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 (September 26, 2007)

SUMMARY

On September 26, 2007, the U.S. Court of International Trade ("CIT") remanded the above-referenced proceeding to the U.S. Department of Commerce ("the Department") to revise the final results of the second five-year sunset review of the suspended investigation on uranium from the Russian Federation ("Russia") to exclude all sales pursuant to enrichment transactions, as outlined in the Eurodif cases, and to redetermine the likelihood of continued or recurring dumping without reliance on such transactions.[1]

In accordance with the Court's instructions, we have reconsidered our determination of the likelihood of continued or recurring dumping in the absence of the suspension agreement by excluding sales pursuant to separative work unit ("SWU") contracts, as defined in the Eurodif cases, from our analysis. Based on the results below, the Department finds that dumping is likely to continue or recur if the suspension agreement and/or the suspended antidumping duty investigation on uranium from Russia were terminated.

BACKGROUND

On May 30, 2007, the Department issued its final results of the second five-year sunset review of the Agreement Suspending the Antidumping Investigation on Uranium From the Russian Federation ("Suspension Agreement"), finding that revocation of the Suspension

[1] See aff'd in part Eurodif S.A. v. United States, 411 F.3d 1355 (Fed. Cir. 2005) ("Eurodif I"); Eurodif I reaff'd 423 F.3d 1275 (Fed. Cir. 2005) ("Eurodif II"); and Eurodif S.A. v. United States, Appeal No. 2007-1005-1006 at 4 (Fed. Cir. Sept. 21, 2007).

Agreement would likely lead to a continuation or recurrence of dumping. See Notice of Final Results of Five-Year Sunset Review of Suspended Antidumping Duty Investigation on Uranium from the Russian Federation 71 FR 32517 (June 6, 2006) and the accompanying "Issues and Decision Memorandum for the Sunset Review of the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation; Final Results" (May 30, 2006). Techsnabexport ("Tenex") and the Ad Hoc Utilities Group ("AHUG") challenged the Department's final results in this second five-year sunset review, claiming that the Department's inclusion of sales pursuant to SWU contracts, as defined in the Eurodif cases, renders unlawful its findings and conclusions with regard to the scope of the proceeding, the volume of subject imports, the likelihood of dumping, and the magnitude of the margin likely to prevail. On September 26, 2007, the CIT remanded the Department's final results for redetermination in accordance with its instructions. See Techsnabexport, Plaintiff, v. United States, Defendant, and USEC Inc. and United States Enrichment Corporation, Defendant-Intervenors, Cons. Court No. 06-00228, Slip Op. 07-143 (September 26, 2007) ("Tenex").

Consistent with the Court's remand instructions, we have reconsidered our determination of the likelihood of continued or recurring dumping in the absence of the Suspension Agreement without reliance on sales pursuant to SWU contracts, as defined in the Eurodif cases.

COMMENTS FROM PARTIES

On October 17, 2007, the Department offered parties an opportunity to provide comments and information relevant to the CIT's instructions with respect to this remand, and existing at the time the Department made its sunset determination. Comments were due no later than October 22, 2007. In response to requests by parties, the Department twice extended this

deadline, first to October 25, 2007, and then to October 26, 2007. The Department received comments from: United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied-Industrial and Service Workers International Union, AFL-CIO, CLC ("USW"), representing workers employed in U.S. uranium enrichment and conversion facilities and an original co-petitioner in the underlying AD investigation;[2] Power Resources, Inc. ("PRI") and Crow Butte Resources, Inc. ("Crow Butte"), U.S. producers of natural uranium concentrates; Uranium Producers of America ("UPA"), an association of domestic producers of natural uranium;[3] USEC, Inc. and United States Enrichment Corporation (collectively, "USEC"), a U.S. uranium enricher; Techsnabexport ("Tenex"), an exporter of Russian uranium products; and the Ad Hoc Utilities Group ("AHUG"), a group of owners and operators of U.S. nuclear power plants. Summaries of the parties' comments and information follow.

USW

The USW addresses the issue of whether the sales of LEU, down-blended from highly-enriched uranium ("HEU"), under 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") are "enrichment

[2] According to the USW, 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. PACE was the successor-in-interest to the Oil, Chemical and Atomic Workers International Union ("OCAW"), an original co–petitioner in the underlying AD investigation, following a merger with the Paperworkers International Union in January, 1999.

[3] As explained by counsel to the UPA, the UPA members include a number of the original members of the Ad Hoc Committee of Domestic Uranium Producers, the original petitioner in the underlying AD investigation, and/or their successors. See Memorandum to The File from Sally C. Gannon (December 14, 2007).

services transactions" as determined in the Eurodif cases. The USW states that these transactions, defined by Congress in the USEC Privatization Act, 42 U.S.C. §2279h-10(b), are unique and substantially different than those considered in the Eurodif cases. First, the USW asserts that at no time does the end-user or the industrial user (the U.S. utility) have a contract with the Russian enricher for enrichment, nor does that utility purchase uranium feedstock and provide it to the Russian enricher to make LEU. Additionally, the USW argues that the uranium feedstock is always the property of Russia, was used to make nuclear warheads, was blended down to a level useable as LEU, and was sold to USEC, the Executive Agent for the United States government under the HEU Agreement. The USW further argues that it is clear from the Senate Committee on Energy and Natural Resources' Report on S. 755 (USEC Privatization Act, 42 U.S.C. §2279h) ("Senate Report") that Congress considered the LEU from HEU to include both the SWU and the feedstock and that the U.S. Executive Agent was to purchase all of it from the Russians.[4] The USW maintains that USEC pays cash for the equivalent SWU value and in kind for the uranium feedstock as described in the USEC Privatization Act.

UPA

The UPA reminds the Department that the investigation which led to the current Suspension Agreement was principally filed by the domestic uranium mining industry to cover imports of Russian uranium, both in a natural form and as further processed, whereas only USEC was a petitioner in the Eurodif cases concerning French uranium. The UPA maintains that the scopes, and the breadth of imported products covered, in the two proceedings are very different. The UPA states that this is a critical time for the recovering domestic industry as it is obtaining

[4] See USW's October 25, 2007, comments to the Department at 3 and 6.

the investment needed to reestablish a viable production center in the United States.[5] The UPA, therefore, urges the Department to ensure that, regardless of any scope exclusions for SWU, natural uranium and the natural uranium component of all uranium products from the Russian Federation continue to be included in the scope of this proceeding.

PRI and Crow Butte

PRI and Crowe Butte note that the CIT has directed the Department to correct the scope of the investigation by excluding all sales of enrichment services transactions, as outlined in the Eurodif cases. PRI and Crow Butte state that, in the French LEU investigation, the scope covers only LEU while the scope of this investigation includes all forms of uranium, from the natural uranium ore to weapons grade material and other processed forms. They note that this difference stems from the disparate nature of the domestic industries seeking relief in each case. In particular, according to PRI and Crow Butte, the French LEU case has a single petitioner, USEC, while the petitioners in this case include an ad hoc committee of U.S. producers of uranium concentrate and the union representing workers at all U.S. conversion and enrichment facilities.

PRI and Crow Butte state that the decisions by the U.S. Court of Appeals for the Federal Circuit ("CAFC") in the Eurodif cases concerned the issue of whether SWU contracts were contracts for the provision of services, with the CAFC ultimately holding that the LEU produced pursuant to those contracts was not subject to the AD statute. PRI and Crow Butte note that, in light of the limited scope of the French LEU cases, if the SWU could not be covered due to the CAFC's ruling, no other component of the imported LEU (i.e., the uranium component) would be covered. However, PRI and Crow Butte assert that the situation is quite different in the

[5] See UPA's October 25, 2007, comments to the Department at 2.

Russian uranium case because Russian uranium, whether in natural or enriched form, is unquestionably covered by the scope of the suspended investigation. Thus, according to PRI and Crow Butte, Russian U3O8, UF6, LEU, and the uranium component of uranium purchased by a U.S. utility and then enriched in Russia under a SWU contract, regardless of whether the SWU transaction would have been excludable in the French LEU case, are all within the scope of, and covered by, this proceeding. PRI and Crow Butte request that any scope amendment pursuant to the Court's remand ensure, to the extent that the Suspension Agreement removes any SWU transactions, that the natural uranium component of the LEU continues to be clearly and effectively covered.

PRI and Crow Butte note that the CIT has ordered the Department, in its reconsideration of the sunset determination, to examine economic and political changes that have occurred since the preliminary determination in the original investigation, such as the dissolution of the USSR and Russia's graduation to market-economy status. PRI and Crow Butte assert that, in spite of many changes and progress in the Russian economy, it is reasonable and correct for the Department to find a likelihood of continuation of dumping, and to do so based on calculations from the preliminary determination.

In this vein, PRI and Crow Butte make several points. First, they state that Russia's graduation to a market-economy status does not by itself obviate the likelihood of dumping, as most of the Department's orders cover products from market economies. Second, they maintain that the many economic changes which have occurred in Russia have not been reflected in the nuclear sector, and, citing to the August 2006 report by the International Trade Commission ("ITC") in its concurrent sunset review, that Russia's uranium industry remains firmly under

state ownership and control.[6] Third, PRI and Crow Butte argue that no Russian-producing entity provided a substantive response to the Department's notice of initiation in this sunset review or otherwise provided probative information. Lastly, PRI and Crow Butte assert that the Suspension Agreement specifically provides in Paragraph XIII that it may be converted to a market-economy agreement if Russia gains market-economy status.

