70 FR 40000, July 12, 2005

C-428-829; C-421-809;
C-412-821
Administrative Reviews
POR: 1/1/2003-12/31/2003
Public Document
Ops, Office 3: DB

July 5, 2005

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

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

SUBJECT: Issues and Decision Memorandum: Final Results of Countervailing Duty Administrative Reviews: Low Enriched Uranium from Germany, the Netherlands, and the United Kingdom

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Summary

We have analyzed the comments and rebuttal comments of interested parties in the administrative reviews of the countervailing duty (CVD) orders on low enriched uranium (LEU) from Germany, the Netherlands, and the United Kingdom for the period January 1, 2003, through December 31, 2003. We have made no modifications to the Preliminary Results of Countervailing Duty Administrative Reviews: Low Enriched Uranium from Germany, the Netherlands, and the United Kingdom, 70 FR 10986 (March 7, 2005) (Preliminary Results).

The "Subsidies Valuation Information" and "Analysis of Programs" sections below describe the methodology followed in these reviews with respect to Urenco Deutschland GmbH of Germany (UD), Urenco Nederland B.V. of the Netherlands (UNL), Urenco (Capenhurst) Limited (UCL) of the United Kingdom, Urenco Ltd., and Urenco Inc. (collectively, the Urenco Group or respondents), the producers/exporters of subject merchandise covered by these reviews. Also below is the "Analysis of Comments" section, which contains the Department of Commerce's (the Department's) response to the issues raised in the case and rebuttal briefs. We recommend that you approve the positions we have developed in this memorandum.

Below is a complete list of the issues in these reviews for which we received comments and rebuttal comments from parties:

Comment 1: Net Countervailable Subsidy Rate
Comment 2: Draft Cash Deposit and Liquidation Instructions
Comment 3: Enrichment Services
Comment 4: Allocation Period
Comment 5: Centrifuge Enrichment Capacity Subsidies by the Government of Germany

I. METHODOLOGY AND BACKGROUND INFORMATION

A. International Consortium

In our Notice of Final Affirmative Countervailing Duty Determinations: Low Enriched Uranium from Germany, the Netherlands, and the United Kingdom, 66 FR 65903 (December 21, 2001) (LEU Final) and accompanying Issues and Decision Memorandum: Final Affirmative Countervailing Duty Determinations: Low Enriched Uranium from Germany, the Netherlands, and the United Kingdom - Calendar Year 1999 (LEU Final Decision Memo) at Comment 2: International Consortium Provision, we found that the Urenco Group operates as an international consortium within the meaning of section 701(d) of the Tariff Act of 1930, as amended (the Act).

In the instant administrative reviews, we received no comments on this issue. Therefore, absent new evidence or arguments, and based upon the evidence in these administrative reviews, for the final results we continue to find that the Urenco Group constitutes an international consortium. Accordingly, we have continued to cumulate all countervailable subsidies received by the member companies from the government of Germany (GOG), the government of the Netherlands (GON), and the government of the United Kingdom (UKG), pursuant to section 701(d) of the Act.

II. SUBSIDIES VALUATION INFORMATION

A. Allocation Period

Under section 351.524(d)(2) of the Department's regulations, we will presume the allocation period for non-recurring subsidies to be the average useful life (AUL) of renewable physical assets for the industry concerned, as listed in the Internal Revenue Service's (IRS) 1977 Class Life Asset Depreciation Range System (CLADRS) tables, as updated by the Department of the Treasury. The presumption will apply unless a party claims and establishes that these tables do not reasonably reflect the AUL of the renewable physical assets for the company or industry under investigation, and the party can establish that the difference between the company-specific or country-wide AUL for the industry under investigation is significant. In this instance, however, the IRS Tables do not provide a specific asset guideline class for the uranium enrichment industry.

In the LEU Final, we derived an AUL of 10 years for the Urenco Group (see LEU Final Decision Memo at Comment 3: Average Useful Life). The AUL issue is currently subject to litigation

related to the original investigation. Parties to the instant reviews submitted comments on the AUL.

