DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–818]

Notice of Final Determination of Sales at Less Than Fair Value: Low Enriched Uranium From France

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final determinations of sales at less than fair value.

EFFECTIVE DATE: December 21, 2001.

FOR FURTHER INFORMATION CONTACT: Victoria Schepker or Edward Easton, at (202) 482–1756 or (202) 482–3003, respectively; AD/CVD Enforcement, Office 5, Group II, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department of Commerce (Department) regulations refer to the regulations codified at 19 CFR part 351 (April 2000).

Final Determination

We determine that low enriched uranium (LEU) from France is being sold, or is likely to be sold, in the United States at less than fair value (LTFV), as provided in section 735 of the Act. The estimated margins of sales at LTFV are shown in the Continuation of Suspension of Liquidation section of this notice.

Case History

The preliminary determination in this investigation was published on July 13, 2001. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Low Enriched Uranium from France*, 66 FR 36743 (July 13, 2001) (*Preliminary Determination*). The petitioners [1] and the respondent, Eurodif, S.A. (Eurodif), the sole producer of the subject merchandise, and its owner, Compagnie Generale des Matieres Nucleaires (Cogema) (collectively, Cogema/Eurodif or the respondent), filed case briefs on antidumping methodological issues on September 28, 2001, and rebuttal briefs on October 9, 2001. A rebuttal brief was also filed by the Ad Hoc Utilities Group (Ad Hoc Utilities Group or AHUG).[2] A public hearing on the antidumping methodological issues was held on October 23, 2001.

On October 22 and 23, 2001, the petitioners, respondent, and the Ad Hoc Utilities Group filed briefs on common scope issues in the antidumping and countervailing duty investigations of low enriched uranium from France, Germany, the Netherlands and the United Kingdom. Rebuttal briefs on these common scope issues were filed on October 29, 2001, and a public hearing on the common scope issues was held on October 31, 2001. In response to a September 28, 2001 submission by the European Commission to Mr. Grant Aldonas, Under Secretary for International Trade, regarding the antidumping duty (AD) and countervailing duty (CVD) investigations of LEU from France, Germany, the Netherlands, and the United Kingdom, and Mr. Aldonas' November 7, 2001 reply to this letter and the November 22, 2001 submission from the European Commission, the petitioners, respondent and the Ad Hoc Utilities Group filed briefs that addressed the content of this correspondence.

This final determination was originally scheduled to be issued on November 26, 2001. On November 6, 2001, the Department tolled the final determination deadlines, until December 13, 2001, to accommodate a delayed verification and briefing and hearing schedule in the companion countervailing duty investigation, due to the events of September 11, 2001.

Amended Scope of Investigation

For purposes of this investigation, the product covered is all low enriched uranium (LEU). LEU is enriched uranium hexafluoride (UF_6) with a U^{235} product assay of less than 20 percent that has not been converted into another chemical form, such as UO_2, or fabricated into nuclear fuel assemblies, regardless of the means by which the LEU is produced (including LEU produced through the down-blending of highly enriched uranium).

Certain merchandise is outside the scope of this investigation. Specifically, this investigation does not cover enriched uranium hexafluoride with a U^{235} assay of 20 percent or greater, also known as highly enriched uranium. In addition, fabricated LEU is not covered by the scope of this investigation. For purposes of this investigation, fabricated uranium is defined as enriched uranium dioxide (UO_2), whether or not contained in nuclear fuel rods or assemblies. Natural uranium concentrates (U_3O_8) with a U^{235} concentration of no greater than 0.711 percent and natural uranium concentrates converted into uranium hexafluoride with a U^{235} concentration of no greater than 0.711 percent are not covered by the scope of this investigation.

Also excluded from these investigations is LEU owned by a foreign utility end-user and imported into the United States by or for such end-user solely for purposes of conversion by a U.S. fabricator into uranium dioxide (UO_2) and/or fabrication into fuel assemblies so long as the uranium dioxide and/or fuel assemblies deemed to incorporate such imported LEU (i) remain in the possession and control of the U.S. fabricator, the foreign end-user, or their designed transporter(s) while in U.S. customs territory, and (ii) are re-exported within eighteen (18) months of entry of the LEU for consumption by the end-user in a nuclear reactor outside the United States. Such entries must be accompanied by the certifications of the importer and end user.