PRI and Crow Butte also note that the Department, in its decision graduating Russia to market-economy status, clearly put Russia on notice that an administrative review would be required to establish a new AD margin. PRI and Crow Butte point out that Russia has made no efforts to either convert this Suspension Agreement to a market-economy agreement, requiring the submission of price and cost data and an updated AD analysis, or to submit information and seek a new calculation for a final determination. Thus, PRI and Crow Butte conclude, there is no basis to conclude that the changes that have occurred in Russia eliminate the likelihood of dumping if the investigation were to be terminated.

USEC

USEC maintains that the remand relates only to the scope of the suspended investigation and not to the scope of the Suspension Agreement. Thus, according to USEC, regardless of how the scope of the underlying suspended investigation is modified, the Department should recognize that it does not have a legal obligation to modify the "Product Coverage" of the Suspension Agreement. In support of its argument, USEC cites to USEC Inc. V. United States, 34 Fe. Appx. 725 (Fed. Cir. 2002), in which the CAFC held that, although the scope of the Agreement Suspending the Antidumping Investigation on Uranium from Kazakhstan and the

[6] See PRI's and Crow Butte's October 26, 2007, comments to the Department at 9.

scope of the Department's final determination in the resumed less-than-fair-value investigation were worded in similar terms, it did not necessarily follow that imports covered by the former would fall within the scope of the latter. As another example, USEC points out that the Suspension Agreement itself originally stated that Russian uranium enriched in a third country was not subject to the terms of the agreement but that the agreement was later amended to include this "by-pass" uranium within the agreement's coverage, notwithstanding the fact that this material would not otherwise have been merchandise subject to the underlying investigation because of the location of its enrichment.

USEC argues that suspension agreements further differ from orders in that suspension agreements can only be maintained if they meet certain statutory requirements. In the case of an agreement under Section 734(l) of the Tariff Act of 1930, as amended ("the Act"), USEC notes, it cannot be accepted unless it is in the public interest and can be effectively monitored and unless it will prevent the suppression or undercutting of price levels of domestic products by imports of the merchandise under investigation. According to USEC, it is probable that the elimination of imports of LEU sold pursuant to enrichment services transactions of the kind addressed in the Eurodif decisions from the Suspension Agreement's Product Coverage would undermine the agreement's requirement, in accordance with Section 734(l)(2) of the Act, to prevent the suppression or undercutting of domestic prices of merchandise manufactured in the United States. Thus, USEC argues, the Department should decline to amend the Suspension Agreement's Product Coverage in its remand redetermination.

USEC asserts that, should the Department decide to amend the Product Coverage of the Suspension Agreement in its remand determination, it should not consider the exclusion and

certification process from its May 2006 remand redetermination in the Eurodif litigation as the means by which the Courts' decisions can be implemented. USEC points out that this exclusion and certification process was developed on the basis of a factual record developed in the original French LEU AD investigation and that the Department had the benefit in that case of reviewing documentation and information regarding how French contracts were structured and implemented during the period of investigation. USEC argues that, in contrast to the French LEU case, the Department has scant experience and record evidence in this proceeding regarding Russian contracting practices for commercial LEU sales and how enrichment service transactions take place with the Russian enricher. According to USEC, the CAFC's decision here suggests that the Department has the ability and obligation to develop the facts and procedures specific to this case that are necessary to determine whether future imports of Russian LEU are or are not subject to the AD law. USEC suggests various means the Department could use to determine whether specific transactions constituted enrichment service transactions as outlined in the Eurodif decisions, and should be excluded from the Product Coverage, including an annual administrative review, a scope inquiry, or a Statement of Administrative Intent.

USEC argues that the application of Eurodif will not eliminate all future imports of uranium products from the Department's analysis of the likelihood of future dumping. USEC notes that, unlike the scope of the French LEU AD order, the Suspension Agreement on Russian uranium covers all forms of uranium products, including natural uranium in U3O8 and uranium hexafluoride (UF6) forms, in addition to enriched uranium in uranium hexafluoride (UF6) and uranium dioxide (UO2) forms. USEC asserts that, absent the Suspension Agreement, Tenex is likely to make sales of natural uranium which are indisputably sales of subject merchandise.

USEC notes that the ITC concluded in its parallel sunset review that Russia is a significant uranium producer and that Rosatom's director has stated Russia has no shortage of natural uranium and is planning to increase investment in the uranium sector.[7]

USEC maintains that, absent the Suspension Agreement, Tenex is likely to make sales of LEU pursuant to enriched uranium product ("EUP") contracts in the United States. In support of its contention, USEC cites ample public evidence in the form of past Russian commercial activities in the U.S. market, continuing efforts by Tenex to sell EUP in the U.S. market, Tenex's commercial activities in markets other than the United States, and continued purchases of LEU under EUP contracts by U.S. utilities. According to USEC, Russian sales of LEU under EUP contracts, in which Tenex or an affiliate would provide both the natural uranium and enrichment components of the LEU, would also be consistent with Russia's vertically-integrated production structure and statements from the management of Tenex and Rosatom. USEC asserts that the state-owned Russian nuclear fuel industry sells products across the nuclear fuel spectrum, and, thus, has the commercial incentive to sell LEU under EUP contracts, rather than simply selling the enrichment component in an enrichment services transaction.

USEC points out that the ITC requested and received information from U.S. utilities which had signed contingent contracts for the supply of Russian LEU under EUP contracts during the sunset review period. On the basis of the information collected, USEC notes, the ITC concluded that Russian LEU was offered for sale through contingent EUP contracts with U.S. utilities during the 2000-2005 period and that the large amount of uranium involved in those

[7] See USEC's October 26, 2007, submission to the Department at 13.

contracts could have a potentially injurious impact.[8] USEC also cites to requests by Tenex and others over the past eighteen months for approval to sell a certain stockpile of Russian LEU leftover from the Suspension Agreement's "grandfathered" contracts and Tenex's intention, essentially admitted, to sell this material under an EUP contract. Further, USEC asserts that Tenex is actively selling LEU under EUP contracts in its home market and in third-country markets and that Tenex itself has explained its normal practice of paying cash to uranium mining enterprises and enrichment plants and then exporting the "finished product."[9] Finally, USEC maintains that U.S. utilities continue to purchase LEU under EUP contracts, as evidenced by USEC's own LEU deliveries pursuant to EUP contracts during the sunset review period, as reported to the ITC, and the fact that USEC continues to receive requests for quotations/proposals from U.S. utilities for the purchase of LEU under EUP contracts.

USEC argues that historical practice suggests that Tenex's SWU contracts may not satisfy the terms necessary for exclusion under Eurodif. According to USEC, Tenex has signed no SWU contracts with any U.S. utilities since the time that the Suspension Agreement came into effect, and certain facts, including the lack of and/or difficulties with government-to-government cooperation agreements, suggest that Tenex would not be able to structure enrichment transactions in the same manner as the Eurodif transactions. USEC asserts that the Department has only the Russian HEU Contract, inappropriately characterized as a "SWU contract," to consider in determining if future SWU contracts would meet the terms of Eurodif but that the terms and conditions of this contract do not satisfy the requirements of Eurodif. Therefore,

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[8] Id. at 15.

[9] Id. at 16-17.

USEC maintains, the Department has no evidence on which to conclude that Tenex would enter into enrichment transactions that would satisfy the Eurodif exclusion and must conclude that no future Russian imports of LEU under SWU contracts would be excluded from the future analysis of likely dumping.

USEC describes the fundamental objective of the Russian HEU Contract as the purchase of LEU from HEU in order to implement the HEU Agreement, i.e., the conversion of 500 metric tons of HEU extracted from nuclear weapons as soon as practicable.[10] USEC asserts that it is required, as the U.S. Executive Agent under the Russian HEU Contract, to purchase fixed annual quantities of LEU derived form HEU, through 2013, with the principal purpose of promoting non-proliferation goals intended to serve U.S. national security objectives. USEC states that the Russian HEU Contract, as initially drafted, provided for the purchase of the Russian weapons LEU at a specified price for each kilogram of LEU delivered and that the price was further expressed in terms of a per-SWU price and a per-kilogram price for natural uranium. However, USEC notes, the process of producing LEU through the down-blending of HEU does not involve the enrichment of natural uranium, i.e., there is no SWU or uranium component associated with the Russian weapons LEU. USEC describes the mechanisms put into place, via the USEC Privatization Act, to compensate Russia for the natural uranium equivalent of the LEU from HEU and points out that, under the option exercised by Tenex of taking title to the equivalent natural uranium, USEC is required to warrant that Tenex is receiving good title because the natural uranium must be marketable in order to accomplish its purpose as a form of consideration for the LEU that can be liquidated through resale.

[10] Id. at 20.

