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MEMORANDUM TO: Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

FROM: Barbara E. Tillman
Acting Deputy Assistant Secretary
for Import Administration

DATE: September 6, 2005

SUBJECT: Issues and Decision Memorandum for the Final Results of the Administrative Review of the Antidumping Duty Order on Low Enriched Uranium from France (2003-2004)

Summary

We have analyzed the case and rebuttal briefs from interested parties in response to the preliminary results of this review and the verification reports on research and development (R&D) expenses and the cost of electricity as a major input for Eurodif S.A. (Eurodif), Compagnie Générale Des Matières Nucléaires, S.A. and COGEMA, Inc. (collectively, Eurodif/COGEMA). As a result of our analysis, we recommend that you approve the positions we have developed in the "Discussion of the Issues" section of this memorandum. See the complete list of the issues, below, for which we received comments from the parties.

Background

On March 7, 2005, the Department of Commerce (the Department) published the preliminary results of this administrative review of the antidumping duty order on low enriched uranium (LEU) from France.[1] The period of review (POR) is February 1, 2003, through January 31, 2004. The respondent is Eurodif/COGEMA; the petitioners are USEC Inc. and United States Enrichment Corporation (collectively, the petitioner).

Both the respondent and the petitioner submitted case and rebuttal briefs as well as comments on

[1] See, Low Enriched Uranium from France: Preliminary Results of Antidumping Duty Administrative Review, 70 FR 10957 (March 7, 2005) (Preliminary Results).

the verification report, and to the placement on the record of USEC's 2004 Financial Statements. A hearing was held on August 4, 2005. At the petitioner's request, a portion of the hearing was conducted on a closed basis, for purposes of discussing business propriertary information (BPI).

Issues

Comment 1:	Goods Versus Services
Comment 2:	Eurodif's Cost of Purchases of Electricity from the Affiliated Supplier
Comment 3:	Established Market Price for Electricity
Comment 4:	Excluded Costs in EdF's Cost of Production
Comment 5:	Cogema's R&D Expenses
Comment 6:	CEA's R&D for Centrifuge Enrichment Technology
Comment 7:	Use of USEC's Financial Statements
Comment 8:	Goodwill Expenses in Constructed Value (CV) Profit
Comment 9:	Inter-Company Sales As Part of Sales Revenues in CV Profit
Comment 10:	Offset to COGEMA's Interest Expense For Income on Short-Term Investment
Comment 11:	Date of Sale For Certain Deliveries
Comment 12:	Cost of Uranium in the Calculation of CEP and CV
Comment 13:	Indirect Selling Expense Rate
Comment 14:	Attribution of Indirect Selling Expenses
Comment 15:	Ministerial Error in the CV Calculation for G&A, Interest Rate, and CV Profit

Discussion of Issues

Comment 1: Goods Versus Services

Eurodif/COGEMA argues that the Court of Appeals for the Federal Circuit (CAFC) has upheld the Court of International Trade's (CIT) decision that enrichment services cannot be included in the scope of an LEU antidumping order.[2] In that decision, Eurodif/COGEMA argues, the Federal Circuit held that contracts for Separative Work Units (SWU) were contracts for the provision of services and not for the sale of goods. Therefore, the LEU imported into the United States pursuant to these contracts is not subject to the antidumping statute. Eurodif/COGEMA states that implementation of the CAFC decision will require the Department to amend the scope of the LEU antidumping duty order to exclude sales of enrichment services. In addition, Eurodif/COGEMA notes that the Department stated in the preliminary results that all POR entries and subsequent deliveries were made pursuant to SWU contracts.[3] Thus, Eurodif/COGEMA concludes, there were no entries, exports, or sales of subject merchandise during the POR. Therefore, it is appropriate for the Department to rescind this administrative review and to instruct U.S. Customs and Border Protection (CBP) to liquidate all entries without

[2] See Eurodif et al. V. United States, 411 F.3d 1355 (Fed. Cir. March 3, 2005).

[3] See Preliminary Results, 70 FR 10957.

the assessment of antidumping duties and to refund all antidumping duty deposits paid, with interest.

The petitioner contends in its rebuttal brief that, until the CAFC determines whether it will grant a rehearing *en banc* and the CIT's decision is final, it is premature for the Department to take the action requested by Eurodif/COGEMA.

Department's Position: The petition for rehearing is pending before the CAFC. It would be premature for the Department to consider the action requested by Eurodif/COGEMA until the litigation on this issue before the CIT is completed.

Comment 2: Eurodif's Cost of Purchases of Electricity from the Affiliated Supplier

Eurodif/COGEMA states that in the preliminary results the Department used partial facts available because there were reconciliation differences between EdF's reported costs and the costs shown in the annual report. Since that time, Eurodif/COGEMA maintains, it has provided detailed information which was verified and accepted by the Department. Eurodif/COGEMA claims EdF has tied all of its cost calculations to its books and records; therefore, the Department must use the actual electricity costs submitted by EdF.

The petitioner argues that even though much of the requested information was provided, certain areas of the record still remain incomplete. The petitioner claims that EdF failed to reconcile its unbundled income statement to the consolidated income statement in its 2003 annual report. Moreover, the petitioner states, EdF did not provide a reconciliation of the total generation production costs in the financial statements to EdF's Pilotis accounting system total cost which was used to calculate the reported costs, even though this reconciliation was requested by the Department. The petitioner claims that the Department's confirmation of the adjustment categories at verification does not mean it approved EdF's decision to exclude these costs, and notes that the purpose of verification is not to evaluate a respondent's methodological choices but rather to confirm the factual accuracy of the data.

The petitioner also alleges that EdF excluded from the reported costs most of its selling expenses because in its view these expenses did not pertain to Eurodif. The petitioner claims that EdF's exclusion of selling expenses is inappropriate because the Department generally calculates selling expenses on a market-specific basis and not a customer-specific basis.

Given the gaps in the factual record and methodological deficiencies, the petitioner claims the Department would be justified in making an adverse facts available determination for the final results. However, should the Department decide to use Eurodif/COGEMA's data, the petitioner urges the Department to use the higher of the market price reported by EdF for its 2003 electricity purchases or EdF's cost of production including the write-off of fuel stock and write-down of assets that were inappropriately excluded from the cost calculation.

Department's Position: Section 776 of the Tariff Act of 1930, as amended (the Act) requires that certain conditions be met before the Department may resort to facts available (FA). Where

the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party an opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits, the Department may, subject to section 782(e), disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) states that the Department shall not decline to consider information deemed "deficient" under section 782(d) if: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

The statute provides, in addition, that in selecting from among the FA the Department may, subject to the corroboration requirements of section 776(c), rely upon information drawn from the petition, a final determination in the investigation, any previous administrative review conducted under section 751 (or section 753 for countervailing duty cases), or any other information on the record.

Section 773(f)(1)(A) of the Act 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 (GAAP) of the exporting or producing country and reasonably reflect the costs. To ensure that the company's accounting system used to calculate the reported costs captures expenses in conformity with its home country GAAP, the Department normally requires a reconciliation of the reported costs to the audited financial statements prepared in accordance with local GAAP. EdF employs two different accounting systems which draw from the same source accounting data; however, they classify revenues and costs differently because the systems are used for different purposes. The company uses its "ETAFI" accounting system to prepare its audited financial statements in accordance with French GAAP. EdF's "Pilotis" accounting system is used as a management tool and to prepare its consolidated audited financial statements in accordance with International Accounting Standards (IAS). To calculate the reported costs, EdF utilized its Pilotis accounting system which is not used to prepare the financial statements according to French GAAP.

At verification, the company was unable to reconcile the total reported cost of generating electricity as shown in its Pilotis system to the total generation expenses reported in its audited financial statements prepared in accordance with French GAAP. We note that even though the company was able to reconcile the net operating results from the Pilotis system to the net results on the French GAAP audited financial statements, this does not satisfy the need to reconcile total costs. It is important to note that the statute specifically identifies the local GAAP as the basis for the reported costs. According to EdF officials, the ETAFI and Pilotis accounting systems use different methods of capturing production costs. For example, while one system may record a transaction as an increase in expense, the other may reflect it as a reduction to revenue. In such cases, the net operating results as recorded in both accounting systems will agree, but the total amount of expenses recorded by each system may differ. Because EdF did not provide a reconciliation of the total reported costs to the total costs recorded in the audited French GAAP

financial statements, we were unable to determine whether the company's reported costs are based on the records kept in accordance with French GAAP as required by the statute. Therefore, we find that the total cost figure reported by EdF is unreliable, and for the final results, in accordance with section 776(a) of the Act, as facts available, we used the total electricity generation costs recorded in the French GAAP audited financial statements as the starting point in our calculation. We then adjusted the total generation costs for certain expenses verified to be unrelated to the generation of electricity, and recalculated the average cost of electricity generated by EdF. See Memorandum to File from Myrna Lobo and Elfi Blum on Analysis for Eurodif/COGEMA for the Final Results of the Second Administrative Review of Low Enriched Uranium (LEU) from France, September 6, 2005 (Final Analysis Memo).

As for petitioner's arguments regarding the appropriate market price for electricity and certain excluded costs, see Comment 3, *Established Market Price for Electricity* and Comment 4, *Excluded Costs in EdF's Cost of Production,* respectively. We also note that the issue of the excluded selling expenses raised by the petitioner is moot, because by using the total costs as recorded on the French GAAP audited financial statements as FA, we have captured all expenses included in the unbundled electricity generation section of the EdF French GAAP audited financial statements, which includes those cost centers with selling expenses.

Comment 3: Established Market Price for Electricity

The petitioner notes that in the first administrative review and the preliminary results of this review, the Department applied the major inputs rule according to section 773(f)(3) of the Act. The petitioner maintains that under this rule, in calculating the cost of production, the Department has the discretion to use the market price for that input if it exceeds the transfer price and the affiliated supplier's cost of producing that input. The petitioner claims that at verification the Department was able to determine a market price for electricity in France applicable to large industrial purchasers of electricity, and the Department should use this value as the market price for purposes of the final results.

The issue of market price of electricity, the petitioner states, arose when the Department was testing the reasonableness of EdF's exclusion of its purchases of electricity from the reported electricity cost. During this testing the Department calculated an average unit price of electricity purchased by EdF for its trading activity. The petitioner notes that at verification EdF company officials stated that the average price calculated by the Department was in line with the open market prices during the review period. The petitioner claims that this statement establishes the "amount usually reflected" for sales of electricity "in the market under consideration" as defined by section 773(f)(2) of the Act. Based on the quantities of electricity purchased by Eurodif and EdF, the petitioner states that both companies are large purchasers of electricity and therefore, should be considered in the same "market under consideration."

