

new shipper reviews on June 9, 2004, and June 25, 2004, respectively.

On June 28, 2004, Jining Jinshan resubmitted its request for a new shipper review to correct certain deficiencies (e.g., illegible exhibits, missing English translations, etc.) that we identified in its submission and to provide additional documentation pertaining to the U.S. sale for which it requested a new shipper review.

Summary of Request for New Shipper Review

Pursuant to 19 CFR 351.214(b)(2)(i), Jining Jinshan certified that it did not export subject merchandise to the United States during the period of investigation (POI). Pursuant to 19 CFR 351.214(b)(2)(iii)(A), Jining Jinshan further certified that, since the initiation of the investigation, it has never been affiliated with any exporters or producers who exported the subject merchandise to the United States during the POI, including those not individually examined during the investigation. As required by 19 CFR 351.214(b)(2)(iii)(B), Jining Jinshan also certified that its export activities were not controlled by the central government.

In addition to the certifications described above, Jining Jinshan submitted documentation establishing the date of its sale to H & T Trading Co., Ltd. (H & T), an unaffiliated customer outside the PRC. Jining Jinshan also provided the volume and value of this shipment. Further, according to the documentation provided by Jining Jinshan, H & T then issued an invoice and resold the subject merchandise to the United States. Jining Jinshan also provided entry documentation establishing the date on which the subject merchandise entered into the United States, as well as the quantity and value of the merchandise that was resold by H & T to an unaffiliated U.S. purchaser.

Initiation of New Shipper Review

Pursuant to section 751(a)(2)(B) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.214(d)(1), we are initiating a new shipper review for shipments of fresh garlic from the PRC grown and exported by Jining Jinshan. Therefore, until completion of the new shipper review, we will instruct U.S. Customs and Border Protection to allow, at the option of the importers, the posting of a bond or security in lieu of a cash deposit for entries of subject merchandise grown and exported from the PRC by Jining Jinshan.

Initiation of Middleman Dumping Inquiry

In cases in which the producer under review sells the subject merchandise to an unaffiliated party prior to its arrival in the U.S. with knowledge of the final destination, we normally use export price, the price at which the producer sells the subject merchandise to the first unaffiliated party, as the basis for U.S. price, pursuant to section 772(a) of the Act.

Based on the material that has been submitted on the record, it appears that the sale for review in the instant case is an export-price sale.

However, when an exporter sells its merchandise to an unaffiliated exporter, who resells its merchandise to the United States below acquisition and selling costs, it is possible that "middleman dumping" may exist. In such cases, the Department will calculate an antidumping duty margin based on a combination of the price paid by the middleman to the exporter, and the price paid to the middleman from the unaffiliated U.S. customer. Congress indicated in its legislative history that it intended for the Department to prevent middleman dumping from occurring, and the Courts have affirmed this application of the law as necessary to prevent the circumvention of the antidumping duty law. *See Tung Mung v. United States*, 219 F. Supp. 2d 1333, 1343 (CIT 2002), aff'd 354 F. 3d 1371 (Fed. Cir. 2004); S. Rep. No. 96-249 at 94 (1979), reprinted in 1979 U.S.C.C.A.N. 381, 480; and H.R. Rep. No. 96-317 at 75 (1979) (both discussing the need to prevent middleman dumping).

Our analysis of the sales documentation submitted by Jining Jinshan in its request for a new shipper review appears, at first glance, to suggest that a middleman dumping scenario may exist in this case. Accordingly, the Department is initiating a middleman dumping inquiry and will be issuing middleman-oriented questionnaires consistent with our practice in similar past cases. *See Fuel Ethanol From Brazil: Final Determination of Sales at Less than Fair Value*, 51 FR 5572, 5573 (February 14, 1986); *Notice of Final Determination of Sales at Less than Fair Value: Stainless Steel Sheet and Strip in Coils from Taiwan*, 64 FR 30592 (June 8, 1999); and *Notice of Final Determination of Sales at Less than Fair Value: Stainless Steel Plate in Coils from Taiwan*, 64 FR 15493 (March 31, 1999).

The period of review is November 1, 2003, through April 30, 2004. *See* 19 CFR 351.214(g)(1)(i)(B). We intend to

issue the preliminary results of this review and inquiry no later than 180 days after the date on which this review is initiated, and the final results of this review and inquiry within 90 days after the date on which the preliminary results are issued. *See* section 751(a)(2)(B)(iv) of the Act.

Interested parties that need access to proprietary information in this new shipper review and middleman dumping inquiry should submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306.

This initiation notice is in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214 and 351.221(c)(1)(i).

Dated: June 30, 2004.

Jeffrey A. May,

Deputy Assistant Secretary for Import Administration, Group I.

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DEPARTMENT OF COMMERCE

International Trade Administration

[(C-428-829); (C-421-809); (C-412-821)]

Final Results of Countervailing Duty Administrative Reviews: Low Enriched Uranium From Germany, the Netherlands, and the United Kingdom

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative reviews.