USEC argues that the Russian HEU Contract is not part of an excludable enrichment services transaction under Eurodif for three principal reasons. First, USEC asserts that, central to the holdings of the CIT and CAFC with respect to the SWU contracts at issue in the LEU from France litigation, was the enricher's lack of ownership of the enriched uranium prior to its delivery to the utility such that there could be no sale of merchandise for purposes of the AD law. According to USEC, however, in the case of the Russian HEU Contract, it is indisputable that Russia owns the HEU from which the down-blended LEU is derived, the tails material with which it is blended, and the enriched uranium prior to its transfer to USEC. USEC cites to Section C.04 of the Russian HEU Contract, as amended by Amendment 008, where Tenex ". . .represents and warrants to USEC that TENEX will convey to USEC good and marketable title to the LEU delivered to USEC pursuant to this contract free and clear of any liens, encumbrances, security interests or other adverse claims."[11]

Second, USEC asserts that the CIT found a "continuous chain of ownership" in the natural uranium throughout the enrichment process and through to delivery of the LEU, a finding echoed by the CAFC.[12] In contrast, USEC argues, under the Russian HEU Contract, no such continuous ownership chain in the natural uranium exists because natural uranium is not being enriched by Tenex. USEC notes that natural uranium is not even delivered to Tenex until the down-blended uranium is delivered at St. Petersburg, Russia, which is long after the LEU is produced. According to USEC, the natural uranium credited to Tenex's U.S. account is far more akin to an element of non-monetary compensation than it is the provision of raw materials for the

[11] Id. at 30.

[12] Id. at 30.

production of a finished product.

Third, USEC maintains that the terms of payment for the enrichment component of the down-blended LEU are different from the payment terms in normal enrichment service transactions. USEC notes that, in the enrichment contracts looked at by the Courts in the USEC and Eurodif litigation, utilities pay for the enrichment performed on the natural uranium. USEC argues that, under the Russian HEU Contract, USEC's payment is calculated pursuant to a formula that uses a tails assay established by statute and bears no resemblance to any actual enrichment being performed on natural uranium since down-blended LEU is *not* produced pursuant to the enrichment of natural uranium. Thus, USEC argues, it only pays cash for an amount of SWU deemed to be contained in the down-blended LEU as calculated by the parties, but this "SWU component" bears no relationship to how the material was produced. USEC summarizes by stating that, even if one concluded that the Russian HEU Contract was a "SWU contract," the foregoing discussion demonstrates conclusively that this contract is not part of an enrichment services transaction under the CAFC's precedent in Eurodif.

USEC argues that, despite the many economic and political changes in the former Soviet Union since the Suspension Agreement was originally signed in 1992, the Russian energy sector generally, and the nuclear fuel industry specifically, remain owned and regulated by the state and cannot be considered market-oriented. USEC further argues that the Department's decision to graduate Russia to market-economy status should have no impact on its determination of whether dumping is likely to continue or recur in this remand proceeding because substantial evidence demonstrates that the Russian government continues to exercise complete control over every aspect of the Russian nuclear fuel cycle. According to USEC, the Russian state completely owns

and controls all aspects of uranium production; the Russian state fully controls the allocation of resources in the uranium industry; and the Russian state makes all price and output decisions for nuclear fuel products. In fact, USEC notes, in its memorandum graduating Russia to market-economy status, the Department reserved its right to reject Russian costs and prices as necessary.[13] Finally, USEC asserts that graduation to market-economy status is no guarantee that dumping will be eliminated and, in fact, the Department has calculated positive dumping margins for Russian companies under market-economy principles, citing to Magnesium Metal from the Russian Federation: Notice of Final Determination of Sales at Less Than Fair Value, 70 FR 9041 (February 24, 2005).

USEC maintains that substantial record evidence supports the conclusion that dumping is likely to continue or recur if the suspended investigation and the Suspension Agreement were terminated. USEC states that the Department's finding in its final sunset review results that prices for uranium products in the U.S. market would likely decline if the Suspension Agreement were terminated is particularly valid given that demand is likely to remain flat, i.e., until the effects of the "nuclear renaissance" start to impact demand for nuclear fuel, and given that Russia is actively looking to increase its sales of all uranium products in the United States, as evidenced in various press articles.[14] According to USEC, absent a complete, verifiable submission by Tenex, actual data regarding the cost of production for uranium products in Russia would be impossible to obtain because such information is tightly controlled as a matter of national security, and Tenex has not offered to make such information available. Further, USEC argues,

[13] Id. at 37.

[14] Id. at 39.

any costs that could be obtained on nuclear fuel products would be distorted and would not reflect real production costs. USEC also maintains that Russian energy prices are manipulated by the Russian government to achieve foreign and domestic policy objectives and cannot be used as a valid basis for determining normal value without substantial adjustment.

USEC asserts that, given that U.S. prices are likely to fall as a result of the termination of the Suspension Agreement and that reliable evidence on Russian normal value is essentially unobtainable, the Department has no choice but to conclude that the dumping margin likely to prevail if the Suspension Agreement were terminated is the dumping margin from the original preliminary determination. USEC notes that the statute, at 19 U.S.C. § 1675a(c)(1)(A) and 19 U.S.C. § 1675a(c)(3), sets forth a clear preference for the Department to forward to the ITC a margin that was calculated in either the underlying investigation or a subsequent administrative review. Likewise, USEC points out that the Uruguay Round Agreements Act ("URAA") Statement of Administrative Action ("SAA") and the House Report to the URAA emphasize that the Department will normally select dumping margins determined in the original investigation or a prior review.[15] In particular, USEC states, the SAA specifies that "[t]he Administration intends that Commerce normally will select the rate from the investigation, because that is the only calculated rate that reflects the behavior of exporters and foreign governments without the discipline of an order or suspension agreement in place."[16] USEC further notes that neither Rosatom nor Tenex has ever requested the Department to conduct any type of review or

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[15] See SAA, H.R. Doc. No. 103-316, Vol. 1 (1994) at 890; see also H. Rep. No. 103-826, Pt. 1 (1994) ("House Report") at 64.

[16] See SAA at 890.

recalculation of its dumping margin, nor even offered any information in the sunset review by which such a review or recalculation could have been accomplished. Finally, USEC maintains that the fact that the 115.82 percent margin from the preliminary determination was based on data from a period of time prior to the dissolution of the Soviet Union, or that it was calculated based on the non-market-economy methodology, does not render it inappropriate for use in this sunset review since the Russian nuclear fuel industry remains a sizeable sector in Russia where market forces are absent.

USEC asserts that AHUG is not a "producer" of the subject merchandise and, thus, is not an interested party to this proceeding. USEC points out that, in prior cases, the CIT has identified the three factors necessary to determine who is a "producer" under the tolling regulation: 1) ownership of the subject merchandise, 2) control of the relevant sale, and 3) control of production of the subject merchandise. Further, USEC notes, the CIT applied these factors in USEC I and USEC II in the context of European enrichment services transactions, concluding that U.S. utilities who had entered into such transactions with Eurodif and Urenco, the European enrichers, should be deemed "producers" under the Department's tolling regulation.[17]

According to USEC, AHUG's members satisfy none of the three factors necessary to be deemed a producer of Russian LEU under the Department's tolling regulation. First, USEC argues that AHUG's members do not control the production of Russian LEU. In support of this argument, USEC asserts that no AHUG member had a direct contractual relationship with Tenex

[17] See USEC's October 26, 2007, submission at 49-50; see also USEC Inc. v. United States, 259 F.Supp.2d 1310, 1322-26 (Ct. Int'l Trade 2003) ("USEC I"); see also USEC Inc. v. United States, 281 F.Supp.2d 1334, 1339-45 (Ct. Int'l Trade 2003) ("USEC II").

that resulted in a delivery of Russian weapons LEU in the United States nor control of Tenex's production of LEU; rather, AHUG has relied upon the contractual relationships between its members and USEC, in which USEC *may* have delivered Russian weapons LEU that it obtained through the Russian HEU Contract. USEC further argues that it is no mere "broker" or "middle-man" between AHUG's members and Tenex since USEC buys and resells Russian LEU at its own risk. In addition, USEC notes, the 0.30 tails assay at which USEC takes delivery of the Russian LEU is established by statute and is not correlated to the tails assay demanded by AHUG's members under their contracts with USEC. USEC maintains that, under USEC's "open origin" contracts with U.S. utilities, it is USEC who determines what material the utilities receive (i.e., Russian weapons LEU or USEC's own LEU production), providing another indication that AHUG's members lack control over Tenex's production of LEU.

With respect to the second factor under the tolling regulation, USEC asserts that AHUG's members have no ownership rights in the Russian weapons LEU prior to its delivery. According to USEC, in contrast to the contracts at issue in USEC I, in this case, it is indisputable that Tenex owns and controls all Russian weapons LEU prior to its delivery to USEC in St. Petersburg and that USEC owns all the Russian weapons LEU after its delivery. Third, AHUG argues that AHUG's members cannot claim to own any of the raw materials used to produce the Russian weapons LEU, either as a matter of fact or "legal fiction;" rather, the natural uranium referenced in the contracts between USEC and AHUG is entirely irrelevant to the production of Russian weapons LEU. Finally, USEC maintains that AHUG's focus on the entity making the "relevant sale" is not sufficient to satisfy the tolling regulation and proves the opposite conclusion. USEC argues that Tenex completely owns the Russian weapons LEU, and any raw materials used to

make it, prior to its delivery to USEC; likewise, from the moment USEC takes delivery of Russian weapons LEU in St. Petersburg, the LEU (both the SWU and natural feed components) belongs entirely to USEC. Thus, USEC notes, it is in a position to control the relevant sale of the Russian weapons LEU and can decide to sell it either in EUP or SWU contracts.

