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MEMORANDUM TO: David M. Spooner
Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

DATE: August 21, 2006

SUBJECT: Issues and Decision Memorandum for the Final Results of the Administrative Review of the Antidumping Duty Order on Low Enriched Uranium from France (2/1/2004-1/31/2005)

Summary

We have analyzed the case and rebuttal briefs from interested parties in response to the preliminary results of this review for Eurodif S.A. (Eurodif), AREVA NC (formerly Compagnie Générale Des Matières Nucléaires, S.A.) and AREVA NC Inc. (formerly COGEMA, Inc.) (collectively, Eurodif/AREVA). As a result of our analysis, we recommend that you approve the positions we have developed in the "Discussion of 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, 2006, 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, 2004 through January 31, 2005. The respondent is Eurodif/AREVA; the petitioners are USEC Inc. and the United States Enrichment Corporation (collectively, the petitioner).

The Department issued a supplemental major input cost questionnaire on March 16, 2006, and received a timely response. Both the respondent and the petitioner submitted case and rebuttal

[1] See Low Enriched Uranium from France: Preliminary Results of Antidumping Duty Administrative Review, 71 FR 11386 (March 7, 2006) (Preliminary Results).

briefs in a timely manner. Petitioner requested a hearing on May 2, 2006, but subsequently withdrew this request on May 9, 2006.

On July 7, 2006, the Department published in the Federal Register a notice (signed on June 30, 2006) extending the deadline for the final results from July 5, 2006 to August 21, 2006. See Low Enriched Uranium from France: Extension of Time Limit for Final Results of Antidumping Duty Administrative Review, 71 FR 38611 (July 7, 2006).

Changes Since the Preliminary Results of Review

As a result of our analyses below, we have made the following changes since the preliminary results for these final results. We have adjusted the cost of production for electricity to disallow certain offsets and exclude intra-company transfers. See Comments 1 and 2 below. We have revised our calculation of indirect selling expenses to include home market selling expenses with third country selling expenses. See Comment 5. We have revised the CEP profit ratio in accordance with our standard practice and consistent with our practice in the previous reviews. See Comment 8. Finally, we have corrected a programming error that prevented U.S. sales denominated in Euros from being properly converted to dollars. See Comment 11.

Issues

Discussion of Issues

Comment 1: Cost of Electricity

Petitioner recommends the application of adverse facts available for the calculation of the cost of electricity supplied to Eurodif/AREVA by its affiliated company, Electricité de France (EdF). Petitioner states that section 776(a)(2)(A) of the Tariff Act of 1930, as amended (the Act) directs the Department to use the facts otherwise available in reaching the applicable determination if an interested party withholds the requested information. Petitioner points out that section 776(b) of

the Act provides that in using facts available, adverse inferences, including the use of information supplied by petitioner, are justified where the Department finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Petitioner maintains that respondent and its affiliate, EdF, failed to cooperate to the best of their ability by providing inadequate responses to the Department's questionnaires. Specifically, petitioner claims that respondent did not provide a reconciliation of the reported electricity cost to the costs recorded in EdF's unbundled financial statements as requested by the Department. Petitioner suggests that, as adverse facts available, the Department should use the cost of electricity provided by petitioner in its major input allegation.

Eurodif/AREVA argues that petitioner's claims for application of adverse facts available in calculating EdF's cost of producing electricity are unsupported by the statute and facts on the record in this review. According to Eurodif/AREVA, section 776 of the Act establishes two requirements for applying adverse facts available. First, the Department must find that respondent withheld information, failed to provide information, significantly impeded a proceeding, or provided information that cannot be verified. Second, the Department must find that respondent failed to cooperate by not acting to the best of its ability to comply with a request for information. Eurodif/AREVA states that neither of these standards has been met. Eurodif/AREVA maintains that it has acted to the best of its ability to secure a complete and accurate response from EdF. Eurodif/AREVA argues that the record is far from incomplete because it has obtained from EdF answers to all the Department's questions with the exception of one – involving the reconciliation between EdF's costs based on the "Pilotis" accounting system, which the company believes is the appropriate measure of costs, and costs according to the "ETAFI" accounting system used to prepare EdF's unbundled financial statements. Eurodif/AREVA claims that its failure to provide this reconciling information, which its attempts at completing in the last review were disregarded by the Department for being insufficient, cannot be considered a material defect or failure to cooperate. Eurodif/AREVA states that, given its and EdF's full cooperation, there is no basis for the Department to apply adverse facts available.