The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 2844.20.0020. Subject merchandise may also enter under 2844.20.0030, 2844.20.0050, and 2844.40.00. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this proceeding is dispositive.

Scope Clarification

For further details, *see* Comment 2 of the ''*Issues and Decision Memorandum for the Antidumping Duty Investigation of Low Enriched Uranium from France*'' (*Decision Memorandum*) from Bernard T. Carreau, Deputy Assistant Secretary

[1] The petitioners in this investigation are USEC, Inc., and its wholly-owned subsidiary, United States Enrichment Corporation (collectively USEC); and the Paper Allied-Industrial, Chemical and Energy Workers International Union, AFL-CIO, CLC, Local 5–550 and Local 5–689 (collectively PACE).

[2] The members of the Ad Hoc Utilities Group are: Arizona Public Service Co., Carolina Power & Light Co., Dominion Generation, Duke Energy Corp., DTE Energy, Entergy Services, Inc., Exelon Corporation, First Energy Nuclear Operating Co., Florida Power Corp., Florida Power and Light Co., Nebraska Public Power District, Nuclear Management Co. LLC (on behalf of certain member companies), PPL Susquehanna LLC, PSEG Nuclear LLC, South Texas Project, Southern California Edison, Southern Nuclear Operating Co., Union Electric Company, and Wolf Creek Nuclear Operating Corp.

for Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, dated concurrently with this notice.

Goods Versus Services

Applicability of AD/CVD Law

The Preliminary Determination

In the preliminary determinations in the LEU investigations, we determined that all LEU entering the United States from Germany, the Netherlands, the United Kingdom, and France is subject to the AD and CVD investigations on LEU regardless of the way in which the sales for such merchandise were structured. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value: Low Enriched Uranium from Germany and the Netherlands; and Postponement of Final Determinations,* 66 FR 36748, 36750 (July 13, 2001). We based our preliminary determinations on several factors. First, we found, and no party disputed, that LEU entering the United States constitutes a good, the tangible yield of a manufacturing operation. Moreover, under the U.S. Customs regulations, we recognized that any item within a tariff category for the Harmonized Tariff System constitutes merchandise for customs purposes. *See* 19 CFR 141.4 (2000). In this case, LEU is normally classified under HTSUS 2844.20.0020, but also satisfies three other HTSUS classifications described as enriched uranium compounds, enriched uranium, and radioactive elements, isotopes, and compounds.

Second, in our preliminary determinations we found it to be a well-established fact 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. We found that no party disputes that the enrichment process constitutes substantial transformation of the uranium feedstock. We, therefore, preliminarily concluded that the LEU enriched and exported from Germany, the Netherlands, the United Kingdom and France are products of those respective countries, and are subject to these investigations.

Third, we found that there are significant volumes of LEU sold pursuant to contracts that expressly provide separate prices for SWU and feedstock (*i.e.,* contracts for enriched uranium product (EUP)), and that no party disputes that such sales constitute sales of subject merchandise. Rather, it is only those transactions in which utility companies obtain LEU through separate purchases of SWU and feedstock from separate entities that the Ad Hoc Utilities Group (AHUG) contends cannot be subject to the antidumping law. We preliminarily determined that there was little substantive commercial difference between the two types of transactions. We found that, simply because an unaffiliated customer purchases subject merchandise through two transactions, instead of a single transaction, does not mean that the merchandise entering the United States is not subject to the antidumping law.

Fourth, we preliminarily determined that, contrary to respondents' arguments, the tolling regulation does not provide a basis to exclude merchandise from the scope of an investigation. Rather, we found that the purpose of the tolling regulation is to identify the seller of the subject merchandise for purposes of establishing export price, constructed export price, and normal value. Thus, under the tolling regulation, the issue is not whether the LEU in question is subject to the antidumping law, but rather who is the seller of the subject merchandise for determining U.S. price and normal value or, more specifically, what is the appropriate way in which to value subject merchandise and foreign like product. To the extent that sales of subject merchandise are structured as two transactions, we stated that we would combine such transactions to obtain the relevant price of the subject merchandise.