SUMMARY: On February 5, 2004, the Department of Commerce (the Department) published in the **Federal Register** its preliminary results of administrative reviews of the countervailing duty (CVD) orders on low enriched uranium from Germany, the Netherlands, and the United Kingdom for the period May 14, 2001, through December 31, 2002 (*see Preliminary Results of Countervailing Duty Administrative Reviews: Low Enriched Uranium from Germany, the Netherlands, and the United Kingdom*, 69 FR 5498 (February 5, 2004) (*Preliminary Results*)). The Department has now completed these administrative reviews in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Based on information received since the *Preliminary Results* and our analysis of the comments received, the Department has revised the net subsidy rate for Urenco Deutschland GmbH of

Germany (UD), Urenco Nederland B.V. of the Netherlands (UNL), Urenco (Capenhurst) Limited (UCL) of the United Kingdom, Urenco Ltd., and Urenco Inc. (collectively, the Urenco Group or respondents), the producers/exporters of subject merchandise covered by these reviews. For further discussion of the changes we have made since the *Preliminary Results*, see the "Issues and Decision Memorandum from Gary Taverman, Acting Deputy Assistant Secretary for Import Administration, Group I, to Jeffrey May, Acting Assistant Secretary for Import Administration concerning the "Final Results of Countervailing Duty Administrative Reviews: Low Enriched Uranium from Germany, the Netherlands, and the United Kingdom" (Decision Memorandum) dated June 30, 2004. The final net subsidy rates for the reviewed companies are listed below in the section entitled "Final Results of Reviews."

DATES: Effective July 7, 2004.

FOR FURTHER INFORMATION CONTACT: Darla Brown or Robert Copyak, Office of AD/CVD Enforcement III, Import Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-2786.

SUPPLEMENTARY INFORMATION:

Background

On February 5, 2004, the Department published in the *Federal Register* its *Preliminary Results*. We invited interested parties to comment on the results. Since the preliminary results, the following events have occurred.

On March 8, 2004, we received case briefs from petitioners¹ and respondents. In their case brief, petitioners requested a hearing. On March 15, 2004, we received rebuttal briefs from petitioners and respondents. On April 1, 2004, a public hearing was held at the Department of Commerce.

On May 27, 2004, we extended the deadline for the publication of these final results from June 4, 2004, until June 30, 2004. See *Low Enriched Uranium from France, Germany, the Netherlands, and the United Kingdom: Extension of Final Results of Countervailing Duty Administrative Reviews*, 69 FR 31792 (June 7, 2004).

Pursuant to 19 CFR 351.213(b), these reviews cover only those producers or exporters of the subject merchandise for which a review was specifically requested. Accordingly, these reviews cover the Urenco Group. These reviews

cover the period May 14, 2001, through December 31, 2002, and five programs.

Scope of Reviews

For purposes of these reviews, the product covered is all low enriched uranium (LEU). LEU is enriched uranium hexafluoride (UF₆) with a U²³⁵ product assay of less than 20 percent that has not been converted into another chemical form, such as UO₂, or fabricated into nuclear fuel assemblies, regardless of the means by which the LEU is produced (including LEU produced through the down-blending of highly enriched uranium).

Certain merchandise is outside the scope of these orders. Specifically, these orders do not cover enriched uranium hexafluoride with a U²³⁵ assay of 20 percent or greater, also known as highly enriched uranium. In addition, fabricated LEU is not covered by the scope of these orders. For purposes of these orders, fabricated uranium is defined as enriched uranium dioxide (UO₂), whether or not contained in nuclear fuel rods or assemblies. Natural uranium concentrates (U₃O₈) with a U²³⁵ concentration of no greater than 0.711 percent and natural uranium concentrates converted into uranium hexafluoride with a U²³⁵ concentration of no greater than 0.711 percent are not covered by the scope of these orders.

Also excluded from these orders is LEU owned by a foreign utility end-user and imported into the United States by or for such end-user solely for purposes of conversion by a U.S. fabricator into uranium dioxide (UO₂) and/or fabrication into fuel assemblies so long as the uranium dioxide and/or fuel assemblies deemed to incorporate such imported LEU (i) remain in the possession and control of the U.S. fabricator, the foreign end-user, or their designated transporter(s) while in U.S. customs territory, and (ii) are re-exported within eighteen (18) months of entry of the LEU for consumption by the end-user in a nuclear reactor outside the United States. Such entries must be accompanied by the certifications of the importer and end user.

The merchandise subject to these orders is currently classifiable in the *Harmonized Tariff Schedule of the United States* (HTSUS) at subheading 2844.20.0020. Subject merchandise may also enter under 2844.20.0030, 2844.20.0050, and 2844.40.00. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to these reviews are addressed in the Decision Memorandum, which is hereby adopted by this notice. A list of the issues contained in the Decision Memorandum is attached to this notice as Appendix I. Parties can find a complete discussion of all issues raised in these reviews and the corresponding recommendations in this public memorandum, which is on file in the Central Record Unit (CRU), room B-099 of the Main Commerce Building. In addition, a complete version of the Decision Memorandum can be accessed directly on the World Wide Web at <http://ia.ita.doc.gov>, under the heading "Federal Register Notices." The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Reviews

In accordance with section 705(c)(1)(B)(i) of the Act, we calculated an *ad valorem* subsidy rate for the Urenco Group for calendar years 2001 and 2002. For 2001, we determine the net subsidy rate for the Urenco Group to be 1.57 percent *ad valorem*, and for 2002, we determine the net subsidy rate for the Urenco Group to be 1.47 percent *ad valorem*.