Department's Position: We find that the application of adverse facts available is not warranted in this case. Section 776(a) of the Act provides that, if an interested party (A) withholds information requested by the Department, (B) fails to provide such information by the deadline, or in the form or manner requested, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified, the Department shall use facts otherwise available in reaching the applicable determination. In selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that an interested party "failed to cooperate by not acting to the best of its ability to comply with a request for information."

As evidenced by the record, Eurodif/AREVA cooperated with the Department by providing answers to all the Department's questions with the exception of the requested complete reconciliation of the reported Pilotis-based cost of electricity to EdF's unbundled financial

statements, which respondent claimed to be unable to provide. During verification of the previous review, the respondent, at the request of the Department, attempted to conduct a similar reconciliation. However, despite the respondent's best efforts in providing a reconciliation of the reported Pilotis-based costs to EdF's unbundled financial statements, it became apparent to the Department that a complete reconciliation was not practical due to the specifics of the respondent's cost accounting system.[2] As a result, the Department resorted to facts available, but without an adverse inference, given the respondent's cooperation. Thus, in the previous review, we used as the starting point for our facts available surrogate the total electricity generation costs recorded in EdF's unbundled financial statements adjusted for certain items unrelated to the generation of electricity. See Notice of Final Results of Antidumping Duty Administrative Review: Low Enriched Uranium From France, 70 FR 54359 (September 14, 2005) and accompanying Issues and Decision Memorandum at Comment 2.

The facts are similar in the current review. While the Department asked for the reconciliation again in this review as part of our standard questionnaire, the respondent claimed that it is still unable to complete such a reconciliation. Given our experience in the last review, under similar circumstances, we have no basis for not relying on respondent's claim. Respondent's statements are consistent with what the Department learned about EdF's cost accounting system during the prior review's verification. See 2nd Review Cost Verification Report. Therefore, we continue to conclude that the respondent has cooperated and that an adverse inference is not warranted. For the final results and consistent with our preliminary results, as facts available, we calculated the cost of electricity supplied to Eurodif based on the total electricity generation costs as recorded in EdF's unbundled financial statement adjusted for items unrelated to generation.

Comment 2: Calculation of Electricity Cost

Eurodif/AREVA argues that the Department disregarded EdF's reported cost of production and calculated a cost based on the total generation costs as recorded in EdF's unbundled financial statements, which resulted in an inaccurate cost of production figure that needs correction. Eurodif/AREVA maintains that EdF's costs recorded in the unbundled financial statements include expenses that are unrelated to the cost of producing electricity provided to Eurodif and do not remove intra-company transfers. Eurodif/AREVA claims that the Pilotis system calculates the actual cost of generating electricity, and accordingly, the Department should use the cost figures provided by EdF based on its Pilotis system.

Eurodif/AREVA further argues that, if the Department bases electricity costs on the costs reported in the unbundled financial statements, it should make the following adjustments. First, the Department should remove intra-company transfers because, by not removing them, the

[2] See Memorandum to Neal Halper from Ernest Gziryan, Verification Report on the Cost of Production Data submitted by Electricite de France (EdF), dated July 11, 2005 (2nd Review Cost Verification Report), placed on the record of the current review in Memorandum to the File from Myrna Lobo, Case Analyst, Documents for the Record Relevant to the Current Review, dated February 24, 2006 (Documents for Record Memo).

Department would double-count all costs related to intra-company transactions. Eurodif/AREVA notes that, at the Department's request, EdF provided this amount as well as a detailed breakdown of the total. Second, according to Eurodif/AREVA, the Department should remove from EdF's interest expense calculation the item titled "(Increase) decrease in provision for financial risks and expenses" of Euros 510 million. According to Eurodif/AREVA, this expense relates to a provision for making certain investments and a provision for a loan to one of EdF's subsidiaries that could not be repaid. Eurodif/AREVA notes that this expense item is similar to the Euro 794 million income amount that resulted from EdF's sale of its stake in another company that the Department already excluded from the calculation for the preliminary results, and as such, the Euro 510 million expense should also be removed from the financial expense ratio calculation.