Fifth, we preliminarily determined that enrichers are the sellers of LEU in both types of transactions—either as an exchange of SWU and uranium feedstock for cash, or as an exchange of SWU for cash and a swap of uranium feedstock. We preliminarily determined that regardless of whether the utility company pays in cash or in kind for the natural uranium content, the LEU is delivered under essentially the same contract terms, including warranties and guarantees pertaining to the complete LEU product. Second, enrichers do not use the uranium feedstock provided by the utility companies. Instead, the natural uranium is typically delivered shortly before, or even after, delivery of the LEU, making the delivery of such uranium a payment in kind for the natural uranium component of the LEU. Third, the utility company does not have control over the process used to produce the LEU that the utility company receives. Rather, the enricher controls the manufacture of LEU, as demonstrated by the fact that the product assay under the contract (transactional assay) differs from the product assay produced and delivered by the enricher (operational assay). The enricher makes the decision of the particular product based upon its own operational requirements and inputs costs. We preliminarily determined that, taken together, these facts indicate that enrichers are in effect selling LEU under both types of contractual arrangements.

Discussion

For these final determinations, we have concluded that all LEU from the investigated countries entering the United States for consumption is subject to the AD and CVD laws. We have carefully considered all comments received on this issue in response to our preliminary determinations and, for the reasons stated below, do not find persuasive the arguments that the LEU at issue is exempt from the AD and CVD laws.

For these final determinations, respondents and AHUG are joined by the EC in raising again the issue of whether the AD and CVD laws can be applied to goods sold pursuant to contracts for the provision of enrichment. Respondents and AHUG contend that, under such contracts, LEU is not sold to, or in, the importing country. Respondents contend that, for these transactions, enrichment companies sell enrichment services, which is a component of LEU. Accordingly, for those entries of LEU, sold pursuant to SWU contracts, these parties assert that the AD and CVD laws are not applicable because respondents are not selling subject merchandise and because there is no sale of subject merchandise in the United States.

In our view, respondents and AHUG have confused fundamental concepts concerning the application of the unfair trade laws. The AD and CVD laws were enacted to address trade in goods. Thus, respondents and AHUG have confused what is being sold in a particular transaction with what is being introduced into the commerce of the United States. The Department finds that the issue of whether merchandise entering the United States is subject to the AD and CVD laws depends upon whether the merchandise produced in, and exported from, a foreign country is introduced into the commerce of the United States.

In particular, the language of section 735(a)(1) of the Act states that ''the administering authority shall make a final determination of whether the subject merchandise is being, or is likely to be, sold in the United States at less than fair value.'' *See also* section 731(1) of the Act. We have consistently interpreted these provisions to pertain to merchandise from the investigated

country, and not to companies. *See Jia Farn Mfg. Co.* v. *United States*, 817 F. Supp. 969, 973 (CIT 1993) (''LTFV determinations and antidumping duty orders are rendered upon the subject merchandise from a certain country under the investigation.''). In other words, AD and CVD cases proceed *in rem* (*i.e.*, against the good as entered), rather than *in personam* (*i.e.*, against the parties to the import transaction).

Similarly, 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.'' We believe 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, 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.

Finally, we find, and no party disputes, that the LEU at issue enters into the commerce of the United States. Thus, the question of whether enrichers sell enrichment processing, as compared to LEU, is not relevant to the issue of whether the AD and CVD law is applicable. Rather, it is only relevant in these investigations for purposes of determining how to calculate the dumping margin and how to determine who is the producer/seller of subject merchandise.

In seeking to equate what is being sold with a service that is beyond the scope of the AD and CVD laws, respondents and AHUG assert that the enrichment of uranium is akin to the cleaning of a suit.[3] They contend that a person who takes a suit to a cleaner and picks up a clean suit is merely paying for the service of cleaning. In the case of enrichment, they assert, a person provides natural uranium to an enricher who returns enriched uranium and is paid for the services.

We agree that a cleaner merely provides a service for which one is paid. However, we disagree with the appropriateness of the analogy used for purposes of understanding what is occurring in these cases. In the case of cleaning services, the cleaner merely returns to its customer a cleaned suit; no substantial transformation takes place, and no merchandise is being produced. Enrichment of uranium, however, is a critical step in the production of nuclear fuel. The production of uranium in the nuclear fuel cycle consists of five stages: mining, milling, conversion, enrichment, and fabrication. A distinct product is produced at each stage. Milled uranium is converted into uranium hexafluoride. Uranium hexafluoride is used to produce enriched uranium. Enriched uranium is used to produce fuel rods. And fuel rods are used in nuclear-generating facilities to produce electricity. In the case of enrichment, it is uncontested that enrichment results in the production of two separate products: low enriched uranium and uranium tails (or depleted uranium which can be re-enriched to produce enriched uranium).

