re-enrichment of tails, we disagree with AHUG’s assertion that Russia’s underutilization of the HEU feed quota (pursuant to the USEC Privatization Act) is indicative that Russia will not redirect uranium exports to the U.S. market in the absence of the Agreement. Sales of the HEU feed quota material are made not only by Russia, but by agents designated by Russia to make such sales, and these sales of feed may be made for consumption both inside and outside of the United States; therefore, we do not agree that whether or not Russia fully utilizes the HEU feed quota in the United States necessarily indicates that it will *not* direct natural uranium exports to the United States 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 offers the most sales opportunities with respect to open demand in the near to mid-term. See “The World Uranium Industry and Market,” TradeTech Report (June 2004), at 5-7 and 10. See also Another Mountain, at 12. In addition, USEC, PRI and Crow Butte present compelling arguments regarding the restrictions on the imports of Russian uranium in third-country markets, such as the European Union and Asia, which make it even more likely that Russia would redirect its uranium exports to the U.S. market in the absence of the Suspension Agreement. While AHUG argues that Russia would instead re-direct its exports to further the non-proliferation goals of the United States and the International Atomic Energy Agency, by providing enriched uranium to other countries as an inducement to them to forgo their development of enrichment and reprocessing facilities, it provides no evidence to support this contention.

Based on the record evidence, we preliminarily determine that there is a likelihood that Russia would significantly increase its future exports of uranium products 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 both a large stockpile of HEU to be used for down-blending as well the world’s largest capacity to produce enriched uranium (and this capacity is growing). These facts, accompanied by the evidence regarding third-country market restrictions, lead us to preliminarily 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 were no longer in place. Therefore, we preliminarily find that there is a likelihood that future import volumes of Russian uranium products into the U.S. market would increase in the absence of the Suspension Agreement.

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

PRI's and Crow Butte's Comments

PRI and Crow Butte argue that all available information indicates that uranium from the Russian Federation would significantly undercut the price of U.S.-produced uranium if the suspended investigation were terminated. Citing to the ITC's and the Department's findings in the first sunset review, PRI and Crow Butte argue that uranium remains a fungible commodity that is extremely sensitive to changes in price. Therefore, according to PRI and Crow Butte, because demand for uranium is generally stable, and significant volumes of Russian uranium would be directed to the U.S. market absent the discipline of the Suspension Agreement, Russian uranium would quickly be sold at below-market values in the United States, undercutting and depressing U.S. uranium prices, and expanding Russia's already significant U.S. market share.

PRI and Crow Butte also argue that the market provides highly probative evidence of the likely effects of Russian uranium exported to the United States in the absence of the Suspension Agreement. According to PRI and Crow Butte, Russian uranium is traded widely internationally at prices below the price of uranium from other sources. Specifically, PRI and Crow Butte cite industry publications which continue to report on a weekly basis a "restricted" and "unrestricted" price for SWU. According to PRI and Crow Butte, these industry publications apply the "unrestricted" prices to Russian separative work units (SWU) and this price is consistently about 20 percent below the restricted market price. PRI and Crow Butte state that the lower prices seen in the international marketplace are consistent with Russia's stated intention concerning its pricing practices, about which PRI and Crow Butte quote the former Russian Minister for Atomic Energy stating that Russia would always be able to supply its fuel at 30 percent less than Western producers.

According to PRI and Crow Butte, the suppression of U.S. prices will be a certain result of the very large volumes of uranium that will be exported to the United States because the Russian uranium will enter as enriched uranium, thus displacing sales of U.S. uranium, conversion, and SWU. Further, PRI and Crow Butte argue that the termination of the Suspension Agreement would lead to price suppression and undercutting, the undermining of the U.S.-Russia HEU Agreement, and result in the destabilization of the market. As support for its argument, PRI and Crow Butte cite the Department's position in first sunset review, in which it stated that termination of the Suspension Agreement would increase the availability of Russian uranium in the U.S. market and result in a decrease in prices.