Petitioner states that Eurodif/AREVA fails to recognize that the Department must use facts available because they failed to provide a reconciliation of Pilotis costs to EdF's financial statements. Because Eurodif/AREVA failed to submit the requested information, petitioner advocates the use of facts available, with an adverse inference.

Regarding the adjustments Eurodif/AREVA proposes, petitioner argues that both adjustments are inappropriate. With respect to intra-company transfers, petitioner claims that the unbundled EdF financial statements do not double count internal transactions because intra-company purchases are included in the "Generation" division's cost, while actual costs are recorded in the division providing the input, i.e., the costs are only included in the "Generation" division's costs once. As such, petitioner maintains, the Department should not make this adjustment. Regarding the exclusion of the Euro 510 million expense, petitioner argues that nothing in the Department's practice indicates that this adjustment should be made, especially where there is no information on the record about the specifics of this expense item.

Petitioner further suggests that, if the Department does not rely on adverse facts available, the Department should not reduce the total generation costs, as recorded in EdF's unbundled financial statements, by certain selling expenses which, respondent claims, are not related to EdF's sales to Eurodif. Petitioner holds that because the generation costs are calculated for all EdF electricity, they should therefore include all expenses related to EdF's sales of electricity.

Eurodif/AREVA states that none of the selling expenses at issue were incurred to support EdF's sales to Eurodif. Eurodif/AREVA, citing to the Notice of Final Results of Antidumping Duty Administrative Review: Silicon Metal From Brazil, 62 FR 1970, 1979 (January 14, 1997), argues that selling expenses are always calculated with reference to the sales at issue and exclude selling expenses that are attributable to other types of customers, even if they involve sales of the subject merchandise. Therefore, according to Eurodif/AREVA, the Department should exclude these selling expenses from the calculation of EdF's cost of electricity.

Department's Position: We disagree with respondent that the Department should use the electricity cost figures provided by EdF. Respondent did not provide a complete reconciliation

of the reported electricity cost to EdF's audited financial statements prepared in accordance with French GAAP. Thus, the reported electricity cost is rendered unreliable. Therefore, for the final results, as facts available, we calculated electricity cost based on the total electricity generation costs as recorded in EdF's unbundled financial statement adjusted for items unrelated to generation. See Comment 1.

We agree with Eurodif/AREVA that the total costs recorded in the unbundled financial statements should be adjusted for intra-company transfers which represent the amounts included in more than one activity on the unbundled financial statements. Section 773(f)(1)(A) of the Act states that "costs shall be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the generally accepted accounting principles of the exporting country. . . and reasonably reflect the costs associated with the production and sale of the merchandise." We note that EdF's parent company's financial statements, which combine costs for generation, transmission, and distribution of electricity, do not include intra-company transfers, i.e., they are eliminated during preparation of the parent company's financial statements. Thus, because the costs recorded in EdF's audited financial statements prepared in accordance with French GAAP do not include intra-company transfers, we disagree with petitioner that the total costs recorded in the "Generation" division should not be adjusted for intra-company transfers. Therefore, for the final results we excluded intra-company transfers from the calculation of electricity cost.

We agree with petitioner that the Euro 510 million of expenses related to the provision for making certain investments and a provision for an uncollectible loan to one of EdF's subsidiaries should be included in the calculation of EdF's financial expense. We note that this amount was included in EdF's consolidated financial statements as part of "Other financial income and expenses." Respondent's claim that this expense item is similar to the Euro 794 million in income already excluded by the Department for the preliminary results is not supported by the record. The Euro 794 million gain resulted from EdF's sale of its investment in another company,[3] i.e., it represents a gain on investment activity which the Department normally excludes. See Notice of Final Results of Antidumping Duty Administrative Reviews: Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom, 67 FR 55780 (August 30, 2002), and accompanying Issues and Decision Memorandum at Comment 40. However, the Euro 510 million amount appears to consist of expenses which are normally included in the cost, e.g., provision for uncollectible loan (bad debt). We note that Eurodif/AREVA did not provide details of this amount to support its claims that this expense should be excluded from the calculation. Therefore, for the final results we have included this expense item in the calculation of EdF's financial expense.

With regard to the selling expenses which respondent claims are not related to sales to Eurodif/AREVA, we find that they should be included in EdF's cost of electricity. According to

[3] See EdF Group 2004 Annual Report, note 13 ("Other financial income and expenses"), at Exhibit A-43 of respondent's July 7, 2005 Section A response.

