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MEMORANDUM TO: James J. Jochum
Assistant Secretary
for Import Administration

FROM: Gary Taverman
Acting Deputy Assistant Secretary
for Import Administration, Group I

DATE: July 26, 2004

SUBJECT: <u>Issues and Decision Memorandum for the Antidumping Duty Review of Low Enriched Uranium from France</u>

<u>Summary</u>

This memorandum addresses issues briefed or otherwise commented on in the above-referenced proceeding. Following is a list of the issues briefed by interested parties and an analysis of the comments of the interested parties and our recommendations for each of the issues.[1]

<u>Background</u>

On January 27, 2004, the Department of Commerce (the Department) published the preliminary results in the review of low enriched uranium from France.[2] The period of review (POR) is July 13, 2001, through January 31, 2003. The respondent in this review is Eurodif S.A. (Eurodif), Compagnie Générale Des Matières Nucléaires, S.A. and COGEMA, Inc. (collectively, COGEMA/Eurodif). The petitioners in this case are USEC Inc. and United States Enrichment Corporation (collectively, the petitioners).

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[1] For several issues requiring detailed discussion of proprietary information, those issues are also addressed in a Proprietary Supplement to this memorandum.

[2] <u>See</u>, <u>Notice of Preliminary Results of Antidumping Duty Administrative Review: Low Enriched Uranium from France</u>,, 69 FR 3883 (January 27, 2004) (<u>Preliminary Results</u>).

We received case and rebuttal briefs from the respondent and the petitioners. A public hearing was held on March 17, 2004.

Issues

Comment 1: Application of the Major Input Rule to Eurodif's Purchases of Electricity
Comment 2: General and Administrative (G&A) Expenses
Comment 3: Financial Expenses
Comment 4: Constructed Value (CV) Profit
Comment 5: Goodwill Expenses
Comment 6: Tails Defluorination and Plant Decommissioning
Comment 7: Attribution of Subject Merchandise
Comment 8: Circumstance of Sale (COS) Adjustment
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Comment 10: Indirect Selling Expenses
Comment 11: CV Selling Expenses
Comment 12: Treatment of Countervailing Duties

Discussion of Issues

Comment 1: Application of the Major Input Rule to Eurodif's Purchases of Electricity

COGEMA/Eurodif argues that the Department improperly disregarded the actual price Eurodif paid for its major input, electricity, which was provided by its affiliate, EdF. Instead, the Department used EdF's average cost of producing electricity to calculate Eurodif's cost of production (COP). COGEMA/Eurodif claims that the price it paid to EdF for electricity exceeded prices it paid to unaffiliated electricity providers, and exceeded EdF's cost for electricity provided to Eurodif. COGEMA/Eurodif therefore claims that the Department should have used the transfer price rather than the average cost of production to value electricity obtained from its affiliate, Edf.

COGEMA/Eurodif asserts that the cost of producing electricity depends on the quantities, timing and duration of consumption. COGEMA/Eurodif further claims that because its consumption of electricity is negatively correlated with national demand and occurs mostly during the off-peak periods, this decreases EdF's cost to serve Eurodif. In contrast, COGEMA/Eurodif states, EdF's other customers have volatile consumption patterns which require it to maintain a greater peak capacity and to build additional facilities which are not needed for Eurodif's predictable and stable demand pattern. COGEMA/Eurodif maintains that these differences in consumption patterns are taken into account by the long run marginal costs ("LRMC") model used by EdF to calculate the cost of electricity supplied to customers. According to COGEMA/Eurodif, the LRMC model is widely used by the electric utility industry around the world, and is also the industry standard in the United States. COGEMA/Eurodif claims that the Department has recognized in the past that the key to evaluating electricity costs for a particular consumer is consideration of "divergent consumption and generation patterns," [3] which is how EdF costs its electricity using the LRMC model. COGEMA/Eurodif states that steady, flat patterns of consumption over a long duration, such as Eurodif's, are less costly to supply because EdF serves such demand by baseload nuclear plants, whereas concentrated patterns of consumption over short periods create peaks in demand and require investment in additional capacity which is frequently not fully utilized.

COGEMA/Eurodif claims that, contrary to petitioners' argument, EdF properly classified certain production costs as fixed costs within the LRMC model. According to COGEMA/Eurodif, these costs relate to the availability of the facilities, and thus are incurred irrespective of the duration of their operations.

COGEMA/Eurodif argues that the Department's application of a single weighted-average cost for electricity in the preliminary results, on the basis that it is the Department's practice to calculate a single weighted-average cost of production for identical products, is inappropriate and renders meaningless EdF's responses to the Department's questionnaires which specifically requested EdF's cost of production of electricity sold to Eurodif. COGEMA/Eurodif contends that, while this practice may apply in cases where all differences affecting cost are taken into account through product characteristics, it is not applicable to electricity in the major input rule context, because such differences are not separately identified here. COGEMA/Eurodif, referring to the Department's practice of calculating a single weighted-average cost for identical products, claims that not all electricity should be regarded as "physically identical." According to COGEMA/Eurodif, electricity is an intangible product which can not be stored in inventory and must be provided instantaneously on demand and, as such, a kilowatt hour produced during one period is not interchangeable with a kilowatt hour produced during a different time period.

In certain cases, COGEMA/Eurodif argues, where an economy is experiencing high inflation or where there are sharp currency fluctuations, the Department normally calculates multiple costs of production for physically identical products.[4] In addition, COGEMA/Eurodif points out that the Department has recognized that where costs of production vary, it would be inappropriate to calculate a single

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[3] See, Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Trinidad and Tobago, 62 FR 55003, 55007 (October 12, 1997) (Steel Wire Rod from Trinidad and Tobago).

[4] See, Notice of Preliminary Results of Antidumping Duty Administrative Review: Honey from Argentina, 69 FR 621, 624 (January 4, 2004) (Honey from Argentina); see, also, Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from the Republic of Korea, 64 FR 30664, 30675-76 (June 8, 1999) (Steel Sheet and Strip in Coils from Korea).

weighted-average cost of production that would not take the cost variations into account.[5] COGEMA/Eurodif notes that the law requires the Department to calculate constructed value as an amount usually reflected in sales of merchandise under consideration in the market under consideration. COGEMA/Eurodif claims that the record demonstrates that electricity provided to Eurodif by unaffiliated parties was sold for prices below the single weighted-average cost calculated in the preliminary results and used as the value for electricity. According to COGEMA/Eurodif, this indicates that the single weighted-average cost is not a fair surrogate for the electricity price charged in the French market.

COGEMA/Eurodif points out that the Department's application of the major input rule is discretionary, not mandated, and to calculate a single weighted-average cost of production for electricity when the record demonstrates that EdF's cost is far lower, is an abuse of discretion. Accordingly, COGEMA/Eurodif concludes, the Department should calculate constructed value based upon the fair market price that Eurodif paid for electricity, as it did in the investigation.