USEC's Comments

USEC argues that, as the Department and the ITC concluded in the first sunset review, uranium products are fungible products that trade principally on the basis of price. Further, citing to the ITC's report in the first sunset review, USEC points out that the ITC noted that uranium of any form is substitutable, for the most part, with uranium of the same form produced elsewhere in the world. Thus, according to USEC, given the intense pressure in the nuclear fuel market, the lowest price will almost always win the sale as product characteristics, other than price, are generally unavailable to distinguish between products. According to USEC, as the costs of operating nuclear power plants increase, nuclear facilities will have increased incentives to obtain lower-priced uranium products.

USEC also argues that industry analysts have consistently reported that Russian uranium products undersell comparable Western uranium products, thus providing evidence of the likelihood of Russian producers to undersell producers in the U.S. uranium industry if the Suspension Agreement were terminated. According to USEC, the imposition of antidumping restrictions on uranium imports from Newly Independent States (NIS), including Russia, highlighted the pricing differential in the United States between "restricted" Western-origin uranium products and "unrestricted" NIS-origin uranium products. USEC states that, in 2001, major publications discontinued reporting prices for "restricted" and "unrestricted" products like U3O8 and UF6, but that between 1992, when the Suspension Agreement became effective, and 2001, NIS-origin uranium products consistently sold at a price discount as compared to similar U.S. uranium products.

However, according to USEC, while restricted and unrestricted U3O8 and UF6 prices are no longer reported, differences between "restricted" and "unrestricted" LEU prices continued to be reported. According to USEC, these prices illustrate that Russian SWU continued to sell at a discount compared to Western-origin SWU. USEC states that, from October 1992 to today, Russian SWU prices have ranged from approximately one to 20 percent lower than "restricted" Western-origin SWU and that year-to-date data for 2005 indicates that Russian SWU is underselling U.S. SWU by approximately 20 percent. USEC argues that the consistent price discount is evidence of Russian willingness to underprice U.S. suppliers and suggests that, absent the Suspension Agreement, Russian SWU would significantly undersell U.S. SWU in the United States.

Further, according to USEC, Russia's underutilized uranium enrichment capacity, its desire to make use of that capacity to generate revenues at any level above \$65 per SWU, its need for hard-currency earnings, and its limits on shipments to the European Union and Asia provide compelling evidence that Russia is likely to increase the volume of its exports if it gains unrestricted access to the U.S. market, in an effort to establish itself as a major supplier. According to USEC, as essentially a "new entrant" into the U.S. market for a fungible product, the only way Russia will be able to differentiate itself is through price. USEC argues that the U.S. market is highly competitive, with a number of major international suppliers, all of whom

have a proven record of reliability and quality, pursuing all new business opportunities. Further, USEC states that the volume of uncovered requirements in the United States market in the next three years is low and, therefore, only limited opportunities exist for a foreign producer to establish itself in the market except to underprice existing suppliers.

USEC argues that Russia's actions prior to the filing of the petition support its claim that terminating the Suspension Agreement would lead to underpricing. According to USEC, exports of Russian-enriched uranium began in the late 1980's as Russia's enrichment facilities stopped producing enriched uranium for defense purposes and SWU prices, which were in the mid-\$70s in 1987, declined over the next three years to \$50 per SWU as Russian SWU entered the market. According to USEC, prices only began to recover in 1992 when the Suspension Agreement came into effect. Therefore, USEC argues that, if the Suspension Agreement was terminated, imports of enriched uranium from Russia would again enter the U.S. market at dumped prices.

Additionally, USEC argues that a resurgence of Russian imports of LEU will have a significant depressive effect on prices for natural uranium and SWU. According to USEC, due to the lack of a cooperation agreement with the United States, and restrictions imposed under cooperation agreements with the two largest uranium suppliers, Australia and Canada, it is unlikely that natural uranium delivered to Rosatom and TENEX in exchange for commercial LEU under a SWU contract (where a customer paying cash procures LEU by delivering natural uranium to the enricher and pays cash for the SWU component) could be returned to Russia. Rather, according to USEC, it is more likely that Russian commercial LEU would be sold under EUP contracts (whereby cash is paid for both natural uranium and SWU) or, if sold under a SWU contract, the natural uranium delivered to the Russian supplier would accumulate in inventories in the United States for future resale. According to USEC, the result would be one or more sales that depress prices in the United States for both SWU and natural uranium.