Citing two cases,[4] the petitioner claims that relying on EdF's purchase price for electricity is appropriate. The petitioner argues that this is a better market price than Eurodif's purchases because Eurodif/COGEMA purchased only a small quantity from unaffiliated suppliers compared to its total electricity consumption. The petitioner states that the Department has disregarded unaffiliated prices as the basis for market price when the Department concluded that the circumstances of those sales, including the quantities purchased, were too dissimilar from the affiliated transaction being valued.[5] Therefore, the petitioner urges the Department to rely on EdF's electricity purchase price in applying the major input rule.

Eurodif/COGEMA states that it has demonstrated that all of its third-party electricity purchases were for prices that were less than that charged to it by EdF. Eurodif/COGEMA argues that the quantity of its non-affiliated purchases of electricity cannot disqualify its purchases for purposes of the major input rule.[6] Eurodif/COGEMA asserts that the quantities of electricity purchased by Eurodif from unaffiliated suppliers were substantial, involved multiple transactions, were conducted on the open market with multiple sellers, and were relied on by the Department in the investigation and prior review; therefore, the petitioner has no basis to dismiss these sales as minuscule or not reflective of market conditions. Eurodif/COGEMA states that in Steel Plate Products from Korea, the Department explained that its preferred choice for market price is what the respondent actually paid an unaffiliated provider for the input. Respondent continues that in Pure Magnesium from Israel, cited by petitioner, there was no evidence regarding the price paid by the respondent to unaffiliated suppliers. Moreover, Eurodif/COGEMA argues that the record contains nothing about the terms or conditions of EdF's electricity purchases, while in contrast, EdF's cost of producing electricity for Eurodif is very low because it can service Eurodif's stable and predictable load demands with its baseload capacity. Therefore, Eurodif/COGEMA contends the Department should use the market value information it has provided.

Department's Position: The price paid by Eurodif to its unaffiliated suppliers should be used as the market price for electricity. In applying the major input rule according to section 773(f)(3) of the Act, the Department must determine the market value of inputs purchased from affiliated suppliers. According to the statute, the market value should represent the amount usually reflected for sales of merchandise under consideration in the market under consideration. The Department has established a preference for using respondent's own purchases from unaffiliated suppliers as the market price for an input, provided such transactions are significant and fairly

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[4] See Final Determination of Sales at Less Than Fair Value: Pure Magnesium from Israel, 66 FR 49349 (September 27, 2001) (Pure Magnesium from Israel) and the accompanying Issues and Decision Memorandum at Cmt. 7, and the Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Quality Steel Plate Products from Korea, 64 FR 73196, 73209 (December 29, 1999) (Steel Plate Products from Korea).

[5] See Final Determination of Sales at Less Than Fair Value: Low Enriched Uranium from France, 66 FR 65877 (December 21, 2001) and the accompanying Issues and Decision Memorandum at Cmt. 8 (Uranium LTFV Final).

[6] See Final Results of Antidumping Duty Administrative Review: Certain Softwood Lumber Products from Canada, 69 FR 75921 (December 20, 2004) and the accompanying Issues and Decision Memorandum at Cmt. 7 (Softwood Lumber from Canada).

reflect an arms-length transaction for the input in question. As we stated in Steel Plate Products from Korea, "{T}he price that a respondent pays directly to a supplier might be preferable {for our analysis} since the statute, at section 773(f)(2), specifically refers to transactions 'in the market under consideration'. The prices paid by the respondent in an investigation by definition represent the market under consideration." 64 FR at 73209. The Department further addressed this issue in Silicomanganese From Brazil, where we stated that:

> {I}n establishing the market price to use in determining whether the transfer price of affiliated inputs is at arm's length, the Department's established preference is to use the price paid by the respondent itself in transactions with unaffiliated suppliers as this price best represents the respondent's own experience in the market under consideration . . . If the respondent did not make any purchases of the input from unaffiliated parties during the POR, the Department's next preference is to use the price at which the affiliated parties sold the input to unaffiliated purchasers in the market under consideration. If the affiliated supplier made no such sales during the POR and this price is also unavailable, then we may consider other market values that are reasonably available and on the record.[7]

A respondent's own purchases from its unaffiliated suppliers inherently represent consumption by a comparably sized company, in the same industry, and in the market under consideration. Absent evidence that the input purchased from unaffiliated suppliers is not comparable to that purchased from its affiliates, or evidence of unusual circumstances surrounding such unaffiliated purchases, we deem respondent's own unaffiliated purchases to be our first preference for a market price. As the record shows in this case, the inputs are identical and there are no identified unusual circumstances surrounding Eurodif's unaffiliated purchases of electricity.

We also disagree with the petitioner that the quantity of unaffiliated purchases in relation to total purchases of the same input should be a disqualifying factor in considering such purchases for the purpose of the major input rule. As long as such purchases occurred in commercial quantities, we may rely on such transactions as a benchmark for market value. As we recently stated in Softwood Lumber from Canada, "{I}n determining whether transaction prices between affiliates reflect market values, we do not consider the substantiality of those transactions in terms of volume to be the determining factor."[8] We also find that the petitioner's reliance on Uranium LTFV Final is misplaced. In that case we found that unique terms of the contract disqualified the unaffiliated sales from being considered for the purposes of determining the market price.[9] These circumstances were not present during this POR. Lastly, Pure Magnesium from Israel is inapplicable because in that case there were no unaffiliated purchases of electricity

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[7] Final Results of Antidumping Duty Administrative Review: Silicomanganese from Brazil, 69 FR 13813 (March 24, 2004) and the accompanying Issues and Decision Memorandum at Cmt. 7. (Silicomanganese from Brazil)

[8] Softwood Lumber from Canada, 69 FR 75921, and the accompanying Issues and Decision Memorandum at Cmt. 7.

[9] Uranium LTFV Final, 66 FR 65877, and the accompanying Issues and Decision Memorandum at Cmt. 8.

by the respondent to be used in our analysis to determine the market price.[10] Therefore, based on the record of this review, we find that the prices paid by Eurodif to unaffiliated suppliers fairly represent the market price for electricity in the market under consideration.

Comment 4: Excluded Costs in EdF's Cost of Production

When applying the major input rule, the petitioner contends that the Department must include two write-offs that EdF has inappropriately excluded from its cost of production figure. The petitioner points out that EdF improperly excluded the write-down of fixed assets that are still in use. The petitioner argues that the Department's practice is to include in the cost of production the write-downs and write-offs.[11] In addition, the petitioner states that EdF should not have excluded the write-off of nuclear fuel stock from its reported cost of production because this write-off was related to EdF's energy generation activities and was recognized by EdF in its Branche Energie costs and income statement for 2003.

Eurodif/COGEMA argues that the Department should exclude asset write-downs because the expense relates to a prior period and has no impact on EdF's POR costs. Eurodif/COGEMA states that it is the Department's policy to not include items related to periods outside the POR when calculating costs.[12] Eurodif/COGEMA notes that the Department did not adjust profit because it was not appropriate to reduce the current period's costs to correct the error made in the depreciation expense recognized in prior periods.[13] Eurodif/COGEMA asserts the same situation exists here. Respondent claims that prior to 2003, EdF's auditors issued a qualified audit opinion. As a result, EdF undertook a study of the company's fixed asset values. This study resulted in the write-down of the fixed asset values. Thus, Eurodif/COGEMA concludes, excluding this write-down was in accordance with the Department's practice because it did not relate to the generation of electricity in 2003 but rather to the recognition of revenues and expenses of a prior period.

With respect to the inventory write-off, Eurodif/COGEMA asserts that this nuclear fuel stock was not only unusable for EdF's production of electricity, but also related to investment activities of holding an asset, and was unrelated to the production of electricity in France in 2003. Eurodif/COGEMA notes that the Department's established practice excludes a finished goods

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[10] Pure Magnesium from Israel, 66 FR 49349, and the accompanying Issues and Decision Memorandum at Cmt. 7.

[11] Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Steel Products from Brazil, 65 FR 5554, 5582 (February 4, 2000) and the Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Spain, 63 FR 40391, 40403 (July 29, 1998).

[12] Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from Brazil, 69 FR 76910 (December 23, 2004) and the accompanying Issues and Decision Memorandum at Cmt 17.

[13] Final Results of Antidumping Duty Administrative Review: Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Brazil 70 FR 7243 (February 11, 2005) (Pipe from Brazil) and the accompanying Issues and Decision Memorandum at Cmt 8.

adjustment from the cost of production and investment-related activity adjustments.[14] Eurodif/COGEMA argues that because this fuel could not be used by EdF, it only was being held for investment purposes in the hope of being sold later. Thus, respondent concludes, when the fuel turned out to be unsaleable resulting in the charge, the cost of this write-down was properly excluded from EdF's reported cost of production.

Department's Position: These expenses should be included in EdF's cost of producing electricity. As Eurodif/COGEMA pointed out, the Department normally excludes income and expense items related to prior periods, such as corrections or reversals of prior period amounts. However, we disagree that the asset write-down at issue relates to a prior period. As stated in Note 17 to the EdF 2003 consolidated financial statements, "the objective of this was to make the accounting data match the physical reality by the end of 2003 . . . The years 2001 and 2002 were basically devoted to defining, testing and validating the methodologies {for asset valuation} which were implemented during the fourth quarter of 2002. Almost all the differences recorded were recorded in 2003." We note that even though the write-down resulted from the independent auditors' opinion issued prior to 2003 and was based on a study undertaken in 2002, the write-down was recorded in 2003 as a difference between the book value and the fair value of the assets as of 2003. There is no evidence on the record that this expense was a correction or a reversal of a prior period amount. As such, we find that the asset write-down is a current period expense and should be included in EdF's cost of producing electricity for the final results.

Regarding respondent's argument that the inventory write-off should be excluded under the Department's practice of excluding a finished goods inventory adjustment and investment-related activity adjustments, we note that the fuel stock in question is not finished goods. It was not produced by EdF for sale, but rather was used as a fuel at a fast neutron generator. The respondent's claim that the fuel was held for investment purposes is equally not persuasive, because the fuel stock was initially acquired by the company not as an investment, but as an input which was to be used in EdF's production of electricity. We find that the write-off of the fuel stock represents a loss due to obsolete inventory related to EdF's generation activity, rather than loss on investment. Accordingly, for the final results, we included the write-off of the nuclear fuel stock in EdF's cost of producing electricity.

