

Expenses
Comment 10: Reclassification of EP sales to
CEP sales

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DEPARTMENT OF COMMERCE

International Trade Administration

[C-427-819]

Notice of Final Affirmative Countervailing Duty Determination: Low Enriched Uranium From France

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

ACTION: Notice of final affirmative
countervailing duty determination.

SUMMARY: On May 14, 2001, the Department of Commerce (the Department) published in the **Federal Register** its preliminary affirmative determination in the countervailing duty investigation on low enriched uranium (subject merchandise) from France for the period January 1, 1999 through December 31, 1999.

The net subsidy rate in the final determination differs from that of the *Preliminary Affirmative Countervailing Duty Determination and Alignment with Final Antidumping Duty Determination: Low Enriched Uranium from France*, 66 FR 24325 (May 14, 2001) (*Preliminary Determination*). The revised final net subsidy rate for the investigated company is listed below in the "Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: December 21, 2001.

FOR FURTHER INFORMATION CONTACT: Michael Grossman at (202) 482-3146 or Richard Herring at (202) 482-4149, Office of AD/CVD Enforcement VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (2000).

Background

On May 14, 2001, the Department published the preliminary results of investigation on low enriched uranium from France. See *Notice of Preliminary Affirmative Countervailing Duty Determination and Alignment with Final Antidumping Duty Determination: Low Enriched Uranium from France*, 66 FR 24325 (May 14, 2001) (*Preliminary Determination*). This investigation covers low enriched uranium (subject merchandise) from France for the period January 1, 1999, through December 31, 1999.

We invited interested parties to comment on the *Preliminary Determination*. On October 22 and 23, 2001, the petitioners,¹ the Ad Hoc Utilities Group,² and respondent producers/exporters Eurodif, S.A. and Compagnie Generale des Matieres Nucleaires (COGEMA) filed briefs on common scope issues in the antidumping and countervailing duty investigations of LEU from France, Germany, the Netherlands and the United Kingdom. Rebuttal briefs on these common scope issues were filed on October 29, 2001, and a public hearing on the common scope issues was held on October 31, 2001. On October 26, 2001, we received comments from the petitioners and the respondents. On November 5, 2001, we received rebuttal comments from petitioners and respondents. A public hearing was held at the Department of Commerce on November 7, 2001. On or about September 28, 2001, and November 22, 2001, we received letters from the EC regarding certain issues in these investigations. On November 7, 2001, Mr. Grant Aldonas, Under-Secretary for International Trade, replied to the first letter. We invited comments on these letters, which we received from petitioners, respondents, and the Ad Hoc Utilities Group, on

¹ The petitioners in this investigation are USEC, Inc. and its wholly-owned subsidiary, United States Enrichment Corporation (Collectively USEC), and the Paper, Allied-Industrial, Chemical and Energy Workers International Union, AFL-CIO, CLC, Local 5-550 and Local 5-689 (collectively PACE).

² In accordance with section 777(h) of the Act the Ad Hoc Utilities Group, whose members include: Arizona Public Service Co., Carolina Power & Light Co., Dominion Generation, Duke Energy Corp., DTE Energy, Entergy Services, Inc., Exelon Corporation, First Energy Nuclear Operating Co., Florida Power Corp., Florida Power and Light Co., Nebraska Public Power District, Nuclear Management Co. LLC (on behalf of certain member companies), PPL Susquehanna LLC, South Texas Project, Southern California Edison, Southern Nuclear Operating Co., Union Electric Company, and Wolf Creek Nuclear Operating Corp., submitted comments as industrial users of subject merchandise.

November 15, 2001, and November 29, 2001.

This final determination was originally due on November 26, 2001. We subsequently tolled the final determination deadline in this investigation until December 13, 2001, to accommodate certain verifications and a delayed briefing and hearing schedule that were delayed because of the events of September 11, 2001.

Amended Scope of Investigation

For purposes of this investigation, 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 this investigation. Specifically, this investigation does 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 this investigation. For purposes of this investigation, 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 this investigation.