AHUG's Comments

AHUG cites to the recent decision by the CAFC in Eurodif in maintaining that there is no legal basis for the Department to find existing or future dumping margins based on SWU transactions in this sunset review. AHUG explains that, after analyzing the same type of enrichment services contracts in this review and consistent with the conclusion of every Federal court that has ever considered this issue, the CAFC determined that sales of enrichment services are not sales of merchandise. See Eurodif, Slip. Op. at 12-16. AHUG points out that the CAFC concluded that "the SWU contracts at issue in this case were contracts for the provision of services and not for the sale of goods" and that "the LEU produced as a result of those contracts is not subject to the antidumping statute." See Eurodif, Slip. Op. at 16. Additionally, AHUG states that, in the prior sunset review of uranium from Russia, the Department used the "best information available" rate provided by the petitioner, which was partly based on sales of SWU. AHUG continues that, as a result, the Department's finding of dumping was invalid because it was partially based on SWU transactions.

Concerning sales of uranium and uranium feed, AHUG contends that market conditions make any future dumping of uranium highly unlikely. With respect to SWU, AHUG claims that, even if the Department were to ignore the CAFC decision and continued to rely on services for conducting its dumping analysis, the HEU Agreement currently maintains a price mechanism that prevents HEU-derived SWU from being sold at dumped prices. AHUG notes that, during the late 1990's, HEU-derived SWU sold to USEC under the HEU Agreement was set at fixed prices at slightly below market value. However, according to AHUG, in 2002, TENEX and USEC agreed to a new market-based pricing formula in the HEU Agreement that requires HEU-derived SWU to be sold at market prices less a set discount for the remaining 11 years of the Agreement. AHUG concludes that this price mechanism gives the Russian seller a significant incentive not to dump commercial SWU in the future because it would drive down the market price and undermine its own revenue from HEU-derived SWU sold under the HEU Agreement.

AHUG contends that the Department's analysis in the first sunset review was flawed when it concluded that under the "laws of supply and demand," if the restrictions on uranium sales were lifted, more commercial SWU would flood the market and lower the market price of uranium to dumped prices. First, AHUG points out that Russia is obligated by the terms of the HEU Agreement, to continue to sell SWU derived from down-blended weapons material into the United States, and it cannot reasonably be assumed that Russia would breach this international treaty to flood the U.S. market with commercial SWU. Second, Russia has a strong profit incentive to continue HEU-derived SWU sales under the HEU Agreement, which, according to AHUG, has generated significant economic and political gains for Russia. Third, Russia does not have enough natural uranium or uranium feed to down-blend its weapons inventory at a fast rate to sell large amounts of Russian SWU. Finally, AHUG points out that there is rising Russian and worldwide demand for SWU and that this demand outside the United States increased substantially since the last sunset review. AHUG asserts that Russia has no incentive to sell enrichment services to the United States at low prices in light of the rising demand in its own market as well as in the emerging nuclear programs in Asia.

Additionally, AHUG claims that current market conditions have eliminated the possibility of dumping of natural uranium and uranium feed. AHUG states that market prices for natural uranium and uranium feed have risen in the past two years and are currently double the price of \$13 per pound U₃O₈ for natural uranium that the Department found would not be the price suppressive under the original agreement. Also, AHUG contends that, even if Russia had economic incentive significant enough to persuade it to increase sales of uranium or uranium feed, it does not have the uranium mining capability to do so because most of uranium used in the past mainly came from the former Soviet States, whereas Russia itself does not have the mining capability to produce substantial amounts of uranium. With respect to purchasing from other suppliers, AHUG notes that Russia cannot obtain uranium from other significant world suppliers such as Canada, Australia and the United States, because it does not have an Agreement for Cooperation for Nuclear Materials that would allow such sales. Further, AHUG maintains

that Russia is not even currently fully using the quota available under the USEC Privatization Act for sales of Russian HEU feed in the United States because it needs to use that feed material for blending down HEU material.