Eurodif/AREVA, these expenses include technical services, sales, marketing, and customer management, and none of them were incurred to support EdF's sales to Eurodif. We note that these expenses may relate to all of EdF's sales (e.g., marketing), and there is no information on the record to show that all these expenses are directly related to sales to customers other than Eurodif. Moreover, because the Department in its calculation uses the total cost of electricity sold to all customers, such cost should include all expenses related to all of EdF's sales of electricity.

Comment 3: Date of Sale for Certain Deliveries

Petitioner argues that, although the Department has generally used the long-term contract date as the date of sale for shipments made pursuant to long-term contracts, the Department must apply a different date of sale for certain long-term contracts. Petitioner contends that, given the terms of these contracts and the deliveries carried out under these contracts, multiple dates of sale are required by Department practice.

Eurodif/AREVA states petitioner is advancing the same argument from the prior review that the Department has already rejected. Eurodif/AREVA claims that the contracts identified by petitioner include, in one instance, one of the same contracts identified in the previous review and others that, while new, have terms that are very similar to those previously considered by the Department. Given the Department's conclusion in the previous review, Eurodif/AREVA argues that there is no basis for the Department to reach any contrary determination here. Further, Eurodif/AREVA points out that petitioner's argument contains critical factual errors which, if corrected, would demonstrate that the deliveries are not as petitioner claims, and therefore that petitioner has provided no new reason for the Department to depart from its prior conclusion.

Department's Position: The contracts identified by petitioner involve the same situation as that considered by the Department in the second review, except that in this review petitioner has claimed that the actual performance of the contracts strengthens the case for multiple sale dates, whereas in the last review the concern was solely with the terms of the contracts. In fact, one of the contracts identified by petitioner is one of the same contracts the Department examined in the second review regarding this issue. Our review of all of the contracts in question shows that all of the deliveries under the contracts were within the terms of the contracts, contrary to petitioner's interpretation. Therefore, as in the last review, there is no basis to change the date of sale from contract date to another date. A more detailed discussion of our analysis of the proprietary information supporting this conclusion is presented in our Memorandum to Barbara E. Tillman, Director, Office of AD/CVD Operations, 6 from Mark Hoadley, Case Analyst, Supplement to Issues and Decision Memorandum for the Antidumping Review of Low Enriched Uranium from France - Date of Sale for Certain Deliveries (Comment 3), dated concurrently with this memorandum.

Comment 4: Inclusion of All POR Deliveries in Margin Calculations

Petitioner argues that Eurodif/AREVA failed to provide any information to link entries of non-subject merchandise (i.e., LEU not of French origin) with subsequent deliveries, and thus failed to meet the strict requirements imposed by the Department in prior cases for excluding deliveries of purportedly non-subject merchandise. Since it is the responsibility of the respondent to provide adequate evidence to link entries of non-subject merchandise with subsequent deliveries, and Eurodif/AREVA has failed to do so in this case, petitioner contends, the use of "facts available" is appropriate. Citing Department practice in prior cases,[4] petitioner argues that respondent must "demonstrably link" non-subject entries with its subsequent deliveries in order for those deliveries to be excluded from the Department's calculations. Furthermore, petitioner claims, the Department has developed a presumption that a delivery of the merchandise under review is subject merchandise unless the respondent can affirmatively link it to a non-subject entry.[5] Since Eurodif/AREVA has failed to do so, argues petitioner, the Department is fully justified in using facts available. Petitioner states that, because this matter was an issue in the first administrative review as well, Eurodif/AREVA is fully aware of the relevant precedent and of the Department's warning that it would carefully review Eurodif/AREVA's attribution methodology and reporting of subject merchandise in the future.

Eurodif/AREVA claims that this argument is identical to one rejected by the Department in the first review. Eurodif/AREVA argues that this review is based on POR entries, and not POR sales, and therefore any failure to link entries to subsequent deliveries is irrelevant. Moreover, Eurodif/AREVA states that it has used the same attribution methodology the Department established in the first and second reviews, and therefore that it has sufficiently tied all entries of subject merchandise to subsequent deliveries. Eurodif/AREVA also adds that the Department has not requested further information regarding this matter or implied that its responses were deficient in this regard.