Tenex

Tenex contends that, in requiring the Department to exclude enrichment services, or SWU, transactions from the scope of the investigation, the CIT is requiring that the Department exclude from the scope all transactions involving contracts for services and not goods. Tenex asserts that the CIT's remand requires the Department to issue a revised scope for this investigation that excludes all sales in which there is no transfer of ownership of LEU and the fundamental purpose of the contract is to provide enrichment services.

Tenex maintains that the transactions that must be excluded from the scope include Russia's sales to USEC pursuant to the USEC Privatization Act. Tenex states that, although LEU is shipped from Russia to the United States in transactions pursuant to the USEC Privatization Act, the sale is for SWU only because USEC is required to simultaneously return to Tenex the equivalent amount of feed or natural uranium in each transaction, and that feed is deemed by U.S. law to be of Russian origin. Tenex argues that, pursuant to U.S. law, since Russia retains and does not transfer ownership of the natural uranium in these transactions, there is no transfer of ownership of LEU but only sales of enrichment services, or SWU. Tenex further contends that the terms of the contract between USEC and Tenex implementing the USEC Privatization Act, or "Implementing Contract," clearly do not provide for the transfer of ownership of LEU from Tenex to USEC and indicate that the fundamental purpose of these

transactions is the provision of enrichment services (or SWU), not goods (LEU).[18]

Finally, Tenex contends that, like the scope of the investigation, the scope of the Suspension Agreement must be revised to reflect that it cannot govern sales of SWU because, under Eurodif, such transactions are not subject to the U.S. AD law. According to Tenex, for the sake of administrative clarity, the Department should specify that transactions pursuant to the USEC Privatization Act are excluded from the investigation and the Suspension Agreement.

Tenex states that there is no dispute that the only imports for consumption during the sunset review period were SWU transactions made pursuant to the USEC Privatization Act. Tenex asserts that evidence on the record in the sunset review proceeding indicates that deliveries of LEU pursuant to enrichment services transactions, i.e., imports of LEU pursuant to the HEU Agreement, would continue to comprise a significant portion of likely future uranium imports from Russia, and these imports would be the only imports likely to increase if the Suspension Agreement were terminated. Tenex maintains that the Implementing Contract shows that SWU transactions will comprise a significant part of any likely future imports of uranium from Russia because, for example, USEC is contractually-obligated to purchase 5.5 million SWU from Tenex each calendar year through 2013.[19]

According to Tenex, consideration of relevant economic factors demonstrates that the margin from the preliminary determination in the original investigation, a best-information-available rate for uranium from the former USSR, is not probative of likely dumping and should not be relied upon by the Department. Tenex argues that relevant economic factors, including

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[18] See Tenex's October 26, 2007, comments to the Department at 5.

[19] Id. at 7.

significant alterations in the supply and demand conditions in the U.S. and global markets for uranium since 1992, indicate dumping is unlikely to continue or recur. Tenex further argues that relevant imports, i.e., non-SWU transactions, are unlikely to be significant or at dumped prices. According to Tenex, the only sales and imports for consumption from Russia during the review period were SWU transactions pursuant to the Implementing Contract. Tenex also maintains that Russia had, and will have, a very limited amount of natural uranium during the review period and in the foreseeable future, making significant imports of both natural and enriched uranium unlikely.[20] Finally, Tenex asserts that, during the review period, Russia did not even deliver for consumption in the United States the amount of natural uranium permitted pursuant to the USEC Privatization Act because it needed it for down-blending HEU, indicating that dumping of natural uranium in significant volumes is unlikely in the foreseeable future.

AHUG

AHUG maintains that its members are foreign producers of Russian LEU, the subject merchandise, pursuant to 19 C.F.R. § 351.401(h) under their enrichment services contracts with USEC. Thus, AHUG argues that it is an interested party with standing to participate fully in this proceeding. AHUG claims that the producer of LEU delivered to USEC under the HEU Implementing Contract is the entity that owns the LEU as a whole and controls its relevant sale. AHUG asserts that neither Tenex nor USEC can be the producer of LEU delivered to AHUG members under their SWU contracts because neither sells, nor sets the price for, LEU. According to AHUG, its member utilities are qualified as producers of LEU because they are the only entities that own the LEU as a whole, delivered to them under their enrichment services

[20] Id. at 8.

contracts with USEC, and are in a position to sell that LEU.

AHUG argues that the Department must modify the scope of the subject merchandise in this sunset review to exclude LEU imported pursuant to SWU transactions as defined in the Eurodif decisions. According to AHUG, the CIT noted in Tenex that the Eurodif decisions defined SWU transactions based on two primary characteristics: 1) ownership over the uranium is not transferred in the contract, and 2) the fundamental purpose of the contract is to provide enrichment services. Thus, AHUG maintains, if the contract does not contemplate a sale of LEU as a whole, then it is a SWU transaction not subject to the AD law. Further, AHUG urges the Department to apply the definition for enrichment transactions provided by the Department in its Eurodif remand redetermination in this case as well.[21] AHUG further urges that, upon publishing the remand redetermination in this case, the Department should issue instructions to U.S. Customs and Border Protection allowing LEU imported pursuant to SWU transactions into the U.S. customs territory without regard to the Suspension Agreement.

AHUG asserts that current evidence does not support a finding of likely recurrent dumping in this sunset review. AHUG first notes that, pursuant to 19 U.S.C. § 1675a(c), the Department is to assess the following three factors in making its determination of whether the termination of the suspended investigation "would be likely to lead to continuation or recurrence of dumping," in accordance with 19 U.S.C. § 1675(c): (A) the weighted-average dumping margins determined in the investigation and subsequent reviews, (B) the volume of subject imports before and after acceptance of the suspension agreement, and (C) other relevant price,

[21] See AHUG's October 26, 2007, submission to the Department at 5-6.

cost, market, or economic factors.[22] AHUG asserts that the only relevant criteria on which the Department may base its likelihood determination are the other factors such as price, cost, market, or economic conditions.

AHUG maintains that, since SWU transactions must be excluded from the likelihood analysis, the Department may only consider likely sales of EUP. However, according to AHUG, the facts confirm that Tenex is not able or likely to sell EUP in significant quantities in the U.S. market in the foreseeable future if the Suspension Agreement is terminated. First, AHUG asserts that Tenex has little of its own uranium available to use in sales of EUP over the next few years.[23] AHUG then argues that, given Russia's existing commitments for enrichment, it is unlikely that a significant increase in subject EUP exports to the United States would occur in the next few years if the suspended investigation were terminated. AHUG also maintains that utilities procure the vast majority of their enrichment needs through long-term SWU and uranium feed contracts and that nothing suggests they could or would shift to purchasing EUP in any significant quantities if the Suspension Agreement were revoked.

AHUG argues that Russian uranium concentrate is unlikely to be imported in significantly increased volumes if the Suspension Agreement is removed. In support of this argument, AHUG states that imports of Russian HEU feed under the USEC Privatization Act have averaged substantially less than the quota allotment over the period of investigation. AHUG also states that Russia's production of uranium concentrates does not satisfy its own current domestic demand and that Russia does not have vast reserves of uranium. AHUG further

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[22] Id. at 8-9.

[23] Id. at 10.

maintains that HEU down-blend and tails re-enrichment do not provide significant alternative sources for Russian uranium imports into the United States because Russia has little excess SWU capacity available to produce additional re-enriched uranium for export to U.S. end-users.[24]

AHUG asserts that prices for Russian uranium are likely to remain well above dumped levels because global supply of uranium products is low, demand is high, and prices have increased as a result. AHUG maintains that existing production of uranium concentrates is largely committed until 2009 and that much of the new production planned by concentrate producers is not likely to reach the market until 2009 or later. AHUG argues that global demand is increasing, and will increase further in the next ten to fifteen years, as evidenced by the new nuclear reactors planned in the United States, Russia and numerous other countries. According to AHUG, these planned nuclear reactors are already having an effect on the market as some utilities look to establish supply sources for their initial fuel loads and as operators are driven to seek longer supply contracts (up to 15 years), even at today's high prices. [25]

AHUG argues that price trends in the uranium market are favorable and make dumping of Russian uranium unlikely, noting that the price for U3O8 in spot and long-term contracts rose from less than $10 per pound in 2000 to $43.50 per pound as of May 2006. According to AHUG, long-term prices above $40 per pound are not likely to be dumped, especially in light of the Department's estimation in 1992 that $13 per pound would not be injurious under the Suspension Agreement. AHUG asserts that the former existence of a price differential between "restricted" and "unrestricted" uranium does not indicate that Russian concentrate would be

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[24] Id. at 14-15.