Respondents' and AHUG's reference to the term ''services'' in their arguments mischaracterizes the nature of the enrichment operations, and attempts to place a major manufacturing operation which produces merchandise squarely outside the realm of trade in goods, based solely upon the way in which particular sales of such merchandise are structured. We find, however, that regardless of whether the sale is structured as one of enrichment processing or LEU, in all cases the trade in LEU is a trade in goods, as the transactions in question result in the introduction of LEU into the commerce of the United States. Accordingly, the Department determines that all LEU produced in the investigated countries and entering the United States for consumption is subject to these investigations.

AHUG and respondents insist that the AD and CVD laws can only be applied where the sale of LEU occurs in a specific way (*i.e.*, where the merchandise is sold in a single transaction). AHUG further insists that the law is inapplicable because the utility companies cannot be considered the sellers of subject merchandise since they do not sell LEU, but instead sell electricity to U.S. consumers. Accordingly, AHUG and respondents conclude that the law cannot apply because no entity sells the subject merchandise.

We disagree. It does not matter whether the producer/exporter sold subject merchandise as subject merchandise, or whether the producer/exporter sold some input or manufacturing process that produced subject merchandise, as long as the result of the producer/exporter's activities is subject merchandise entering the commerce of the United States. The first, and threshold, question we must ask is whether the merchandise entering the United States is subject merchandise. All else flows from this. The second question is what transaction does the Department look at to determine export price.

Further, we believe Congress intended the law to be applicable where the subject merchandise enters the commerce of the United States, even where the transaction for such merchandise does not take the form of a simple, single chain of commerce involving a solitary manufacturer/exporter, a single sales price, and a single unaffiliated purchaser in the United States. Congress enacted specific provisions that demonstrate a clear intent to make merchandise entering the United States subject to the law even though the sale by the exporter to the first unaffiliated purchaser is not a sale of subject merchandise. In constructed export price transactions involving further manufacturing, for example, subject merchandise enters the United States, but through a process of further manufacturing, is often sold to the first unaffiliated purchaser in the form of non-subject merchandise. The form of the sale, however, does not prohibit the application of the law. To the contrary, to address those situations Congress enacted special provisions that require the Department to determine whether there are dumping margins and to apply duties, as appropriate, to such merchandise. *See* section 772(b) of Act. Even where the first sale to an unaffiliated purchaser is far removed from the subject merchandise that enters the commerce of the United States, such merchandise is covered under the law, and Congress enacted a specific provision establishing a basis for calculating export price. For example, where rollerchain constitutes the subject merchandise and enters the United States, but the first sale to an

[3] *See* Respondents' Joint Case Brief, at 38, 39; *see also* Petitioners' Rebuttal Brief at 26.

unaffiliated purchaser is the sale of a motorcycle that contains the rollerchain, the law is applicable to such entries of rollerchain. *See* section 772(e). *See also* SAA at 825.

While there is no specific statutory provision that dictates how the Department is to calculate the value of subject merchandise and the export price in the circumstances in these LEU investigations, the absence of such a provision does not render the law inapplicable where the facts demonstrate that the product in question enters into the commerce of the United States, as in this case.

Use of the Term ''Enrichment Services'' in Other Legal Contexts

In seeking to demonstrate that for the transactions at issue the enrichment companies provide enrichment services, perform a value-added service, and do not sell the subject merchandise, respondents contend that the U.S. government has advocated on behalf of USEC before U.S. domestic courts that enrichment contracts are contracts for services, and accordingly, that the Uniform Commercial Code (UCC), which only pertains to goods, does not apply to such contracts. Moreover, the parties contend that U.S. courts have ruled in USEC's favor, finding that the UCC did not apply to such transactions because they were sales contracts for services, not for goods. The parties conclude, therefore, that because the U.S. government has recognized that the sales in question are sales of services, to be consistent, the Department cannot apply the AD or CVD law to these transactions.

