C-427-819
Sunset Review
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May 2, 2007

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

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

SUBJECT: Issues and Decision Memorandum for the Final Results of Expedited Sunset Review of the Countervailing Duty Order on Low Enriched Uranium from France

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Summary

We have analyzed the substantive response of the domestic interested party in the sunset review of the countervailing duty ("CVD") order on low enriched uranium ("LEU") from France. We recommend that you approve the positions which are described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in this sunset review.

1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy
2. Net Countervailable Subsidy Likely to Prevail
3. Nature of the Subsidy

History of the Order

In the underlying investigation, the Department of Commerce ("the Department") investigated Eurodif S.A. ("Eurodif") and Compagnie Generale des Matieres Nucleaires ("COGEMA"),[1] the French producer and exporter, respectively, of LEU and concluded that the Government of France ("the GOF") was providing countervailable subsidies to French producers and exporters of subject merchandise. See Final Affirmative Countervailing Duty Determination: Low Enriched Uranium from France, 66 FR 65901 (December 21, 2001) ("Final LEU Determination"). The period of investigation was January 1, 1999, through December 31, 1999.

On February 13, 2002, the Department published an amended final determination and CVD order on LEU from France. See Amended Final Determination and Notice of

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[1]COGEMA is now known as AREVA NC.

Countervailing Duty Order: Low Enriched Uranium from France, 67 FR 6689 (February 13, 2002). The following two programs were found to confer countervailable subsidies:

Subsidy Program	Net Countervailable Subsidy Program Rate
Purchases at Prices that Constitute "More Than Adequate Remuneration"	11.28 percent ad valorem
Exoneration/Reimbursement of Corporate Income Taxes	0.87 percent ad valorem

The list below identifies the producers/exporters and the total net subsidies determined by the Department in the investigation.

Producers/Exporters	Net Countervailable Subsidy (percent)
Eurodif/COGEMA	12.15 percent ad valorem
All Others	12.15 percent ad valorem

Since the issuance of the order, the Department has completed three administrative reviews. See Final Results of Countervailing Duty Administrative Review: Low Enriched Uranium from France, 69 FR 40,871 (July 7, 2004) (period of review ("POR"): May 14, 2001, through December 31, 2002); Final Results of Countervailing Duty Administrative Review: Low Enriched Uranium from France, 70 FR 39,998 (July 12, 2005) (POR: January 1, 2003, through December 31, 2003); and Final Results of Countervailing Duty Administrative Review: Low Enriched Uranium from France, 71 FR 47,774 (August 18, 2006) (POR: January 1, 2004, through December 31, 2004). In each administrative review, the Department examined the two programs found to confer countervailable subsidies in the investigation. The Department did not discover any additional countervailable programs utilized by Eurodif/COGEMA in the reviews.

Background

On January 3, 2007, the Department initiated a sunset review of the CVD order on LEU from France pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). See Initiation of Five-Year ("Sunset") Reviews, 72 FR 100 (January 3, 2007). On January 16, 2007, the Department received a notice of appearance on behalf of Eurodif and its affiliated companies, including AREVA, an owner of Eurodif, and AREVA NC[2] and AREVA NC, Inc., a producer/exporter of LEU (collectively, "Eurodif/AREVA"). Eurodif/AREVA is an interested party under section 771(9)(A) of the Act. On January 18, 2007, the Department received a notice of intent to participate on behalf of USEC Inc. and its subsidiary, United States Enrichment Corporation (collectively, "USEC"), a domestic interested party. USEC, a domestic producer of LEU, is an interested party under section 771(9)(C) of the Act and 19 CFR 351.102.

[2]AREVA was previously known as COGEMA.

On February 2, 2007, the Department received a complete substantive response from USEC within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). However, the Department did not receive a substantive response from any government or respondent interested party to this proceeding. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted an expedited sunset review of this CVD order.

Discussion of the Issues

In accordance with section 751(c)(1) of the Act, the Department is conducting this review to determine whether revocation of the CVD order would be likely to lead to continuation or recurrence of a countervailable subsidy. Section 752(b) of the Act provides that, in making this determination, the Department shall consider the net countervailable subsidy determined in the investigation and any subsequent reviews, and whether any change in the programs which gave rise to the net countervailable subsidy has occurred that is likely to affect that net countervailable subsidy. Pursuant to section 752(b)(3) of the Act, the Department shall provide to the International Trade Commission ("ITC") the net countervailable subsidy likely to prevail if the order were revoked. In addition, consistent with section 752(a)(6) of the Act, the Department shall provide to the ITC information concerning the nature of the subsidy and whether the subsidy is a subsidy described in Article 3 or Article 6.1 of the 1994 WTO Agreement on Subsidies and Countervailing Measures ("ASCM").