[25] Id. at 18.

dumped in the U.S. market. AHUG maintains that Russian-origin concentrate trades on world markets on par with concentrate from other countries.

AHUG argues that Tenex would be unlikely to dump enriched uranium product in the U.S. market if the Suspension Agreement were removed since enriched uranium is not normally sold as a product in the U.S. market (i.e., utilities purchase toll enrichment services for uranium they already own). AHUG asserts that, even if Tenex were to sell Russian EUP to U.S. customers, it has no incentive to sell it at prices significantly below U.S. market price. According to AHUG, current tight supply and increasing demand mean that enriched products are not price sensitive, i.e., enrichers can make a profit in this seller's market even if they are not the low-cost supplier. AHUG also notes that U.S. enrichment demand is already committed under long-term contracts, leaving little room for Tenex to expand its market share by aggressive pricing of EUP. Finally, AHUG maintains that the structure of the HEU Implementing Contract between USEC and Tenex leaves little incentive for Tenex to dump EUP on the U.S. market because such dumping would depress SWU prices and, thus, reduce the price USEC is obligated to pay Tenex for its annual supply of SWU.

AHUG objects to the participation of PRI and Crow Butte in this remand proceeding and requests that the Department reject any comments and information they submit. AHUG maintains that, having failed to intervene in the appeal at the CIT, PRI and Crow Butte cannot then join the proceedings on a subsequent remand. AHUG further argues that counsel for PRI and Crow Butte has not filed a Form 17 with the CIT and is not covered by the judicial protective order governing confidential information related to AHUG's standing in these proceedings. Thus, according to AHUG, it may not legally provide counsel to PRI and Crow Butte with access

to proprietary information it submits on the record in this remand proceeding.

LIKELIHOOD OF CONTINUATION OR RECURRENCE OF DUMPING

Consistent with the guidance provided in the legislative history accompanying the URAA, specifically the SAA, the House Report, and the Senate Report, S. Rep. No. 103-412 (1994) ("Senate Report"), the Department's determinations of likelihood in a sunset review will be made on an order-wide basis. Pursuant to section 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 suspended investigation 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 section 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 Department agrees with AHUG that the most appropriate factors to consider in determining the likelihood of continued or recurring dumping in the case of this Suspension Agreement are such other price, cost, market, or economic factors, rather than the volume of imports of the subject merchandise for the period before and after the issuance of the Suspension Agreement. Imports of Russian uranium products during the sunset review period (2000-2005) consisted of: 1) imports of natural uranium under the "matched sales" quota, pursuant to Section IV.A of the Suspension Agreement (as amended in 1994); 2) imports of LEU from HEU under the HEU Agreement, pursuant to Section IV.M of the Suspension Agreement; and 3) imports for reprocessing and re-export, under Section IV.H of the Suspension Agreement.

The Suspension Agreement's "matched sales" quota provision for natural uranium, which expired in March 2004, restricted imports of Russian natural uranium during this sunset review period unless sold pursuant to a matched sale, where Russian-origin natural uranium was matched with U.S.-origin natural uranium for sale into the U.S. market. With respect to the re-export provision, imports of up to six million pounds U_3O_8 equivalent were allowed entry during this sunset review period, and continue to be allowed entry, under the Suspension Agreement for reprocessing and re-export within 12- or 36-month periods; thus, these imports are not for consumption in the U.S. market. Finally, the Suspension Agreement did allow for unlimited imports of the LEU down-blended from HEU pursuant to the HEU Agreement during this sunset review period, and continues to allow for such imports. Because the imports described above were allowed entry during the sunset review period under the particular quota provisions and controlled circumstances mandated by the Suspension Agreement, we do not believe they are indicative, for purposes of this sunset review, of the likelihood of continued or recurring

dumping in the absence of the Suspension Agreement. Therefore, the Department has continued to consider additional information and record evidence on future volumes and prices of imports in making its redetermination of the likelihood of future dumping by Russia of its uranium products in the U.S. market pursuant to this remand.

We first state that, in accordance with the CIT's instructions on remand, we have reconsidered our analysis of the likely future dumping of Russian uranium products without the inclusion of LEU imports pursuant to sales under SWU contracts, as defined in the Eurodif decisions. In its opinion, the CIT described these contracts as follows:

> Typically, these contracts are structured so that a utility contracts for the enrichment of a certain amount of converted uranium (called "feedstock"), which it supplies. The enricher provides enriched uranium to the utility, in exchange for a comparable amount of feedstock and payment for the amount of separative work units ("SWU") necessary to enrich the feedstock. Although the enriched uranium is typically not the same uranium as the feed uranium provided for a given transaction, it is contractually treated as such. These contracts or transactions are referred to as "SWU contracts" or "SWU transactions."[26]

The CIT then referred to the Department's definition of "SWU transactions" in Low Enriched Uranium from France, Final Results of Redetermination Pursuant to Court Remand, Eurodif S.A. v. United States, (Dep't of Commerce, June 19, 2006):[27]

> Also excluded from the scope of this order is LEU produced and imported pursuant to a

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[26] See Tenex, Slip-op. 07-143 at 7 n.8.

[27] See http://ia.ita.doc.gov/remands/06-75.pdf.

> separative work unit ("SWU") transaction. For purposes of this exclusion, a SWU transaction means a transaction in which the parties only contract for the provision of enrichment processing, and the purchasing party is responsible for the provision of natural uranium feedstock to the enricher. At no time, before, during or after enrichment, does the enricher own or hold title to the LEU product delivered under the contract. In order to qualify for the exclusion, the SWU transaction must be performed in accordance with the relevant terms of a written contract for the provision of SWU. Entries pursuant to such SWU transactions must be accompanied by the certification of the end user and enricher.[28]

Tenex and AHUG indicate in their comments that the transactions to be excluded are transactions where there is no transfer of ownership of LEU and the fundamental purpose of the contract is to provide enrichment services. The Department has used the noted definitions and guidelines in excluding the SWU transactions, as defined by the Eurodif cases, from this redetermination of the likelihood of future dumping.

Volume of Imports

The Department first takes issue with Tenex's and AHUG's insistence that imports of Russian LEU derived from down-blended HEU pursuant to the HEU Agreement meet the above-discussed definitions and guidelines of SWU transactions, as defined by the Eurodif decisions, and must be excluded from the Department's redetermination of likelihood in this sunset review remand. In fact, we disagree that the LEU from HEU transactions in any way resemble the Eurodif-defined SWU transactions such that they should be excluded from our analysis. As

[28] Id. at 7 n. 8.

described by the USW, it is evident from the Senate Report related to the USEC Privatization Act, which defined the LEU from HEU transactions, that Congress considered the LEU down-blended from HEU to include both the SWU and the feedstock and that the U.S. Executive Agent, USEC, was to purchase the whole product from the Russians.[29]

Additionally, as clearly detailed by USEC and the USW, the structure of the transactions under the HEU Agreement and Russian HEU Contract (or Implementing Contract), are wholly different than the structure of the Eurodif-defined SWU transactions. For these HEU Agreement transactions, Russia owns the HEU from which the down-blended LEU is derived, the tails material with which it is blended, and the enriched uranium which results prior to its transfer to USEC. The Russian HEU Contract, which governs the sale of this LEU from HEU, is between Tenex, the Russian Executive Agent and enricher, and USEC, the U.S. Executive Agent and a U.S. enricher. The Russian HEU Contract, as amended by Amendment 008, in fact makes clear that Tenex ". . .represents and warrants to USEC that TENEX will convey to USEC good and marketable title to the LEU delivered to USEC pursuant to this contract free and clear of any liens, encumbrances, security interests or other adverse claims."[30] Thus, unlike with the Eurodif-defined SWU transactions, title to the LEU *does* transfer from the enricher with the LEU from HEU transactions. As noted by USEC in its comments, "[f]rom the moment that USEC takes delivery of Russian weapons LEU in St. Petersburg, the LEU – both the SWU and natural uranium feed components – belongs entirely to USEC. . ." and USEC is then in a position to

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[29] See Senate Report 104-173, Calendar No. 244, November 17, 1995; http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=104_cong_reports&docid=f:sr173.104.pdf.

[30] See USEC's October 26, 2007, submission at 30.

control its sale, either through EUP or SWU contracts.[31] Further, although USEC credits Tenex's account in the United States with an equivalent quantity of natural uranium when the LEU from HEU is delivered to USEC in St. Petersburg, no U.S. utility end-user purchases uranium feedstock and provides it to the Russian enricher to make the LEU, as is the case with the Eurodif-defined SWU transactions.

Therefore, Tenex's ownership of the enriched uranium material prior to its delivery to USEC, as the U.S. Executive Agent (*not* a U.S. utility end-user), makes this contract and these transactions fundamentally different from the SWU contracts and transactions considered in the Eurodif decisions. The Department has, thus, continued to include LEU from HEU transactions pursuant to the HEU Agreement in its analysis of the likely volumes of imports and likely future dumping, while excluding SWU transactions which meet the description of the SWU transactions defined in the Eurodif decisions. In this vein, the Department also agrees with Tenex that evidence on the record in the sunset review proceeding indicates that imports of LEU pursuant to the HEU Agreement would continue to comprise a significant portion of likely future uranium imports from Russia, through 2013, if the Suspension Agreement were terminated.