Comment 5: Cogema R&D Expenses

The petitioner alleges that Eurodif/COGEMA failed to submit supporting information and reconciliations for the reported R&D expenses, despite several requests by the Department. According to the petitioner, Eurodif/COGEMA has failed to provide the necessary information in three crucial areas. First, Eurodif/COGEMA failed to provide documents related to the AREVA

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[14] See Final Results of Antidumping Duty Administrative Review: Stainless Steel Wire Rod from the Republic of Korea, 69 FR 19153 (April 12, 2004) and the accompanying Issues and Decision Memorandum at Cmt. 7; Final Determination of Sales at Less Than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above ("DRAMS") From Taiwan, 64 FR 56308, 56325 (October 19, 1999); Final Results of Antidumping Duty Administrative Review: Stainless Steel Wire Rod from India, 70 FR 40318 (July 13, 2005) and the accompanying Issues and Decision Memorandum at Cmt. 15; and Pipe from Brazil and the accompanying Issues and Decision Memorandum at Cmt. 8.

partnership in the Enrichment Technology Corporation (ETC) venture by first stating that the arrangements were not final, then arguing that the documents were irrelevant, and finally claiming that the documents were not available even though the Department reviewed one of the documents during verification in the previous review. Second, the petitioner claims that Eurodif/COGEMA failed to reconcile the R&D expenses billed through COGEMA. The petitioner claims that, without a proper reconciliation, the Department has no way to determine whether the expenses represent all relevant reportable R&D expenses. And third, the petitioner asserts that Eurodif/COGEMA failed to report all relevant R&D costs, disclosing the detail of certain costs only after repeated requests from the Department, which suggests that Eurodif/COGEMA may still have additional R&D expenses which remain unreported.

The petitioner therefore states that, in light of Eurodif/COGEMA's failure to provide specifically requested information which is necessary for the proceeding and its failure to act to the best of its abilities, the Department is justified in applying adverse facts available to determine Eurodif/COGEMA's R&D expenses. The petitioner further states that adverse facts available are warranted when information necessary for the Department's analysis is absent from the record and when a party has failed to cooperate by not acting to the best of its ability.[15] Further, the petitioner suggests that the Department look to Eurodif/COGEMA's worksheet Exhibit D-73 where full R&D expenses are shown, to determine a basis for adverse facts available. The petitioner concludes that, without the proper reconciliation, it is impossible to be sure that the expenses shown represent all of Eurodif/COGEMA's POR R&D expenses and, therefore, the Department would be justified in using the enrichment-related R&D expenses shown in Exhibit D-73.

Eurodif/COGEMA states that it responded to all of the Department's questionnaires in a manner consistent with the Department's instructions and the treatment of R&D expenses in the investigation and first review. Moreover, respondent states that the Department confirmed the accuracy of the record facts at its verification of the Commissariat à l'Energie Atomique (CEA). Eurodif/COGEMA states the sheer quantity of information they provided refutes the petitioner's claim that they failed to cooperate. With respect to ETC, the AREVA-URENCO joint venture, Eurodif/COGEMA states that they provided pertinent information; the record information was verified and demonstrates the prospective and confidential nature of the venture and the irrelevance of the documents in this review. Eurodif/COGEMA further states that at verification the Department expressed no need to review documents related to the expected joint venture.

With regard to its R&D figures, Eurodif/COGEMA states that they confirmed and certified the figures to be directly drawn from COGEMA's books and records and also responded to the Department's further request for itemization. According to Eurodif/COGEMA, no reconciliation

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[15]Petitioner refers to Section 776(b) of the Act. As the Court of Appeals for the Federal Circuit has held, "{t}he mere failure of a respondent to furnish requested information – for any reason – required Commerce to resort to other sources of information to complete the factual record on which it makes its determination." Nippon Steel Corp. v. United States, 337 F.3d 1373, 1381 (Fed. Cir. 2003) ("{T}he statutory mandate that a respondent act to 'the best of its ability' requires the respondent to do the maximum it is able to do."). Moreover, "{t}he statutory trigger for Commerce's consideration of an adverse inference is simply a failure to cooperate to the best of respondent's ability, regardless of motivation or intent." Id. at 1383.

was needed as their response provided the detail requested, showing the balance of COGEMA's R&D expenses that were not related to enrichment and, therefore, properly excluded from Eurodif's costs. Additionally, Eurodif/COGEMA states that it volunteered that there were additional R&D costs to be picked up when they uncovered the information. Eurodif/COGEMA states they have fully explained why the amount was not classified in COGEMA's enrichment R&D account and that the information was verified by the Department. Eurodif/COGEMA asserts that it has supplied all pertinent information accurately and to the best of its abilities to comply with the Department's requests. Therefore, respondent requests that in the final results the Department adhere to the verified facts and include the enrichment-related R&D expenses properly reported by them and not use the adverse amount suggested by the petitioner.

Department's Position: Applying facts available or adverse facts available in this situation is unwarranted. First, regarding ETC, we asked Eurodif/COGEMA a series of questions about the setup of this joint venture.[16] Our questions were aimed at obtaining a better understanding of the arrangement of the joint venture, which respondent had already explained was not in existence as of the POR. After reviewing respondent's description of the ETC joint venture and its status as of the date of the supplemental D response, and also based on our review of the other information on the record related to the ETC, we did not find further questioning was warranted. Therefore, we did not pursue any more information about ETC. Based on our analysis of all of the information, we found that there were no R&D costs associated with ETC during the POR. As a result, we have not adjusted reported R&D costs for the ETC joint venture. We plan to further investigate the ETC joint venture if it is pertinent to future administrative reviews.

Second, regarding the R&D expenses in COGEMA's books, we find that the necessary information was provided and that respondent acted to the best of its ability. In the second supplemental section D questionnaire, we asked respondent to report the total amount of R&D expenses incurred by COGEMA in 2003 and to clarify the amount that had been allocated to Eurodif.[17] Eurodif responded with three values for R&D and specified that all expenses related to enrichment were allocated to Eurodif and are set forth in Eurodif's cost of production exhibit. In our first supplemental R&D questionnaire, we asked Eurodif to explain how they quantified the three R&D expense amounts incurred by COGEMA in 2003. We also asked respondent to describe how and where the numbers were derived and tie them to the financial statements of the companies through whom these expenses were passed on to Eurodif.[18] In response to this questionnaire, Eurodif/COGEMA explained that the first amount listed was the sum of the second and third amounts. Respondent explained that the second amount was for activity that was outside of the enrichment process and was therefore excluded from the reported R&D expenses for Eurodif. Respondent further explained that the third number encompassed several items, including a portion that was attributable to Eurodif. We matched this figure to Eurodif's

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[16] See R&D Supplemental Questionnaire (March 18, 2005).

[17] See Supplemental Section D Questionnaire November 8, 2004.

[18] See the Department's March 18, 2005 R&D Supplemental Questionnaire.

reported costs of production in its section D response without exception.[19] The only additional question that we posed was to clarify the third amount by requesting a list of the other projects that made up the third amount.[20] In that questionnaire response, respondent also provided a list of the projects included in the second amount and noted that a portion of this amount could have related to enrichment R&D. We noted that this portion was not included in respondent's reported costs.

The purpose of our supplemental questionnaires was to understand what items were included in the R&D expense amounts. Although Eurodif asserted that it had included all related enrichment R&D expenses in its reported costs, Eurodif provided the list of the projects in response to the Department's request. We did not intend for Eurodif to reconcile each of the figures to COGEMA's financial statements, but to identify what projects were related to the amounts included and from where they were derived. This intention is evidenced by the fact that we did not ask for additional reconciliations in our second supplemental R&D questionnaire. However, as a result of our other questions, we found that there was a portion of COGEMA's R&D expenses that was not included in the reported costs. Therefore, we have increased the R&D expense to include this missed amount.

Comment 6: CEA's R&D for Centrifuge Enrichment Technology

The petitioner argues that in addition to the R&D expenses Eurodif/COGEMA reported, the record indicates that its affiliate, CEA, was involved in R&D activities on civilian-oriented centrifuge enrichment technology. Therefore, costs associated with these activities should be included in Eurodif/COGEMA's cost of production as they relate directly to the production of subject merchandise. The petitioner states that neither CEA nor Eurodif/COGEMA have refuted the conclusion, drawn from public documents, that CEA was engaged in research on centrifuge enrichment technology related to the replacement of Eurodif's current gaseous diffusion enrichment facilities. Instead, CEA has simply stated that none of its centrifuge research activities in 2003 were conducted for civilian purposes. The petitioner adds that when Eurodif/COGEMA was called upon to clarify the contradiction, neither respondent nor CEA provided any information or additional explanation. The petitioner states there is no evidence Eurodif/COGEMA sought any clarification from CEA on this point. Further, the petitioner says, Eurodif/COGEMA's commitment to URENCO technology for its ongoing enrichment needs does not prove that CEA was not engaged in civilian R&D activities. The petitioner also notes that assuming Eurodif/COGEMA's statement at the CEA verification to be true ("centrifuge technology used to produce highly enriched uranium (HEU) is very different from the technology for producing LEU") does not constitute evidence that the only centrifuge R&D conducted by CEA related solely to HEU. Indeed, that inference is contradicted by CEA's public statements regarding the nature and purpose of its centrifuge research. The petitioner contends that even though the CEA technology may not have looked immediately promising, it does not mean that CEA was not pursuing it for the benefit of the French nuclear industry. Moreover, the AREVA-

[19] See Respondent's May 21, 2004 Section D response, Exh. D-13.

[20] See the Department's April 26, 2005 R&D Second Supplemental Questionnaire.

URENCO venture has many obstacles to overcome, and should the venture fail, Eurodif/COGEMA would most certainly turn to CEA to upgrade its technology. The petitioner, thus feels it is simply not credible for Eurodif/COGEMA to suggest that CEA's R&D activities are irrelevant.