Department's Position: The Department verified and accepted Eurodif/AREVA's attribution methodology in the first review. See Notice of Final Results of Antidumping Duty Administrative Review: Low Enriched Uranium from France, 69 FR 46501 (August 3, 2004),

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[4] Stainless Steel Sheet and Strip from Taiwan; Final Results and Partial Rescission of Antidumping Duty Administrative Review, 67 FR 6682 (February 13, 2002), and accompanying Issues and Decision Memorandum at Comment 30; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews, 63 FR 33320, 33347 (June 18, 1998); Certain Stainless Steel Wire Rods From France: Final Results of Antidumping Duty Administrative Review, 62 FR 7206, 7211-12 (February 18, 1997); Certain Corrosion-Resistant Carbon Steel Flat Products from Australia: Preliminary Results of Antidumping Duty Administrative Review, 60 FR 42507, 42509 (August 16, 1995).

[5] Stainless Steel Plate in Coils From Taiwan: Final Results and Rescission in Part of Antidumping Duty Administrative Review, 67 FR 40914 (June 14, 2002), and accompanying Issues and Decision Memorandum at Comment 2; Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, From Italy; Final Results of Antidumping Duty Administrative Review, 57 FR 8295 (March 9, 1992) at Comment 1.

and accompanying Issues and Decision Memorandum (1st Review I&D Memo) at Comment 7. Eurodif/AREVA has used the same attribution methodology in this review. Although the Department stated in the first review that its acceptance of Eurodif/AREVA's attribution methodology in that review was no guarantee it would accept it in future reviews, there is no indication on the record of this review of any manipulation in delivery schedules to achieve a lower margin, or any change that would cause us to scrutinize further Eurodif/AREVA's attribution methodology in this review. As Eurodif/AREVA states, the Department did not request that it provide a tracing table, or any other additional information, to track shipments from entry to delivery, and thus the respondent cannot be said to have been uncooperative. Therefore, we determine that Eurodif/AREVA's response is adequate and that there is no need to resort to facts available in this regard.

Comment 5: Home Market Indirect Selling Expense (ISE) Calculation

Eurodif/AREVA states that, in the Preliminary Results, the Department incorrectly used selling expenses incurred in "third country markets, including Japan" to calculate indirect selling expenses (ISE) included in constructed value (CV), instead of using expenses incurred in France as the Department did in the first review. Eurodif/AREVA alleges that this decision is inconsistent with the first review, because in both reviews, despite the fact that home market sales were not used for normal value, the home market was viable and the facts on the record concerning home market ISE were otherwise identical. Since there have been no changes in the facts or the law, Eurodif/AREVA contends the Department had no reason to depart from its previous practice, and ISE should be determined based upon the home market as in the first review. Petitioner did not comment on this issue.

Department's Position: Despite the fact that the home market was viable in both the first and current reviews, we were unable to use home market sales for normal value in both cases because all sales in the home market were to an affiliate and these sales were consumed by the affiliate in the production of another product. Because of the affiliation between buyer and seller, it is inappropriate to use selling expense information related solely to these home market sales. Thus, for these final results, we will combine selling expense information related to the home market and all other markets (except the United States) for purposes of calculating the ISE ratio.

It would be inappropriate to rely solely on selling expenses that reflect only selling expenses incurred in selling to an affiliated party where there is no way to determine whether such sales were at arm's length. Our analysis in this case indicates that Eurodif/AREVA's selling expenses incurred in selling to the affiliated party are significantly less than the selling expenses incurred in selling to unaffiliated parties. Therefore, combining the home market and third country selling expenses in this case more appropriately reflects the intent of the statutory provision for CV, which is to construct the value of the U.S. sale made to an unaffiliated party, as if it were made in the home market. Therefore, we find this to be a reasonable method for calculating ISE pursuant to section 773(e)(2)(B)(iii) of the Act.

Finally, respondent is mistaken in stating that our first review ISE calculations relied solely on home market information. The first review ISE calculations can be found in Attachment 2 of Memorandum to Constance Handley, Program Manager, Office 1, AD/CVD Enforcement Group I from Carol Henninger, International Trade Compliance Analyst, Office 1, AD/CVD Enforcement Group 1, Final Results Calculation COGEMA/Eurodif, dated July 26, 2004, which refers to Exhibit C-22 of COGEMA/Eurodif's August 5, 2003 response. From these documents, it is apparent that the ISE ratio takes into account all markets except the United States market, using the percentage of staff involved in U.S. sales to calculate this exclusion.

