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Suspension Agreement – Admin Review

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December 10, 2019

MEMORANDUM TO: Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

FROM: P. Lee Smith *PLS*
Deputy Assistant Secretary
for Policy and Negotiations
Enforcement and Compliance

SUBJECT: Decision Memorandum for the Preliminary Results of the 2017-
2018 Administrative Review of the Agreement Suspending the
Antidumping Investigation on Uranium from the Russian
Federation

I. Summary

In response to a request from domestic interested party Louisiana Energy Services LLC (LES), the Department of Commerce (Commerce) is conducting an administrative review to review the current status of, and compliance with, the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation (Agreement) for the October 1, 2017, through September 30, 2018 period of review (POR). For the reasons stated in this memorandum, Commerce preliminarily finds that State Atomic Energy Corporation “ROSATOM” (ROSATOM) and its affiliates TENEX, Joint-Stock Company (TENEX) and TENEX-USA, Incorporated (TENEX-USA) are in compliance with the Agreement, although Commerce intends to continue examining after the issuance of these preliminary results certain clarifying information requested from TENEX in a supplemental questionnaire. Further, we preliminarily find that TENEX’s unaffiliated resellers, Centrus Energy Corp. and United States Enrichment Corporation (USEC) (collectively, Centrus) and Nukem, Inc. (Nukem), also subject to individual examination in this review, are in compliance with the Agreement, although Commerce similarly intends to continue examining after the issuance of these preliminary results certain clarifying information to be requested from Centrus in a supplemental questionnaire. Additionally, we are continuing our examination of the current status of the Agreement and whether the Agreement continues to meet the statutory requirements, as set forth in section 734(l) of the Tariff Act of 1930, as amended (the Act), after these preliminary results. Commerce, therefore, needs to obtain additional information and needs additional time to evaluate information received, and to be received, from respondents and interested parties in

order to confirm whether the Agreement continues to meet the relevant statutory requirements referenced above.

II. Scope of the Agreement

The product covered by this Agreement is natural uranium in the form of uranium ores and concentrates; natural uranium metal and natural uranium compounds; alloys, dispersions (including cermet), ceramic products, and mixtures containing natural uranium or natural uranium compounds; uranium enriched in U^{235} and its compounds; alloys, dispersions (including cermet), ceramic products, and mixtures containing uranium enriched in U^{235} or compounds of uranium enriched in U^{235} ; and any other forms of uranium within the same class or kind.

Uranium ore from Russia that is milled into U_3O_8 and/or converted into UF_6 in another country prior to direct and/or indirect importation into the United States is considered uranium from Russia and is subject to the terms of this Agreement.

For purposes of this Agreement, uranium enriched in U^{235} or compounds of uranium enriched in U^{235} in Russia are covered by this Agreement, regardless of their subsequent modification or blending. Uranium enriched in U^{235} in another country prior to direct and/or indirect importation into the United States is not considered uranium from Russia and is not subject to the terms of this Agreement.¹

Highly enriched uranium (HEU) is within the scope of the underlying investigation, and HEU is covered by this Agreement. For the purpose of this Agreement, HEU means uranium enriched to 20 percent or greater in the isotope uranium-235.

Imports of uranium ores and concentrates, natural uranium compounds, and all forms of enriched uranium are currently classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 2612.10.00, 2844.10.20, 2844.20.00, respectively. Imports of natural uranium metal and forms of natural uranium other than compounds are currently classifiable under HTSUS subheadings: 2844.10.10 and 2844.10.50. HTSUS subheadings are provided for convenience and Customs purposes. The written description of the scope of this proceeding is dispositive.

III. Background

On October 16, 1992, Commerce signed an agreement under section 734(l) of the Act with the Russian Federation's Ministry for Atomic Energy (MINATOM), the predecessor to ROSATOM,

¹ As noted below, the second amendment of two amendments to the Agreement effective on October 3, 1996, in part included within the scope of the Agreement Russian uranium which had been enriched in a third country prior to importation into the United States. According to the amendment, this modification remained in effect until October 3, 1998. *See 1996 Amendments.*

suspending the antidumping duty investigation on uranium from the Russian Federation.² There have been five amendments to the Agreement, the most recent of which was signed on February 1, 2008.³ Section 8118 of the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, codified at 42 U.S.C. § 2297h *et seq.* (2008) (Domenici Amendment) established import limitations through 2020 that in large part mirror the export limits instituted in the 2008 amendment to the Agreement. On February 2, 2010, Commerce issued its Statement of Administrative Intent (SAI) which provided implementation guidance related to the 2008 amendment.