The petitioner believes that having established that CEA did conduct research on centrifuge enrichment technology in 2003, the Department should then include these costs in calculating Eurodif/COGEMA's cost of production. To support its argument, the petitioner cites section 773(e)(2)(A) of the Act, which has been interpreted to require an affiliate's costs to be included in the respondent's cost of production. To counter Eurodif/COGEMA's assertion that it did not benefit from CEA's research, the petitioner points out that CEA confirmed at verification that Eurodif/COGEMA used CEA as counsel in its negotiations with URENCO. The petitioner adds that, because of the knowledge acquired in conducting its own centrifuge research, the CEA was in a position to counsel Eurodif/COGEMA on its acquisition of centrifuge enrichment technology from URENCO. The petitioner further contends that even if Eurodif/COGEMA did not benefit from CEA's research, the inclusion of the costs would still be appropriate because the Department requested Eurodif/COGEMA to report those costs, regardless of whether the respondent had a right to use the R&D, was party to an agreement with CEA regarding the R&D, or whether the R&D project was concluded successfully. The petitioner counters Eurodif/COGEMA's argument that its agreement with URENCO prevents it from using CEA centrifuge technology, by stating that France is not a party to that agreement and hence there is nothing that precludes the Government of France or its agencies, such as CEA, from pursuing centrifuge-based enrichment technology on their own. The petitioner further states that the record demonstrates that the centrifuge research CEA was conducting was for the specific purpose of allowing Eurodif/COGEMA to evaluate the centrifuge technology to be obtained from URENCO and therefore, its argument that it will renounce any centrifuge technology from sources other than the AREVA-URENCO joint venture, does not appear factually correct. The petitioner also points out that the documents Eurodif/COGEMA referenced at verification appear to be the very documents the Department requested earlier in the proceeding and which Eurodif/COGEMA refused to submit. Therefore, according to the petitioner, Eurodif/COGEMA should not be allowed to cite these documents selectively in support of its arguments without giving all parties the right to examine them in their entirety. Lastly, the petitioner contends that there are no impermeable barriers to transfer the results of CEA's centrifuge research to Eurodif/COGEMA and although CEA has stated it is unaware of whether the latter could benefit from the research, it did not state that such benefits do not exist and confirmed that the information could be shared with approval. The petitioner also states that even though CEA noted that the results of its research might be protected through a "classified patent" there is no suggestion that it could not be subsequently licensed to Eurodif/COGEMA.

Since evidence demonstrates that enrichment-related R&D activities were conducted by CEA, petitioner argues, an amount for such costs should be included in Eurodif/COGEMA's cost of production. Since Eurodif/COGEMA has not provided the cost of CEA's centrifuge-related R&D activities during the POR, the petitioner states the Department must use "facts available" as section 776(a) of the Act clearly mandates. The petitioner adds that the only figure available on the record with respect to CEA's enrichment R&D activities, is the amount provided for the

SILVA project, and even though unsupported, this could be an appropriate, conservative figure to use as non-adverse "facts available" for the amount spent by the CEA on centrifuge research in 2003. The petitioner believes it is entirely reasonable and likely conservative to use the figure provided for the SILVA project because, as Eurodif/COGEMA explained, CEA's SILVA activities in 2003 were only to wind down the project and memorialize the results of this research while more of their attention and thus expense in 2003 was focused on the more favored centrifuge technology.

In response to the petitioner's request for the inclusion of an amount based on non-adverse facts available for R&D expenses incurred by the CEA, to be included in the CV calculation, Eurodif/COGEMA states that it has (consistent with past references) demonstrated, and the Department has verified, that the SILVA-related research is beyond the scope of the review. Eurodif/COGEMA adds that CEA's centrifuge-related R&D activities bear no commercial relationship to Eurodif/COGEMA or the subject merchandise and, therefore, CEA's expenses should not be attributable to Eurodif/COGEMA's enrichment services. Eurodif/COGEMA states the Department specifically clarified CEA's statements with respect to CEA's involvement in centrifuge research for civilian, commercial purposes, and verified that, even though CEA and Eurodif/COGEMA had engaged in development of centrifuge technology in the past, their research had not yielded any commercial output and it had not developed industrial centrifuge technology. Thus, Eurodif/COGEMA formally committed to the development of commercial centrifuge technology to replace the gaseous diffusion enrichment plant through the expected future ETC joint venture with URENCO. The commitment, as the Department verified, obligated Eurodif/COGEMA to use ETC; this commitment is further confirmed by the Treaty of Almelo which states that "all commercial exploitation of the gas centrifuge process must be through collaboration pursuant to the Treaty." As such, Eurodif/COGEMA will have no automatic access to any kind of CEA research. Therefore, based on the facts verified and CEA's certification that it undertook no civilian centrifuge research in 2003, Eurodif/COGEMA refutes the petitioner's claim that CEA's centrifuge R&D activities during the POR were designed to assist Eurodif.

Responding to the petitioner's claim of the benefit gained by Eurodif/COGEMA from using CEA as counsel in its negotiations with URENCO, Eurodif/COGEMA states that no aspect of the Department's verification report or anything in the record suggests that CEA provided COGEMA with any technical assistance or counsel towards its centrifuge endeavor with URENCO during the POR. In addition, Eurodif/COGEMA's commitment to the ETC joint venture was completed prior to the POR.

In response to the petitioner's argument that CEA's research costs should be attributed to Eurodif because neither CEA or Eurodif/COGEMA have provided evidence to refute the conclusion that CEA conducted centrifuge R&D for civilian and commercial use, Eurodif/COGEMA states that the petitioner ignores the certified and verified facts on the record and the highly confidential and classified information at issue. Eurodif/COGEMA adds that CEA is first and foremost an instrumentality of the Republic of France whose activities are heavily vested in highly sensitive military and defense matters, and it is completely reasonable that the details of its R&D projects cannot be disclosed. Even though CEA has some tangential affiliation with Eurodif/COGEMA,

its primary obligations are to the French State. Further, CEA made clear its activities are in no way connected to the commercial merchandise involved. Eurodif/COGEMA states that, at verification, although limited by its inability to discuss military and defense matters, CEA again certified to the Department that its 2003 centrifuge-related R&D projects were of a non-civilian nature and wholly unrelated to this proceeding.[21] Eurodif/COGEMA argues that there is nothing in the record to suggest CEA was in fact pursuing centrifuge technology for civilian and commercial purposes. Beyond CEA's certified statements that it was not engaged in such activities, according to Eurodif/COGEMA the record demonstrates that CEA had no incentive or commercial rationale to pursue civilian centrifuge research. Eurodif/COGEMA urges the Department to dismiss the petitioner's claims about the Treaty not precluding the Government of France or its agencies from pursuing centrifuge-based enrichment on their own. Even though France is not a party to the Treaty, Eurodif/COGEMA claims that it would be irrational for CEA to have spent resources during 2003 to embark on civilian centrifuge R&D research made useless by the Treaty's requirements. The petitioner's claim that CEA must have pursued civilian centrifuge R&D in 2003 so Eurodif could turn to French technology in the event the ETC joint venture failed, is directly contradicted by CEA's certified statements on record. Indeed, if Eurodif/COGEMA or CEA had any plans to use the CEA as a standby, their ETC arrangement would not have been structured the way it presently is and the status of CEA's prior centrifuge efforts would have been different. Eurodif/COGEMA urges the Department to adhere to the certified record which shows that CEA engaged in no centrifuge R&D projects for civilian purposes during 2003.

Finally, Eurodif/COGEMA claims that there is no valid argument for attributing CEA's centrifuge R&D expenses to Eurodif, because to do so would be to impose on Eurodif all of the enrichment R&D costs incurred by the French military. The distant affiliation between Eurodif and CEA through government ownership does not trump the Department's appropriate, long-standing practice of excluding R&D expenses that do not benefit the subject merchandise.[22] Therefore, Eurodif/COGEMA argues, R&D that is certified by the French government to be for "non-civilian" purposes, and thus is of no use to Eurodif/COGEMA's commercial uranium hexafluoride (UF_6) enrichment activities, should be excluded from Eurodif's costs. There is no basis for the petitioner's claim that non-civilian technology may be transferable or beneficial to Eurodif/COGEMA in the future. The Department should reject the petitioner's call for the application of facts available and the inclusion of SILVA research expenses in Eurodif's costs, which the Department verified relate only to non-subject merchandise.

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[21] See, e.g., PPG Industries, Inc. v. United States, 15 CIT 615, 781 F. Supp. 781 (Dec. 12, 1991) (stating that the Department can base a determination "solely upon an oral statement by a government official"); see also Georgetown Steel Corp. v. United States, 16 CIT 1084, 1086, 810 F. Supp. 318, 320-21 (Dec. 23, 1992).

[22] See, e.g., Micron Technology, Inc. v. United States, 19 CIT 829, 832, 893 F. Supp. 21, 27-28 (June 12, 1995) (determining that R&D expenses should be excluded where "respondents provide{d} ample citation to verified record evidence tending to show that the subject merchandise did not derive an intrinsic benefit from R&D related to other semiconductor products"); Final Determination of Sales at Less Than Fair Value: Sweaters Wholly or in Chief Weight of Man-Made Fiber from the Republic of Korea, 55 FR 32659, 32671 (August 10, 1990) (Sweaters from Korea) ("Those {R&D} costs incurred in the development of other products were considered to be only applicable to such products and, therefore, were not included in general expenses.").

Citing to a number of cases in support of their position, Eurodif/COGEMA further states that it has cooperated with the Department to the fullest extent possible within the strictures of its confidentiality and security obligations to the French State, and it had no ability to compel CEA to do more and no more should have been required of the CEA.[23] Further, the Department must adhere to the record facts, certified by the French State and verified by the Department, demonstrating that CEA's R&D activities during the POR have no relationship to the commercial enrichment activities at issue in this proceeding and therefore have no place in the Department's constructed value calculation.

Department's Position: The Department determined that Eurodif/COGEMA and CEA are affiliated. Specifically, CEA, which is 100 percent owned by the French government, owns 78.96 percent of AREVA, formerly known as CEA Industries. AREVA, in turn, owns 100 percent of COGEMA, which holds 59.66 percent ownership in Eurodif.[24] Therefore, pursuant to section 771(33) of the Act, CEA is an affiliate of Eurodif/COGEMA.

Evidence placed on the record of this review indicates that CEA engaged in centrifuge technology research that can have civilian applications. CEA's 2003 annual report states that Eurodif/COGEMA's gaseous diffusion process is to be replaced around 2012, and that there are two alternatives, the Silva process and the centrifuge process. The annual report also clearly states that "{a}t the same time, research was carried out into the centrifuge process, an initiative was begun to obtain data and build a small-scale modern centrifuge. Aging tests are under way on materials exposed to uranium hexafluoride."[25] CEA's organizational chart identifies a "Director of the EdF Nuclear Production." EdF is the French civilian supplier of electricity and is an affiliated major supplier of electricity to Eurodif/COGEMA for the production of subject merchandise. Based on this evidence it appears that CEA oversaw R&D efforts to develop a centrifuge for civilian purposes. Neither CEA nor Eurodif/COGEMA have refuted this conclusion that CEA has been engaged in research designed to assist in the replacement of Eurodif/COGEMA's current gaseous diffusion enrichment facilities. CEA officials themselves stated that CEA conducted research in centrifuge technology, although limited, on behalf of Eurodif/COGEMA, as well as engaged in limited joint activities with Eurodif/COGEMA. In addition, CEA served as counsel to Eurodif/COGEMA in its negotiations with the Urenco

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[23] See e.g., Certain Cut-to-Length Carbon Steel Plate from Belgium; Final Results of Antidumping Duty Administrative Review, 63 FR 2959, 2961 (January 20, 1998) (stating that the Department "may resort to adverse facts available" only where respondent "could not compel its affiliate to report {the information}"); Notice of Final Results and Partial Recission of Antidumping Duty Administrative Review: Roller Chain, Other Than Bicycle, From Japan, 62 FR 60472, 60476 (November 10, 1997) (noting that Department did not apply adverse facts available because "{respondent} is not in a position to compel the affiliated customer to produce the information requested by the Department"); Certain Cut-to-Length Carbon Steel Plate from Brazil: Final Results of Antidumping Duty Administrative Review, 63 FR 12744, 12751 (March 16, 1998) (Cut-To-Length From Brazil) (Department did not apply adverse inference where respondent "did attempt to obtain cost of production information from its affiliate," and where nature of affiliation was such that respondent could not compel affiliate to provide information).