Comment 6: Application of the ISE Ratio

Eurodif/AREVA claims the Department compounded its indirect selling expense calculation error by applying the ISE ratio in a manner that is inconsistent with the basis upon which it is calculated. Citing Large Newspaper Printing Presses from Germany,[6] Eurodif/AREVA states that the Department has recognized that ratios must be applied on the same basis on which they are derived, because doing otherwise could result in an over- or under-allocation of expenses. Eurodif/AREVA claims the Department violated this principle by calculating an ISE ratio on the basis of SWU sales and applying it on a per-LEU basis to the total cost/value of the LEU, i.e., not only the cost of production of the SWU component of LEU but also a feed value.

Petitioner argues that the ISE factor was not applied to LEU, as Eurodif/AREVA claims, but rather to the cost of SWU, excluding feed cost. Petitioner adds that this is the same application the Department has used in prior reviews and, as there is no change in the facts or the law, there is no reason for the Department to depart from its consistent methodology.

Department's Position: We agree with petitioner. The ISE ratio is applied to the cost of production of SWU only. That resulting per-SWU unit cost is then converted to a per-LEU unit cost, as are many other figures used in the calculations. The objective is to have all cost adjustments on a per-LEU basis in order to calculate CV on the same basis. It does not involve, as respondent suggests, the application of the ISE ratio to the value of feedstock.

Comment 7: Use of Facts Available for R&D Costs

Eurodif/AREVA argues that the Department's use of USEC's R&D expenses as facts available in calculating Eurodif/AREVA's R&D expenses is contrary to the statute and not justified by the record. Eurodif/AREVA states the Department's reason for using facts available was because information on certain R&D undertaken by CEA, the French atomic energy agency and an affiliate of respondent, was not provided. Eurodif/AREVA states it has fully answered all of the Department's questions with the sole exception of not providing a confidential CEA-AREVA agreement which was irrelevant to the production or sale of subject merchandise. Further,

[6] Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled from Germany, 66 FR 11557 (February 26, 2001), and accompanying Issues and Decision Memo at Comment 7.

Eurodif/AREVA states that the Department's decision to use facts available stems from the second review in which CEA's 2003 annual report contained a statement that research was carried on involving a centrifuge process. Eurodif/AREVA claims that, by contrast, CEA's 2004 annual report contains no such statement that even hints at CEA's involvement in centrifuge or other R&D related to enrichment of LEU. Moreover, Eurodif/AREVA states that the annual report clearly notes that the right to use CEA's research results is granted only to entities that provided funding for the same, and, since respondent did not provide funding, it would be impossible to benefit from such research.

Further, Eurodif/AREVA contends that the Department's decision to use USEC's R&D costs as a surrogate value is contrary to the statutory directive requiring margins be determined as accurately as possible; facts available surrogates must be neutral and non-distortive and must exhibit a rational relationship between data chosen and the matters to which they are to apply.[7] Eurodif/AREVA argues that Eurodif's and USEC's transition to centrifuge technology is very different since USEC is developing its technology from scratch while Eurodif is pursuing centrifuge technology through purchase of a long-developed centrifuge technology. Eurodif/AREVA notes that it has properly accounted for all expenses with respect to the prospective joint venture facilitating this purchase. Since the different approaches taken by Eurodif and USEC are in no way comparable and respondent has properly reported its costs, Eurodif/AREVA argues it would be wrong for the Department to use USEC's costs as a surrogate.

Petitoner rebuts Eurodif/AREVA's argument that the use of facts available to calculate its R&D expenses is contrary to the statute and unjustified, arguing that Eurodif/AREVA has unilaterally decided that some of the information solicited is "irrelevant," and that it has been unresponsive to the Department's requests for information. Morever, petitioner argues that Eurodif/AREVA, in addition to failing to provide a copy of the CEA-AREVA agreement, failed to report any expenses incurred during the POR by it affiliates, CEA, AREVA or COGEMA, in conjunction with the agreement, and failed to respond to the Department's question on CEA's activities and costs. Therefore, petitioner states, it is absurd for Eurodif/AREVA to now claim there is no record evidence when it is the one who refused to provide the requested information which would have shown exactly what CEA's activities were and the nature of Eurodif/AREVA's involvement in such activities. Petitioner notes the Department's conclusion in the prior review that CEA had engaged in centrifuge technology research for civilian applications, and argues that there is no evidence to show that CEA stopped this research during this POR. Petitioner further states that Eurodif/AREVA knew it was on notice that the Department would take the same approach in this review as in the past review.