On October 26, 2018, LES⁴ submitted a request for an administrative review of the Agreement pursuant to *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 83 FR 49358 (October 1, 2018).⁵ On December 11, 2018, Commerce initiated a review.⁶ On January 28, 2019, Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018, through the resumption of operations on January 29, 2019.⁷ On July 11, 2019, we extended the due date for issuance of these preliminary results from August 12, 2019, to no later than December 10, 2019.⁸

On April 24, 2019, Commerce issued questionnaires to ROSATOM, TENEX, and any other affiliated or unaffiliated exporters and resellers, as applicable. On July 24, 2019, ROSATOM, TENEX, TENEX-USA, Centrus, and Nukem submitted responses to Commerce's initial questionnaire.

On August 1, 2019, Commerce requested that all parties under administrative protective order to the 2017-2018 administrative review place all relevant information from the record of the 2016-2017 administrative review segment onto the record of the 2017-2018 administrative review segment.⁹ On August 28, 2019, LES submitted its relevant information. On August 29, 2019, Nukem and Power Resources, Inc. and Crow Butte Resources, Inc. (collectively, Cameco

² See *Antidumping; Uranium from Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Ukraine, and Uzbekistan; Suspension of Investigations and Amendment of Preliminary Determinations*, 57 FR 49220, 49235 (October 30, 1992) (*1992 Suspension Agreement*).

³ See *Amendment to Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation*, 59 FR 15373 (April 1, 1994) (*1994 Amendment*); *Amendments to the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation*, 61 FR 56665 (November 4, 1996) (*1996 Amendments*); *Amendment to Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation*, 62 FR 37879 (July 15, 1997) (*1997 Amendment*); and *Amendment to the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation*, 73 FR 7705 (February 11, 2008) (*2008 Amendment*).

⁴ LES is a U.S.-based uranium enrichment company owned by European enrichment consortium, URENCO Ltd.

⁵ See Letter from LES, "Uranium from Russia: Request for Administrative Review" (October 26, 2018).

⁶ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 83 FR 63615 (December 11, 2018).

⁷ See Memorandum to the Record, "Deadlines Affected by the Partial Shutdown of the Federal Government" (January 28, 2019). All deadlines in this segment of the proceeding have been extended by 40 days.

⁸ See Memorandum to P. Lee Smith, Deputy Assistant Secretary for Policy and Negotiations, "Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation: Extension of Deadline for Preliminary Results of Administrative Review" (July 11, 2019).

⁹ See Memorandum to All Interested Parties, "Requests Placement of 2016-2017 Administrative Review Documents on the Record of the 2017-2018 Administrative Review" (August 1, 2019).

Resources) submitted their relevant information. On August 30, 2019, ROSATOM, TENEX, and TENEX-USA submitted their relevant information, as well as Exelon Generation Company, LLC and the Ad Hoc Utilities Group (collectively, AHUG). On September 3, 2019, Centrus submitted its relevant information.

On August 14, 2019, LES submitted factual information to rebut, clarify, or correct the initial questionnaire responses from TENEX and TENEX-USA. On August 19, 2019, LES submitted factual information to rebut, clarify, or correct the initial questionnaire responses from ROSATOM and Centrus. On September 4, 2019, ROSATOM and Centrus, respectively submitted comments and factual information to rebut, clarify, or correct LES's August 19, 2019 factual information submission. On September 6, 2019, AHUG submitted factual information to rebut LES's August 19, 2019 factual information submitted in response to ROSATOM's initial questionnaire response.

On September 12, 2019, Commerce issued a supplemental questionnaire to TENEX-USA. On September 27, 2019, Commerce issued supplemental questionnaires to ROSATOM and Nukem. On October 2, 2019, TENEX-USA submitted its response to Commerce's supplemental questionnaire. On October 15, 2019, LES submitted factual information to rebut, clarify, or correct the supplemental questionnaire response from TENEX-USA. On October 18, 2019 and October 25, 2019, respectively ROSATOM and Nukem submitted their responses to Commerce's supplemental questionnaires. On November 4, 2019, LES submitted factual information to rebut, clarify, or correct ROSATOM's supplemental questionnaire response. On November 25, 2019, Commerce issued a supplemental questionnaire to TENEX.

On November 6, 2019, Commerce requested additional information from LES related to price suppression and undercutting.¹⁰ On November 12, 2019, Centrus and TENEX, respectively, submitted factual information pursuant to section 351.301(c)(5) of Commerce's regulations. On November 18, 2019, LES submitted its additional information. On November 20 and November 21, 2019, Centrus and TENEX, respectively, submitted requests to Commerce to reject LES's November 18, 2019 submission as untimely.¹¹

On November 25 and November 27, 2019, LES and Centrus, respectively, submitted pre-preliminary comments. On December 2 and December 5, 2019, TENEX and AHUG, respectively, submitted comments on LES's November 25 submission of pre-preliminary comments.