We do not view those determinations as relevant to the issue of whether LEU that enters the commerce of the United States is subject to the AD and CVD laws. The respondents and AHUG are mixing two entirely different statutory regimes, which play different roles and have different purposes. Other legal or regulatory regimes are not determinative of how the Department is to treat such transactions under the AD and CVD laws. For example, the court's finding in *Florida Power & Light Co.* v. *United States* that the transfer of title of uranium feedstock ''does not rise to the level of 'procurement' or 'disposal' of property'' was made in the specific context of determining the applicability of the Contract Disputes Act to government contracts and is not relevant, much less binding, for purposes of the application of the AD and CVD laws.[4] In *Barseback Kraft AB and Empress Nacional Del Urnaio, S.A.* v. *United States*, the court ruled that the UCC did not apply to the contracts at issue because the UCC does not apply to government contracts.[5] Moreover, the UCC addresses the rights and obligations of the parties to a specific contract, and is therefore not determinative of whether the overall trade is one involving goods or services. As a general principle, different terms can have different meanings under different statutes, and parties are entitled to make their claims pursuant to the case law and precedent of the particular relevant statute, even where those claims appear to be at odds with other claims made pursuant to the case law and precedent of another statute that has an entirely different purpose.

Tolling

Respondents and AHUG also seek to obtain an exemption under the law for the LEU at issue through the application of the Department's tolling regulation, set forth at 19 CFR 351.401(h).

We disagree with respondents'suggested interpretation for several reasons. First, we do not interpret section 351.401(h) of the Department's regulations to be relevant or applicable in determining whether merchandise entering the United States is subject to the AD and/or CVD laws. Instead, section 351.401, including subsection (h) on tolling, was intended to ''establish certain general rules that apply to the calculation of export price, constructed export price and normal value,'' and not for purposes of determining whether the AD and/or CVD laws are applicable. *See* 19 CFR 351.401(a) (2000). Our interpretation that the tolling regulation is intended solely for purposes of calculating dumping margins is further supported by the absence of any parallel provision on tolling in the CVD regulations.

Furthermore, in practice, we have never applied, nor relied upon, section 351.401(h) to exempt merchandise from AD proceedings, nor have we ever applied the provision in CVD proceedings. Moreover, our application of the tolling regulation in *SRAMs from Taiwan* does not support AHUG's or respondents' claim for exemption from the AD and CVD laws.[6] In that case, we applied the tolling regulation, seeking to determine which party made the relevant sale of subject merchandise. We found that the U.S. design house made sales of subject merchandise to unaffiliated purchasers in the United States, and therefore based our determination of U.S. price and normal value upon the transactions made by the U.S. design house. In that case, we applied AD duties to all entries of *SRAMs from Taiwan*, regardless of whether the U.S. design house or the Taiwan exporter made the sale of subject merchandise. Therefore, our decision in *SRAMs from Taiwan* establishes no basis for excluding the LEU in question from these investigations. Further analysis of the tolling regulation in these antidumping investigations for purposes of determining EP, CEP and NV is provided below.

Temporary Import Bonds, Foreign Trade Zones, and American Goods Returned

Respondents also cite the Department's treatment of subject merchandise entering the United States under Temporary Import Bonds (TIBs), into Foreign Trade Zones (FTZs), and as American Goods Returned, as examples of where subject merchandise enters the United States without being subject to duties, and to support their claim that the Department is not authorized to impose duties on subject merchandise unless there is a sale of such merchandise. However, these provisions cited by respondents are not instances in which the merchandise enters the United States for consumption without the imposition of AD and countervailing duties. By operation of law, goods entered under TIBs are prohibited from entering the United States for consumption. For FTZs, where the merchandise enters the United States for consumption, antidumping and countervailing duties are imposed. *See* 15 CFR 400.33(b)(2)(2000). The Department's treatment of goods entering FTZs or under TIBs is, therefore, consistent with the practice that the AD and CVD laws apply to goods that enter the commerce of the United States.

With respect to American Goods Returned (AGR), this provision is only applicable to merchandise that has not been substantially transformed in another country. AGR only applies to U.S. merchandise that is further manufactured in minor respects in another country, such that the product that is returned to the United States is not substantially transformed. As discussed below, this provision is not applicable in this case.

[4] 49 Fed. C1. 656 (2001) (No. 96–644C).

[5] 36 Fed. C1. 691 (1996), *aff'd* 121 F.3d 1475 (Fed. Cir. 1997).

[6] *Static Random Access Memory Semiconductors From Taiwan: Redetermination on Remand*, (May 2, 2000). The text of this determination can be found on the Department's Internet site at http://ia.ita.doc.gov/remands/00–48.htm.