We were not persuaded by the comments we received on this issue to change the AUL from the 10-year AUL calculated and applied in the original investigation. Therefore, for the purposes of these final results, we continue to apply the 10-year AUL that was calculated in the LEU Final. For further discussion, see Comment 4: Allocation Period, below.

III. ANALYSIS OF PROGRAMS

A. Programs Determined Not to Confer a Benefit from the Government of Germany

1. Enrichment Technology Research and Development Program

In the LEU Final, we determined that, under this program, the GOG promoted the research and development (R&D) of uranium enrichment technologies. The Federal Ministry for Research and Technology provided Uranitisotopentrennungsgeselleschaft mbH (Uranit) (the privately-held German arm of the Urenco Group) a series of grant disbursements for the funding of R&D projects. The funds were provided to encourage continuous improvements of centrifuge technologies and to fund the research of lasers and other advanced technologies. The grant disbursements under this program were made during the years 1980 through 1993.

Assistance under this program was provided for in two agreements and two sets of guidelines: the "Financing Agreement," the "Operating Agreement," the "Terms and Conditions for Allocations on a Cost Basis to Companies in Industry for Research and Development Projects" (BKFT75), and the "Auxiliary Terms and Conditions for Grants on a Cost Basis from the Federal Ministry for Research and Development to Companies in Industry for Research and Development Projects" (NKFT88), respectively. According to Article 4, Section 6, of the "Financing Agreement," the funds provided to Uranit under this agreement had contingent repayment obligations. The funds were repayable within five years of disbursement, contingent upon the company's earnings. If the funds were not repaid within five years, then the repayment obligation lapsed. The funds provided under the "Operating Agreement" were not repayable. Uranit also received funds for laser R&D pursuant to the terms and conditions of the BKFT75 and NKFT88.

In the LEU Final, we determined that the assistance provided under this program constitutes countervailable subsidies within the meaning of section 771(5) of the Act. Specifically, we found that the grant disbursements constitute a financial contribution and confer a benefit, as described in sections 771(5)(D)(I) and 771(E) of the Act. We further found that this program is specific under section 771(5A)(D)(i) of the Act because the provision of assistance under this program was limited to one company. In addition, we found that the program provided non-recurring benefits under section 351.524(c)(2) of the Department's regulations because the assistance was made pursuant to specific government agreements and was not provided under a

program that would provide assistance on an ongoing basis from year to year. See LEU Final Decision Memo at the "Enrichment Technology Research and Development Program" section. No new information or evidence of changed circumstances has been presented to warrant reconsideration of this determination; therefore, for these final results, we continue to determine that this program is countervailable.

In the first administrative reviews, we determined that grant disbursements made under this program prior to 1992, including the 1985 disbursement made under the "Financing Agreement," no longer provided a benefit during those periods of review (POR), i.e., January 14, 2001, through December 31, 2002. We also determined that only the grant disbursements made in 1992 and 1993 continued to provide benefits during the 2001-2002 POR. See Final Results of Countervailing Duty Administrative Reviews: Low Enriched Uranium From Germany, the Netherlands, and the United Kingdom, 69 FR 40869 (July 7, 2004) (2001-2002 LEU) and the accompanying Issues and Decision Memorandum (2001-2002 LEU Decision Memo) at the "Analysis of Programs" section.

In 2001-2002 LEU, we determined that Urenco would not benefit from Enrichment Technology Research and Development Program subsidies from the GOG after 2002 because the grants were fully allocated by the end of 2002. See 2001-2002 LEU Decision Memo at Comment 3: Cash Deposit Rate for Future Urenco Imports.

Because the grant disbursements under this program were made between 1980 and 1993, the 10-year allocation period for each grant disbursement expired prior to the POR of the instant reviews. Therefore, for these final results, we determine, as we did in the Preliminary Results, that each of these grants has been fully allocated prior to the POR, and, therefore, no benefit was received under this program during the POR.