¹⁰ See Memorandum to the File, "Telephone Call with URENCO USA and Counsel" (November 6, 2019); and Memorandum to the File, "Addendum to *Ex Parte* Memorandum" (November 27, 2019).

¹¹ Commerce notes that interested parties have been given the opportunity to submit rebuttal factual information to rebut, clarify, or correct LES's November 18 submission of additional information; see Memorandum to the File, "Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation: Schedule for Opportunity to Submit Factual Information to Rebut, Clarify, or Correct Factual Information Submission from Louisiana Energy Services, LLC" (November 27, 2019). As these rebuttal factual information submissions are due to Commerce after the issuance of these preliminary results, Commerce will not consider LES's November 18 submission in the instant analysis.

IV. Preliminary Results of Review

Section 751(a)(1)(C) of the Act specifies that Commerce shall “review the current status of, and compliance with, any agreement by reason of which an investigation was suspended.” In this case, Commerce and MINATOM (the predecessor to ROSATOM) signed the Agreement on October 16, 1992, which was subsequently amended on March 11, 1994, October 3, 1996, May 7, 1997, and February 1, 2008. Because Commerce determined that the Russian Federation was a non-market economy at the time the Agreement was signed, the Agreement was entered into under section 734(l) of the Act. Section 734(l) provides that Commerce may suspend an investigation upon acceptance of an agreement with a non-market-economy country to restrict the volume of imports into the United States, if Commerce determines that such an agreement is in the public interest, effective monitoring is possible, and the agreement “will prevent the suppression or undercutting of price levels of domestic products by imports of the merchandise under investigation.” For this purpose, ROSATOM agreed in the context of the 2008 amendment that Russian Uranium Products¹² would be subject to export limits through 2020, as outlined in Section IV.B.1 of the amended Agreement. Further, under the amended Agreement,¹³ ROSATOM has also agreed to other conditions including Commerce approval of Section IV.B.1 contracts, Commerce approval of incoming shipments under all provisions of the Agreement, and the submission of various required certifications.

A. Compliance with the Agreement

ROSTATOM

Based on record evidence, Commerce preliminarily finds ROSATOM to be in compliance with the terms of the Agreement and the SAI during the POR. In its initial questionnaire response, ROSATOM describes the procedures through which the Government of Russia’s (GOR) Federal Service on Technical and Export Control (FSTEC) agency issues export licenses, provided for by Russian legislation, and export certificates required by the Agreement.¹⁴ The combination of the legislative export license and Agreement-mandated export certificates, ROSATOM states, serves to ensure compliance with Section V of the Agreement,¹⁵ which sets out the GOR’s obligations to provide export licenses and certificates covering exports of Russian Uranium Products to the United States. Upon reviewing the general export license issued to TENEX and the shipment-specific export certificates applicable to exports to the United States during the POR,¹⁶ Commerce preliminarily finds no evidence of non-compliance regarding the requirements in Section V of the Agreement and the February 2, 2010 SAI.

Regarding the export limit provisions in Section IV of the Agreement, in particular the provisions established in Sections IV.B.1 and IV.H, Commerce preliminarily finds ROSATOM,

¹² “Russian Uranium Products” is defined in Section II(l) of the Agreement.

¹³ Commerce’s SAI also details specific procedures and requirements related to the 2008 amendment to the Agreement.

¹⁴ See ROSATOM’s July 24, 2019 Initial Questionnaire Response (ROSTATOM July 24 IQR) at 1-4.

¹⁵ *Id.* at 5.

¹⁶ *Id.* at Exhibits R-10 and R-11.

and TENEX as the executor of exports of Russian Uranium Products, to be in compliance with these provisions during the POR. As described above, ROSATOM has complied with the required shipment-specific export certificates applicable to both exports under Section IV.B.1 and IV.H. Furthermore, ROSATOM documents its reconciliation between its export statistics and the quarterly Master Export Schedules, in which TENEX details its completed deliveries pursuant to Commerce-approved contracts and which are required to be submitted to Commerce per Appendix 3 of the Agreement and Section F of the SAI.¹⁷ TENEX, in turn, reconciles its Master Export Schedule submissions to its reported exports during the POR.¹⁸ Commerce has reviewed the accounting of exports during the POR by ROSATOM and TENEX and has further reconciled this accounting to information contained in export certificates issued for exports¹⁹ during the POR. Commerce, therefore, finds no evidence of non-compliance by ROSATOM with the Agreement's Section IV.B.1 and IV.H export limits.