The Department also does not consider SWU transactions where Russian-origin natural uranium is enriched in Russia as transactions qualifying for exclusion, pursuant to the Eurodif decisions, from the Department's redetermination of likelihood in this sunset review remand. In such a transaction, although a U.S. utility may contract with Tenex separately for the Russian-origin natural uranium feed and the Russian enrichment processing, it is purchasing both components directly from Tenex. As noted above, in a transaction which qualifies for exclusion

[31] Id. at 58-59.

from the Department's analysis pursuant to the Eurodif decisions, the utility is responsible for providing natural uranium feedstock to the enricher. However, in a transaction involving both Russian-origin natural uranium and enrichment under separate contracts, Tenex owns the Russian-origin natural uranium feed which is subsequently purchased by the U.S. utility for purposes of enrichment in Russia.

In this remand redetermination, the Department reiterates its agreement with statements provided on the sunset review record by PRI and Crow Butte 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 predictable manner (in addition to the other Russian 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, both natural and enriched, 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. In fact, in a recent press article, an industry analyst made the point that, post-2013, "Russian companies are likely to prefer to export LEU derived from natural uranium rather than

from downblending HEU. . .”[32]

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.[33] 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.[34] Russia has also made clear that it is planning to increase this capacity by around six million SWU, to approx. 26 million SWU, by 2010.[35]

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.[36] In addition, as USEC indicated

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[32] See “Putin crafts Russian nuclear titan,” Guardian Unlimited (December 10, 2007) (“Russian nuclear titan”), available at http://www.guardian.co.uk/feedarticle?id=7140501.

[33] See “The Global Nuclear Fuel Market: Supply and Demand 2003-2025," World Nuclear Association (2003), at 107 (“Supply and Demand”).

[34] 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 Electrochecmical Integrated Plant) (2003), at 3. See also “Another Mountain: The Tails Aspect of Secondary Supply,” RWE Nukem (July 2005), at 8 (“Another Mountain”).

[35] See Another Mountain, at 9. See also Supply and Demand, at 143.

[36] See “NAC’s Nuclear Industry Status Report - Enrichment,” NAC International (February 2005), Sect. F-3 at 27.

during the sunset review proceeding, 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.[37] The record evidence indicates that Russia is evidently using its remaining capacity to re-enrich depleted uranium tails; however, as noted by the parties during the sunset review proceeding, this is not the most economically-viable use of its capacity, in comparison with enriching natural uranium for commercial SWU sales.[38] 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 enriched uranium products.

The sunset review record also contained indications that Russia will increase its mining of uranium in the coming years.[39] The article Russian nuclear titan notes that "Russia has about 870,000 tonnes of uranium in reserves and more than 1 million tonnes if joint ventures abroad are included. . ." and that these figures exclude Russia's strategic reserve of HEU and plutonium whose size is a state secret.[40] 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 and Tenex's assertions for this remand redetermination that Russia's underutilization of the HEU feed quota (pursuant to the USEC Privatization Act) is indicative that Russia will not redirect natural uranium exports to the U.S. market in the absence of the Suspension Agreement. Sales of the

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[37] See USEC's August 31, 2005, Substantive Response at 13.

[38] Id. at 13-14.

[39] See Supply and Demand, at 100. See also "The Russian Nuclear Industry: The Need for Reform," Bellona Report Volume 4 (2004) at 35.

[40] See Russan nuclear titan.

HEU feed material pursuant to the quota mandated by the USEC Privatization Act are made in the U.S. market not only by Tenex, but also by three additional agents designated by Russia to make such sales. In addition, these sales of feed may be made for consumption both inside and outside of the United States. According to the Department's own record of the HEU feed deliveries in the United States, the percentage utilization under the quota ranged from approximately 68 percent to over 96 percent during the sunset review period (2000-2005). Therefore, we do not agree that the HEU feed quota was significantly underutilized during this sunset review period. Furthermore, we do not agree that whether or not Russia, via Tenex, fully utilizes its allotted 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 clear from the record evidence in the sunset review proceeding 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.[41] In addition, record evidence with regard to the restrictions on the imports of Russian uranium in third-country markets, such as the European Union and Asia, provides further support for the argument that Russia will redirect its uranium products exports to the U.S. market in the absence of the Suspension Agreement.[42]

Coupled with the assessment described above of Russia's enormous enrichment capacity, additional evidence regarding the potential for Russia to make sales of LEU in the U.S. market

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[41] See "The World Uranium Industry and Market," TradeTech Report (June 2004) at 5-7 and 10. See also Another Mountain at 12. See also PRI's and Crow Butte's August 30, 2005, Substantive Response at 16.

[42] See PRI's and Crow Butte's August 30, 2005, Substantive Response at 15-16. See also USEC's August 31, 2005, Substantive Response at 20-22.

points to increased volumes of imported Russian LEU in the absence of the Suspension Agreement. During the course of the concurrent sunset review conducted by the ITC, that agency requested U.S. uranium purchasers to submit information regarding discussions and contingent contracts between the Russian industry and U.S. utilities during the sunset review period. According to the ITC's public report, the Russian uranium industry had had discussions with U.S. nuclear utilities about sales in the event the suspended investigation was terminated; in fact, the ITC reported that the Russian uranium industry had entered into a number of contingent contracts with U.S. utilities. Specifically, the ITC's report states that 16 out of 29 responding uranium purchasers advised that they had solicited or had been solicited to negotiate contingent contracts for Russian-sourced uranium during the period 2000-2005.[43] The ITC notes that these contingent contracts covered: conversion to UF_6, natural uranium hexafluoride, enrichment services, and the purchase of enriched uranium product, or EUP.

The ITC continued by stating in its report that these arrangements reflected repeated attempts by the Russian industry to increase sales to the United States over and above the sales currently permitted under the Suspension Agreement. The ITC viewed those efforts, in tandem with the public statements of Mr. Sergei Kiriyenko, Director of the Federal Atomic Energy Agency, or Rosatom, as an indication of the Russian industry's intent to expand uranium sales in the U.S. market upon termination of the suspended investigation.[44] The ITC also made the following notation:

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[43] See ITC's Uranium from Russia, Inv. No. 731-TA-539-C, USITC Pub. No. 3872 (August 2006) ("ITC Report") at 31.

[44] Id. at 31.

> We note that the relatively large number of contingent contracts involving the provision of EUP, and the large amount of uranium involved in these contracts, could be particularly harmful to the domestic uranium industry because EUP encompasses all of the previous stages of the nuclear fuel cycle. Thus, the provision of EUP takes away sales from not only the enricher but also the converter and concentrators.[45]

We believe that the evidence submitted to the ITC from U.S. uranium purchasers regarding contingent EUP contracts, and the ITC's conclusions with respect to these contracts, provide strong indications that Russia will sell, and U.S. utilities will purchase, Russian EUP in the absence of the Suspension Agreement.

We also agree with USEC's assertions in this remand proceeding that Tenex is likely to make sales of LEU pursuant to EUP contracts in the U.S. market in the absence of the Suspension Agreement because it would be consistent with Russia's efforts to continue consolidating and vertically integrating its nuclear production structure, as evidenced by press articles and Rosatom and Tenex statements. In fact, the article Russian nuclear titan reports that "[t]he Kremlin is folding all Russia's civilian nuclear assets – ranging from uranium mines and nuclear fuel enrichment to atomic power stations – into a giant company, Atomenergoprom. . ."[46] It further quotes Mr. Kiriyenko, head of Rosatom and the man behind Atomenergoprom's creation, as stating "[i]t will be a company encompassing the full cycle – from mining uranium to the generation of electricity at atomic stations and decommissioning them. . .."[47] USEC pointed

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[45] Id.at 31 n. 195.

[46] See Russian nuclear titan.

[47] Id.

out in its comments that Tenex is actively selling LEU under EUP contracts in its home market and in third-country markets and that Tenex itself has explained its normal practice of paying cash to uranium mining enterprises and to enrichment plants, and exporting the "finished product."[48] We agree with USEC's assessment that the state-owned Russian nuclear fuel industry sells products across the nuclear fuel spectrum and, thus, has the commercial incentive to sell LEU under EUP contracts, rather than simply selling the enrichment component of LEU in a SWU transaction. Finally, USEC also noted in its comments that its own experience, as a U.S. enricher, during the sunset review period was that it made LEU deliveries pursuant to EUP contracts in the 2000-2005 period and also that it continues to receive requests for quotations/proposals from U.S. utilities for the purchase of LEU under EUP contracts.[49]

Another strong indication that Russia is likely to sell a wide range of Russian uranium products into the U.S. market in the absence of the Suspension Agreement is the position taken by the Russian government, i.e., Rosatom, in negotiations with the U.S. government on a possible amendment to the Suspension Agreement. For over two years, since early 2005, the Department has been in discussions with Rosatom regarding a possible amendment which would allow some commercial sales of Russian uranium products in the U.S. market. In these discussions, Rosatom has pushed hard for the flexibility to sell Russian uranium products *in any form* into the U.S. market. The United States and Russia initialed a draft amendment on November 27, 2007, in which a new definition is inserted in Section II ("Definitions") of the Suspension Agreement: "Russian Uranium Products" means all products described in Section

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[48] See USEC's October 26, 2007, submission at 16-17 and Att. 6.