USEC's Rebuttals

USEC disagrees with AHUG's claim that the pricing mechanism in the Russian HEU agreement will prevent future dumping by the Russian Government. USEC contends that AHUG does not have access to the precise terms of the Russian Contract which are U.S.-government "classified" and, therefore, that AHUG is not in a position to comment on the pricing terms. Further, USEC quotes a public statement of the pricing mechanism which states that the prices are determined by a multi-year retrospective index including both long-term and spot prices. USEC states that this statement does not mention "dumping," "less than fair value," "normal value," "cost of production," or any other terms or calculations relevant to the determination of a dumping margin. USEC also states that selling a product in the United States pegged to a discount from certain price points does not dictate whether or not that product is being sold at a dumped price.

USEC challenges AHUG's statement that Russia would have an incentive not to dump sales of SWU outside the Russian Contract because it would drive down the market price, and thus, undermine the revenue Russia receives under the HEU Agreement. With respect to sales of commercial SWU, the domestic interested parties contend that AHUG confuses selling price with dumping, and state that sales of commercial SWU could be made at current market prices, yet still be dumped if the Russian "normal value" was in excess of that price. Further, according to USEC, even under AHUG's theory, AHUG fails to consider that the price mechanism under the Russian Contract is based on a "multi-year retrospective" mechanism which would allow Russia to sell at lower prices for several years before the HEU Agreement price fully reflected the negative impact of discounted sales. Moreover, USEC argues that, while Russia might receive less revenue under the HEU Agreement if the SWU price calculated under the Russian Contract were lower, Russia might receive substantially more total revenue from the large volumes of additional SWU it would sell if it had unhindered access to the U.S. market absent the Suspension Agreement.

USEC maintains that, contrary to the AHUG's statement, the laws of supply and demand dictate that, absent the Suspension Agreement, increased volumes of Russian imports will drive down prices for U.S. uranium products. USEC contends that Russia does not have to "abandon" the HEU Agreement to dump additional SWU in the United States because it can maintain its obligations under the Suspension Agreement and still sell additional SWU in the U.S. market at less than fair value. Also, USEC disagrees with AHUG's statement that Russia is lacking natural uranium or uranium feed because AHUG is not a producer of Russian natural uranium, and, therefore, not in a position to know the extent of Russian uranium inventories.⁴

⁴USEC notes that the only party with access to this information, the Russian Government, has declined to participate in this review.

With respect to Russia's inventory of natural uranium, USEC points out that the country of origin of LEU is determined by the country where enrichment takes place, meaning that natural uranium imported by Russia and manufactured into LEU is Russian LEU. Therefore, considering the fact that Russia is the largest producer of LEU and its geographical proximity to Kazakhstan, whose uranium production is estimated to have increased 77 percent from 2000 to 2005, Russia is the most likely recipient of this material. USEC then continues by stating that AHUG's suggestion of limited feed availability is in contrast to Russia's already expanded capacity and Russia's own statement that it will expand capacity by an additional 30 percent.

Also, with respect to AHUG's claim that Russia has no incentive to sell enrichment services to the United States at low prices in light of the rising demand in its own market as well as in China and India, USEC maintains that the United States unquestionably has the greatest open demand of any country and that both China and India are relatively small consumers of LEU. Regarding AHUG's statement about Russia's rising domestic consumption, USEC notes that Russia's current production capacity of 20 million SWU per year pales in comparison with its current annual consumption of 2.5 to 3.0 million SWU.

Third, USEC contends that recent increases in the price of natural uranium do not prevent the possibility of future dumping of Russian uranium products. USEC notes that the rise in market prices of natural uranium is quite recent, essentially beginning in 2004. USEC states that many of the factors AHUG attributed to the recent price recovery such as perceived supply shortage and individual mine problems, are temporary in nature. Moreover, while agreeing that a number of factors have influenced the price of natural uranium, USEC notes that it does not endorse AHUG's list of factors and suggests that the submission made by the U.S. producers of natural uranium (PRI and Crow Butte) is more probative to this aspect of the inquiry. USEC maintains that all evidence, including that discussed by USEC in its substantive response, suggests that Russia would undercut the price of U.S.-produced natural uranium in the absence of the Suspension Agreement. In conclusion, USEC states that given Russia's massive inventory of uranium products, its ability to obtain uranium from other countries, and its stated goals of expanding capacity, Russia would dump the subject merchandise absent the Suspension Agreement.