Finally, COGEMA/Eurodif argues that the Department erred in its preliminary results by adjusting the price for electricity provided to Eurodif by another affiliated supplier using the average cost of electricity calculated for EdF. Eurodif notes that the other supplier is independent of EdF, no below-cost investigation was undertaken by the Department with respect to the other supplier, no information was collected regarding its cost of producing electricity, and no verification of the supplier's cost was conducted. Accordingly, Eurodif concludes, the Department has no basis to adjust the price of electricity provided to Eurodif by the other supplier.

The petitioners point out that it is the Department's practice to compute a single weighted-average COP for all physically identical merchandise, and the Department has no reason not to follow its normal practice of calculating a single weighted-average COP in this review.[6] The petitioners note that the Department has previously calculated a weighted-average COP for electricity in the major input context, and that COGEMA/Eurodif provided no grounds to distinguish this case from any of the prior cases where the Department used a weighted-average COP for identical merchandise. According to the petitioners, the record does not support COGEMA/Eurodif's claim that not all electricity is fungible. The petitioners maintain that all electricity received by different customers is identical, regardless of

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[5] See, Notice of Final Determination of Sales at Less Than Fair Value: Brass Sheet and Strip from the Netherlands, 53 FR 23431, 23432-33 (June 22, 1988) (Brass Sheet and Strip from the Netherlands); see, also, Notice of Final Determination of Sales at Less Than Fair Value: DRAMS of One megabit and Above from the Republic of Korea, 58 FR 15467, 15476 (March 23, 1993) (DRAMS from Korea); see, also, Notice of Final Determination of Sales at Less Than Fair Value: Erasable Programmable Read Only Memories from Japan, 51 FR 39680, 39682 (October 30, 1986) (EPROMS from Japan).

[6] See, Notice of Final Determination of Sales at Less Than Fair Value: Open-End Spun Rayon Singles Yarn From Austria, 62 FR 43701, 43708 (August 15, 1997).

when it was produced.

The petitioners maintain that the instances in which the Department has departed from its normal practice of calculating a single weighted-average COP, such as in cases involving high inflation economies or currency fluctuations, are not relevant here because France was not experiencing high inflation during the POR, and in the cases involving currency fluctuations the Department never calculated a customer-specific COP which captures less than all of the respondent's costs.

The petitioners refute COGEMA/Eurodif's claim that the particular phrasing of the Department's major input questionnaire instructed it to calculate EdF's customer-specific electricity cost by noting that COGEMA/Eurodif has recognized that the Department's consistent practice is to calculate a single weighted-average cost of all identical merchandise, and this linguistic argument cannot be taken seriously. Calculating a company-wide average COP is commercially reasonable, the petitioners maintain, despite Eurodif's claim that the characteristics of the electric utility industry, such as its inability to inventory produced electricity, make it different from any other industry. The petitioners refer to the cut flower industry where fresh cut flowers also cannot be inventoried, yet the Department implicitly recognized that the use of anything other than a total period average COP would be inappropriate.[7] Further, the petitioners argue that the use of a single weighted-average production cost in this review is not inconsistent with the Department's conclusion in the investigation. In the investigation, the petitioners note, the Department declined to use the estimated average per-unit cost of electricity due to the limited amount of detail presented in EdF's financial statements and the inability to quantify significant infrastructure, transmission, and servicing cost differences. According to the petitioners, in this review the Department calculated EdF's cost based on EdF's verified cost of generating electricity, thereby excluding the infrastructure, transmission, and servicing cost differences that caused it concern in the investigation.

Further, the petitioners assert that accepting COGEMA/Eurodif's cost calculation approach and its arguments that the specific terms of Eurodif's commercial arrangements with EdF should impact the Department's cost calculation, would give respondents in future proceedings a clear roadmap to artificially lowering their suppliers' COP. The petitioners suggest that affiliated parties could draft contracts similar to the contract between Eurodif and EdF and argue that these contractual terms have an effect on the cost of otherwise identical merchandise. Moreover, the petitioners maintain that the electricity COP advocated by Eurodif should not be used for the final results because that cost was based on the LRMC method, which is inconsistent with the Act. According to the petitioners, section 773 of the Act defines "cost of production" as a fully allocated cost to produce the product while the cost presented by COGEMA/Eurodif omits fixed costs of nuclear and coal-fired plants when they are operating at "marginal" capacity. The petitioners suggest that the LRMC methodology used by

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[7] See, Notice of Final Determination of Sales at Less Than Fair Value: Certain Fresh Cut Flowers from Colombia, 52 FR 6842 (March 5, 1987).

COGEMA/Eurodif does not guarantee full cost recovery, and while companies may analyze their marginal costs for business reasons, these analyses do not necessarily capture all costs of producing a product and, as such, can not be accepted.

The petitioners claim that even if the LRMC model were theoretically sound, the specific manner in which EdF has applied the model renders it inappropriate for the Department's use in this review. According to the petitioners, EdF has adopted the most extreme definition of variable cost, where only fuel costs are considered variable, and all other costs are treated as fixed costs. The petitioners contend that in categorizing costs as fixed and variable, EdF included only a few cost items in its calculation of the variable costs, which significantly reduced the per-unit electricity cost reported by EdF. The petitioners further argue that it is the Department's practice to calculate a company-wide weighted-average, rather than a facility-specific, COP. According to the petitioners, the cost figures reported by COGEMA/Eurodif fail to capture costs incurred by EdF's hydro production facilities.

The petitioners contend that the Steel Wire Rod from Trinidad and Tobago countervailing duty (CVD) investigation cited by COGEMA/Eurodif, which related to the Department's approach to determining whether a state-owned entity provided an input at less than adequate remuneration under section 771(5)(E)(iv), is irrelevant to the methodology for determining whether a major input was provided by an affiliated supplier at less than its COP under section 773(f)(3) of the Act. Also, the petitioners note that in Steel Wire Rod from Trinidad and Tobago the Department evaluated the reasonableness of the utility's rate setting and not the utility's COP.

The petitioners argue that the Department has no reason not to adjust the value of electricity under the major input rule, and COGEMA/Eurodif's claim that EdF's prices to Eurodif may be at market rates is irrelevant to the issue before the Department. The petitioners point out that section 773(f)(3) of the Act allows the Department to use the highest of the transfer price, the market price, or the affiliated supplier's cost of producing the major input, and if the COP of the input is higher than the market price, the Department can make a major input adjustment notwithstanding the fact that the price from the supplier to the respondent is claimed to be a fair market price. For these reasons, the petitioners conclude, the Department should continue to adjust the cost of electricity Eurodif purchased from affiliated suppliers in the final results of this review.

Regarding COGEMA/Eurodif's argument that the price for electricity provided to Eurodif by an affiliated supplier other than EdF should not be adjusted, the petitioners note that due to similarities in the overall operational structure between EdF and the other affiliated supplier (e.g., both companies produce electricity from nuclear reactors), it was reasonable for the Department to use EdF's COP as a surrogate to adjust the other affiliated supplier's electricity value.