[24] See Respondent's Section A Response, at Exh. A-35, p. 23 (May 5, 2005); and Respondent's May 6, 2004 Response at 7.

[25] See Respondent's December 1, 2004 Response, at Exh. D-44, p. 20.

Group.[26]

The above evidence nothwithstanding, CEA categorically states "that *none* of CEA's research activities in 2003 with respect to the centrifuge process were conducted for civilian purposes," and that "{a}ll of CEA's centrifuge R&D activities in 2003 related to highly sensitive and confidential affairs of the French State, which are not relevant to this review."[27] At verification CEA officials stated that all centrifuge projects are confidential and of a classified nature, and thus, they declined to say whether there is a technical barrier to transfering the technology to commercial use, and whether CEA's research could benefit Eurodif/COGEMA. Eurodif/COGEMA claims that the Department has no reason not to accept the written statements by CEA officials that CEA did not conduct centrifuge technology for civilian or commercial purposes in 2003. However, the written statements of CEA are contradicted by CEA's 2003 annual report, a public document prepared for distribution to CEA's shareholders. In addition, regardless of the stated reason for the initial purpose of the R&D, the pivotal issue is whether it can have civilian applications. Therefore, even if it was conducted for military purposes, but could be potentially used for or applicable to LEU production, its cost is properly allocated to Eurodif/COGEMA.

We reject Eurodif/COGEMA's argument that it cannot benefit from CEA's centrifuge research because of its planned joint venture, ETC, with the Urenco Group. According to Eurodif/COGEMA, the Treaty of Almelo, which is not yet even amended to permit COGEMA's participation, states that all commercial exploitation of the gas centrifuge process must be through collaboration pursuant to the treaty. While we do not take any position on Eurodif/COGEMA's interpretation of the treaty,[28] we determine that Eurodif/COGEMA's interpretation does not preclude CEA from sharing its research with respondent. First, despite the Department's repeated requests, there is no documentation on the record specifying the details of Eurodif/COGEMA's agreement with the Urenco Group concerning the ETC joint venture. In other words, there is no documentation or explanation on the record regarding Eurodif/COGEMA's commitments with the Urenco Group as specified in the Memorandum of Understanding, and no documentation of the terms and structure of the prospective joint venture. However, the record of this proceeding does establish that during the POR, Eurodif/COGEMA was not yet a party to the Treaty of Almelo, and that it will not be able to become a party to the treaty without the approval of the other three governments. Therefore, Eurodif/COGEMA's membership under the treaty is only a possibility, not a certainty. In the event that France does not become a member to the Treaty of Almelo, there is nothing to prevent Eurodif/COGEMA

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[26] See Memorandum To File Through Dana Mermelstein and Neal Halper From Elfi Blum: Verification of Research and Development Expenses at the French Atomic Energy Commission (CEA), at 3 and 4 (July 11, 2005) (CEA Verification Report). The Urenco Group is comprised of the signatories of the Treaty of Almelo, which is an agreement among the United Kingdom, Germany, and the Netherlands. The treaty documents the parties' agreement on collaboration in the development and exploitation of the gas centrifuge process for producing enriched uranium. The Urenco Group formed a company with uranium enrichment facilities called ETC.

[27] See Respondent's May 17, 2005 Response, at 2, and Exh. D-70.

[28] See Respondent's May 31, 2005 Response, at Att. B.

from obtaining the centrifuge technology from CEA, thus benefitting from the R&D efforts undertaken by CEA during the POR.

We further reject Eurodif/COGEMA's claim that there is no benefit to respondent from CEA's R&D in centrifuge technology because it is not civilian or commercial in nature. At verification, the Department asked CEA officials whether Eurodif/COGEMA had access to CEA's research, whether there was anything to prevent CEA from sharing information with Eurodif/COGEMA that would be useful for commercial LEU production, and whether there were any agreements with other ministries or agencies concerning the use of its knowledge obtained from centrifuge research. CEA explained that any interagency information sharing must be approved by the Secrétariat Général de la Défense Nationale (SGDN) in France, the General Secretary of which sits on the Comité de l'Énergie Atomique. They further stated that all information concerning enrichment is regulated, that CEA needs government approval for all of its research activities and for sharing its results; in addition, it needs to obtain a classified patent in the event it develops technology for industrial use.[29] In other words, verification established that CEA has the ability to share its technology with Eurodif albeit under certain conditions.

On August 4, 2005, the Department conducted a hearing. The hearing examiner asked a Eurodif/COGEMA official whether the centrifuge process is a step-wise process, and whether any desired enrichment level - five or ten or any other concentration - could be obtained. The company official responded that uranium can be removed at any point in the process, depending upon the desired level of enrichment, or the spinning can continue and the enrichment level increased.[30] This statement clearly indicates that centrifuge technology, and specifically centrifuge technology designed to produce HEU, can be applied to the production of LEU, and thus, can be used to produce subject merchandise.

Section 773(e)(2)(A) of the Act provides for the inclusion of an affiliate's R&D expenses in a respondent's cost, if the R&D is related to the production of subject merchandise. Based on our findings above, we determine that CEA's R&D in centrifuge technology is relevant to the production of subject merchandise. While its original purpose may be for military applications it can provide an intrinsic benefit to Eurodif/COGEMA's commercial applications. The cases cited by respondent, Micron Technology, Inc. v. United States and Sweaters from Korea, relate to R&D to produce non-subject merchandise. This present case is distinguishable because subject merchandise can be produced by centrifuge. In fact, the centrifuge process is a continuum with uranium first becoming LEU before it becomes HEU. Therefore, we find that this R&D relates directly to subject merchandise. Accordingly, we have recalculated Eurodif/COGEMA's R&D expenses to include an amount for CEA's R&D in centrifuge technology. For a discussion of what we are using for the centrifuge R&D expense, see Comment 7 below.

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[29] See CEA Verification Report, at 4.

[30] See Hearing: In the Matter of the Antidumping Administrative Review of the Antidumping Duty Order on Low Enriched Uranium From France at 76-79 (August 12, 2005).

Comment 7: Use of USEC's Financial Statements

On August 25, 2005, the Department placed USEC's 2004 financial statements on the record of this review and invited parties to comment.[31] In its comments, submitted on August 29, 2005, the petitioner reiterates that the Department must use facts available to account for the R&D expenses incurred by CEA on behalf of Eurodif/COGEMA during the POR because Eurodif/COGEMA did not respond to the Department's request for information concerning CEA's R&D activities related to subject merchandise. In addition, the petitioner believes that its own centrifuge R&D expenses are reasonable to use for non-adverse facts available for the following reasons: (1) the expenses relate to the same type of enrichment technology, i.e., centrifuge technology; (2) the expenses relate to a time period mostly contemporaneous with the period of review; and (3) the petitioner was in the process of manufacturing key components of its centrifuges but had not reached the point of building a full centrifuge enrichment facility in 2003-04.

Eurodif/COGEMA argues in its August 25, 2005, comments, that there is no basis for using facts available and that the petitioner's R&D expenses are an inaccurate surrogate for Eurodif/COGEMA's R&D expenses. Eurodif/COGEMA believes that the petitioner's financial statements cannot be properly understood without consideration of the relevant portions of the petitioner's 2004 annual report. Furthermore, Eurodif/COGEMA argues that, although the Department indicated that it will not accept any new factual information with the comments, the Department's regulations grant parties ten days to submit factual information to rebut or clarify any new information placed on the record.[32] According to Eurodif/COGEMA, information in the annual report demonstrates that the petitioner is desperate to develop centrifuge technology to satisfy its 2002 agreement with the U.S. Department of Energy (DOE). According to Eurodif/COGEMA, the petitioner's annual report outlines some milestones and the accompanying severe consequences if these goals are not met.[33] Because of the consequences outlined in its annual report, Eurodif/Cogema says, the petitioner is in a race to develop the new technology which threatens its ongoing operations. USEC must develop its home-grown centrifuge technology for use in a new enrichment facility by 2010, one year earlier than originally scheduled. According to Eurodif/COGEMA, this requirement is causing aberrationally high levels of R&D spending. Eurodif/COGEMA claims that the petitioner's annual report shows that the petitioner's spending on centrifuge technology in 2000 and 2001 was only 10.0 and 11.4 million dollars, respectively; in 2002 and 2003 spending nearly doubled from the previous year to 22.9 million and 44.8 million, respectively. By 2004, the petitioner's spending on centrifuge technology increased to 58.5 million dollars. Eurodif/COGEMA concludes that an R&D rate based on an average of spending in 2002 through 2004 would be inappropriate because

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[31] See Memorandum To The File Through Mark Hoadley From Elfi Blum and Myrna Lobo: Second Antidumping Duty Administrative Review of Low Enriched Uranium from France: USEC Inc. 2004 Financial Statements (August 25, 2005) (Memo on USEC's Financial Statements).

[32] See 19 C.F.R. 351.301(c) of the Department's regulations.

[33] See USEC Annual Report 2004 at 12 and 14 (March 17, 2005).

it reflects aberrational spending by the petitioner.

In addition, Eurodif/COGEMA argues, the petitioner's spending activities have no bearing on Eurodif/COGEMA. As part of its implementation of centrifuge technology, the petitioner had to undertake certain tasks, such as leasing and refurbishing a centrifuge testing facility and submitting a license application for lead cascade to the Nuclear Regulatory Commission (NRC). The petitioner also incurred costs relating to centrifuge design, engineering and construction,[34] i.e., expenses related to the actual implementation of the centrifuge technology. According to Eurodif/COGEMA, none of these costs which the petitioner incurred to construct a full size centrifuge are applicable to respondent. Eurodif/COGEMA reiterates that it expects to replace its gaseous diffusion enrichment plant through its participation as owner of the ETC, a URENCO subsidiary. This represents Eurodif/COGEMA's exclusive means of obtaining the best available uranium centrifuge enrichment technology. Eurodif/COGEMA's own expenses were mainly for related travel and administrative expenses and phase-out payments to CEA, which have been reported in Eurodif's cost and which Eurodif/COGEMA claims the Department verified. In contrast, according to Eurodif/COGEMA, the petitioner "is scrambling to develop a commercially viable centrifuge technology, as required by agreement with the DOE," whereas Eurodif/COGEMA avoided all these costs by purchasing proven and developed technology. Eurodif/COGEMA also argues that it did not incur costs to comply with NRC licensing requirements.