AHUG's Rebuttals

AHUG rebuts USEC's and PRI's and Crow Butte's claims that the pricing differential for Russian SWU, as reflected in the "restricted" and "unrestricted" uranium and SWU prices cited by USEC, is evidence that the Russians would dump in the U.S. market by noting that the restricted/unrestricted price differential was adopted after the Suspension Agreement was put into place. As such, AHUG states that the market required a discount for that uranium that otherwise could not be freely traded in the world market. Further, AHUG points out that the restricted/unrestricted price differential was eliminated in 2001 after the removal of antidumping duty orders on Kazakh, Uzbek, and Ukrainian uranium. According to AHUG, the reason a price difference for Russian SWU remains is because Russian SWU are still restricted from the U.S.

market, and this differential is not evidence of dumping, but rather a recognition that Russian SWU cannot be freely traded.

AHUG states that the only other price discounts for Russian SWU sold to the U.S. market are based on discounts demanded by USEC for sales of Russian HEU-derived SWU under the HEU Agreement. Further, according to AHUG, USEC marks up the price of Russian SWU when it supplies Russian SWU under existing contracts with U.S. utility customers. Therefore, according to AHUG, USEC's claim that the Russians would dump Russian SWU in the U.S. market if the Suspension Agreement were terminated is at odds with its position as the beneficiary of low prices it demanded from the Russians under the HEU Agreement.

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, 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 preliminary likelihood determination.

PRI and Crow Butte, USEC, and AHUG have submitted information concerning the impact on prices in the U.S. market for both natural uranium and SWU absent the Suspension Agreement. We agree with USEC and PRI and Crow Butte that, absent the Suspension Agreement, imports of Russian uranium and SWU would likely undercut and depress, or suppress, U.S.-market prices for uranium products. As the Department stated in the first sunset review, uranium is a highly fungible commodity for which purchasing decisions are based almost exclusively on price. 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 Comment 3. Therefore, as also discussed above under Volume of Imports, it is likely that, absent the Suspension Agreement, Russia would direct its exports of uranium products to the United States at prices that would undersell U.S. uranium products.

All of the parties acknowledge the post-Suspension Agreement distinction between the "restricted" and "unrestricted" uranium market prices. AHUG would have us believe that removal of the restrictions imposed by the Suspension Agreement would cause the price of Russian uranium to rise, whereas USEC and PRI and Crow Butte argue that removal of the restrictions would unleash tremendous supply, thereby causing prices to fall. While we agree that the restrictions imposed by the Suspension Agreement may have resulted in the distinction between "restricted" and "unrestricted" uranium prices, we do not agree that removal of the Suspension Agreement's restrictions would cause the price of Russian uranium to rise. USEC and PRI and Crow Butte have presented compelling evidence illustrating how the prices of

Russian uranium products have been consistently lower than the prices for uranium from Western sources and have the propensity to continue to be lower in the future. For example, Russia's former Atomic Energy Minister clearly outlined Russia's intentions to undercut the price of uranium from the Western sources stating that "we shall always supply our fuel at 30% less than western producers." See "Nuclear Exports Trade is Russia's Growing 'Cash Crop'," Nuclear Society of Russia (March 14, 2000). Additionally, a review by the World Nuclear Association confirms Russia's approach to undercut world prices for nuclear fuel and services by that amount. See "Nuclear Power in Russia," World Nuclear Association (September 2005), available at <http://world-nuclear.org/info/inf45.htm>.

In contrast to AHUG's assertions that the Department's arguments with respect to the "laws of supply and demand" in the first sunset review were erroneous, we believe that the more 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 in the U.S. market. The increased availability of Russian uranium products would in turn drive down prices for U.S. uranium products. 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 increase import levels of ammonium nitrate in the U.S. market and lower their prices."

AHUG points to the CAFC's March 2005 ruling in Eurodif, which was in the context of litigation pertaining to the antidumping duty order on LEU from France, to support its argument that there is no legal basis for the Department to determine existing or future dumping margins based on SWU transactions. However, the Department notes that the litigation related to this CAFC ruling has not been completed, and the Department is continuing to actively pursue all avenues in the litigation process. This case was remanded to the Department, and the Department filed its redeterminations with the CIT on March 3, 2006. In addition, the appeals process is not complete, and the CAFC's ruling is not binding unless and until such ruling is final and conclusive. Therefore, this litigation has no effect on the Suspension Agreement or this sunset review of the Suspension Agreement, and AHUG's arguments are not valid in this context.