[49] Id. at 18, Att. 8 and Att. 10.

III, Product Coverage, of the Agreement." See Initialed Draft Amendment to the Agreement Suspending the Antidumping Investigation on Uranium From the Russian Federation; Request for Comment, 72 FR 68124 (December 4, 2007) ("Draft Amendment"). The Draft Amendment uses the term "Russian Uranium Products" throughout, and the quota levels to be instituted, if the amendment is finalized, are expressed in "KgU as LEU." As evidenced by the negotiations with Rosatom and the Draft Amendment itself, there is every indication that the ability to sell an increasingly fully-packaged, upstream product, as well as any singular product along the nuclear fuel spectrum, is all-important to Russia. Therefore, the exclusion of SWU transactions notwithstanding, the evidence on which the Department has based its analysis in this sunset review redetermination indicates a strong predisposition for Russia to sell a range of nuclear products--from natural uranium concentrates to converted products to EUP–in the absence of the Suspension Agreement.

Based on the record evidence, we determine for this remand redetermination that there is a likelihood that Russia would significantly increase its future exports of uranium products, including natural and enriched uranium, 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. Further, 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, with the evidence indicating this capacity is growing. These facts, accompanied by the evidence regarding third-country market restrictions and Russia's future plans to sell more fully-packaged, upstream products, 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, 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 and/or the suspended investigation.

Likelihood of Continued or Recurring Dumping

As noted above, in accordance with section 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 played 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 from increased imports of Russian uranium products in the absence of the Suspension Agreement are worthy of consideration in the context of our likelihood redetermination.

PRI and Crow Butte, USEC, and AHUG submitted information in the sunset review proceeding concerning the impact on prices in the U.S. market for both natural uranium and SWU absent the Suspension Agreement. We agreed with USEC and PRI and Crow Butte in our sunset determination 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. In this remand redetermination, after excluding potential SWU transactions as defined in the Eurodif cases, we continue to assert that imports of Russian uranium products, including natural uranium, converted uranium and EUP, would likely undercut and depress, or suppress, U.S.-market prices for those same 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.[50] Therefore, as also discussed above under Volume of Imports, it is likely that, absent the Suspension Agreement, Russia would redirect its exports of uranium products, including natural and enriched uranium, to the United States at prices that would undersell U.S. uranium products.

During the sunset review proceeding, all of the parties acknowledged the post-Suspension Agreement distinction between the "restricted" and "unrestricted" market prices for uranium products. AHUG would have had us believe that removal of the restrictions imposed by the Suspension Agreement would cause the price of Russian uranium products to rise, whereas USEC and PRI and Crow Butte argued 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" prices for uranium products, we do not agree that removal of the Suspension Agreement's restrictions would cause the price of Russian uranium products to rise.

USEC and PRI and Crow Butte presented compelling evidence in the sunset review proceeding 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 Western sources stating that "we shall always supply our fuel at 30% less than western producers."[51] Additionally, a review by the

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[50] See Issues and Decision Memorandum for the Sunset Review of Uranium from Russia; Final Results, dated July 5, 2000 at Comment 3.

[51] See "Nuclear Exports Trade is Russia's Growing 'Cash Crop'," Nuclear Society of Russia (March 14, 2000).

World Nuclear Association confirms Russia's approach to undercut world prices for nuclear fuel and services by that amount.[52] We also agree with USEC's assertion in its comments for this remand redetermination that the Department's sunset finding (that significant price declines for uranium products would result from the likely substantially-increased volume of Russian uranium products) is particularly valid given that Russia is actively looking to increase its sales of all uranium products in the United States at a time when demand is likely to remain flat, i.e., until the effects of the "nuclear renaissance" start to impact demand for nuclear fuel.[53]

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, including both natural and enriched uranium, in the U.S. market. The increased availability of these Russian uranium products would in turn drive down prices for the corresponding U.S. uranium products. As the Department noted in its sunset review decision, it has already determined in at least two previous sunset review 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

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[52] See "Nuclear Power in Russia," World Nuclear Association (September 2005), available at http://world-nuclear.org/info/inf45.htm.

[53] See USEC's October 26, 2007, submission at 39 and Att. 23.

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."

We continue to find in the remand redetermination that this influx of Russian natural and enriched uranium products, notwithstanding the exclusion of SWU transactions of the Eurodif persuasion, would not only depress prices in the U.S. market but would also likely be at dumped prices, indicating a likely continuation or recurrence of dumping in the U.S. market. We emphasize that neither Rosatom nor Tenex submitted information during the sunset review, nor in an administrative review during the life of the Suspension Agreement, that would counter the information relied upon in the original preliminary determination, i.e., that Russian uranium products were sold at dumped prices in the U.S. market before the Suspension Agreement went into place. We agree with PRI and Crow Butte that the Department's graduation of Russia to market-economy status does not in itself obviate the likelihood of dumping. The Department's 2002 memorandum on Russia's graduation specifically indicated that any AD rates established in pre-existing investigations would ". . .remain in effect until they are changed as the result of a review, pursuant to Section 751 of the Act."[54]

We also agree that the Suspension Agreement itself, under Section XIII ("Conditions"), offers Russia the opportunity to enter into a market-economy-based agreement under the Act, or

[54] See "Inquiry into the Status of the Russian Federation as a Non-Market Economy Country under the U.S. Antidumping law," Memorandum from Albert Hsu to Faryar Shirzad (June 6, 2002) at 2.

to submit new information in the context of a resumed investigation, should the Department determine during the life of the Suspension Agreement that the Russian uranium industry was a market-oriented industry or that Russia was a market economy. Neither Rosatom nor Tenex has requested a new calculation of the likely AD margin in the context of an administrative or sunset review, submitted probative information for such a calculation, requested a conversion of the Suspension Agreement to a market-economy-based agreement under the Act, or taken advantage of the opportunity to submit new information in the context of a resumed investigation.

Indeed, USEC points out that data on costs for uranium products in Russia are distorted and kept closely confidential and that state control of Russian energy prices would render them unusable as a valid basis for determining normal value without substantial adjustment.[55] During this sunset review period, the Department recognized the potential unreliability of Russia's energy costs in the first market-economy suspension agreement signed with Russia when it noted the following:

> In accordance with section 773(f) of the Act, the Department will examine prices and costs within Russia and, for any sales period, may disregard particular prices or costs when the prices are not in the ordinary course of trade, the costs are not in accordance with the generally accepted accounting principles, the costs do not reasonably reflect the cots associated with the production and sale of the merchandise, or in other situations provided for in the Act or the Department's regulations. Examples of possible areas in which adjustments may be necessary include, but are not limited to, costs related to energy, depreciation, transactions among affiliates, barters, as well as items that are not

[55] See USEC's October 26, 2007, submission at 40-43.

recognized by the Russian Accounting System.

See Agreement Suspending the Antidumping Investigation of Certain Cut-to-Length Carbon Steel Plate From the Russian Federation, 68 FR 3859 (January 27, 2003). Furthermore, with respect to the Russian civilian nuclear fuel industry, the ITC reported in its sunset review proceeding that the U.S. Embassy in Moscow stated that "[i]n support of Russia's foreign policy goals, the civilian nuclear industry frequently set prices for its services lower than what market forces would dictate."[56]

Thus, with the official record of the Suspension Agreement lacking in information on Russian prices and costs to support a contrary conclusion, the Department is left with no other alternative but to conclude that Russian uranium products would continue to be sold at dumped prices in the U.S. market in the absence of the Suspension Agreement. Therefore, we find in this remand redetermination that, in the absence of the Suspension Agreement, Russia would be likely to substantially increase its exports to the United States of uranium products, including natural and enriched uranium, and this increased supply would be likely to lead to a decline of the prices for U.S. uranium products. Further, it is likely that there would be a continuation or recurrence of dumping in the U.S. market of Russian uranium products, not to include Russian SWU transactions as defined in the Eurodif decisions and excluded from our analysis in accordance with the CIT's instructions, if the Suspension Agreement and/or the suspended investigation were terminated.