Department's Position: Section 773(f)(3) of the Act states that in the case of a transaction between affiliated persons involving the production by one of such persons of a major input, the administering authority may determine the value of the major input on the basis of the information available regarding such cost of production, if such cost is greater than the amount that would be otherwise determined for such input. In accordance with 19 CFR 351.407(b), in applying the major input rule, the Department will normally determine the value of a major input purchased from an affiliated person based on the higher of the transfer price between affiliates, the market price for the input, or the affiliate's COP for the purchased input.[8]

In this case, electricity is a major input obtained from an affiliated supplier. While we agree that the record shows that the amount EdF charged Eurodif for electricity exceeded the amount Eurodif was charged by unaffiliated suppliers (i.e., a market price), our decision can not be based solely on this fact because the statute requires that we also evaluate the affiliated supplier's cost of producing electricity under the major input rule. Our normal practice in determining the average per-unit COP for products of identical physical characteristics is to calculate a single, company-wide average cost. This methodology is reasonable, consistent, and relevant across product sectors. It spreads the total manufacturing costs incurred during the cost reporting period over the total quantity of identical products produced during the same period. Contrary to the respondent's claim, this practice is not limited to the calculation of COP for subject merchandise, but is also followed in the major input context as well.[9] Moreover, in the past the Department has followed its general practice of calculating a single average cost in a number of cases specifically involving electricity as a major input.[10]

We agree with the petitioners that the instances cited by Eurodif in which the Department has departed from its normal practice of calculating a single weighted-average cost are off point. In Honey from Argentina, Argentina experienced high inflation during the period of review. In high inflation cases, the Department does not calculate different costs for identical products as alleged by Eurodif. Rather, the Department calculates monthly costs and indexes these monthly costs to end-of-year currency values in order to calculate a single weighted-average cost in a constant currency. In Steel Sheet and Strip in Coils from Korea, contrary to Eurodif's claims, we did calculate a single weighted-average cost for each product. Due to the extreme currency fluctuations in Korea during the period of investigation in that case, we calculated two different averaging periods for price comparison purposes, not the calculation of cost. The other cases cited by the respondent are also not on point. In Brass Sheet and Strip from the Netherlands, the brass producer's cost of nickel and zinc changed drastically during the cost reporting period and the final price of the subject merchandise was tied directly to the London

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[8] See NTN Bearing Corporation, et al. v. United States, Opinion 03-1041 (Fed. Cir., May 21, 2004).

[9] See, Notice of Final Determination of Sales at Less Than Fair Value: Certain Polyester Staple Fiber from Taiwan, 65 FR 16877 (March 30, 2000) and accompanying Issues and Decision Memorandum at comment 39.

[10] See, Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium from Israel, 66 FR 49349 (September 27, 2001) and accompanying Issues and Decision Memorandum at comment 7; see, also, Notice of Final Determination of Sales at Less Than Fair Value: Steel Beams from Luxembourg, 67 FR 35448 (May 20, 2002) and accompanying Issues and Decision Memorandum at comment 8.

Metals Exchange price for nickel and zinc on a particular day, which resulted in the Department calculating a monthly weighted-average raw material cost instead of the annual average. In EPROMS from Japan, the Department matched the sales prices with the cost of manufacturing occurring three months prior to the date of sale because the technology used in the production was changing rapidly. In DRAMS from Korea, the Department did not address the calculation of cost, but instead concluded that monthly weighted-average prices were more representative of the company's pricing practices than period of investigation (POI) averages due to the consistent downward trend in market prices over the POI. We note that in none of these cases did the Department

calculate customer-specific costs for identical products during the cost calculating period, as is being advocated by Eurodif.

In accordance with section 773(f)(1)(A) of the Act, costs shall normally be calculated based on the records of the producer of the merchandise, provided such records are kept in accordance with home country GAAP and reasonably reflect the costs associated with the production and sale of the merchandise. EdF uses the method of cost allocation based on the LRMC model to set the prices it charged its various customers. EdF normally calculates the per unit cost of power generated by different types of power plants (i.e., nuclear, coal-fired, hydro) and, once this information is available, EdF can then calculate a price to charge for any customer using that customer's electricity consumption pattern. We have carefully evaluated the theories associated with the LRMC model. According to EdF, the electric generating industry requires large fixed capital investment for its producing facilities. The utility must ensure it has sufficient capacity to meet the energy demands for all of its customers at any time of day or year. Thus, it must maintain enough electricity generating capacity to meet the highest level of demand at any one time. Because electricity cannot be stored or placed in inventory for use during peak periods, the utility also must have sufficient consumption during the non-peak hours to optimize the usage of its facilities. The more electricity its customers consume during non-peak hours, the more efficiently the utility can operate. Thus, according to this pricing model, those customers that require electricity during peak times contribute the most to the utility having to invest additional capital to construct new facilities. The LRMC model allocates more costs to these peak use customers which leads to them being charged higher rates.

While the LRMC model may be a useful tool for setting prices, we find that EdF's cost of providing electricity to Eurodif calculated based on the LRMC model does not represent the actual "cost of materials and...other processing of any kind employed in producing the foreign like product, during a period which would ordinarily permit the production of that foreign like product in the ordinary course of business" as required by section 773(b)(3) of the Act. Despite COGEMA/Eurodif's claim that electricity produced during different periods represents different products which should have different costs, the Department believes that all electricity produced at any given moment constitutes the same physically identical product and should have the same per-unit cost. The LRMC model used by EdF calculates different costs for electricity consumed by different customers during the same time period. This is because the LRMC model calculates costs based on each customer's contribution to the company's long-term efficiency, ignoring the actual current costs incurred to produce electricity at the time of consumption. For example, during peak hours all of EdF's plants (i.e., nuclear, coal-fired, hydro) operate at near full capacity to satisfy the peak demand. Accordingly, electricity produced during the peak hours should bear the total cost of all generating plants. Nevertheless, according to the LRMC model, not all of the power plants' costs are allocated to electricity supplied to Eurodif during the peak hours.[11] Moreover, according to EdF's application of the LRMC model, the total costs of hydro plants and the fixed costs of the coal-fired plants (i.e., all costs except for fuel) are never allocated to Eurodif, even though electricity supplied to Eurodif is in part produced by these plants (e.g., Eurodif consumes electricity during peak hours when hydro and coal-fired plants are engaged in production).

Accordingly, we find that the cost calculated by EdF using the LRMC model does not reasonably reflect costs associated with the production of electricity for the following reasons. First, it fails to capture costs for all of EdF's production facilities, resulting in a facility-specific cost of electricity rather than a company-wide production cost as required according to the Department's long-standing practice[12] Secondly, as shown above, EdF's application of the LRMC model captures only selected costs at selected facilities. Finally, this model calculates a customer-specific cost for the same physically identical product - electricity. Thus, although the LRMC model is an alternative allocation methodology, which may be appropriate for pricing decisions, it does not present a sound or credible basis for departing from our consistently applied and widely accepted average cost method.