Finally, regarding the anti-circumvention provisions established in Section VII of the Agreement and reporting requirements provided in Appendix 3 of the Agreement and Section F of the SAI, Commerce preliminarily finds ROSATOM to be in compliance during the POR. Based on record evidence, we find no evidence of non-compliance with the Agreement's Section VII anti-circumvention requirements by ROSATOM. Furthermore, as TENEX submitted to Commerce each of its required Master Export Schedules per Appendix 3 of the Agreement, we find ROSATOM, through TENEX as the executor of exports of Russian Uranium Products, to be in compliance with the reporting requirements of Appendix 3 and the SAI.

TENEX

Based on record evidence, Commerce preliminarily finds TENEX to be in compliance with the Agreement and the SAI during the POR, although, as described below, Commerce intends to continue examining after the issuance of these preliminary results certain clarifying information requested from TENEX in a supplemental questionnaire. As discussed above, we preliminarily find TENEX, as ROSATOM's executor of exports of Russian Uranium Products to the United States, to be in compliance with Agreement's export limits and reporting requirements of Appendix 3. In its initial questionnaire response, TENEX discusses its process for allocating the annual export limits for its own sales and sales through its affiliated and unaffiliated resellers.²⁰ TENEX states that it controls quota allocation through export certificates issued for each delivery and describes the steps through which it monitors quota usage.²¹ The steps include the contract approval process with Commerce, production of low-enriched uranium (LEU) pursuant to a customer's order under the approved contract, importation of LEU into the United States under a valid export certificate, and the compilation and submission to Commerce of TENEX's quarterly Master Export Schedules required by Appendix 3 of the Agreement.²² Commerce has reviewed this and other information submitted by TENEX and preliminarily finds no evidence of

¹⁷ *Id.* at 15-17 and Exhibit R-14; *see also* ROSATOM's October 18, 2019 Supplemental Questionnaire Response (ROSTATOM October 18 SQR) at 4 and Exhibit Supp. R-02.

¹⁸ *See* TENEX's July 24, 2019 Initial Questionnaire Response (TENEX July 24 IQR) at 6-10 and Exhibit TX-03.

¹⁹ *See* ROSATOM July 24 IQR at Exhibit R-11.

²⁰ *See* TENEX July 24 IQR at 40.

²¹ *Id.* at 40-41.

²² *Id.*

non-compliance by TENEX with respect to the Agreement's export limits nor with respect to the Appendix 3 reporting requirements of the Agreement and Section F of the SAI.

Regarding the Section IV.E requirement to charge market rates for conversion, we have reviewed TENEX's contracts and contract amendments submitted to the record covering sales and exports during the POR and find no evidence of non-compliance with this provision.²³ Commerce also preliminarily finds TENEX to be in compliance with Section V.C and the SAI regarding the requirements that Russian Uranium Products may enter the United States if: 1) sold pursuant to a Commerce-approved contract; 2) accompanied by a valid export license, export certificate, and purchase/delivery order showing the specific product and tails assays, as applicable; and 3) not in excess of the export limits. Commerce has reviewed TENEX's shipment approval documentation covering exports to the United States during the POR and preliminarily finds TENEX to have met its obligations under Section V.C and the SAI.²⁴ In particular, we note that all shipments entered the United States during the POR under Commerce-approved contracts and were within the Section IV.B.1 export limits. Furthermore, each submission of shipment documentation submitted to Commerce during the POR contained the required export license, export certificate(s), and valid purchase/delivery order showing the specific product and tails assays, as applicable, pursuant to Section V.C(1)-(3).²⁵ Each set of Section IV shipment documentation submitted by TENEX during the POR also contained the required anti-circumvention statements, as required by Section VII.D and the SAI, certifying: 1) the country(ies) of origin of the ore and applicable origin of conversion, enrichment, and fabrication; and 2) that the uranium products were not obtained under any arrangement, swap, or other transaction designed to circumvent the export limits or the Domenici Amendment.²⁶ Furthermore, Section IV.H shipment documentation submitted during the POR contained the additional certifications required under that provision, as applicable. Therefore, Commerce preliminarily finds no evidence of non-compliance with the shipment approval requirements of Section V.C and the SAI during the POR.