2. Forgiveness of Centrifuge Enrichment Capacity Subsidies

In accordance with the "Risk Sharing Agreement" (RSA) and the "Profit Sharing Agreement" (PSA) signed between the GOG and Uranit, the GOG agreed to provide funds to UD to support the promotion of an uranium enrichment industry. These two agreements were signed on July 18, 1975, and the GOG provided a total of Deutschmark (DM) 338.3 million from 1975 to 1993 to Uranit in support of the Treaty of Almelo's goal of creating and promoting the enrichment industry.[1] Under the terms of the agreements, repayment of the funds was conditional and based upon the financial performance of the company. However, in no case was the amount of the total repayments to exceed twice the amount of the funds provided to UD by the GOG.

[1] In March 1970, the GOG, the GON, and the UKG signed the Treaty of Almelo, which became effective in July 1971. The purpose of the treaty was for the three governments to collaborate in the development and exploitation of the gas centrifuge process for producing enriched uranium. Prior to 1971, the centrifuge R&D programs in each country were independent.

In 1987, Uranit signed a new agreement with the GOG. This "Adjustment Agreement" stipulated that Uranit would repay the GOG for the DM 333.8 million in centrifuge capacity assistance and an additional agreed-upon DM 31.7 million, which was not related to the centrifuge subsidies. Prior to the 1993 merger of the Urenco Group, the GOG and Uranit negotiated a basis to terminate the repayment obligations of the RSA and the PSA. Based upon these negotiations, a "Termination Agreement" was signed on July 13, 1993, and amended on October 27, 1993. Prior to the Termination Agreement, Uranit had made repayments totaling DM 5.6 million. Under the terms of the Termination Agreement, Uranit was to pay the GOG DM 101.1 million, thus terminating the repayment obligations stipulated in the Adjustment Agreement. Uranit made this DM 101.1 million payment on July 1, 1994.

In the LEU Final, we determined this program to be countervailable. We found that assistance provided under this program to Uranit was specific under section 771(5A)(D)(i) of the Act because the program was limited to one company. In addition, we determined that a financial contribution was provided under section 771(5)(D)(i) of the Act. We also determined that a benefit was provided to the company, within the meaning of section 771(5)(E) of the Act to the extent that the repayments made to the GOG were less than the amount of assistance provided to the company under this program. See LEU Final Decision Memo at the "Forgiveness of Centrifuge Enrichment Capacity Subsidies" section. No new information or evidence of changed circumstances has been presented to warrant reconsideration of this determination; therefore, for these final results, we continue to determine that this program is countervailable.

In the LEU Final, we determined that this program provided a grant under 19 CFR 351.505(d)(2) because there was a waiver of a contingent liability. We determined the adjusted grant amount to be equal to the difference between the original amount of centrifuge subsidies (DM 338.3 million) and the total amount of repayment attributable to those centrifuge subsidies (DM 97.556 million), which we calculated to be DM 240.744 million. We also determined that the first year of allocation was 1993, the year in which the repayment obligation stipulated in the Adjustment Agreement was waived. No new information or evidence of changed circumstances has been presented to warrant reconsideration of this determination.

In 2001-2002 LEU, we determined that the Urenco Group would not benefit from Forgiveness of Centrifuge Enrichment Capacity subsidies from the GOG after 2002 because the grants were fully allocated by the end of 2002. See 2001-2002 LEU Decision Memo at Comment 3: Cash Deposit Rate for Future Urenco Imports. No new information or evidence of changed circumstances has been presented to warrant reconsideration of this finding. Therefore, for these final results, we determine, as we did in the Preliminary Results, that the grant has been fully allocated prior to the POR, and, therefore, no benefit was received under this program during the POR.

B. Programs Determined Not to Be Used from the Government of the Netherlands

1. Wet Investeringsrekening Law (WIR)
2. Regional Investment Premium

No new information, evidence of changed circumstances, or comments from interested parties were received regarding these programs. Therefore, we continue to determine that these programs were not used by the respondents in this review.

IV. TOTAL *AD VALOREM* RATE

The total net subsidy rate for the Urenco Group in these reviews is 0.00 percent ad valorem for the POR.