We agree with the petitioners that the Steel Wire Rod from Trinidad and Tobago CVD investigation cited by Eurodif in support of its position is not applicable here. In Steel Wire Rod from Trinidad and Tobago the Department faced the issue of whether the respondent received electricity from a state-owned utility at less than adequate remuneration under section 771(5)(E) of the Act, while the issue in this case is whether a major input was provided by an affiliated supplier at less than the supplier's COP under section 773(f)(3) of the Act. COGEMA/Eurodif provided no support for its contention that principles applicable in CVD proceedings should be relevant in this antidumping proceeding. We also note that in Steel Wire Rod from Trinidad and Tobago the Department analyzed the utility's rates which were based on a cost of service study, and did not evaluate the utility's COP. While the cost study may serve a legitimate business purpose in setting electricity rates for different customers, it does not reflect the per-unit average actual costs incurred by the utility in producing electricity. Accordingly, for the final results we have continued to use a single weighted-average cost of electricity produced by EdF

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[11] See Memorandum from Ernest Z. Gziryan, Senior Accountant, to Neal M. Halper, Director, Office of Accounting, Re: Verification Report on the Cost of Production Data Submitted by EdF, dated January 20, 2004. (EdF Verification Report) at 8.

[12] See, Notice of Final Results of Antidumping Duty Administrative Review: Certain Steel Concrete Reinforcing Bars from Turkey, 66FR 56274 (November 7, 2001) and accompanying Issues and Decision Memorandum at comment 14.

to adjust the value of electricity provided by EdF to Eurodif under the major input rule.

Contrary to COGEMA/Eurodif's claim, our decision is not inconsistent with the Department's conclusion in the investigation. In the investigation, the Department had limited information and was unable to make certain adjustments for factors that directly affect the cost of electricity produced by EdF. However, for the final results in this review we calculated EdF's cost of producing electricity based on EdF's verified detailed COP data, thus avoiding the significant uncertainties encountered in the investigation.

With regard to the price for electricity provided to Eurodif by the affiliated supplier other than EdF, we agree with the respondent. The other affiliated supplier is a separate electricity producing company which was not a part of the Department's investigation under the major input rule, and there is no information on the record about the company's cost structure. Thus, for the final results, we made no adjustment to the value of electricity provided to Eurodif by the other affiliated supplier.

As to the parties' arguments regarding EdF's classification of costs as fixed or variable within the LRMC model, we agree with the petitioners that EdF was extreme in its classification of costs as a fixed versus variable; however, the issue is moot because we have determined it inappropriate to rely on the LRMC model for determining EdF's cost of producing electricity for the final results.

Comment 2: General and Administrative Expenses (G&A)

COGEMA/Eurodif claims that while the reported G&A expense ratio was calculated using Eurodif's cost of sales, which does not include the Public Service Electricity Generation Fund tax ("FSPPE levy"), the ratio was applied to the cost of manufacturing, which includes the FSPPE levy. This, according to COGEMA/Eurodif, inflates the amount of G&A expense, and for the final results the Department should apply the reported G&A ratio to a cost of manufacturing that excludes the FSPPE levy. COGEMA/Eurodif further argues that the FSPPE levy should not be included in the constructed value calculation, because the FSPPE levy is not applicable to Eurodif, the issue is currently under challenge in the French courts, and Eurodif expects that it will never pay the FSPPE levy.

The petitioners argue that because Eurodif accrued the FSPPE levy in its audited financial statements, this expense should be included in Eurodif's COP.

Department's Position: We agree with the petitioners that the FSPPE levy should be included in Eurodif's cost because it is a current period expense which was incurred by Eurodif and accrued on the company's books. We note that the FSPPE levy was reflected in the company's audited financial statements prepared in accordance with French GAAP. Section 773(f)(1)(A) of the Act states that costs should be calculated based on the records of the producer of the merchandise if such records are kept in accordance with the generally accepted accounting principles of the exporting country and reasonably reflect the costs. Accordingly, we have continued to include the FSPPE levy in Eurodif's costs for the final results.

We agree with COGEMA/Eurodif that the cost of sales used as the denominator for the G&A ratio calculation should be on the same basis as the cost of manufacturing to which the ratio is applied. Accordingly, for the final results we applied the reported G&A ratio to a cost of manufacturing that excludes the FSPPE levy.

Comment 3: Financial Expenses

COGEMA/Eurodif argues that while the reported interest expense ratio was calculated using the actual amounts recorded in COGEMA's parent company's, AREVA's, consolidated income statement, which does not include the imputed cost of electricity, the ratio was applied to the cost of manufacturing including an additional amount for imputed electricity cost. According to the respondent, this inflates the amount of financial expense included in constructed value (CV), and should be corrected in the final results.

The petitioners maintain that if the Department accepts Eurodif's argument regarding the treatment of the imputed cost of electricity, it should then add the same amount to AREVA's front end division cost of sales in calculating a CV profit rate.

Department's Position: We agree with COGEMA/Eurodif, and for the final results we applied the interest expense ratio calculated based on AREVA's consolidated income statement to the cost of manufacturing exclusive of the imputed electricity amounts. See Comment 4 below for our position with regard to petitioners' argument on CV profit calculation.

Comment 4: Constructed Value (CV) Profit

The petitioners argue that for the final results the Department should reject Eurodif's third country profit rate for the same reason it rejected Eurodif's home market profit rate, i.e., because the sales figure reflected on Eurodif's financial statements for third country sales represents only sales to affiliated parties. The petitioners further argue that the Department should use AREVA's financial statements as the basis for CV profit, because COGEMA/Eurodif itself identified AREVA as an appropriate source for profit information, and it is consistent with the Department's approach in the investigation.

Specifically, the petitioners suggest that the Department use the profit of AREVA's front end division because its activities are more similar to COGEMA/Eurodif's business operations, and, according to AREVA's annual report, a substantial percentage of its front end activities were associated with sales outside the United States. The petitioners maintain that the record shows that AREVA's front end division's results largely reflect those of COGEMA and Eurodif. Also, according to petitioners, AREVA's 2002 financial statements cover the same period as Eurodif's 2002 financial statements. For these reasons, petitioners conclude, the use of a profit rate based on AREVA's front end division is the most appropriate choice for the Department for the final results of this review.

If the Department nevertheless decides to use Eurodif's third country profit rate, the petitioners suggest that the Department must correct the interest expense figure reported by Eurodif in calculating the profit rate. In particular, the petitioners ask the Department to use AREVA's consolidated interest expense rate as the basis for financial expenses used in the profit rate

calculation, because the COP to which this profit rate would be applied reflects AREVA's interest expense.

Finally, the petitioners state that if the Department accepts COGEMA/Eurodif's argument regarding the treatment of the imputed electricity cost for the CV profit calculation (see COGEMA/Eurodif's argument above), the Department should add this amount to the cost of sales denominator used to calculate a CV profit ratio rather than adjusting the COP figure by removing the imputed electricity amounts as suggested by COGEMA/Eurodif.

COGEMA/Eurodif states that the Department properly based CV profit on Eurodif's third-country sales. The petitioners' assertion that the sales figure reflected on Eurodif's financial statements for third country sales represents only sales to affiliated parties and, thus, cannot be used for the CV profit calculation, COGEMA/Eurodif maintains, is wrong. According to COGEMA/Eurodif, even though export sales to non-US customers were made through its affiliate COGEMA S.A., the foreign utilities, not COGEMA S.A., are the ultimate customers, and these sales represent arm's-length transactions.