Regarding the requirement that any contract, or contract amendment, for the sale of Russian Uranium Products under Section IV.B for exportation to the United States be submitted to Commerce for approval pursuant to Section V.F and Appendix 2 of the Agreement and to the SAI, Commerce preliminarily finds TENEX to be in compliance. Commerce has reviewed TENEX's list of contracts and contract amendments applicable to sales and exports of Russian Uranium Products during the POR provided in its initial questionnaire response.²⁷ We have also reviewed the submissions to Commerce on the record of this administrative review requesting approval of contracts applicable to sales and exports during the POR, as well as Commerce's corresponding contract approval memoranda, and preliminarily find TENEX to be in compliance with the contract approval requirements of the Agreement and the SAI.²⁸ Based on record evidence, we find that TENEX submitted each initial contract to Commerce for approval, and

²³ *Id.* at 22-24 and Exhibits TX-05, TX-08, TX-09, and TX-10.

²⁴ *Id.* at 33-38 and Exhibit TX-07.

²⁵ *Id.* at Exhibit TX-07.

²⁶ *Id.*

²⁷ *Id.* at 28-31.

²⁸ *Id.* at Exhibit TX-05.

Commerce in turn granted approval, whether conditionally or unconditionally, applicable to all sales and exports during the POR.²⁹ We also preliminarily find TENEX to have complied with the requirements of Appendix 2 of the Agreement by having submitted the required documentation to accompany each request for initial contract approval.³⁰ Similarly, Commerce has reviewed information on the record and preliminarily finds TENEX to be in compliance with the requirements of the Agreement and the SAI to submit contract amendments to Commerce for approval that involved a change in a contract quantity already approved.³¹ However, we note that not all contract amendments that concern changes to material terms such as pricing or estimated delivery dates were submitted by TENEX to Commerce for review, as required in the SAI, during the POR.³² Furthermore, though we preliminarily find TENEX to be in compliance with Section V.F and the SAI based on information on the record, Commerce has requested clarifying information with regard to certain contracts, contract amendments, and side letters applicable to sales and exports during the POR in a supplemental questionnaire to TENEX, the response for which will be due to Commerce after these preliminary results.

Finally, with regard to the returned feed certification requirements outlined by Commerce in its contract approval memoranda, we preliminarily find TENEX to be in compliance with these requirements during the POR. We have reviewed TENEX's shipment approval documentation provided on the record of this review,³³ reviewed the natural uranium feed reports in TENEX's Master Export Schedules,³⁴ and preliminarily find no evidence of non-compliance by TENEX with regard to submission of returned feed certifications to Commerce and timely export of returned feed from the United States during the POR.

TENEX-USA

Based on record evidence, Commerce preliminarily finds TENEX's affiliate TENEX-USA to be in compliance with the Agreement and the SAI during the POR. As described above, and noted by TENEX-USA in its initial questionnaire response,³⁵ TENEX allocates the Agreement's annual export limits for its own sales and sales through its affiliated and unaffiliated resellers, for which we preliminarily find TENEX to be in compliance. We have reviewed TENEX-USA's questionnaire responses³⁶ and preliminarily find no evidence of non-compliance, on the part of TENEX-USA, with the Agreement's Section IV export limits.

²⁹ *Id.* at 28-31 and Exhibit TX-05.

³⁰ *Id.* at Exhibit TX-05.

³¹ *Id.*

³² *Id.* at 32 and Exhibit TX-15. TENEX, in its IQR, notes this failure to submit certain contract amendments to Commerce for review that contain changes to material price terms and notes that the contract amendments in question were submitted to Commerce in its supplemental questionnaire response on the record of the 2016-2017 administrative review, provided on the record of this administrative review by TENEX in its August 30, 2019 submission of relevant information to the record of this administrative review from the record of the 2016-2017 administrative review.

³³ *Id.* at Exhibit TX-07.

³⁴ *Id.* at Exhibit TX-03.

³⁵ See TENEX-USA's July 24, 2019 Initial Questionnaire Response (TENEX-USA July 24 IQR) at 19.

³⁶ *Id.* and TENEX-USA's October 2, 2019 Supplemental Questionnaire Response (TENEX-USA October 2 SQR).

Regarding the shipment approval and contract approval requirements of Sections V.C and V.F of the Agreement and the SAI, TENEX-USA notes in its initial questionnaire response that it resells in the United States Russian Uranium Products supplied by and purchased from TENEX.³⁷ Furthermore, TENEX-USA states that it did not submit either contracts, contract amendments, or shipment approvals to Commerce during the POR and refers to TENEX's initial questionnaire response for this information.³⁸ We have reviewed the information submitted by TENEX and TENEX-USA in their respective questionnaire responses and preliminarily find no evidence of non-compliance, on behalf of TENEX-USA, with Sections V.C, V.F, and VII.D of the Agreement, the SAI, and the returned feed certification requirements outlined in Commerce's contract approval memoranda with respect to TENEX-USA's sales of Russian Uranium Products in the United States during the POR.