Also excluded from this investigation 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 designed 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 this investigation is classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading

2844.20.0020. Subject merchandise may also enter under 2844.20.0030, 2844.20.0050, and 2844.40.00. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Scope Clarification

For further details, see Comment 1 of the "Issues and Decision Memorandum: Final Affirmative Countervailing Duty Determination: Low Enriched Uranium from France" (Decision Memorandum) from Bernard T. Carreau, Deputy Assistant Secretary for Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, dated concurrently with this notice.

Goods Versus Services

Parties in all eight concurrent investigations of this product have submitted comments on this issue. For a full discussion see *Notice of Final Determination of Sales at Less Than Fair Value: Low Enriched Uranium from France*, which is published concurrently with this notice.

Period of Investigation

The period of investigation (POI) for which we are measuring subsidies is January 1, 1999 through December 31, 1999.

Verification

As provided in section 782(i) of the Act, we conducted verification on October 11 through October 17, 2001. We used standard verification procedures, including meeting with government and company officials and examining relevant accounting records and original source documents provided by the respondent. Our verification results are outlined in detail in the public versions of the verification reports, which are on file in the Central Records Unit of the Department of Commerce (Room B-099).

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the "Issues and Decision Memorandum" (Decision Memorandum) dated December 13, 2001, which is hereby adopted by this notice. A list of issues which parties have raised and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as Appendix I. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum which is on file in

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.

Suspension of Liquidation

In accordance with 703(d)(1)(A)(i) of the Act, we have calculated an individual rate for Eurodif, S.A., which we have also applied to COGEMA, Eurodif's sales agent for sales made in the United States. The "all others" rate is the same as the rate for Eurodif/COGEMA. These rates are summarized in the table below:

Producer/exporter	Net Subsidy Rate
Eurodif, S.A. & COGEMA.	13.21% <i>ad valorem</i> .
All Others	13.21% <i>ad valorem</i> .

In accordance with our *Preliminary Determination*, we instructed the U.S. Customs Service to suspend liquidation of all entries of low enriched uranium from France, which were entered or withdrawn from warehouse, for consumption on or after May 14, 2001, the date of the publication of our preliminary determination in the **Federal Register**. In accordance with section 703(d) of the Act, we instructed the U.S. Customs Service to discontinue the suspension of liquidation for merchandise entered on or after September 11, 2001, but to continue the suspension of liquidation of entries made between May 14, 2001 and September 10, 2001.

We will reinstate suspension of liquidation under section 706(a) of the Act for all entries if the ITC issues a final affirmative injury determination and will require a cash deposit of estimated countervailing duties for such entries of merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary

information in our files, provided that the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Import Administration.

If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated. If however, the ITC determines that such injury does exist, we will issue a countervailing duty order.

Return or Destruction of Proprietary Information

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO.

This determination is published pursuant to sections 705(d) and 777(i) of the Act.

Dated: December 13, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix I—Issues and Decision Memorandum

Methodology and Background Information

I. Subsidies Valuation Information

A. Treatment of the Ad Valorem Rate Calculation and the Denominator

Analysis of Programs

I. Purchase at Prices that Constitute "More Than Adequate Remuneration"

II. Exonerated/Reimbursement of Corporate Income Taxes

Total Ad Valorem Rate

Analysis of Comments

Comment 1: Scope Clarification

Comment 2: Petitioners' Argument that Eurodif Received Non-Recurring Benefits in the Years 1986 through 1999

Comment 3: Petitioners' Argument that a Portion of the Subsidies Related to EdF's 1999 Purchases at Prices that Constitute More than Adequate Remuneration Should be Treated as a Recurring Subsidy

Comment 4: Treatment of "Part Energie" Component of EdF's Price

Comment 5: Respondents' Argument that the Department's Price Comparison in the Preliminary Determination was Flawed in Other Respects

Comment 6: Tax Exemption from the GOF

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