COGEMA/Eurodif responds to the petitioners' argument that AREVA's front end division should be used to calculate CV profit by noting that AREVA's front end division encompasses all operations conducted prior to nuclear power generation, from uranium mining to nuclear fuel fabrication, and thus, is less representative than the use of actual sales by Eurodif of enrichment services in arm's-length transactions.

COGEMA/Eurodif refutes the petitioners' argument that the Department must use AREVA's consolidated interest expense rate as the basis for financial expenses used in the profit rate calculation. It states that the profit realized on sales in third country markets is an actual figure based upon the actual expenses incurred by Eurodif, and replacing some expenses while keeping other expenses would result in an artificial profit rate with no resemblance to reality.

Finally, COGEMA/Eurodif notes that the Department applied the CV profit ratio calculated using actual amounts reported on Eurodif's financial statements which do not include the imputed amount for electricity, to the cost of manufacturing which included the imputed cost of electricity, thus inflating the calculated CV. Eurodif argues that the Department should correct this inconsistency by applying the profit ratio to a cost of manufacturing that excludes the imputed electricity amount.

Department's Position: For the preliminary results, we used Eurodif's profit on sales to third countries as the basis for CV profit. However, we erred in calculating that profit by not taking into account the adjustments we made to Eurodif's COP. When these adjustments are made, there is no profit on Eurodif's sales to third countries. A positive amount for profit must be included in the CV calculation.[13] Therefore, we are not able to base Eurodif's profit on sales to third countries. We sought to find a reasonable method under section 773(e)(2)(B)(iii) of the Act to derive a normal profit rate. Based on our review of the record, we find that it is appropriate to use the profit rate based on AREVA's front end division. We agree with the petitioners that AREVA's front end division's activities are similar to Eurodif's business operations, and that, according to AREVA's annual report, a substantial percentage of its front end activities were associated with sales outside the United States. These similarities lead us to conclude that this is a reasonable method for calculating Eurodif's profit.

For reasons explained in our preliminary results, we are also precluded from basing CV profit on home market sales. Lacking other alternatives, we used a CV profit rate based on AREVA's front end division adjusted as discussed below in comment 5.

We agree with COGEMA/Eurodif that the CV profit ratio should be applied on a consistent basis, and for the final results we applied the calculated CV profit ratio to the COP exclusive of our adjustments, which were not reflected in AREVA's financial statements.

Comment 5: Goodwill Expenses

The petitioners argue that the Department must ensure that the amortized goodwill expenses recorded in AREVA's financial statements are treated consistently for purposes of the CV profit rate calculation and for purposes of calculating COP. First, the petitioners note that in calculating the profit rate for AREVA's front end division, COGEMA/Eurodif subtracted 165 million Euros (which represented the amount of goodwill attributed to the front end division) from the profit earned by the front end division, but then, instead of adding the same figure to the front end division profit allocation base, COGEMA/Eurodif incorrectly added 435 million Euros of the amortized goodwill expenses. The petitioners claim that if the Department decides to use the profit rate of AREVA's front end division for the final results, this error should be corrected. Secondly, the petitioners maintain that, regardless of which profit rate the Department decides to use for the final results, it should attribute to Eurodif's COP a portion of the goodwill expenses that Eurodif has allocated to the AREVA's front end division in its profit calculation.

COGEMA/Eurodif argues that there is no basis for the Department to include any portion of AREVA's goodwill expenses in the calculation of COGEMA/Eurodif's COP, because the goodwill amortization expense relates primarily to AREVA's acquisition of a company that produces connectors and is not

[13] See e.g. Silicomanganese from Brazil, Final Results of Antidumping Administrative Review, 62 FF 37877, (July 15, 1997).

related COGEMA/Eurodif's activity.

Department's Position: We agree with COGEMA/Eurodif that none of the goodwill amortization expenses should be included in COGEMA/Eurodif's COP. At verification, we reviewed the goodwill amortization expense and noted that it relates primarily to AREVA's connectors division, and not to COGEMA/Eurodif's activities.[14] Accordingly, we did not include a portion of the goodwill amortization expense in the calculation of COGEMA/Eurodif's COP for the final results.

We agree with the petitioners that the same amount of goodwill amortization which was attributed to the front end division should be added to the front end division profit allocation base. For the final results, we adjusted COGEMA/Eurodif's calculation of AREVA's front end division profit accordingly.

Comment 6: Tails Defluorination and Plant Decommissioning

Comment 6A: Reserve for Tails Defluorination

The petitioners claim that Eurodif incorrectly calculated the reserve for tails defluorination based on the change in the reserve during the POR. According to petitioners, the defluorination reserve should be based on the amount of tails generated from LEU production, valued at the cost of disposal of tails, which is consistent with the Department's decision in the investigation.

COGEMA/Eurodif argues that the Department properly accounted for Eurodif's tails disposal costs in the preliminary results. COGEMA/Eurodif maintains that it reported the tails disposal costs as recorded in Eurodif's books in accordance with section 773(f)(1)(A) of the Act, which states that costs should be calculated based on the records of the producer if such records are kept in accordance with the generally accepted accounting principles of the exporting country and reasonably reflect the costs. COGEMA/Eurodif notes that Eurodif disposed of more tails than it generated during the POR, that it reported all the disposal costs as recorded in its books, and that the petitioners provided no reason why the Department should deviate from this recorded expense.

COGEMA/Eurodif further argues that even if the petitioners' methodology were to be applied, the calculation of the tails disposal cost proposed by the petitioners is inaccurate because it employs only the higher-cost disposal method. COGEMA/Eurodif suggests that if the Department were to accept the petitioners' methodology, it should use the per-unit tails disposal cost calculated by COGEMA/Eurodif using the total cost of disposal divided by the total quantity of tails disposed of by all the disposal means, which was presented by COGEMA/Eurodif in the proprietary Attachment 1 to its rebuttal brief.

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[14] See Cost Verification Report at 28.

Department's Position: We agree with the petitioners. In accordance with section 773(f)(1)(A) of the Act, costs shall normally be calculated based on the records of the producer of the merchandise, provided such records are kept in accordance with home country GAAP and reasonably reflect the costs associated with the production and sale of the merchandise. We note that in its normal books and records, Eurodif adjusts the current period defluorination expense by the changes in the defluorination reserve due to the changes in tails inventory generated in prior periods. We find that this adjustment distorts the current period costs, as it does not allow for proper matching of current period expenses with current production and revenues. Accordingly, for the final results, we calculated the tails defluorination reserve by multiplying the quantity of tails generated during the POR by the per-unit cost of defluorination as recorded in the company's books.

Regarding the calculation of the per-unit cost of defluorination, we disagree with the calculation prepared by COGEMA/Eurodif. Because we know, from record information, what Eurodif paid to have the tails defluorinated, we have used this actual cost rather than Eurodif's calculation, which takes into account other factors that are extraneous to the actual cost of defluorination.

Comment 6B: Decommissioning reserve

The petitioners argue that the Department should increase Eurodif's reported decommissioning reserve to account for the eventual disposal of all depleted uranium (tails) on hand at the time of plant decommissioning. The petitioners note that COGEMA/Eurodif has consistently excluded the cost of defluorinating a certain quantity of depleted uranium (tails), which Eurodif is allowed by law to keep on site at any time and of which it has no legal obligation to dispose. Because these tails resulted from the production of the subject merchandise, the petitioners contend that a cost for their ultimate defluorination must be included in the COP.