Eurodif/COGEMA argues that the Department may not resort to information unrelated or out of context, contrary to established and verified facts on the record.[35] Eurodif/COGEMA states that the petitioner and respondent pursue completely different paths to obtain centrifuge technology, and that the petitioner's advanced technology costs cannot be seen as a reasonable proxy for Eurodif/COGEMA's R&D expenses. Further, Eurodif/COGEMA asserts that neither the petitioner nor the Department questioned the R&D expenses reported by respondent, and that even the petitioner did not urge that its own inflated R&D centrifuge expenses be used as a surrogate for the far lower expenses of Eurodif/COGEMA. In addition, the Department conducted verification and saw no need to verify Eurodif/COGEMA's reported R&D expenses. According to Eurodif/COGEMA, the only question raised was whether CEA incurred centrifuge R&D expenses during the POR relating to LEU that should be attributed to Eurodif/COGEMA, and that the question was settled by CEA's certification.

The petitioner counters that USEC's advanced technology development costs are part of a program to demonstrate and deploy centrifuge technology based on existing DOE technology, much like CEA's activities. Thus, the petitioner argues, Eurodif/COGEMA is wrong in its claim that USEC started from scratch in its research on centrifuge technology, as USEC works to improve existing centrifuge technology developed by the DOE. USEC's expenditure, the

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[34] See 2004 USEC Financial Statements at 15 and 16.

[35] See Allied Tube and Conduit Corporation v. United States, 25 CIT 23, 32, 132 F.Supp. 2d 1087, 1095 (Jan. 18, 2001); see also, Fabrique De Fer De Charleroi S.A. v. United States, 25 CIT 741, 748. 155 F.Supp.2d 801, 810 (July 3, 2001).

petitioner contends, involves improvements to existing technology the same way CEA is likely incurring R&D expenditures on Eurodif/COGEMA's behalf. USEC's activities, the petitioner concludes, are sufficiently similar to be used as the basis for facts available.

Further, the petitioner explains that Eurodif/COGEMA's claim that its expenses for centrifuge technology were mainly travel and administrative in nature, is irrelevant, as USEC's costs are being considered as a facts available surrogate for CEA's unreported R&D expenses, and not Eurodif/COGEMA's. In addition, the petitioner says Eurodif/COGEMA's argument confuses capitalized costs and expenses, as USEC expenses items related to the "demonstration of American Centrifuge technology,"[36] and capitalizes costs "directly associated with the American Centrifuge plant."[37] According to CEA's annual report, its R&D expenses involve "research into the centrifuge process," including a "small scale centrifuge."[38] Accordingly, USEC's R&D expenses are appropriate as a surrogate for CEA's R&D expenses. Lastly, the petitioner claims that consistent with USEC's financial statements,[39] the Department should apply USEC's R&D factor to Eurodif/COGEMA's COP which includes both Eurodif/Cogema's electricity purchases and any "imputed" electricity costs.

In its rebuttal, Eurodif/COGEMA states that this is the first time the petitioner asked the Department to use USEC's R&D expenses as facts available because all centrifuge technologies are comparable and both entities were at roughly the same stages. Eurodif/Cogema reiterates that USEC is engaged in a "crash course to develop centrifuge technology," whereas, Eurodif/COGEMA is winding down its R&D to develop centrifuge technology. Therefore, Eurodif/COGEMA argues, USEC's abnormally high R&D costs are inaccurate and distortive as facts available. Eurodif/COGEMA on the other hand, opted to buy into an entity that already manufactures centrifuges and phased out its centrifuge research efforts with CEA. Eurodif/COGEMA again insists that the Department, in determining facts available, has to select a surrogate which is neutral and non-distortive,[40] and has to show a "rational relationship between data chosen and the matter to which they are to apply."[41]

Eurodif/COGEMA disagrees with the petitioner that USEC's R&D expenses are a good proxy because both entities are comparable and seem to be at equal stages in their development of centrifuge technology. Eurodif/COGEMA objects to the petitioner's claim and contends that USEC is under pressure to develop the centrifuge technology, and therefore, increased its R&D spending dramatically.

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[36] See USEC 2004 Annual Report, at 34.

[37] Id.

[38] See Respondent's Dec. 1, 2004 Supplemental Response, Exh. D-44 at 20.

[39] See Notes to USEC's Consolidated Financial Statements, at 73.

[40] See, e.g., Krupp Thyssen Nirosta GmbH v. United States, 25 CIT 793, 805 (July 9, 2001).

[41] Mannesmannrohren-Werke AG v. United States, 24 CIT 1082, 1097, 120 F.Supp.2d 1075, 1088-89 (Oct. 5, 2000).

Eurodif/COGEMA points to articles placed on the record by the petitioner, indicating that COGEMA and CEA will not seek to develop new technology and a "native French centrifuge process at this point."[42] Eurodif/COGEMA argues that its own information placed on the record with regard to Eurodif/COGEMA's and CEA's joint efforts demonstrates only a technology watch compared to USEC's escalating efforts, and thus, the two R&D activities cannot be compared. Again, Eurodif/COGEMA points to its expected future ETC joint venture and the Treaty of Almelo, which states according to Eurodif/COGEMA, that all commercial exploitation of the gas centrifuge process must be through collaboration pursuant to the Treaty. Eurodif/COGEMA believes this demonstrates that Eurodif/COGEMA phased out all centrifuge research projects with CEA. Further, Eurodif/COGEMA argues, CEA made clear to the Department that Eurodif/COGEMA does not have automatic access to CEA research. Eurodif/COGEMA argues that the Department cannot include expenses for R&D that do not benefit subject merchandise.[43] Therefore, it would be wrong to use USEC's expenses as a surrogate.

Eurodif/COGEMA also claims that it reported, and the Department accepted, all R&D costs incurred through CEA. In addition, never before did the Department "venture into CEA's research for non-civilian needs," and the Department should not do so now. Eurodif/COGEMA insists that CEA provided all possible requested information and participated in the verification. Therefore, the Department should adhere to the verified facts and apply Eurodif's R&D expenses as properly reported by Eurodif/COGEMA.

Department's Position: As an initial matter, the Department clarifies that the costs related to Eurodif's direct R&D with CEA were reported and properly captured in our calculations. In addition, we have also included the amount which Eurodif/COGEMA reported as the costs of winding down its joint research with CEA. Finally, the fact that Eurodif was winding down its joint research with CEA for civilian uses however, does not necessarily mean that CEA may not have continued to conduct the same type of research, although for other purposes. The Department requested Eurodif/COGEMA to provide CEA's expenditures for its R&D in centrifuge technology, and requested the same information directly from CEA at verification. CEA officials insisted that they were not able to show the verifiers any supporting documentation, and that the Department should rely on the certification provided.[44]

Because the Department does not have any data on the record regarding CEA's centrifuge R&D expenditures, we must rely on secondary information. As facts available and pursuant to sections 776(a) and (c) of the Act, we are relying on USEC's R&D expenditures on centrifuge technology

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[42] Petitioner's Comments on Eurodif/COGEMA's R&D Expenses, at Att. A and B (May 25, 2005).

[43] The Department makes distinctions between research into subject and non-subject merchandise when deciding what costs to pick up. See, e.g., Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Goods from Argentina, 60 FR 33539, 33549 (June 28, 1995); See also, Shop Towels from Bangladesh, 57 FR 3996 (February 3, 1992) "{It} would be inappropriate for shop towels to bear manufacturing costs incurred to produce other products").

[44] See CEA Verification Report, at 3.

as a surrogate for CEA's R&D expenditure in centrifuge technology because it is the only information on the record specifically related to this type of R&D. As discussed in Comment 6, publicly available information on the record shows that CEA is also developing the same type of technology. Even though CEA claims that its R&D is for military purposes, the record shows that the same technology that is used for the enrichment of uranium for military purposes can be used to produce LEU. See Comment 6. Therefore, we determine that USEC's R&D expenses to develop centrifuge technology are the most appropriate surrogate on the record for CEA's R&D expenses for centrifuge technology. For our calculations, we have used the average of USEC's centrifuge R&D costs over the five years 2000 through 2004, to achieve a more conservative estimate of the costs for this R&D and to reflect the costs of this type of research in its various stages.

The petitioner initially proposed that we use CEA's R&D expenses for the Silva project because there was no better information on the record at that time to provide a surrogate. However, we find that USEC's centrifuge-specific R&D expenses are more appropriate as a surrogate in an FA application, because the Silva project is not related to the development of centrifuge technology.

Section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate secondary information used for facts available by reviewing independent sources reasonably at its disposal. The Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, at 870 (1994) (SAA), provides that the word "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value. Because USEC's R&D is for the very same technology and it is conducted by a company in the same industry, we consider the information relevant and corroborated.

Comment 8: Goodwill Expenses in Constructed Value (CV) Profit

The petitioner argues that for the final results the Department must correct its calculation of profit for CV. The petitioner notes that as part of the CV profit calculation, which is based on AREVA's (the parent company) front-end division, Eurodif/COGEMA allocated goodwill amortization expense to AREVA's front-end division, thus reducing the division's profit. According to the petitioner, enrichment operations comprise the majority of AREVA's front-end business, and because the respondent is ultimately consolidated into AREVA, a portion of this goodwill should be allocated to the reported cost of production (COP) of LEU. The petitioner argues that not applying a share of the amortized goodwill expenses to the COP results in a mismatch between the CV profit rate and the COP figure to which the rate is applied.

The petitioner maintains that AREVA's accounting information would have allowed Eurodif/COGEMA to report the actual amount of goodwill amortization expense incurred by AREVA's front-end division, however, it chose instead to allocate the goodwill amortization expense based on each division's cost of sales, thus attributing the expense to all companies which are part of a division. Therefore, the petitioner argues, if the Department determines that Eurodif/COGEMA could have provided the actual amount of amortized goodwill incurred by the companies of the front-end division, then the Department must exclude Eurodif/COGEMA's

allocated goodwill from the calculation of CV profit in the final results of review. Should the Department determine to accept the allocated goodwill expense for the calculation of CV profit, the petitioner holds, then a portion of that amortized goodwill allocation must be included in the reported COP for LEU.