We will instruct U.S. Customs and Border Protection (CBP), within 15 days of publication of the final results of these reviews, to liquidate shipments of low enriched uranium by Urenco from Germany, the Netherlands, and the United Kingdom entered, or withdrawn from warehouse, for consumption from May 14, 2001, through September 10, 2001, at 1.57 percent *ad valorem* and from February 13, 2002, through December 31, 2002, at 1.47 percent *ad valorem* of the f.o.b. invoice price. We have determined that the estimated net subsidy for future Urenco imports is zero (see the Decision Memorandum at Comment 3: Cash Deposit Rate for Future Urenco Imports). Therefore, the Department also will instruct CBP not to collect cash deposits of estimated countervailing duties on all shipments of the subject merchandise from the reviewed entity, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of these reviews. In addition, for the periods May 14, 2001, through September 10, 2001, and February 13, 2002, through December 31, 2002, the assessment rates applicable to all non-reviewed companies covered by this order are the cash deposit rates in effect at the time of entry.

¹ Petitioners are the United States Enrichment Corporation (USEC) and USEC Inc.

Because the Uruguay Round Agreements Act (URAA) replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2) of the Act. The requested review will normally cover only those companies specifically named. See 19 CFR 351.213(b). Pursuant to 19 CFR 351.212(c), for all companies for which a review was not requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected, at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. See *Federal-Mogul Corporation and The Torrington Company v. United States*, 822 F. Supp. 782 (CIT 1993) and *Floral Trade Council v. United States*, 822 F. Supp. 766 (CIT 1993). Therefore, the cash deposit rates for all companies except those covered by these reviews will be unchanged by the results of these reviews.

We will instruct CBP to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order will be the rate for that company established in the most recently completed administrative proceeding conducted under the URAA. See *Notice of Amended Final Determinations and Notice of Countervailing Duty Orders: Low Enriched Uranium from Germany, the Netherlands and the United Kingdom*, 67 FR 6688 (February 13, 2002) (*Amended Final*). This rate shall apply to all non-reviewed companies until a review of a company assigned this rate is requested. In addition, for the period May 14, 2001, through December 31, 2002, the assessment rates applicable to all non-reviewed companies covered by these orders are the cash deposit rates in effect at the time of entry.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply

with the regulations and the terms of an APO is a sanctionable violation.

These administrative reviews and this notice are issued and published in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: June 30, 2004.

Jeffrey May,

Acting Assistant Secretary for Import Administration.

Appendix I—Issues and Decision Memorandum

- I. Methodology and Background Information
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DEPARTMENT OF COMMERCE

International Trade Administration

[C-427-819]

Final Results of Countervailing Duty Administrative Review: Low Enriched Uranium from France

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Countervailing Duty Administrative Review.

SUMMARY: On February 5, 2004, the Department of Commerce (the Department) published in the **Federal Register** its preliminary results of administrative review of the countervailing duty (CVD) order on low enriched uranium from France for the period May 14, 2001, through December 31, 2002 (see *Preliminary Results of Countervailing Duty Administrative Reviews: Low Enriched Uranium from France*, 69 FR 5502 (February 5, 2004) (*Preliminary Results*)). The Department has now completed the administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Based on information received since the *Preliminary Results* and our analysis of the comments received, the Department has revised the net subsidy rate for Eurodif S.A. (Eurodif)/Compagnie Generale Des Matieres Nucleaires (COGEMA), the producer/exporter of subject merchandise covered by this review. For further discussion of the changes we have made since the *Preliminary Results*, see the "Issues and Decision Memorandum from Gary Taverman, Acting Deputy Assistant Secretary for Import Administration to Jeffrey May, Acting Assistant Secretary for Import Administration concerning the Final Results of Countervailing Duty Administrative Reviews: Low Enriched Uranium from France" (Decision Memorandum) dated June 30, 2004. The final net subsidy rate for Eurodif/COGEMA is listed below in the section entitled "Final Results of Reviews."

EFFECTIVE DATE: July 7, 2004.

FOR FURTHER INFORMATION CONTACT:

Carrie Farley or Tipten Troidl, Office of AD/CVD Enforcement III, Import Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-2786.

SUPPLEMENTARY INFORMATION:

Background

On February 5, 2004, the Department published in the **Federal Register** its *Preliminary Results*. We invited interested parties to comment on the results. On March 9, 2004, we received case briefs from petitioners and respondents. In their case briefs, petitioners and respondents requested a hearing. On March 16, 2004, we received rebuttal briefs from petitioners¹ and respondents². On March 18, 2004, respondents and petitioners withdrew their request for a hearing. Pursuant to 19 CFR 351.213(b), this review covers

¹ Petitioners are the United States Enrichment Corporation (USEC) and USEC Inc.

² Respondents are Eurodif and COGEMA.