Magnitude of Margin Likely to Prevail

In a sunset review, the Department normally will provide to the ITC the margin that was

[56] See ITC Report at IV-14.

determined in the final determination in the original investigation. For companies not investigated specifically, 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 (or, in the case of an non-market-economy investigation, the country-wide rate). Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. 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. The Department's preference for selecting a margin from the investigation is based on the fact that it is the only calculated rate that reflects the behavior of manufacturers, producers, and exporters without the discipline of an order or suspension agreement in place.[57]

For the preliminary determination in the original antidumping investigation, the Department calculated a country-wide dumping margin of 115.82 percent, based on the "best information available." As the Department noted in its sunset review decision, the 115.82 percent margin from the preliminary determination is the only margin available to the Department. The underlying investigation was never continued and, to date, no administrative reviews of the Suspension Agreement have been completed. As noted above under Likelihood of Continued or Recurring Dumping, despite various opportunities for Russia to provide information that would update this preliminary margin, to date, Russia has not availed itself of these opportunities. Indeed, neither Rosatom nor Tenex submitted a substantive response at the

[57] See SAA at 890.

beginning of this sunset review proceeding.[58]

With respect to Russia's graduation to market-economy status in 1992, as noted above under Likelihood of Continued or Recurring Dumping, we find that this change in Russia's status does not automatically make margins calculated during the investigation obsolete. In previous sunset reviews on Russian solid urea and Russian ammonium nitrate, the Department made similar determinations that the graduation of Russia to market-economy status did not invalidate earlier margins based on non-market-economy methodology.[59] In its final sunset decision, the Department also found that, consistent with its decisions in sunset reviews on Hungarian tapered roller bearings and Mexican cement, the fact that a different methodology would apply prospectively (as a result of Russia's graduation to a market-economy status) did not nullify the margin calculated in the investigation.[60] Therefore, we conclude that the AD rate from the underlying investigation continues to apply in this sunset review proceeding.

We agree with Tenex that many changes have occurred in the uranium industry since

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[58] See Issues and Decision Memo for the Sunset Review of the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation; Preliminary Results (March 24, 2006) at 4-5.

[59] See Solid Urea from the Russian Federation; Final Results of the Expedited Sunset Review of the Antidumping Duty Order, 70 FR 24528 (May 10, 2005) and accompanying Issues and Decision Memorandum. See also Ammonium Nitrate from Russia and Final Results of Five-Year Sunset Review of Suspended Antidumping Duty Investigation on Ammonium Nitrate from the Russian Federation, 71 FR 11177 (March 6, 2006) (where the Department adopted its decision from the preliminary results in its final results).

[60] See Final Results of Expedited Sunset Review: Tapered Roller Bearings From Hungary, 64 FR 60272, 60274-75 (November 4, 1999) ("Tapered Roller Bearings From Hungary"). See also Gray Portland Cement and Cement Clinker From Mexico; Preliminary Results of Full Sunset Review, 65 FR 10468 (February 28, 2000) and accompanying Issues and Decision Memorandum.

1992, when the Suspension Agreement went into effect. However, we also agree with PRI and Crow Butte and USEC that the many economic changes that have occurred in Russia have not necessarily been reflected in its nuclear sector. During the sunset review period, Russia's nuclear sector and its sales arm, Tenex, remained firmly under state ownership and control. As PRI and Crow Butte note, no parties have placed evidence on the record of this sunset review proceeding to indicate that the Russian nuclear sector has changed in terms of its production or pricing, or that pricing of Russian nuclear products would be "fair," as a result of the other changes in Russia's economy.[61]

As the Department noted in its sunset review decision, there is a substantial case precedent in its history that advises against recalculating margins in sunset reviews. In fact, the SAA clearly states 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."[62] Thus, in Tapered Roller Bearings from Hungary, the Department determined that Hungary's graduation to market economy status did not constitute the "most extraordinary circumstances" specified in the SAA that warranted reliance upon on a dumping margin other than one calculated in prior determinations. Furthermore, the Department determined that "the margin calculated in the original investigation is probative of the behavior of Hungarian producers/exporters if the order were revoked as it is the only rate that reflects the behavior of these producers and exporters without the discipline of the order."[63] Similarly, in

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[61] See PRI's and Crow Butte's October 26, 2007, comments at 10-11.

[62] See SAA at 891.

[63] See Tapered Roller Bearings from Hungary at 60275.

Ammonium Nitrate from Russia, the Department determined that the rates from the original investigation were the only calculated rates that reflected the behavior of producers or exporters of ammonium nitrate from Russia without the discipline of the suspension agreement in place, and the Department deemed those rates to be the most appropriate to report to the ITC. Likewise, given the restrictions imposed by the Suspension Agreement with respect to imports of Russian uranium products, any such recalculation attempted by the Department would reflect the behavior of producers and exporters with the restrictions of the Suspension Agreement in place and would be unduly speculative since there is no data on the record with which to perform such a recalculation.

Thus, consistent with the Department's statute, regulations and past practices, we find that the preliminary margin from the original investigation is the only margin on the record of the proceeding and continues to be probative of the behavior of Russian manufacturers/exporters of the subject merchandise, notwithstanding the exclusion of SWU transactions as defined in the Eurodif decisions, were the Suspension Agreement to be terminated. As such, pursuant to section 752(c) of the Act and this remand redetermination, the Department will continue to report to the ITC the rate of 115.82 percent from the original investigation as the magnitude of the margin likely to prevail if the Suspension Agreement and/or the suspended investigation were terminated. ___

INTERESTED PARTY STATUS ISSUES

AHUG's Status

We disagree with AHUG that its members are foreign producers of Russian LEU, pursuant to 19 C.F.R. § 351.401(h), under their enrichment services contracts with USEC. Thus,

we do not consider AHUG to be an interested party with standing to participate fully in this sunset review proceeding and/or remand redetermination. As for its final results of sunset review, however, the Department has considered AHUG's comments for this remand redetermination on the basis of AHUG qualifying as an industrial user under 19 C.F.R. § 351.312 of its regulations.[64]

According to AHUG, its member utilities are qualified as producers of LEU because they are the only entities that own the LEU as a whole, delivered to them under their enrichment services contracts with USEC, and are in a position to sell that LEU. However, USEC points out that AHUG's members do not control the production of Russian LEU, have no ownership rights in the Russian weapons LEU prior to its delivery, and cannot claim to own any of the raw materials used to produce the Russian weapons LEU. We agree with USEC's characterization of the structure of the transactions under the HEU Agreement and Russian HEU Contract and conclude that the record evidence does not support AHUG's claim that its members are foreign producers of the Russian LEU down-blended from HEU pursuant to 19 C.F.R. § 351.401(h), the Department's tolling regulation.

As the Department described in its Adequacy Memorandum in the sunset review proceeding, AHUG's member utilities do not contract directly with the Russian LEU producer for the Russian LEU down-blended from HEU.[65] Rather, AHUG's members can only receive Russian LEU, from USEC itself, which USEC purchased from Tenex. In addition, according to

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[64] See 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) ("Adequacy Memorandum") at 7.

[65] Id. at 6.

USEC, its contracts with U.S. utilities do not require that Russian LEU be delivered; rather, USEC may supply Russian LEU purchased from Russia or non-Russian LEU that USEC itself has produced to meet its contractual obligations to U.S. utilities. Therefore, the U.S. utilities, including AHUG members, do not have contractual relationships with the Russian LEU producer and, thus, have no control over the Russian producer's production activities.

Further, as explained above under Volume of Imports, title to the Russian LEU from HEU does transfer from Tenex to USEC, belying AHUG's claim that it is the only entity that owns the LEU as a whole. In addition, as noted by USEC in its comments to the Department for this remand redetermination, there is no connection between the production of the LEU that USEC receives from Russia and the belated delivery of natural uranium by USEC to Russia. As noted by USEC in the sunset review proceeding, U.S. utilities do not supply, or retain title to, any natural uranium that the Russian producer may use for the production of LEU that is delivered to USEC which *may*, in turn, be delivered to one of USEC's U.S. utility customers. We continue to conclude that these facts make clear there is no relationship between the utilities' contracts with USEC and the Russian production of LEU from down-blended HEU pursuant to the Russian HEU Contract between USEC and Tenex.

Furthermore, as noted by USEC in the sunset review proceeding, any Russian LEU that USEC delivers to a U.S. utility is produced from down-blended HEU, not by the enrichment of natural uranium, and USEC is the only U.S. importer of such merchandise. As determined by the Department in its Adequacy Memorandum, because USEC is the only U.S. importer of all Russian LEU down-blended from HEU, AHUG members are not importers of the subject

merchandise.[66]

For these reasons, we determine for purposes of this remand redetermination that AHUG is not a foreign producer or importer of Russian LEU, and, therefore, is not an interested party, as defined in section 771(9) of the Act and 19 C.F.R. § 351.312 of the Department's regulations, because its members are not foreign manufacturers, producers, or exporters, or the United States importers of subject merchandise.

PRI's and Crow Butte's Status

We disagree with AHUG's claim that PRI and Crow Butte may not participate in this remand redetermination proceeding. Although PRI and Crow Butte cannot participate in the Court litigation (unless and until they move to intervene, and the CIT grants their motion), PRI and Crow Butte qualify to participate in this remand redetermination proceeding. PRI and Crow Butte are both U.S. uranium miners, i.e., U.S. producers of subject merchandise, and as such clearly qualify as interested parties to this proceeding, as defined in section 771(9) of the Act and 19 C.F.R. § 351.312 of the Department's regulations. As AHUG states, PRI and Crow Butte are not covered by the judicial protective order in the sunset review litigation. However, interested party status is determined under section 771(9). Based upon the applicable interested party provision, counsel for PRI and Crow Butte has applied, and been granted, access to the administrative protective order in this sunset review remand segment of the proceeding.

[66] Id. at 7.