Substantial Transformation and Country of Origin

Respondents also argue that the Department's country-of-origin rationale in this case is contrary to federal and international regulation of transactions involving uranium and enrichment services. Respondents state that the enrichment process does not wipe away the country of origin of the uranium; rather it remains the same for materials tracking purposes after enrichment as it was before enrichment. Respondents conclude that it is irrelevant that enrichment is a major manufacturing process and that the enrichment process constitutes substantial transformation of the uranium feedstock. Accordingly, respondents contend that the Department's conclusion as to the country of origin of the enrichment cannot be used to establish the country of origin of the unitary LEU, because LEU itself has two countries of origin, namely the country of origin of the uranium and that of the separative work unit.

We disagree. The Department's country-of-origin determinations are made pursuant to the agency's authority to determine the scope of its investigations and AD/CVD orders. In contrast, the federal and international regulation of transactions in uranium referred to by respondents reflect requirements adopted for purposes of non-proliferation. Thus, the Nuclear Regulatory Commission (NRC) tracks the origin of natural feedstock for the purpose of tracing the worldwide movement and ultimate disposition of the feedstock, while the U.S. Customs Service and the Department determine the country of origin for the merchandise entering the United States for purposes of tracking international commercial transactions and assessing duties. The NRC has no role in determining the country of origin for customs duty purposes. Moreover, the Department and the Customs Service make country-of-origin determinations for the product entering the United States, which in this case is LEU, not feedstock and SWU, as respondents suggest. Indeed, the Department has in the past determined in other proceedings covering uranium that the process of enrichment constitutes substantial transformation of the uranium, and therefore, that enrichment confers country of origin upon the product entering the United States for AD purposes.

In the current case, petitioners have indicated, and no party has disputed, that the enrichment of uranium accounts for approximately 60 percent of the value of the LEU entering the United States. We find that enrichment processing adds substantial value to the natural uranium and creates a new and different article of commerce and therefore confers a different country of origin upon the product for purposes of the AD and CVD law.

As a final matter, the unfair trade laws must be applicable to merchandise produced through contract manufacturing, just as they are applicable to merchandise manufactured by a single entity. To do otherwise would contravene the intent of Congress by undermining the effectiveness of the AD and CVD laws, which are designed to address practices of unfair trade in goods, as well as have profound implications for the international trading system as a whole. To the extent that contract manufacturing can be used to convert trade in goods into trade in so-called ''manufacturing services,'' the fundamental distinctions between goods and services would be eliminated, thereby exposing industries to injury by unfair trade practices without the remedy of the AD and CVD laws.

While the term ''enrichment services'' is common in the industry, the enrichment of uranium feedstock is no more a ''service,'' as that term is normally understood in the international trading community, than a production process that results in the manufacture of textiles, semiconductors, or corrosion-resistant steel. An importer of textiles who provides yarn to a textile manufacturer may view the transaction as nothing more than the purchase of ''weaving services.'' An importer of semiconductors who provides a patented design mask to a foundry to be pressed into a wafer for purposes of making a microchip may view such a transaction as nothing more than the purchase of ''pressing services.'' Similarly, an importer of corrosion-resistant steel who provides hot-rolled steel to a rolling mill may view the transaction as nothing more than the purchase of ''rolling and coating services.''

Yet, no matter what the purchaser chooses to call the transaction, and no matter what terms may be common in the industry, nothing can change the fundamental facts associated with all of these transactions. In each of these three cases, the purchaser has contracted out for a major production process that adds significant value to the input and that results in the substantial transformation of the input product into an entirely different manufactured product. We simply do not consider a major manufacturing process to be a ''service'' in the same sense that activities such as accounting, banking, insurance, transportation and legal counsel are considered by the international trading community to be services. Instead, we have always considered the output from manufacturing operations that result in subject merchandise being introduced into the commerce of the United States to be a good. The only questions we have grappled with in all these instances is who is the appropriate producer/seller of the merchandise and how to calculate export price and constructed export price.

While respondents and AHUG note that the practice in the uranium industry with respect to the transactions at issue was established long before the Department initiated these investigations, in the Department's view, the issue we are addressing is unfair trade practices. In the Department's view, nothing in the statute in any way indicates that Congress did not intend the AD and CVD laws to be applicable to merchandise based upon the way in which parties structure their transactions for such goods entering the commerce of the United States.

In sum, the application of the AD and CVD laws does not depend upon whether a producer/exporter sells an input to the subject merchandise, or the subject merchandise itself, but rather whether the activities of the producer/exporter result in the subject merchandise being introduced into the commerce of the United States.