COGEMA/Eurodif argues that in the reported decommissioning reserve it has already recognized a defluorination expense for all material and tails it is expected to have on hand at the time of decommissioning. According to Eurodif's estimates, there will be no tails left in storage at the time of plant decommissioning, because the company disposes of more tails annually than it generates. Eurodif estimates that at the time of decommissioning it will have on site only the quantity of tails approximately equal to the quantity generated during the year. COGEMA/Eurodif notes that the reserve for defluorination of the quantity of tails remaining at the time of decommissioning has already been included in Eurodif's decommissioning reserve calculation, and any additional defluorination expense, as proposed by the petitioners, would result in double-counting of expenses.

Department's Position: We agree with COGEMA/Eurodif. As we have determined that the tails disposal costs are best measured based on the quantity of tails generated during the period, there should be no excess tails in inventory at the time of plant decommissioning, for which a cost has not been recognized. The excess tails in inventory only arise because of the method used to account for tails disposal costs in Eurodif's normal books and records, which we rejected (see comment 6A above). Accordingly, we disagree with the petitioners that COGEMA/Eurodif's reported costs should be increased for defluorination costs associated with the tails in question, and for the final results we made no adjustment to the reported decommissioning reserve.

Comment 7: Attribution of Subject Merchandise

The petitioners argue that COGEMA/Eurodif's methodology for reporting its commingled subject merchandise is inherently flawed and should not be accepted by the Department. According to the petitioners, COGEMA/Eurodif's accounting-based methodology, which was belatedly explained for the first time at verification, fails to meet the strict requirements imposed by the Department in prior cases, to link non-subject entries and deliveries in a review.[15] Furthermore, the petitioners maintain, the Department discovered at verification that COGEMA/Eurodif had made numerous errors in applying its methodology to the specific entries and deliveries in this review. Therefore, the petitioners believe that COGEMA/Eurodif's failure to report and apply a reasonable methodology for demonstrably linking entries of non-subject merchandise with subsequent deliveries justifies the use of "facts available."

First, the petitioners point out that the Department made numerous attempts to get COGEMA/Eurodif to clarify its reporting methodology.[16] However, the petitioners maintain that, despite having numerous opportunities to clarify its allocation methodology, at verification, COGEMA/Eurodif provided a new explanation, which conflicted with its statements already on the record. According to the petitioners, by providing this explanation only at verification, COGEMA/Eurodif effectively prevented both the petitioners and the Department from analyzing its methodology for reasonableness and accuracy.

Second, the petitioners contend that the allocation methodology presented by COGEMA/Eurodif at verification provides an inappropriate basis on which to exclude deliveries of LEU during the POR. According to the petitioners, the accounting-based allocation methodology, which allocates deliveries for which there was no directly corresponding entry of LEU between subject and non-subject merchandise, could be easily manipulated by making minor revisions to delivery schedules. The petitioners maintain that this would allow COGEMA/Eurodif to artificially lower its dumping liability by steering subject sales of LEU to deliveries under higher-priced contracts. In addition, the petitioners argue that the Department has essentially developed a presumption that a delivery of the merchandise under review is deemed subject to the proceeding unless the respondent can affirmatively link it to a

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[15] See, e.g. Notice of Final Results of Antidumping Duty Administrative Review of Stainless Steel Sheet and Strip from Taiwan, 67 FR 6682 (February 13, 2002) and accompanying Issues and Decision Memorandum at Comment 30.

[16] See, Petitioners' case brief at 5-7.

non-subject entry.[17] The petitioners contend that the accounting-based methodology cannot meet this requirement, because it was used by COGEMA/Eurodif precisely when entries of non-subject merchandise could not be tied to deliveries.

Finally, citing the verification report,[18] the petitioners maintain that COGEMA/Eurodif's methodology was applied in a way that was riddled with errors, which should undermine any confidence that COGEMA/Eurodif has accurately identified entries of non-subject merchandise with subsequent deliveries. Because the Department cannot be sure of which deliveries were made with subject merchandise, the petitioners contend that, as facts available, the Department should calculate the dumping duties owed based on all of COGEMA/Eurodif's deliveries made during the POR. To the extent that this results in higher dumping liabilities for COGEMA/Eurodif, and thus could be perceived as adverse, the petitioners maintain that an adverse inference is warranted because COGEMA/Eurodif was in possession of the requested information throughout the proceeding, and by not providing it in a timely fashion, failed to act to the best of its ability to comply with a request for information. To further justify the use of an adverse inference, the petitioners maintain that because the methodology itself was inappropriate and erroneously applied, the Department should conclude that it was unable to verify that deliveries which COGEMA/Eurodif claimed to be non-subject were, in fact, associated with non-subject entries.

COGEMA/Eurodif points out that this is an entry-based review and, therefore, its responsibility was to report all deliveries of LEU made from LEU entered during the POR. COGEMA/Eurodif maintains that the fact it did so was verified by the Department, which "reviewed the entry summary of each entry during the POR."[19] First, COGEMA/Eurodif notes that, although its description of the allocation process was refined as the case proceeded, that actual allocation did not change in any meaningful respect from the initial submission of COGEMA/Eurodif's U.S. sales file on June 4, 2003. Further, in response to the second supplemental, COGEMA/Eurodif provided a tracing table which tracked the "in" and "out" transactions for all deliveries. Therefore, COGEMA/Eurodif believes that it cooperated fully with all of the Department's requests for information.

COGEMA/Eurodif states that an overwhelming majority of its entries were definitively linked to a delivery of LEU. Therefore, only a limited number of entries are at issue. With regard to the petitioners' claim that the tracing table was shown at verification to contain errors, COGEMA/Eurodif

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[17] See e.g. Stainless Steel Plate in Coils From Taiwan: Final Results and Rescission in Part of Antidumping Duty Administrative Review, 67 FR 40914, (June 14, 2002) and accompanying Issues and Decision Memorandum at Comment 2.

[18] See, Memorandum from Vicki Schepker and Carol Henninger, International Trade Compliance Analysts, to Gary Taverman, Director, Office 5, Re: Verification of the Sales Response of Eurodif S.A., Compagnie Générale Des Matières Nucléaires, S.A. ,and COGEMA, Inc., dated December 31, 2003, (Sales Verification Report) at 43-64.

[19] Id. at 24.

points out that nine of the eleven alleged errors mentioned by the petitioners involve transactions solely respecting non-subject LEU. Of the remaining two alleged errors, COGEMA/Eurodif is contesting one. See the Proprietary Supplement to the Issues and Decision Memorandum at Comment 7.

COGEMA/Eurodif argues that the cases cited by the petitioners in support of their argument that non-subject entries must be definitively linked to sales, all involve cases where the respondent sought to exclude a particular sale from a sales-based administrative review. COGEMA/Eurodif notes that in Furfuryl Alcohol from South Africa,[20] which was an entry-based review involving a "unitary" product that was routinely treated as fungible and mixed together in inventory, the Department accepted an allocation methodology to determine which sales were made from non-subject merchandise in inventory prior to the suspension of liquidation.