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[7] Eurodif/AREVA cites the Department practice noted in Allied Tube and Conduit Corp. V. United States, 132 F. Supp. 2d 1087, 1095 (CIT 2001); Krupp Thyssen Nirosta GmbH v. United States, 25 CIT 793, 2001 WL 812167, *10 (CIT July 9, 2001); and Manifattura Emmepi S.p.A. v. United States, 799 Supp. 110 (CIT 1992).

Regarding the use of USEC's costs as a surrogate value, petitioner claims that the Department's methodology is reasonable and acceptable. Similar to the last review, petitioner claims that information on USEC's R&D expenditures is the only information on the record specifically related to this type of R&D. Furthermore, petitioner adds that USEC and Eurodif are both producers of LEU using gaseous diffusion and working to transition to centrifuge-based LEU production. Contrary to Eurodif/AREVA's claim that USEC is starting its centrifuge research from scratch, petitioner counters that USEC's centrifuge technology is based on Department of Energy technology. Finally, petitioner notes that the Department considered USEC's information to be relevant and corroborated in the second review, and should therefore follow its previous determination for the final results of this review.

Department's Position: We determined, pursuant to section 771(33) of the Act, that CEA is an affiliate of Eurodif/AREVA. Evidence on the record of the second review, and placed on the record of this review, indicated that CEA engaged in centrifuge technology research that could have civilian applications. See 2nd Review I&D Memo, at Comment 6, and Documents for Record Memo containing 2nd Review CEA Verification Report, which is on file in the Central Records Unit, Room B-099 of the Department of Commerce Building. The Department's practice is to include direct and indirect R&D expenses in a respondent's cost. In the instant review, Eurodif/AREVA has not provided the costs associated with CEA's centrifuge technology research nor any evidence indicating that CEA has stopped such research. Absent the information, and, based on the finding that CEA's R&D is relevant to the production of the subject merchandise, we will continue to include an amount for CEA's research in centrifuge technology in Eurodif/AREVA's R&D expenses.

Absent data on the record regarding CEA's centrifuge R&D expenditures, the Department must rely on secondary information. Section 776(c) of the Act requires the Department corroborate secondary information used for facts available, and the Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, at 870 (1994) provides that the word "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value. In the second review, we found USEC's centrifuge-specific R&D expenses to be relevant and corroborated because it was for the same technology and conducted by a company in the same industry. In that review we used a five-year average of USEC's R&D expenses in the years 2000 through 2004. See 2nd Review I&D Memo, at Comment 7. The five-year average includes calendar year 2004 which overlaps with the POR. Therefore, it remains relevant to the current POR and we will continue to use this average of USEC's centrifuge R&D costs in determining CEA's R&D expenses.

Comment 8: Calculation of Constructed Export Price (CEP) Profit Ratio

Eurodif/AREVA argues that the calculation of the CEP profit ratio based upon AREVA's front-end division profits is inconsistent with the statute and the methodology the Department used in prior reviews and should be corrected. Eurodif/AREVA claims that according to section 772(f)(2)(C)(i) of the Act, the Department should use the expenses incurred with respect to the

subject merchandise sold in the United States and the foreign like product sold in the exporting country if such expenses were requested for purposes of establishing NV (Normal Value) and CEP. Since all of the expenses have been reported at the Department's request, Eurodif/AREVA claims there is no justification for the use of an alternative approach. Moreover, Eurodif/AREVA states the facts in the instant review are exactly the same as those presented in the prior reviews where the Department based its calculation on Eurodif's revenue and cost of production. Therefore, Eurodif/AREVA contends, there is no reason for the Department to depart from its practice in the current review. Petitioner did not comment on this issue.

Department's Position: We agree with respondent. The Department inadvertently overlooked the information on the record that was necessary to calculate Eurodif's profit in the United States and other markets for purposes of the Preliminary Results. As a consequence, we used the AREVA profit figure for CEP profit, the same figure used for CV profit. Respondent, however, identified the relevant information on the record in its case brief. Because that information demonstrates that Eurodif incurred a loss [

]. Therefore, we have not included an amount for profit, in accordance with our standard practice of not using "negative profit" rates, and have used a zero CEP profit rate for these final results. See, e.g., Stainless Steel Plate From Sweden: Final Results of Antidumping Duty Administrative Review, 63 FR 63706 (November 16, 1998) at Comment 1. This methodology is consistent with the methodology used in the investigation and prior reviews.