Respondent argues that the petitioner conflates two distinct concepts, namely, Eurodif/COGEMA's cost of production which is derived from its books and records, and CV profit, which the Department based on a surrogate's financial results. Eurodif/COGEMA refutes the petitioner's argument that the goodwill expenses should be included in the reported COP because respondent and AREVA are ultimately consolidated, citing Structural Steel Beams From South Africa[45] where the Department determined that non-operating income and expenses realized by a related company do not necessarily affect the activities of the respondent. Eurodif/COGEMA further argues that there is no reason to include AREVA's goodwill expenses in Eurodif/COGEMA's COP as they are not reflected in the respondent's books and records.

Eurodif/COGEMA further notes that even though the petitioner asks the Department to calculate CV profit on a consistent basis with the calculation of Eurodif's COP, the petitioner itself has been inconsistent in its CV profit calculation compared to the Department's calculation of COP by ignoring the adjustments made by the Department to Eurodif's electricity costs. Eurodif/COGEMA says the Department disqualified a certain third country market for profit purposes because of this adjustment, and therefore, if any adjustment is to be made to surrogate CV profit, the electricity cost adjustment must be taken into account.

In response to the petitioner's claims that Eurodif/COGEMA allocated a disproportionate share of goodwill expenses to AREVA's front-end division instead of allocating "actual goodwill" expenses, Eurodif/COGEMA responds that their allocation of a pro rata share of goodwill expenses is entirely consistent with the Department's practice of calculating and allocating expenses based on the company-wide G&A costs incurred by the producing company.

Eurodif/COGEMA therefore concludes that the Department should adhere to its established practice and its determination in the prior segments and continue to include a pro-rata share of goodwill expenses in its calculation of AREVA's front-end profit while excluding such expenses from its calculation of Eurodif's COP.

Department's Position: In this case, we were unable to calculate CV profit in accordance with section 773(e)(2)(A) of the Act (i.e., the preferred methodology) because there were no home market or third country sales made in the ordinary course of trade. Therefore, for CV profit, the Department relied on one of the other methodologies specified in section 773(e)(2)(B) of the Act. While there is no preference among the options detailed in section 773(e)(2)(B), only option (iii) was available to the Department in this case. Under this option, as any other reasonable method, we relied on the profit reflected in AREVA's audited financial statements for its front-end

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[45] Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from South Africa, 67 FR 35485 (May 20, 2002), and the accompanying Issues and Decision Memorandum, Cmt. 6 (Structural Steel Beams From South Africa).

division.

In reporting the CV profit computation, respondent allocated AREVA's goodwill expense based on company-wide cost of sales in order to determine how much to assign to the front-end division. As the majority of the goodwill reflected in AREVA's audited financial statements cannot be attributed to a specific division, we find respondent's submitted approach of allocating AREVA-wide goodwill to each division based on cost of sales reasonable.

Even though we resorted to section 773(e)(2)(B)(iii) for calculating CV profit, we were able to compute respondent's G&A based on the actual costs incurred by Eurodif/COGEMA. Because the G&A rate computation is based on a respondent's company-wide G&A costs and cost of sales, and not on market specific or total sales revenues, we are able to compute the respondent's G&A rate using its own cost information. Thus, for the final results, for G&A, we relied upon the actual expenses incurred by Eurodif/COGEMA. Because record evidence fails to show that Eurodif/COGEMA incurred any goodwill expenses, we agree with respondent that none should be included in the G&A rate computation.

The Department normally only includes in the reported G&A costs an allocated portion of the parent company's G&A expenses if such expenses were incurred on behalf of the respondent.[46] Goodwill, however, is not the type of cost that is incurred by a parent for the benefit of its subsidiaries. Goodwill arises when a company acquires another company, and the amortization of the goodwill is a cost which relates to the acquiring entity, not one which should be allocated to its subsidiaries. We note that in the prior administrative review this same issue was argued by the petitioner, and the Department stated that because none of the goodwill expenses were related to Eurodif/COGEMA activities, we included none of it in the calculation of Eurodif/COGEMA's cost of production. In the current review, record evidence again fails to show that any of the goodwill reflected in AREVA's financial statements related to Eurodif/COGEMA's activities. Thus, we disagree with the petitioner that an allocated amount should be included in the G&A rate calculation. Therefore, for these final results we did not allocate a portion of the goodwill expense to the respondent's cost of production of LEU.

Comment 9: Inter-Company Sales As Part of Sales Revenues in CV Profit

The petitioner notes that Eurodif/COGEMA, when calculating the CV profit rate, excluded inter-company sales from the total sales of AREVA's front-end division. However, the petitioner argues, the cost of sales reported by Eurodif/COGEMA for the front-end division includes the costs associated with these inter-company sales, which results in an understatement of the division's profit rate. According to the the petitioner, AREVA's schedule of financial results by operating division shows the detail of the sales revenue and net operating income, but it does not show the elimination of any corresponding costs of the eliminated inter-company sales. The petitioner claims that, by excluding inter-company sales at the division level, Eurodif/COGEMA has underreported the profit of AREVA's front-end division.

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[46] See Notice of Final Results of New Shipper Review of the Antidumping Duty Order on Certain Pasta From Italy, 69 FR 18869 (April 9, 2004) and the accompanying Issues and Decision Memorandum at Cmt. 6.

Eurodif/COGEMA claims that the Department should reject the petitioner's argument because the CV profit rate calculation is based on consolidated figures which already exclude inter-company sales as well as the costs related to the same. Eurodif/COGEMA demonstrates this by pointing to footnote 5.4.6 in AREVA's financial statements which shows gross sales of AREVA's front-end division subtracting the inter-company sales, to arrive at the "Contribution to consolidated sales" figure. Eurodif/COGEMA maintains that because the profit rate is calculated by dividing operating income by contribution to consolidated sales, it is obvious that both the numerator and the denominator are on the same consolidated basis.

Eurodif/COGEMA states that AREVA's financial statements are prepared in strict compliance with French GAAP which requires sales revenue of each division to be disclosed on both an unconsolidated and consolidated basis, while all other line items are required to be shown on a consolidated basis that nets out inter-company transactions. Eurodif/COGEMA believes that the Department should use the "contribution to consolidated sales figure" and not the gross sales figure as urged by the petitioner, which would result in an overstatement of AREVA's front-end division profit rate.

Department's Position: In calculating the CV profit rate, inter-company transactions were eliminated from AREVA's front-end division amounts presented in the notes to the financial statements. We note that presentation by AREVA of the revenues on the net basis is consistent with International Accounting Standards and U.S. GAAP. We also note that there is no evidence on the record to suggest that the divisional income and expense figures are not reported on a consistent basis (i.e., exclusive of inter-company transactions). In addition, as audited financial statements are intended to give the readers a fair presentation of the entity's financial results, it would make no sense to have an audited, consolidated income statement which eliminates inter-company sales for each division, and not do the same for inter-company costs. Therefore, for the final results, we relied on AREVA's front-end division net income figure as reported in its audited financial statements, for the CV profit rate calculation.

Comment 10: Offset to COGEMA's Interest Expense For Income on Short-Term Investment

The petitioner states that the Department should recalculate Eurodif/COGEMA's financial expense rate to exclude AREVA's investment income offset because Eurodif/COGEMA did not provide documentation showing that the income was earned on short-term investments, which the Department requested in two supplemental questionnaires. The petitioner claims that Eurodif/COGEMA greatly overstated AREVA's short-term investments and failed to consider factors like differences in yields on short- versus long-term investments, etc., which would affect significantly the amount of short-term interest income actually earned by AREVA during 2003. The petitioner argues that because Eurodif/COGEMA failed to provide the necessary supporting documentation, the Department should exclude the reported short-term interest income offset from AREVA's financial expense rate calculation.

Eurodif/COGEMA states that it reported the investment income information set forth in AREVA's financial statements. This information discloses investment income earned from both

short-term and long-term interest-bearing sources. Eurodif/COGEMA explains that while it originally treated all of this income as short-term, after reconsideration, Eurodif/COGEMA determined that some of the interest-bearing assets were not short-term in nature, and recalculated the offset amount. Eurodif/COGEMA states that it has followed the Department's established practice of including only the short-term interest income as the offset to financial expenses.

Department's Position: Based on an analysis of the data that Eurodif/COGEMA submitted on January 19, 2005, we found that the interest income reported as an offset to interest expense is partially earned from short-term interest-bearing sources. The footnotes which accompany AREVA's balance sheet show that AREVA had interest-bearing accounts that were classified as both "Other Long-term Notes and Investments" and as "Cash and Marketable Securities". The "Cash and Marketable Securities," earn short-term interest income, whereas, the interest-bearing "Long-term Notes and Investments" earn long-term interest income. The Department's practice is to calculate the financial expense rate offset with only short-term interest income.[47]

Because the earnings from Cash and Marketable Securities constitute short-term interest income, and are related to the ordinary operations of the company, respondent has demonstrated that a short-term interest income offset is warranted in the financial expense calculation for the interest income generated by these assets. Accordingly, we have revised Eurodif/COGEMA's reported interest expense rate to include an offset for the short-term portion of the total interest income, based on the ratio of short-term versus long-term interest-bearing assets, for the final results of this review. See (Final Analysis Memo).

Comment 11: Date of Sale For Certain Deliveries

The petitioner argues that the Department must revise the date of sale for certain deliveries reported by Eurodif/COGEMA where the contract was amended, and in the case of certain other deliveries. Eurodif/COGEMA asserts that the material terms of sale that were established on the date of the original contract did not change and therefore no change in date of sale for these deliveries is warranted. The parties' arguments and the information at issue rely heavily on information which is business proprietary. The complete arguments are discussed in the Memorandum to Joseph A. Spetrini, Acting Assistant Secretary from Barbara Tillman: Supplement to the Issues and Decision Memorandum for the Antidumping Duty Review of Low Enriched Uranium from France – Date of Sale for Certain Deliveries (Comment 11), dated September 6, 2005 (Proprietary Supplement). A public version of this memorandum is on file in the CRU.

Department's Position: Based on consideration of the parties' arguments and our analysis of the information on the record, the Department determines that the date of the contract is the appropriate date of sale, except for one instance where the terms of sale were revised, making the date of the amended contract the appropriate date of sale. No change is required from the

[47] See, Brass Sheet and Strip From Canada; Final Results of Antidumping Duty Administrative Review, 65 FR 37520 (June 15, 2000) and the accompanying Issues and Decision Memorandum, Cmt. 3.

preliminary results, with the exception of one instance where the date of sale will be revised. The full analysis and our decision is based on business proprietary information and is fully discussed in the Proprietary Supplement.