Finally, with regard to the petitioners' comment that the allocation methodology would allow COGEMA/Eurodif to reduce its dumping margin by making adjustments to delivery schedules, COGEMA/Eurodif maintains that no evidence exists that it has done so, and speculation that it could do so is not sufficient cause for reliance on facts available. Further, COGEMA/Eurodif argues that the petitioners' suggestion that, as facts available, the Department calculate the dumping margin on all entries, some of which are non-subject, would be contrary to section 351.212(b)(1) of the Department's regulations, which states that the Department is to "calculate the assessment rate by dividing the dumping margin found on subject merchandise examined by the entered value of such merchandise."

Department's Position: We agree with COGEMA/Eurodif and accept its allocation methodology in this review. At verification, we reviewed how each entry of the subject and non-subject merchandise was tied to the delivery to the customer.[21] As noted in our preliminary results, some entries could be definitively linked to a particular delivery to a U.S. customer. For others, COGEMA/Eurodif used a hierarchy to allocate LEU in inventory at the fabricator to deliveries, beginning with Eurodif-produced LEU entered during the POR.[22] With one exception, we found that COGEMA/Eurodif followed this methodology for each entry. See the Proprietary Supplement to the Issues and Decision Memorandum at Comment 7 and the Final Results Calculation Memorandum at 3.

With regard to the petitioners' argument that this allocation methodology would allow COGEMA/Eurodif to manipulate its dumping liability by steering subject sales to deliveries under

[20] See Notice of Final Results of Antidumping Duty Administrative Review: Furfuryl Alcohol From the Republic of South Africa, 62 FR 61084, 61089, (November 14, 1997).

[21] See Sales Verification Report at 42-60.

[22] See the Proprietary Supplement to the Issues and Decision Memorandum for further discussion.

higher-priced contracts, we found no price distortion resulting from COGEMA/Eurodif's attribution methodology in the current review. However, we note that our acceptance of COGEMA/Eurodif's allocation methodology in the current review does not indicate that the Department will accept this methodology in future reviews, should COGEMA/Eurodif appear to be manipulating its delivery schedule to achieve a lower margin. We will carefully review COGEMA/Eurodif's attribution methodology and reporting of subject merchandise in all future reviews.

Comment 8: Circumstance of Sale (COS) Adjustment

COGEMA/Eurodif argues that the Department incorrectly made a COS adjustment in the preliminary results. Due to the proprietary nature of this information, please see the Proprietary Supplement to the Issues and Decision Memorandum for further discussion.

Department's Position: We have determined that the adjustment in question is more appropriately treated as a production cost, and have treated it as such in the final results. In addition, we have corrected an error in our calculation methodology. See the Proprietary Supplement to the Issues and Decision Memorandum at Comment 8 and Final Results Calculation Memorandum at 2-3 for further details.

Comment 9: Constructed Export Price (CEP) Offset

COGEMA/Eurodif asserts that the Department erroneously denied a CEP offset in connection with U.S. sales in its preliminary results and that the record and the Department's verification report demonstrate that a CEP offset is warranted in this review. COGEMA/Eurodif cites the statute at section 773(a)(7), which sets forth the criteria to be examined in the level of trade analysis and the circumstances under which a CEP offset is granted. In addition, COGEMA/Eurodif cites to the Department's decisions in several cases to demonstrate the appropriateness of granting a CEP offset in situations where a U.S. entity contracts with and services its U.S. customers, effectively relieving the foreign producer of such responsibilities in the U.S. market, and where the U.S. entity undertakes certain selling functions that the producer undertakes in the home market and which the producer would otherwise need to undertake in the U.S. market, including when normal value is based on CV.[23] COGEMA/Eurodif also states that it is the Department's practice to grant a CEP offset to account for differing levels of selling activities where a U.S. entity undertakes selling functions that the producer undertakes in the home market and would otherwise need to undertake in the U.S. market.

[23] See, COGEMA/Eurodif's Case Brief at 33-34. See also, Gray Portland Cement and Clinker from Mexico, 64 FR 13148 (Mar. 17, 1999), Stainless Steel Sheet and Strip in Coils from Mexico, 64 FR 30790 (June 8, 1999), Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan, 64 FR 24329 (May 6, 1999), Dynamic Random Access Memory Semiconductors of One Megabit or Above from the Republic of Korea, 63 FR 50867 (Sept. 23, 1998), NSK Ltd. v. United States, 170 F. Supp. 2d 1280 (CIT 2001), and Oil Country Tubular Goods from Korea, 66 FR 46999 (Sept. 10, 2001).

According to COGEMA/Eurodif, both Eurodif and COGEMA bear a greater responsibility for home market sales and conduct more selling activities in the home market and in third country markets than they do for CEP sales. COGEMA/Eurodif argues that Eurodif directly handles all selling activity with its home market customer, EdF, whereas in the U.S. market, its responsibility for sales is limited to consultation regarding production capacity through its involvement in production planning, compliance with foreign regulations and quality assurance. Thus, the majority of selling functions for CEP sales is undertaken by COGEMA, Inc., not Eurodif or COGEMA. COGEMA/Eurodif also notes that every U.S. POR contract was entered into between COGEMA, Inc. and the utility, while every foreign contract was entered into by Eurodif or COGEMA.

In addition, COGEMA/Eurodif cites portions of the verification report regarding the following selling functions: strategic planning and marketing, market research, visiting customers/potential customers, negotiating contracts, receiving and booking orders/order processing, collecting payments/invoice follow-up, and customer follow-up.[24] For each of these selling functions, COGEMA/Eurodif argues that the Department's verification report confirms that COGEMA, Inc.'s level of involvement in the selling activities for U.S. sales is "high." COGEMA/Eurodif asserts that the record clearly establishes that COGEMA, Inc. undertakes all critical selling functions in the U.S. market that Eurodif undertakes in the home market, and which it would otherwise have to assume in the U.S. market. In addition, COGEMA/Eurodif notes that in the preliminary results, the Department stated that the levels of activity in both markets are similar as "all of the sales in the home market are to one customer under a long-term contract."[25] COGEMA/Eurodif argues that the number of customers in the two markets is irrelevant to the Department's analysis, but rather what matters is whether the kinds of sales activities in the markets differ. Thus, COGEMA/Eurodif argues that Eurodif's home market customer, EdF, purchases far more enrichment services than any U.S. customer and requires much more intensive involvement by Eurodif than any U.S. customer. Therefore, Eurodif's home market sales are at a more advanced level of trade. COGEMA/Eurodif notes that this is the conclusion reached by the Department in the investigation and that there has been no change in the facts or law since that time. Thus, COGEMA/Eurodif argues that the Department's preliminary decision not to grant a CEP offset in this review is contrary to the facts on the record.

The petitioners argue that the Department properly declined to grant a CEP offset as the lack of any difference in selling functions between Eurodif's home market and U.S. sales proves that a CEP offset is unwarranted. The petitioners state that according to the statute and regulations, a CEP offset is granted in cases where it is determined that the home market sales are made at a more advanced level of trade than U.S. sales and where a level-of-trade adjustment cannot be calculated. Furthermore, the petitioners argue that according to the regulations, the Department will examine differences in selling functions in its offset determination, but that such differences are not alone sufficient to establish a

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[24] See Respondents' Case Brief at 36-37 and Sales Verification Report at 15-19.