Therefore, we preliminarily find 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 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

USEC's, PRI's and Crow Butte's Comments

USEC and PRI and Crow Butte assert that the legislative history of the sunset review provisions added by the URAA makes clear that, in determining the margin that is likely to prevail if a dumping order is revoked or a suspended investigation is terminated, the Department normally selects a margin “from the investigation because that is the only calculated rate that reflects the behavior of exporters... without the discipline of an order or suspension agreement in place.” According to USEC and PRI and Crow Butte, the Department’s Sunset Review Policy Bulletin makes clear that in cases such as this where the Department did not issue a final determination because the investigation was suspended and continuation of the investigation was not requested, the Department provides to the ITC the preliminary determination margin from the original investigation. The Department found that uranium from Russia was being dumped at a margin equal to 115.82 percent in its preliminary determination in 1992. USEC and PRI and Crow Butte assert that, in accordance with the SAA and the Sunset Review Policy Bulletin, and consistent with the Department’s first sunset review, 115.82 percent is the margin that the Department should determine is the margin likely to prevail if the suspended investigation is terminated.

AHUG's Comments

AHUG contends that, pursuant to the recent CAFC decision that sales of enrichment services are not sales of merchandise, there is no legal basis for the Department to determine existing or future dumping margins based on SWU transactions. Citing to the CAFC opinion which stated that “the SWU contracts at issue in this case were contracts for the provision of services and not for the sale of goods.... accordingly, we find that the LEU produced as a result of those contracts is not subject to the antidumping statute,” AHUG asserts that the “Best Information Available” (“BIA”) rate relied on by the Department in the prior sunset review of Uranium from Russia was improper. According to AHUG, because the BIA rate used in the prior sunset review was in part based on service transactions, the Department’s finding that there was dumping is invalid. AHUG contends that the Department does not have the authority to restrict legitimate sales of enrichment services.

AHUG further contends that the Department cannot use the BIA rate from the preliminary determination in the investigation because, after the original investigation was initiated, the country identified in the petition, the Soviet Union, was dissolved and its territory divided among twelve independent states. AHUG states that, while the Department divided the case into twelve separate investigations, the BIA dumping margins were calculated based on the petition information for the Soviet Union, rather than the country-specific data. In support of its argument, AHUG cites to Uzbekistan v. United States, (Uzbekistan) where the AHUG contends that the CIT ruled that the Department could not base its likelihood determination on a preliminary margin based on data from the Soviet Union, but rather was required to rely on information specific to Uzbekistan. Similarly, AHUG asserts that the Department cannot base its

“likelihood” determination on the preliminary margin from the investigation, but must conduct its dumping analysis based on data specific to Russia. According to AHUG, because SWU transactions can no longer be considered, the only remaining sales to be considered by the Department are sales of uranium and uranium feed. With respect to sales of uranium and uranium feed, AHUG asserts that prices for these products are currently high and not indicative of dumping. For the reasons stated above, AHUG concludes that the Department must report that no dumping margins could be found under this sunset review.

USEC’s Rebuttal

In its rebuttal brief, USEC continues to assert that the BIA rate of 115.82 percent from the preliminary determination in the antidumping investigation is the best information available about the dumping margin “likely to prevail” if the Department terminates the Suspension Agreement. USEC contends that the BIA rate is the only margin on the record of this proceeding and, given that the Russian foreign producers have declined to participate in this review, there is no alternative data on which a revised margin can be calculated. USEC further contends that it is entirely reasonable for the Department to use the BIA rate and it would be inappropriate for the Department not to do so.

In support of its claim that the BIA margin is the most appropriate margin, USEC cites to the Department’s first sunset review of the Suspension Agreement. In that proceeding, the Department found that the BIA margin was the only margin on the record of the proceeding and the only margin that reflected the behavior of producers/exporters without the discipline of the Suspension Agreement. The Department further stated that:

.... the fact that circumstances have radically changed from those existing at the time the uranium investigation against the Soviet Union was conducted does not invalidate the preliminary finding for determining a dumping margin if the suspended investigation is terminated. We have no information on the record to conclude with certainty that this would be the case and would, hence, need to resort to speculation.