Nukem

Based on record evidence, we preliminarily find unaffiliated reseller Nukem to be in compliance with the terms of the Agreement and the SAI during the POR. As described above, TENEX allocates the Agreement's annual export limits for its own sales and sales through its affiliated and unaffiliated resellers, for which we preliminarily find TENEX to be in compliance. We preliminarily find no evidence of non-compliance with the Section IV export limits by Nukem during the POR. Commerce has reviewed the information submitted by Nukem in its initial questionnaire response pertaining to its sales of Russian Uranium Products to the United States during the POR.³⁹ As Nukem states, it is not a direct exporter of Russian Uranium Products to the United States and instead purchases Russian Uranium Products from TENEX to sell to its customers.⁴⁰ Therefore, as Nukem notes, TENEX is the entity that requests approval of contract quantities and shipments from Commerce.⁴¹ In Commerce's review of Nukem's sales information during the POR, in conjunction with a review of applicable contract approval requests and shipment approval documentation in TENEX's own initial questionnaire response, we preliminarily find no evidence of non-compliance by Nukem with Sections IV, V.C, V.F, and VII.D of the Agreement, with the SAI, and with the returned feed certification requirements outlined in Commerce's contract approval memoranda.

Centrus

Based on record evidence, Commerce preliminarily finds Centrus to be in compliance with the terms of the Agreement and the SAI during the POR, although, Commerce intends to continue examining after the issuance of these preliminary results certain clarifying information to be requested from Centrus in a supplemental questionnaire.⁴² As discussed above, TENEX allocates the Agreement's annual export limits for its own sales and sales through its affiliated

³⁷ *Id.* at 1 and 7.

³⁸ *Id.* at 14 and 16.

³⁹ See Nukem's July 24, 2019 Initial Questionnaire Response (Nukem July 24 IQR).

⁴⁰ *Id.* at 9 and 19.

⁴¹ *Id.* at 19 and 17.

⁴² Commerce intends to issue a supplemental questionnaire to Centrus after the release of these preliminary results and will consider any further new factual information, and rebuttal factual information, provided by parties in the context of its post-preliminary analysis.

and unaffiliated resellers. With regard to Centrus, the Enriched Product Transitional Supply Contract (TSC), signed between USEC and TENEX, gives Centrus the “right to use a portion of the total quota available” under the Agreement.⁴³ Centrus describes its own process for ensuring compliance with the amount of quota allocated to it by TENEX.⁴⁴ Commerce has reviewed information submitted by Centrus and preliminarily finds no evidence of non-compliance by Centrus with respect to the Agreement’s export limits.

Regarding the Section V.C and SAI requirements for Russian Uranium Products entering the United States, Commerce preliminarily finds Centrus to be in compliance with these provisions during the POR. Centrus notes, in its initial questionnaire response, that the TSC includes provisions that require compliance with the terms of the Agreement.⁴⁵ In addition, Centrus states that it takes title, possession, and risk of loss of Russian Uranium Products purchased from TENEX at the point of delivery in St. Petersburg, Russia.⁴⁶ Unlike other resellers for which TENEX directly exports Russian Uranium Products to the United States, Centrus notes that it is responsible for shipping Russian Uranium Products purchased from TENEX to the United States.⁴⁷ Therefore, Centrus is responsible for compliance with the shipment approval requirements of Section V.C of the Agreement and the SAI. Commerce has reviewed Centrus’s shipment approval documentation on the record covering exports to the United States during the POR and preliminarily finds Centrus to have met its obligations under Section V.C and the SAI.⁴⁸ We note that each submission of shipment documentation submitted to Commerce during the POR contained the required export license, export certificate(s), and valid purchase/delivery order showing the specific product and tails assays, as applicable, pursuant to Section V.C(1)-(3).⁴⁹ Each set of shipment documentation submitted by Centrus also contained the required anti-circumvention statements, as required by Section VII.D and the SAI, certifying: 1) the country(ies) of origin of the ore and applicable origin of conversion, enrichment, and fabrication; and 2) that the uranium products were not obtained under any arrangement, swap, or other transaction designed to circumvent the export limits or the Domenici Amendment.⁵⁰ Therefore, Commerce preliminarily finds no evidence of non-compliance by Centrus during the POR with regard to the shipment approval requirements of Section V.C and the SAI.