V. ANALYSIS OF COMMENTS

Comment 1: Net Countervailable Subsidy Rate

In their case briefs, respondents state that, employing the 10-year AUL established in the investigations and utilized in the first administrative reviews of these proceedings, the Department correctly determined in its Preliminary Results that Urenco did not benefit from any previously investigated subsidy program during the POR of the instant reviews.

Moreover, respondents assert that the Department correctly found in its Preliminary Results that Urenco received no new or additional subsidies during the POR, and no other finding would have been supported by the record of these administrative reviews.

Therefore, respondents maintain that the Department's finding in its Preliminary Results of a total net countervailable subsidy rate of zero percent for the Urenco Group is correct and should be upheld in these final results.

Petitioners[2] did not comment on the net countervailable subsidy rate.

The Department's Position:

We agree with respondents and will continue to apply our findings in the Preliminary Results in these final results.

[2] Petitioners are the United States Enrichment Corporation (USEC) and USEC Inc.

Comment 2: Draft Cash Deposit and Liquidation Instructions

Respondents state that the draft cash deposit instructions are fully consistent with the Department's findings in the Preliminary Results and require no amendment if those findings are retained in the final results. Respondents do, however, argue that LEU imports subject to the countervailing duty orders should be limited to circumstances in which the Urenco Group has sold LEU to its customers rather than having provided only enrichment services.

With respect to the draft liquidation instructions, respondents assert that, with the exception of paragraph 9, the liquidation instructions are fully consistent with the Department's Preliminary Results. Respondents argue that paragraph 9 should be altered to conform with paragraphs 4 and 5 of the draft liquidation instructions. Respondents assert that paragraph 9 should refer to the date the subject merchandise is entered, or withdrawn from warehouse, for consumption, rather than when it is exported. Respondents maintain that because certain LEU shipments exported before the end of 2003 might not have entered the United States for consumption until after the beginning of 2004, such shipments might be erroneously liquidated even though they are not covered by the instant reviews. Accordingly, respondents request that the Department amend paragraph 9 of its liquidation instructions by replacing the word "exported" with the phrase "entered, or withdrawn from warehouse, for consumption," so that it conforms with the parallel provision in paragraphs 4 and 5.

Petitioners did not comment on the draft customs instructions.

The Department's Position:

We agree with respondents that, in this proceeding, the word "exported" should be replaced with the phrase "entered, or withdrawn from warehouse, for consumption," in paragraph 9 of the liquidation instructions, so that it conforms with the parallel provision in paragraphs 4 and 5. We have changed the liquidation instructions accordingly.

With respect to respondents' argument that imports subject to the CVD orders should be limited to sales of LEU, see Comment 3: Enrichment Services, below.

Comment 3: Enrichment Services

Respondents point out that the courts are currently considering the Department's inclusion of subsidies of enrichment services within the scope of the orders. Respondents emphasize that applying the countervailing duty law to the subsidization of enrichment services ignores both the meaning of the countervailing duty law itself, which permits the countervailing only of the subsidization of the manufacture or production of a good, and the key differences between the sale of enrichment services and the sale of LEU. Respondents note that these differences were recently recognized and found dispositive by the United States Court of Appeals for the Federal

Circuit (CAFC) (see Eurodif S.A. v. United States, No. 04-1209, -1210, 2005 U.S. App. LEXIS 3567 (Fed. Cir. March 3, 2005) (Eurodif)).

Moreover, respondents argue that the Department's treatment of the subsidization of enrichment services as equivalent to the subsidization of LEU production is contrary to the position taken by the Court in Florida Power & Light Co. v. United States, 307 F.3d 1364, 1372-73 (Fed. Cir. 2002), where the CAFC held that the nature of the contractual pricing scheme for enrichment services contracts in particular indicates that the transaction is properly characterized as a service rather than a sale of goods.

Respondents conclude that there is no evidence on the record of this or any previous segment of these proceedings to suggest that any of the subsidies found countervailable by the Department were bestowed solely, or even predominately, with respect to the manufacture or production of LEU, rather than the rendering of enrichment services. Therefore, respondents argue that the Department's affirmative determinations throughout these proceedings reach far beyond the range of the countervailing duty law.