Comment 9: Feedstock Values Used in Gross Unit Price

Eurodif/AREVA objects to the Department's inclusion of a value for uranium feed in the CEP and CV calculations, stating that the feed was supplied by the customer and Eurodif/AREVA did not incur a charge for it. However, Eurodif/AREVA contends, if the Department persists in including this amount, it should do so in a non-distortive manner by using the same feed amount on both the CEP and CV sides of the equation. Eurodif/AREVA states the Department adhered to this principle for certain transactions by adding the same amount for uranium feed to both the CEP and CV sides, but for other transactions, respondent claims, the Department used differing values, adding an estimated per-transaction value on the CEP side and an average feed value on the CV side.

Petitioner states the Department has consistently followed its practice for the cost-of-feed calculations, and as neither the facts or the law has changed, the Department should not alter its methodology for this review.

Department's Position: The Department's practice, in all cases, not just in Uranium proceedings, is to calculate one weighted-average cost per model of a product. As in previous reviews of this product, we have one model in this review, for which we have calculated one weighted-average cost as the basis for CV. We note that the amounts Eurodif/AREVA billed its

customers requesting additional services was less than what Eurodif/AREVA paid its contractor for those services. In such instances we recalculated the feed cost by subtracting the amount charged to the customer by Eurodif/AREVA, and adding the average price Eurodif/AREVA paid the contractor. For those sales that did not involve additional services, 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. This is the same calculation methodology as that used in the investigation and prior reviews. See, e.g., 2nd Review I&D Memo, at Comment 12. The facts remain the same in this review, and respondent's arguments on this issue do not appear to have changed. We have examined these arguments and responded in detail in the past. Id. Therefore, we are not making any changes to our accounting for feedstock value for the final results of this review.

Comment 10: Rescission of Review and Liquidation of Entries without Assessment of Duties

Eurodif/AREVA argues that the antidumping law provides that only "sales" of subject "merchandise" can be the subject of an antidumping duty order and that sales of enrichment services (SWU transactions) cannot, and that this reading of the law has been affirmed by the Court of Appeals for the Federal Circuit (CAFC) in two decisions. Furthermore, Eurodif/AREVA argues that, since the Department eliminated SWU transactions from its investigation margin calculations pursuant to the Court of International Trade's (CIT) remand order, the Department should do the same in this case. As there are only SWU transactions in this review, claims respondent, the Department should therefore rescind the review, liquidating all POR entries without assessing antidumping duties and refunding antidumping duty deposits with interest.

Petitioner contends in its rebuttal brief that since the Department has already declared its intention to consider seeking certiorari regarding the Federal Circuit's decision, the Federal Circuit's decision is not final, and therefore the Department should reject Eurodif/AREVA's argument outright. More significantly, petitioner contends, the characteristics that make a "SWU transaction" not subject to the antidumping duty statute, including how SWU contracts are implemented, have not been determined. Therefore, petitioner contends, until the characteristics of a non-subject SWU contract have been finally and conclusively resolved, it would be inappropriate to remove SWU transactions from this review and liquidate entries.

Department's Position: In the context of ongoing litigation before the CIT and CAFC, the Department has eliminated SWU transactions from the margin calculations for the investigation; however, the impact of that litigation on this administrative review is not yet known. The CIT and CAFC decisions are not yet final and conclusive. Until the decisions at issue are final and conclusive, it would be premature for the Department to consider the action requested by Eurodif/AREVA.

Comment 11: Correction to Net U.S. Price

Petitioner claims that the Department made a clerical error in computing the preliminary antidumping duty margin by not converting to U.S. dollars sales transactions that were denominated in Euros. Because of an error in the variable name used in the Department's program, petitioner contends that the Department's program failed to convert properly the Euro-denominated sales into U.S. dollars. Respondent did not comment on this issue.

Department's Position: It was our intention to convert all Euro-denominated transactions into U.S. dollars. However, due to an inadvertent error in stating the variable name in the program, that conversion did not take place. We have corrected the variable name to rectify this error.

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 _____

_____
David M. Spooner
Assistant Secretary
for Import Administration

_____
Date