Calculating Export Price, Constructed Export Price and Normal Value
Comments of the Parties

Respondents and AHUG contend that the Department must base its evaluation of dumping upon sales of the subject merchandise, which should reflect all elements of the merchandise's value. In terms of EP and CEP, these parties contend that the statute refers to the price at which the merchandise is sold by the producer or exporter. In addition, AHUG and respondents cite to the agency's decision in *SRAMs from Taiwan*, where the Department determined that the relevant sale under the tolling regulation must be the sale of subject merchandise reflecting the full value of such merchandise.

AHUG and respondents contend that the principles for determining which sales are relevant, as embodied in the tolling regulation and applied in the *SRAMs* case, are directly pertinent to deciding whether the sale of enrichment services by the respondents, and sales of services in general, can be treated as relevant for purposes of the AD law.

These parties assert that the Department should determine that: (1) The enrichment companies do not produce or take title to the uranium feedstock; rather it is supplied to them in bailment; (2) the sale of enrichment does not constitute the relevant sale for purposes of determining EP and CEP because the sales in question do not reflect the full value of the subject merchandise; and (3) the respondents are not in a position to set the price of the product because such companies have no control over the full cost of LEU for the transactions at issue.

Petitioners respond that the respondents and AHUG place heavy emphasis on the Department's ''relevant sale'' discussion in the *SRAMs* case, which petitioners contend was not intended to provide the guiding precedent in a case where the U.S. customer obtains the raw materials in one transaction and exchanges them for finished goods in another transaction, as in these investigations. The petitioners state that the respondents' and AHUG's position is erroneous in claiming that the Department's redetermination in *SRAMs* compels the conclusion that the enricher does not make the ''relevant sale'' because its price does not include all of the cost components of the finished product. Moreover, they add, even if SWU transactions were tolling transactions, the Department's tolling precedent does not establish that tolling transactions are outside the scope of the AD law.

Petitioners further contend that the fact that enrichers have control over the production process used to produce LEU under SWU contracts is relevant to the Department's determination with respect to the relevant sale, and contrary to the arguments raised by respondents and AHUG. Petitioners add that the issue of who controls the production of the finished product is a key factor in determining whether a party is a producer or toller.

With respect to the sales contracts, in their case brief, petitioners argued that the enrichers are actually sellers of LEU under both SWU and EUP contracts because in both arrangements the LEU is produced at an operating tails assay determined by the enricher, and therefore the enricher determines the amount of feed used, the amount of SWU actually applied, and the assay of the tails that will be produced. Petitioners further noted that, although a customer may designate a transactional tails assay in a SWU contract, but not in an EUP contract, there is not a significant difference. To illustrate this point, petitioners note that, by designating a transactional tails assay in a SWU contract, the customer determines only the amount of uranium feedstock it must provide to the enricher, and the amount per SWU the customer will pay. However, the customer's designation of the transactional tails assay does not determine the amount of uranium feedstock used by the enricher or the amount of SWU actually used by the enricher. Petitioners maintain that this is determined by the operational tails assay used by the enricher in the production of LEU. Petitioners assert that enrichers operate in essentially the same manner when they produce LEU under contracts where the customers supply the uranium feedstock as they do when they produce LEU from their own uranium feedstock.

Respondents reject petitioners' assertion that enrichers are actually sellers of LEU based upon the utility's delivery of uranium feed material as a payment-in-kind of uranium for the natural uranium component of the LEU. Respondents contend that enrichment services contracts contain detailed payment terms, and establish a price for the enrichment services sold, but do not contain any provisions for a payment of uranium in any form. Respondents add that it is virtually impossible for a payment-in-kind to occur because title does not pass to the enricher while the uranium is being enriched. Moreover, they explain that if a payment of uranium were occurring, the enricher would have to recognize it as a payment in its financial statements, which they assert does not occur, as the Department verified. Finally, respondents note that, by adopting the payment-in-kind theory, the Department would create a contractual arrangement between parties that completely differs from the contract itself.

Respondents further dispute the petitioners' conclusion that the enricher's return of different uranium rather than the exact material provided by the customer turns the transaction into a payment-in-kind. Respondents argue that, in determining whether a service is being performed, one must look at the essence of the transaction, and what the customer contracted to purchase, not what material is given back to the utility company. Furthermore, they state, because uranium is fungible, it makes no sense to require firms to identify each atom of uranium transported or processed. They note that, in a previous submission by the petitioners, USEC explicitly stated that uranium is a fungible commodity and that a fabricator may use its own inventory of enriched uranium or have enriched uranium delivered by other utility companies.