Petitioners argue that the CIT rejected respondents' argument in USEC Inc. v. United States, 281 F. Supp. 2d 1334 (CIT 2003) (USEC), where the court concluded that the Department's interpretation that the countervailing duty provisions of the statute are applicable to imports of LEU under both enriched uranium product (EUP) purchase contracts and separative work unit (SWU) enrichment contracts was reasonable. Petitioners assert that this finding by the CIT has not been appealed by respondents or any other party. Moreover, petitioners state that respondents' citation of Eurodif is misplaced, as that case was limited to the antidumping provisions of the statute.

Moreover, petitioners argue that respondents' interpretation is unnecessarily restrictive. Petitioners argue that the statute authorizes the imposition of countervailing duties when the government of a country or a public entity in a country provides a countervailable subsidy with respect to the manufacture, production, or exportation of a class or kind of merchandise imported, or sold for importation, into the United States. Petitioners assert that, as the CIT has found, the ordinary meaning of the statue supports its application to the contracts at issue. In sum, petitioners argue, the application of the CVD law to the subsidies at issue in this case is consistent with the plain language of the statute.

The Department's Position:

We note that this is an issue common to the countervailing duty and antidumping cases. As we explained in the Notice of Final Determination of Sales at Less Than Fair Value: Low Enriched Uranium From France, 66 FR 65877, 65879 (December 21, 2001) (LEU from France), in conducting countervailing duty investigations, section 701(a)(1) of the Act requires the Department to impose duties if, inter alia, "the administering authority determines that the government of a country or any public entity within the territory of a country is providing,

directly or indirectly, a countervailable subsidy with respect to the manufacture, production, or export of a class or kind of merchandise imported, or sold (or likely to be sold) for importation, in the United States." The statute is clear that, where merchandise from an investigated country enters the commerce of the United States, the law is applicable to such imports.

In these investigations and administrative reviews, no party disputes that the LEU entering the United States constitutes merchandise. As the product yield of a manufacturing operation, the Department continues to find that LEU is a tangible product. Second, it is well established, and no party disputes, that the enrichment process is a major manufacturing operation for the production of LEU, and that enrichment is a required operation in order to produce LEU. Thus, we find that the enrichment process constitutes substantial transformation of the uranium feedstock. We continue to find, therefore, that the LEU enriched in and exported from Germany, the Netherlands, the United Kingdom and France is a product of those respective countries.

Regarding respondents' citation to Eurodif, we disagree that the CAFC's ruling in that case is applicable to the instant reviews. First, the CAFC's ruling in Eurodif is not final and conclusive. Second, the subsidies and contracts at issue in Eurodif pertained strictly to the purchase of goods for more than adequate remuneration. In these instant reviews, there are no such subsidies or contracts at issue. Third, the CIT has upheld the Department's determination that the countervailing duty law applies to imports of LEU under either LEU purchase contracts or SWU enrichment contracts. See USEC, 281 F. Supp. 2d at 1346-1348. No party has appealed the CIT decision on this issue.

Parties have presented no new factual information or evidence of changed circumstances since the LEU Final. Therefore, we continue to find, as we did in the LEU Final, that the enrichment companies are the only producers and exporters of the subject merchandise in these cases (see LEU from France, 66 FR at 65883).

Comment 4: Allocation Period

Respondents argue that the allocation period should be less than ten years. Specifically, respondents state that, solely for the purpose of preserving the issues raised in Urenco's pending appeals to the CIT, and in light of the requirements for exhaustion of administrative remedies, they once again contend that the allocation period should have been based on the 9.5-year period applicable to chemical manufacturing plants under category 28.0 of the CLADRS tables of the U.S. Internal Revenue Service, and (alternatively) that the Department erred in rounding the calculated company-specific AUL from the calculated 9.27 years up to 10 years.