Regarding the contract, and contract amendment, approval requirements of Section V.F and Appendix 2 of the Agreement and the SAI, Commerce preliminarily finds Centrus to be in compliance. We have reviewed the list of contracts and contract amendments applicable to sales and exports of Russian Uranium Products during the POR provided by Centrus in its initial questionnaire response.⁵¹ We have also reviewed the submissions to Commerce on the record requesting approval of contracts and contract amendments applicable to sales and exports under Section IV.B during the POR, as well as Commerce’s corresponding contract and contract

⁴³ *Id.* at 5.

⁴⁴ *Id.* at 46-47.

⁴⁵ *See* Centrus’s July 24, 2019 Initial Questionnaire Response (Centrus July 24 IQR) at 2-5, 47, and Exhibit 2a.

⁴⁶ *Id.* at 23.

⁴⁷ *Id.* at 19 and 23.

⁴⁸ *Id.* at Exhibits 14 and 15.

⁴⁹ *Id.* at Exhibit 14.

⁵⁰ *Id.*

⁵¹ *Id.* at Exhibit 7.

amendment approval memoranda, and preliminarily find Centrus to be in compliance with the contract approval requirements of the Agreement and the SAI.⁵² Based on record evidence, we find that Centrus submitted each initial contract and each contract amendment to Commerce for approval, and Commerce in turn granted approval, whether conditionally or unconditionally, applicable to all sales and exports during the POR.⁵³ We also preliminarily find Centrus to have complied with the requirements of Appendix 2 of the Agreement by having submitted the required documentation to accompany each request for contract approval.⁵⁴

Finally, with regard to the returned feed certification requirements outlined by Commerce in its contract approval memoranda, we preliminarily find Centrus to be in compliance with these requirements during the POR. We have reviewed Centrus's shipment approval documentation provided on the record of this review⁵⁵ and preliminarily find no evidence of non-compliance by Centrus with regard to submission of returned feed certifications to Commerce during the POR.

B. Status of the Agreement

As discussed above, pursuant to section 734(l) of the Act, Commerce must ensure that effective monitoring of the Agreement is practicable, that the Agreement is in the public interest, and that the Agreement "will prevent the suppression or undercutting of price levels of domestic products by imports of the merchandise under investigation." Commerce preliminarily finds that effective monitoring of the Agreement continues to be practicable.

The Agreement and subsequent SAI guidance provide numerous tools for Commerce to effectively monitor compliance with the export limits, both under Section IV.B.1 (domestic consumption) and Section IV.H (re-export), for Russian Uranium Products. In order to monitor and enforce the Section IV.B.1 export limits, for example, Commerce reviews and approves every contract and contract amendment submitted for approval, including initially counting the maximum amounts of Russian Uranium Products that could be imported under a contract against the available quota in the applicable export limit years. At the time shipments of Russian Uranium Products under Commerce-approved Section IV.B.1 contracts arrive at the U.S. border for entry, Commerce reviews shipment approval documentation required by Section V.C and the SAI, accounts for the actual quantities imported under the export limits, and approves the shipments by sending an instruction to U.S. Customs and Border Protection. For re-export shipments under Section IV.H of the Agreement, Commerce undertakes a similar shipment approval process. Furthermore, as discussed above, the GOR issues export licenses and export certificates, in compliance with Section V of the Agreement, providing an important tool for ensuring that the exports of Russian Uranium Products do not exceed the respective export limits under Sections IV.B.1 and IV.H. With the available tools and procedures, including Commerce's approval of contracts, contract amendments, and incoming shipments, as applicable, Commerce strictly enforces the export limits under the Agreement's provisions and, in this way, can effectively monitor the Agreement.

⁵² *Id.* at Exhibit 12.

⁵³ *Id.* at Exhibits 7 and 12.

⁵⁴ *Id.* at Exhibit 12.

⁵⁵ *Id.* at Exhibit 14.

The Agreement and the SAI call for comprehensive reporting by specific parties with respect to both the Section IV.B.1 and Section IV.H provisions. Such reporting includes the Master Export Schedules submitted quarterly by ROSATOM and TENEX under Appendix 3 of the Agreement; the natural uranium feed deferral reports provided semi-annually by Centrus; and various other reports provided on a regular basis by TENEX and Centrus with respect to Sections IV.H or IV.B, as applicable. Commerce's monitoring of the Agreement is enhanced by means of such reporting, as is the continued stability and predictability created by the Agreement. Further, Section VII of the Agreement provides anti-circumvention provisions which prohibit any arrangements, swaps, or other exchanges designed to circumvent the export limitations established by the Agreement. This provision allows Commerce to ensure there is no circumvention of the Agreement and enhances Commerce's ability to effectively monitor the Agreement.