Comment 12: Cost of Uranium in the Calculation of CEP and CV

Eurodif/COGEMA states that the Department included an amount for uranium feed when calculating CEP and CV for LEU in the preliminary results. Eurodif/COGEMA objects to the inclusion of a cost for customer-supplied uranium, because respondent never incurred such cost. However, according to respondent, if the Department continues to include this cost, it should do so by using the same feed cost for both CEP and CV on both sides of the equation. Eurodif/COGEMA asserts that the Department adhered to this principle by adding the same amount for uranium feed to the CEP and CV sides for the sales involving additional services. For sales not involving additional services, Eurodif/COGEMA argues, the Department distorted the margin calculation by using differing uranium feed values. Specifically, the Department used the transaction-specific feed value reflected on the entry documents on the CEP side, and the period weighted average feed value for CV. Eurodif/COGEMA reiterates that it had zero net cost for feed in the enrichment services transactions involved, and argues that the Department added feed values to "concoct supposed merchandise sales," which are instead sales of a service. The petitioner did not comment on this issue.

Department's Position: It is the Department's practice to calculate one weighted-average cost per model of a product. In this case, the Department notes that the expense billed to Eurodif/COGEMA's customers requesting the additional services was less than Eurodif/COGEMA had paid its contractor for that service. This assessment was based on the information submitted by Eurodif/COGEMA. Since Eurodif/COGEMA's cost for this service was actually higher than the amount it charged to its customer, we recalculated the feed cost by subtracting the amount charged to the customer by Eurodif/COGEMA, and adding in the amount charged to Eurodif/COGEMA for that service, based on the contractual agreement submitted to the Department for those sales. For those sales that did not have that service we used the feed cost as reported, to calculate one period weighted-average cost for the feed, which we then added back to total cost of manufacturing (COM).

For our calculation of CEP, for those sales which involved this service, we used the feed cost inclusive of the amount charged by Eurodif/COGEMA to its customer for providing this service. For those sales where no additional service was provided, we used the feed cost as provided by Eurodif/COGEMA.

As stated above, in this case we have one model, i.e., LEU, for which we calculated one weighted-average cost as the basis for CV to compare to CEP. Therefore, in accordance with our practice, the Department continues to calculate one weighted-average cost as the basis of CV, for these final results of review.

Comment 13: Indirect Selling Expense Rate

Eurodif/COGEMA states that the Department, in the preliminary results, calculated its indirect selling expense ratio based on Eurodif/COGEMA's costs attributable to all third-country markets, excluding those countries where all sales were made to affiliates. Eurodif/COGEMA argues that the Department should base its calculation of the indirect selling expense ratio for Japan only, since Japan is the proper comparison market to be used. First, Eurodif/COGEMA contends that the Department's regulations require that the calculation of selling expenses for purposes of deriving CV should be based on a third country selected by the Secretary under section 773(a)(1)(B)(ii) of Act and section 351.404(e) of the Department's regulations. In the Preliminary Results the Department determined that both Japan and Sweden were viable markets.

Eurodif/COGEMA argues that the Department should select Japan as the comparison market because it meets the criteria in section 351.404(e) of the Department's regulations. Based on those criteria, there is no difference in the product sold to the two markets, but Japan represents the third country with the largest volume of sales. Thus, Eurodif/COGEMA concludes, Japan is the appropriate comparison market.

In accordance with section 351.405(b)(1) of the Department's regulations, Eurodif/COGEMA argues, the selling expenses should be calculated based on the expenses incurred in the viable foreign market. Although Eurodif/COGEMA does not separately track the indirect selling expenses in the Japanese market (these expenses are included in the aggregate value reported for "Asian Markets"), the Department should base its indirect selling expenses on the Asian Market costs, because it is reflective of actual selling expenses for the Japanese market for these final results.

The petitioner responds that Eurodif/COGEMA ignores the fact that the Department, in the Preliminary Results based normal value (NV) on CV. Therefore, in determining indirect selling expense ratio, the Department relies not on section 773(a)(1)(B)(ii), but on section 773(e)(2)(B)(iii) instead, which prescribes that the Department may use "the amounts incurred and realized for selling, general, and administrative expenses, and for profits, based on any other reasonable method." The petitioner concludes that Eurodif/COGEMA's arguments do not constitute a challenge to the Preliminary Results as respondent incorrectly assumed the Department based its calculations of NV using another provision of the Act. In addition, the petitioner claims, Eurodif/COGEMA produced no support for the arguments that a weighted average indirect selling expense ratio based on sales to multiple countries is not a "reasonable methodology," or that "the Department's indirect selling expenses calculation for CV was grossly distorted by inclusion of selling expenses for other third county markets." The petitioner urges the Department to continue to use the same approach for calculating indirect selling expenses for the final results of this review.

Department's Position: Because the Department based NV in this review on CV, the relevant section of the statute for purposes of determining the indirect selling expense ratio is

773(e)(2)(B)(iii) of the Act. As the Department clearly stated in its Viability Memo[48], "{i}n summary, we find that both Japan and Sweden are viable third country markets. However, due to the difficulties in calculating a difference in merchandise adjustment for non-identical products, we recommend using constructed value as the basis of normal value in this review." Because the Department decided to use CV as the basis of normal value in this review, section 773(a)(1)(B), as cited by Eurodif/COGEMA, does not apply. Furthermore, as Eurodif/Cogema correctly stated in its case brief,[49] respondent did not provide the Department with the indirect selling expenses attributable to Japan (such expenses were not segregable from the expenses reported for "Asian Markets"), nor did respondent provide any supporting documentation concerning the attribution of those expenses to Japan. Accordingly, the Department has calculated the selling expenses for CV in accordance with section 773(e)(2)(B)(iii) of the Act and section 351.405(b)(2) of the Department's regulations, and for these final results, has continued to calculate the indirect selling expense ratio based on sales to all third countries.

Comment 14: Attribution of Indirect Selling Expenses

Eurodif/COGEMA argues the Department inappropriately allocated indirect selling expenses, by attributing all indirect selling expenses incurred to sales of enrichment services, rather than to total revenue.[50] In addition, Eurodif/COGEMA argues that the Department calculated the indirect selling expense ratio based on sales revenue and then applied that ratio to Eurodif's "total costs." It contends this is inconsistent because it applies a factor on a basis different than that on which the factor was calculated and inflates the indirect selling expenses in excess of the amount that was actually incurred.

The petitioner argues that the re-calculation of indirect selling expenses that Eurodif/COGEMA provided in its case brief is inappropriate because its accuracy is unsubstantiated. There is no evidence to demonstrate that the ratio Eurodif/COGEMA applies to its calculations accurately reflects or even approximates the appropriate ratio with regard to enrichment services in the Asian markets. Without such documentation, the petitioner says the Department cannot determine whether the adjustment is warranted.

In addition, the petitioner rejects Eurodif/COGEMA's argument that an indirect selling expense figure calculated on the basis of sales revenue but then applied to "total costs," results in a calculation that is unfairly skewed. The petitioner says that Eurodif/COGEMA's argument rests on the assumption that certain adjustments the Department made to total costs do not apply to all sales represented in the total sales revenue. Thus, applying the indirect selling expense ratio to costs was skewing the results. The petitioner says that the record does not support that

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[48] See Memorandum to Dana Mermelstein through Maria MacKay from Elfi Blum and Myrna Lobo: Antidumping Duty Administrative Review of Low Enriched Uranium (LEU) from France: Subj: Market Viability at 5 (December 20, 2004) (Viability Memo).

[49] Respondent's Case Brief, at 5 (June 30, 2005).

[50] See Stainless Steel Wire Rod from Spain; Final Results of Antidumping Duty Administrative Review, 66 FR 10988 (February 21, 2001), and accompanying Issues and Decision Memorandum, Cmt. 2.

assumption. As it becomes clear from the record evidence,[51] those entities in those locations to which the cost adjustment does not apply were not included in the sales revenue and expenses that the Department used to calculate the indirect selling expense ratio, i.e., Asia and Europe/Africa. As can be seen from Exhibit C-4, the petitioner says, those locations, and thus entities, were listed separately and therefore, were not included in the Department's calculations. Therefore, the petitioner states, the mismatch Eurodif/COGEMA addresses does not exist, and applying the indirect selling expense ratio as calculated by the Department is not inconsistent with the manner in which the figure was calculated.

Department's Position: The Department did not misallocate Eurodif/COGEMA's indirect selling expenses for CV by attributing all indirect selling expenses incurred to sales of enrichment services. There is no supporting documentation on the record of this review indicating that the ratio calculated by Eurodif/COGEMA is an actual reflection of the universe of its sales in the Asian market or any other market. Furthermore, there is no evidence on the record of this review supporting Eurodif/COGEMA's claim that the Department deviated from its practice of allocating expenses to the sales to which they pertain, as Eurodif/COGEMA claims. Absent any other information on the record of this review, we continue to allocate all the reported indirect selling expenses for the selected geographic areas to enrichment services.

Further, it is appropriate to apply an indirect selling expense ratio that was calculated based on sales to actual costs. As indirect selling expenses are generally not sales-specific, it is the Department's practice to calculate the indirect selling expense ratio by dividing the indirect selling expenses by the sales, and then to apply that expense rate to the reported sales or to CV, as necessary. Also, we agree with petitioner that no revenue from sales to any of Eurodif/COGEMA's special customers was included in the Department's indirect selling expense calculation. Therefore, we have not changed our calculation of indirect selling expenses from the preliminary results of review.

Comment 15: Ministerial Errors in the CV calculation for G&A, Interest Rate, and CV Profit

The petitioner contends that the Department, when calculating CV profit, neglected to convert the cost of production from a SWU basis to an LEU basis, and therefore understated the amount of profit included in CV. The petitioner states that the Department did not apply the revised consolidated financial expense rate submitted by Eurodif/COGEMA on January 19, 2005, when calculating interest expenses for CV. The petitioner says that the Department did not use Eurodif/COGEMA's revised G&A ratio, as reported in its response to the petitioner's pre-prelim comments when calculating the COP.

Respondent states that the Department should re-calculate the AREVA front-end division profit rate based on the updated consolidated financial expense rate before applying this rate to CV.

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[51] Memorandum To File From Myrna Lobo and Elfi Blum through Maria MacKay: Analysis for Eurodif/COGEMA for the Preliminary Results of Second Administrative Review of Low Enriched Uranium (LEU) from France, Sections A and C Responses, Exh. C-4, and Att. 5 (February 28, 2005) (Prelim Analysis Memo).

Department's Position: The Department inadvertently calculated CV profit on a SWU basis when it should have been calculated on an LEU basis. We have corrected this error and recalculated profit on an LEU basis for these final results. We also erroneously used the incorrect interest expense rate and G&A rate when calculating COP and CV. With respect to the other two comments, as there have been additional changes to the financial expense rate, we have applied that new rate to the calculations.

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 _____

_____
Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

_____
Date