USEC asserts that the use of the BIA rate in this sunset review is even more appropriate because the foreign producer has declined to participate in the review and has not submitted a substantive response to the Department’s Notice of Initiation. USEC contends that, even if the Department were inclined to recalculate the dumping margin or to amend its BIA determination, it would be unable to do so because the party with this information, the foreign producer, has declined to participate in this proceeding.

With respect to AHUG’s argument that Uzbekistan stands in support of its position that the Department cannot rely on the BIA margin but instead must conduct its dumping analysis based on Russia-specific data, USEC contends that AHUG’s reliance on Uzbekistan is misplaced. According to USEC, in Uzbekistan the CIT did not decide a rule generally applicable to all sunset reviews or a rule specific to margins based on data prior to the dissolution of the former

Soviet Union; rather the court simply determined that the Uzbek respondents had to be given a “fair opportunity to participate in a meaningful way” in a sunset review conducted after the breakup of the Soviet Union. USEC asserts that, in this case, the Russian producer has not been denied an opportunity to participate, but instead has declined to participate altogether. USEC concludes that Uzbekistan is irrelevant to the current proceeding because the Department is not exercising its discretion to exclude alternate Russian data.

Concerning AHUG’s argument that the BIA rate from the preliminary determination cannot be used in this review because it was based on part on sales of SWU, even assuming that AHUG’s position concerning SWU is correct — a point that USEC does not concede – the BIA rate is still appropriate under the current “facts available” standard. USEC contends that because no other dumping margins exist in this proceeding, the BIA rate, even if imperfect, must be the rate reported by the Department as the margin likely to prevail if the Suspension Agreement were terminated.

Department’s Position

The Department normally will provide to the Commission 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. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the “all-others” rate from the investigation. Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations.

We do not agree with AHUG that the procedural circumstances of the antidumping investigation on uranium from Russia make the reliance on the BIA margin from the original investigation unacceptable. Rather, we note that the BIA margin from the preliminary determination of the investigation is the only margin available to the Department and use of the BIA margin in this sunset review is even more appropriate because the foreign producer has declined to participate in this proceeding and has not submitted a substantive response. In addition, as noted in the Background section above, to date, no administrative reviews of the Suspension Agreement have been completed. Therefore, consistent with our finding in the first sunset review, we continue to find that the BIA margin from the original investigation is the only margin on the record of the proceeding and the only margin that reflects the behavior of producers/exporters without the discipline of the Suspension Agreement.

Concerning AHUG’s assertion that the BIA margin cannot be used because it was calculated based on petition information for the Soviet Union rather than Russia-specific data, consistent with the first sunset review, we find that the fact that circumstances have radically changed from those existing at the time the uranium investigation against the Soviet Union was conducted does

not invalidate the preliminary finding for determining a dumping margin if the suspended investigation is terminated. Further, both with respect to AHUG's argument that the BIA margin cannot be used because it was not based on Russia-specific data and its argument that the BIA rate from the preliminary determination cannot be used in this sunset review because it was based in part on sales of SWU, as stated in the first sunset review, we do not agree that we should, in the course of this sunset review, calculate a margin of dumping likely to prevail if the suspended investigation were terminated. Rather, the SAA makes clear that the calculation of future dumping margins would involve undue speculation regarding future selling prices, costs of production, selling expenses, exchange rates, and sales and production volumes. Additionally, given the restrictions imposed by the Suspension Agreement with respect to imports of uranium, any such calculation would reflect the behavior of producers and exporters with the restrictions of the Suspension Agreement in place.

Therefore, we preliminarily find that the margins calculated in the original investigation are probative of the behavior of Russian manufacturers/exporters of the subject merchandise were the suspended investigation to be terminated. As such, the Department will report to the ITC the rate from the original investigation as the magnitude of the margin likely to prevail if the suspended investigation 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 preliminary results of review in the Federal Register.

Agree _____ Disagree _____

David M. Spooner
Assistant Secretary
for Import Administration

Date