Below we address the substantive response of the domestic interested party.

1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy

Interested Party's Comments

In its substantive response, USEC, the domestic interested party, discusses that in the investigation, the Department determined that the following two programs provided countervailable subsidies to Eurodif: (1) Purchases of LEU from Eurodif by Electricite de France ("EdF"), a wholly owned French government agency, at prices that constitute "more than adequate remuneration," and (2) Exoneration and Reimbursement of Corporate Income Taxes for Eurodif. USEC states that there is no information on the record of the administrative reviews establishing that these programs have been terminated or suspended, or that there have been changes to the programs. Therefore, USEC asserts that the Department should find that revocation of the order would be likely to lead to a continuation or recurrence of a countervailable subsidy.

Department's Position

Since the investigation, the Department has completed three administrative reviews of this order. In those proceedings, no evidence was submitted to the Department which demonstrated that the programs found to confer countervailable subsidies to French producers/exporters of subject merchandise were terminated. Because these programs remain in place, we find that revocation of the order would be likely to lead to continuation or recurrence of a countervailable subsidy.

2. Net Countervailable Subsidy Likely to Prevail

Interested Party's Comments

USEC asserts the established policy is that "the Department normally will select the rate from the investigation because that is the only calculated rate that reflects the behavior of exporters and foreign governments without the discipline of an order in place." See USEC's substantive response at 8 (February 2, 2007).[3] Therefore, USEC submits that the Department should report to the ITC a countervailing duty rate of 12.15 percent ad valorem for Eurodif, which represents the applicable rate determined in the amended final determination in the investigation.

Department's Position

We agree that the Department normally will provide to the ITC the net countervailable subsidy rate that was determined in the investigation because that is the calculated rate which reflects the behavior of exporters and foreign governments without the discipline of an order in place. Because the programs that gave rise to the subsidy rate calculated in the investigation have not been terminated and we did not identify any new countervailable subsidy programs in the subsequent administrative reviews, we determine that the investigation rate is the appropriate rate that best reflects the behavior of exporters and foreign governments without the discipline of an order in place.

On this basis, we find that the net subsidy level for the producers and exporters of LEU included in this review are those listed below. Thus, we will report to the ITC these net subsidy rates.

[3] This public document is available in the Department's Central Records Unit (room B-099).

Final Results of Review

As a result of this review, the Department finds that revocation of the CVD order on LEU from France would likely lead to continuation or recurrence of a countervailable subsidy at the rates listed below:

Producer/Exporter	Net Countervailable Subsidy
Eurodif /AREVA	12.15 percent ad valorem
All Others	12.15 percent ad valorem

3. Nature of the Subsidy

Consistent with section 752(a)(6) of the Act, the Department is providing the following information to the ITC information concerning the nature of the subsidy, and whether the subsidy is a subsidy as described in Article 3 or Article 6.1 of the ASCM. We note that Article 6.1 of the ASCM expired effective January 1, 2000.

The following programs do not fall within the meaning of Article 3.1 of the ASCM. However, they could be subsidies described in Article 6.1 of the ASCM if the amount of the subsidy exceeds five percent, as measured in accordance with Annex IV of the ASCM. They also could fall within the meaning of Article 6.1 if they constitute debt forgiveness or are subsidies to cover operating losses sustained by an industry or enterprise. However, there is insufficient information on the record of this review for the Department to make such a determination. We are, however, providing the ITC with the following program descriptions.

1) Purchases at Prices that Constitute "More than Adequate Remuneration"

Eurodif provides LEU to EdF, a wholly owned French government agency that supplies, imports, and exports electricity. Eurodif sells LEU to EdF under long-term contracts.

2) Exoneration/Reimbursement of Corporate Income Taxes

Under a specific governmental agreement entered into upon Eurodif's creation, Eurodif is only liable to pay income taxes on the portion of its income relating to the percentage of its private ownership. Eurodif is fully exonerated from payment of corporate income taxes corresponding to the percentage of its foreign government ownership and is eligible for a reimbursement of the amount of corporate income taxes corresponding to the percentage of its French government ownership.

Recommendation

Based on our analysis of the substantive response received, we recommend adopting the above positions. If these recommendations are accepted, we will publish the final results of review in the Federal Register.

AGREE: _____ DISAGREE: _____

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David M. Spooner
Assistant Secretary
for Import Administration

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(Date)