The responses to Commerce's questionnaires demonstrate that the Agreement is being monitored effectively. As discussed above, in this administrative review, Commerce has found respondents to be in compliance with not only the contract, contract amendment, and shipment approval requirements of Sections V.C and V.F and the SAI but also the reporting requirements in Appendix 2 and Appendix 3 of the Agreement and the SAI. The structure of the Agreement, combined with the requirements of the SAI and Commerce's contract, contract amendment, and shipment approval memoranda, provide Commerce with strong tools to monitor compliance with the Agreement and establish corresponding procedures, such as the reporting requirements in Appendix 3 for example, that ensure ROSATOM and its affiliates will restrict their sales and exports in compliance with the Agreement's export limits. Therefore, we preliminarily find that the Agreement continues to meet the statutory requirement of being able to be effectively monitored.

Regarding the public interest and price suppression or undercutting statutory requirements, LES has alleged in this administrative review that the scheduled termination of the Agreement and the underlying antidumping duty investigation on December 31, 2020 are not in the public interest and are causing, and will continue to cause, price suppression and undercutting in the U.S. market.⁵⁶ LES argues that termination of the Agreement and underlying investigation are against the public interest as these actions would negatively affect U.S. national and energy security and it would be contrary to U.S. law for petitioners to retroactively revoke their petition.⁵⁷ Furthermore, the scheduled termination of the Agreement, LES contends, is failing to prevent price suppression or undercutting as market participants have already begun contracting for post-2020 deliveries which: 1) would not fall under the discipline of the Agreement; and 2) affect the current market as "long-term contracts drive pricing in the nuclear fuel cycle."⁵⁸ Counter to LES, Centrus argues that the scheduled termination of the Agreement and underlying investigation are in the public interest and that there is no evidence on the record that imports of Russian Uranium Products undercut or suppressed U.S. market prices during the POR.⁵⁹

⁵⁶ See Letter from LES, "Uranium from the Russian Federation: Pre-Preliminary Comments of LES" (November 25, 2019) at 2.

⁵⁷ *Id.* at 10-12.

⁵⁸ *Id.* at 3.

⁵⁹ See Letter from Centrus, "Uranium from the Russian Federation: Pre-Preliminary Comments" (November 27, 2019) at 9 and 18.

In light of interested parties' comments to date, the voluminous information on the record of this administrative review and from the previous administrative review still under consideration, and the complex nature of these issues, we find that we require additional time and information in order to complete our examination of whether the Agreement continues to meet the statutory requirements, particularly since interested parties still have the opportunity to submit new factual information and comments on information and supplemental questionnaire responses received, and still to be received, on the record.

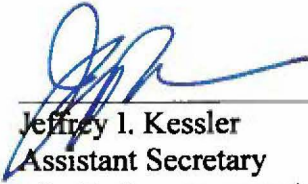
Before Commerce can reach a final determination on these key issues, we need additional information and time to analyze the information already received and to be received. After reviewing the initial and supplemental questionnaire responses received from respondents thus far, we preliminarily find no evidence of non-compliance with the terms of the Agreement and with the SAI by respondents during the POR. As noted above, however, Commerce has requested certain clarifying information from TENEX in a supplemental questionnaire and intends to issue a supplemental questionnaire to Centrus. As these responses, and any interested party submissions of rebuttal new factual information, will be received after issuance of these preliminary results, we intend to continue our examination of compliance in a post-preliminary analysis. Further, Commerce needs more time to examine related new factual information and comments received, and to be received, from interested parties on the broader issues related to whether the Agreement remains in the public interest and whether it continues to prevent price suppression and undercutting. Therefore, we intend to continue our examination after the issuance of these preliminary results in order to reach a full preliminary determination on whether the Agreement has been complied with during the POR and whether the Agreement continues to meet the statutory requirements set forth in section 734(l) of the Act.

V. Recommendation

Based on the record evidence discussed above, we recommend preliminarily finding that ROSATOM and its affiliates TENEX and TENEX-USA, as well as unaffiliated resellers Nukem and Centrus, all subject to individual examination in this review, have been in compliance with the terms of the Agreement. However, after the issuance of these preliminary results, we are continuing our examination of the current status of, and compliance with the Agreement, including whether the Agreement continues to meet the statutory requirements, as set forth in section 734(l) of the Act, after these preliminary results. Further, we recommend, once Commerce has obtained and reviewed supplemental information required to complete its examination, that a post-preliminary analysis be released as soon as practicable. If this recommendation is accepted, we will publish the preliminary results of review in the *Federal Register*.

Agree

Disagree



Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

December 10, 2019

Date