Petitioners, in their rebuttal brief, argue that this issue is currently the subject of pending appeals, and respondents have not offered any new evidence or arguments with respect to this issue. Petitioners maintain that absent new facts, new argumentation, or the adoption of a new Department policy, it is the Department's practice not to reconsider its position on an appealed issue in a subsequent proceeding, pending the final results of the appeals. Instead, argue

petitioners, the Department has awaited a final and conclusive decision regarding the legality of its methodologies before changing its position. Therefore, petitioners assert that the Department should not revisit in these administrative reviews legal arguments raised by respondents that are subject to ongoing appeal.

The Department's Position:

In the LEU Final, we decided to calculate a company-specific AUL using data from the Urenco Group because, in the absence of a CLADRS table that corresponds to subject merchandise, 19 CFR 351.524(d)(2)(iii) instructs the Department to use a company-specific AUL or the country-wide AUL for the industry under investigation. We also stated that we found that the use of company-specific data is the most appropriate method of calculating the Urenco Ltd. AUL. See LEU Final Decision Memo at Comment 3: Average Useful Life.

In the LEU Final, we determined that calculating an AUL for the Urenco Group based on Urenco Ltd.'s consolidated financial statements for years 1994 through 1999 was the most accurate methodology because, among other reasons, it took into account the fact that all three companies of the consortium had to conform to a common methodology when submitting their asset and depreciation figures. Moreover, we stated that our decision to apply the international consortium provision affects the manner in which we must calculate the AUL. In the LEU Final, we stated that if the Department finds that the Urenco Group constitutes an international consortium, the Department cannot calculate and apply separate AULs to each of the Urenco Group companies. See LEU Final Decision Memo at Comment 3: Average Useful Life.

In the LEU Final Decision Memo, we stated that pursuant to 19 CFR 351.524(d)(2)(iii), the Department will calculate a company-specific AUL by "dividing the aggregate of the annual average gross book value of the firm's depreciable productive fixed assets by the firm's aggregated annual charge to accumulated depreciation . . . ." Thus, we stated, the regulations direct the Department to use AUL information as reported on the firm's balance sheet. The regulation also states that the Department will not accept such information from the firm's balance sheet if the firm's depreciation figures are not reflective of the actual AULs of the firm's assets.

We disagree with respondents that the AUL should be less than ten years. Respondents have presented no new factual information or evidence of changed circumstances since the LEU Final to warrant reconsideration of the allocation period. As we did in the LEU Final, we continue to disagree with respondents' contention regarding the applicability of the CLADRS tables. As we stated in the LEU Final, the CLADRS tables do not provide a specific asset guideline class for the uranium enrichment industry. Though respondents claim that section 28.0 of the CLADRS is appropriate for use as the AUL because uranium enrichment is a chemical process and section 28.0 provides for "chemical products to be used in further manufacture," we note that the complete citation from section 28.0 indicates otherwise. The complete phrase cited in section 28.0 of the CLARDS is "chemical products to be used in further manufacture, such as synthetic

fibers and plastic materials." The product produced by the uranium enrichment industry is not related to synthetic fibers and plastic materials and, thus, we find that section 28.0 of CLARDS is not appropriate for use as the AUL. See LEU Final Decision Memo at Comment 3: Average Useful Life.

In the absence of a CLADRS table that corresponds to subject merchandise, 19 CFR 351.524(d)(2)(iii) directs the Department to use a company-specific AUL or the country-wide AUL for the industry under investigation. Based on the information submitted by the UKG, GOG, and GON in the underlying investigations, we found that the government depreciation tables do not reasonably reflect the useful life of enrichment assets. Therefore, the Department determined that company-specific data were suitable for purposes of calculating an AUL for the Urenco Group. After reviewing the AUL data of UCL, UD, and UCN at verification, we found that the use of company-specific data was the most appropriate method of calculating the Urenco Ltd. AUL. Absent new evidence, we continue to find that the use of company-specific data represents the most appropriate method of calculating the AUL for the Urenco Group.

In accordance with our decision in the LEU Final and with Department practice, we are not recalculating the AUL in these administrative reviews. Consequently, we have not countervailed subsidy programs found in the investigation to be specific but not to confer a benefit because they fell outside the allocation period.