[25] See Respondents' Case Brief at 38-39.

difference in the level of trade. The petitioners agree with the Department's preliminary results, in which the Department concluded that all thirteen selling activities were performed in both markets, and only two had minor differences in the levels of selling activity. The petitioners argue that the Department correctly concluded that these minor differences were insufficient to establish a difference in the level of trade between the home and U.S. markets.

As to COGEMA/Eurodif's argument regarding the Department's prior decision in the investigation, the petitioners assert that the level of selling activities did change following the investigation and that the Department found differences between the levels reported and Eurodif's actual levels of selling activities at verification. The petitioners also state that COGEMA/Eurodif's reliance on previous determinations in support of its argument is misplaced as the facts in those cases differ from those in this review. Specifically, the petitioners note that in most of those cases, the respondent performed the selling functions in the home market, not in the United States; whereas in this case, COGEMA/Eurodif performed the selling functions in both markets. In response to COGEMA/Eurodif's arguments based upon statements in the verification report, the petitioners argue that the respondent focuses on the comparison between Eurodif's selling functions in the home market and COGEMA Inc.'s functions in the U.S. market rather than on a comparison of Eurodif's functions in the home and U.S. markets. The petitioners cite the verification report arguing that the Department's findings clearly show that Eurodif's home market sales are not at a more advanced level of trade.[26] Finally, the petitioners rebut COGEMA/Eurodif's argument that the number of customers in the two markets is irrelevant by stating that for the selling functions for visiting customers/potential customers and negotiating contracts, the Department correctly assessed the number of customers in each market in order to assess the level of activity in each market. Also, with regard to COGEMA/Eurodif's argument regarding the kinds of sales activities undertaken in the two markets, the petitioners note that the Department verified and determined that Eurodif performs all thirteen activities in both markets. Therefore, for all of the above reasons, the petitioners argue that Eurodif's home market sales are not at a more advanced level of trade and that a CEP offset is not warranted.

Department's Position: We agree with the petitioners and continue to find that a CEP offset adjustment is not warranted in this review. As noted in the Preliminary Results, of the thirteen reported selling functions, we found minor differences in the levels of two selling functions for Eurodif's sales in the home market and sales to its U.S. affiliate, COGEMA, Inc. COGEMA/Eurodif had reported different levels of selling activities in the following categories:
sales forecasting, visiting customers/potential customers, negotiating contracts, receiving and booking orders/order processing, collecting payments/invoice follow-up, and customer follow-up. At verification, we found that Eurodif performs the same level of selling activity for receiving and booking orders/order processing and collecting payments/invoice follow-up for both home market and CEP

[26] See Petitioners' Rebuttal Brief at 56-59.

sales. For the selling functions of visiting customers/potential customers and negotiating contracts, we found that Eurodif performed these functions to a similar degree for both home market and CEP sales, as all of Eurodif's home market sales are to one customer under a long-term contract.[27] Therefore, because we found only minor differences between Eurodif's selling activities in the home market and to its U.S. affiliate, we do not find that its home market sales are at a more advanced level of trade. Accordingly, we are not granting a CEP offset.

Comment 10: Indirect Selling Expenses

The petitioners argue that the Department should adjust COGEMA/Eurodif's indirect selling expenses in the final results. The petitioners state that during the POR, COGEMA/Eurodif incurred substantial expenses associated with the sale of subject merchandise that were not included in its reported indirect selling expenses. According to the petitioners, because these expenses are linked to the sale of subject merchandise, they should be recognized in the Department's final results. In addition, the petitioners argue that a certain revenue item should not be treated as an offset to indirect selling expenses. Due to the proprietary nature of this information, see the Proprietary Supplement to the Issues and Decision Memorandum for further discussion.

COGEMA/Eurodif argues in its rebuttal brief that the Department properly did not include certain expenses in indirect selling expenses. In addition, COGEMA/Eurodif rebuts the petitioners' claim that a certain revenue item should not be treated as an offset to indirect selling expenses. See the Proprietary Supplement to the Issues and Decision Memorandum for further discussion.

COGEMA/Eurodif argues that the Department made an error in calculating the indirect selling expense ratio for CV. Specifically, the Department calculated the total revenue for the second half of 2001 by subtracting a total sales figure for the first half of 2001 that double-counted the total export sales, thereby understating the total sales for the second half of 2001. The respondents state that this error resulted in an inflation of the indirect selling expense factor for the second half of 2001, which was used to calculate the factor for the POR.

Department's Position: We agree with COGEMA/Eurodif that these expenses should not be included in indirect expenses and the revenue item should be treated as an offset to indirect selling expenses. We also agree with COGEMA/Eurodif's allegation regarding a clerical error in the calculation of the indirect selling expense ratio for CV. Accordingly, we have revised this calculation for the final results. See the Proprietary Supplement to the Issues and Decision Memorandum at Comment 10 for further discussion; see also the Final Results Calculation Memorandum at 2.

Comment 11: CV Selling Expenses

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[27] See Sales Verification Report at 15-19.

The petitioners argue that, in calculating CV, the Department must include COGEMA S.A.'s expenses incurred in conjunction with sales of Eurodif-produced LEU in markets other than the United States. The petitioners point out that both the Act and the Department's regulations state that there should be a concordance between the selling expenses included in the CV calculation and the market selected by the Department for normal value. Thus, petitioners claim, because third county sales are the basis for the normal value calculation, the Department must include an amount for all selling expenses incurred on these sales, including COGEMA S.A.'s selling expenses.

COGEMA/Eurodif maintains that in the preliminary results, the Department selected France as the comparison market, finding that the French market was viable. However, due to all sales being to an affiliated party, the Department stated that it would calculate CV pursuant to section 773(a)(4) of the Act, rather than use home market prices pursuant to section 773(a)(1)(B)(1). COGEMA/Eurodif further claims that because the French market was found to be viable, the selling expense component of CV is appropriately based upon home market costs. Therefore, COGEMA/Eurodif argues that, because COGEMA S.A. does not conduct any selling activities in the home market related to sales to EdF, none of its expenses should be included in the calculation of CV.

Department's Position: We agree with COGEMA/Eurodif. As stated in the preliminary results, we determined that the home market was viable. However, because COGEMA/Eurodif has only one customer in the home market, an affiliated party, and because we had no independent means to determine whether prices for sales to this customer were made at arm's length, we based normal value on CV. As a result of our determination that the home market was viable, CV selling expenses should be based on home market selling expenses. COGEMA S.A.'s selling expenses were incurred for third-country selling activites, and therefore we have not included them in the calculation of CV.

Comment 12: Treatment of Countervailing Duties

The Department has addressed whether it is appropriate to deduct countervailing duties from EP and CEP in Appendix I. See Appendix I.

Recommendation

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

Agree ______ Disagree ______

____
James J. Jochum
Assistant Secretary
for Import Administration

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Date