Comment 5: Centrifuge Enrichment Capacity Subsidies by the Government of Germany

Respondents argue that the Department's finding in the investigation, and maintained throughout these proceedings, that the forgiveness of the CEC grants provided a countervailable benefit to Urenco beginning in 1993 is erroneous. Respondents assert that UD's former parent company, Uranit, received no countervailable benefit in 1993 or thereafter by virtue of the Termination Agreement between Uranit and the GOG, which released Uranit from its contingent liability to make payments to the GOG with respect to the CEC grants in exchange for Uranit's agreement to pay the GOG DM 101.1 million. Respondents assert that the necessary elements for finding a countervailable subsidy, i.e., a financial contribution and a benefit, were absent, and that Uranit did not receive any countervailable benefit from the GOG because in 1993 Uranit actually paid the GOG more than the present value of the GOG's claim to settle the contingent claim for repayment.

Respondents further argue that the Department erred by treating a contingently repayable grant as a loan. Respondents explain that the Department's determination that the Termination Agreement resulted in a countervailable benefit to Urenco was based on its reasoning that the Termination Agreement provided a "deemed grant" in the form of debt forgiveness relief to Uranit under section 351.505(d) of the Department's regulations (see LEU Final Decision Memo at 59, 62-64). Respondents argue that section 351.505(d), on its face, applies only to "contingent liability interest-free loans," the outstanding balance of which are treated as grants received in the year in which the obligation of repayment becomes non-viable. Respondents maintain, however,

that there was never any debt to forgive, and that the record is clear that the CEC funds were provided in the form of grants, not loans.

Moreover, respondents state that even if a countervailable benefit had been conferred on Uranit in 1993, there was no basis for finding that any portion of that benefit was passed along by Uranit to UD or any of the other companies in the Urenco Group for use in the production of LEU. Respondents argue that whatever benefit may be said to have flowed from the termination of the contingent liability of repayment of the CEC grants, that benefit aided only Uranit and, indirectly, its shareholders, because they alone were relieved of the repayment contigency.

Petitioners, in their rebuttal brief, argue that this issue is currently the subject of pending appeals, and respondents have not offered any new evidence or arguments with respect to this issue. Petitioners maintain that absent new facts, new argumentation, or the adoption of a new Department policy, it is the Department's practice not to reconsider its position on an appealed issue in a subsequent proceeding, pending the final results of the appeals. Instead, argue petitioners, the Department has awaited a final and conclusive decision regarding the legality of its methodologies before changing its position. Therefore, petitioners assert that the Department should not revisit in these administrative reviews legal arguments raised by respondents that are subject to ongoing appeal.

The Department's Position:

As we stated in the Preliminary Results, no new information or evidence of changed circumstances has been presented to warrant reconsideration of the countervailability of the CEC program. We also disagree with respondents that there was no basis to apply the countervailable benefits from this program to UD and all the members of the Urenco Group.

As we explained in Comment 17: Centrifuge Enrichment Capacity Subsidies, of the LEU Final Decision Memo, we did not apply the debt forgiveness provisions of 19 CFR 351.508 because the facts warrant the application of 19 CFR 351.505(d)(2), the provision for treating a liability as a grant if the Department determines that the event upon which repayment depends is not a viable contingency. No new factual information or evidence of changed circumstances has been provided to the Department since the LEU Final with respect to the CEC Program. Therefore, we continue to find that 19 CFR 351.505(d)(2) is applicable with regard to those disbursements provided to Uranit by the GOG which had repayment obligations that we determined were waived by the GOG. Furthermore, we continue to determine that, for allocation purposes, the year in which the repayment obligation was waived (via an agreement between Uranit and the GOG for a partial cash payment) is the year of receipt of the subsidy and that, for purposes of the 0.5 percent test, it is also the year of approval.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of reviews and the final net subsidy rates for the reviewed producers/exporters of the subject merchandise in the Federal Register.

_____ Agree

_____ Disagree

_____
Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

_____
Date