In addition, respondents contend that the Department did not base its dumping margin calculations upon the number of SWUs or the price per SWU, but instead treated the sale as if it were a sale of LEU. Respondents note that the Department's price calculation is based upon the quantity of uranium and the quantity of SWUs involved, which has no correlation with the agreed upon price per SWU. Respondents contend that in doing so the Department is changing the material terms fixed on the date of sale into one in which the terms are not fixed until a later date, and then unilaterally, by notification from the customer. Respondents contend that this violates the statutory requirement that the Department base its calculation on the actual costs reflected in the respondent's books and records, ignores the long-standing practice of making AD comparisons on a production or process-neutral basis, and uses a methodology that is completely contrary to the date of sale methodology applied by the Department in the same cases.

Respondents also note that the Department assigned a value to the natural uranium in the Preliminary Determinations where no price was provided, notwithstanding that the uranium provided by the utility company was not a cost to the enricher, and was not charged to the customer at all. Respondents contend that the surrogate uranium cost that the Department used violated the statutory requirement that it base its calculation on the actual costs incurred. They reiterate that the cost of the uranium to the enricher is zero. The respondents add that, although the uranium is processed, it is never paid for by the enricher, nor is it considered revenue, nor does it appear in the enricher's books. Therefore, they contend, uranium may not be treated as a cost when calculating constructed value.

AHUG also contends that the SWU contracts are unequivocally contracts for services, arguing that the enrichers hold the LEU as bailees for their utility customers, and if a particular delivery of LEU does not contain the exact same physical feed as that delivered by the utility, it contains feed delivered to the enricher by another utility. Therefore, AHUG asserts, the fungibility of the feed does not alter the actual commercial terms of the contracts or the nature of the transaction.

AHUG also disagrees with the Department's preliminary determination that there is little commercial difference between EUP and enrichment contracts. AHUG contends that enrichment

contracts require payment for enrichment services, and therefore, the contract does not reflect all elements of the value of the LEU delivered, as do the EUP contracts. Furthermore, AHUG contends that LEU production is usually arranged through three, not two transactions: the purchase of U3O8, a contract for conversion services, and a contract for enrichment services. In addition, AHUG argues that the Department proposes that U.S. utility contracts for the purchase of each of these components can be cumulated to derive an unfair price even in the absence of a sale of that LEU in the U.S. market that reflects all elements of its value. AHUG argues that this theory seems to state that when utility companies arrange for the production of LEU through these separate contracts, they are selling LEU to themselves. AHUG asserts that the Department is simultaneously attempting to attribute the utilities' transactions with the mining companies and the conversion service providers to the enrichers, even though the enrichers are not parties to those other transactions, have no control over the process, and receive none of the revenue from such sales. AHUG claims this theory cannot be supported.

Petitioners respond that, contrary to respondents' and AHUG's contentions, the contractual obligation of a customer in a SWU transaction to supply converted uranium is properly viewed as part of the *quid pro quo* that the customer must provide in order to obtain LEU from the enricher. Petitioners add that there can be no question that provision of the natural uranium is like the payment of the cash price for the SWU, a contractual obligation that must be met by a utility purchaser under a SWU contract in order to acquire a wholly new product, *i.e,* LEU from the enricher.

Petitioners note that, in the preliminary determinations, the Department identified three factors that petitioners had cited in support of its position. First, with respect to warranties and guarantees, LEU and EUP are delivered under essentially the same type contract. Second, the enrichers do not use the specific feedstock supplied by a particular customer to produce LEU for that customer. Third, the enrichers, not the utility companies, control the process used to produce the LEU under either type of contract. Petitioners state that, contrary to respondents' criticism of the ''essentially identical'' language in the preliminary determinations, the Department was not saying that SWU and EUP contracts were identical in every respect, nor is it necessary for the Department to so find.

Respondents reject petitioners' arguments on whether the enricher controls the production process, arguing that the relevant question is not whether enrichers own and control the production process for LEU, but rather whether the customer is purchasing a service. Respondents add that, because the quantity of uranium feedstock to be supplied by the customer is set pursuant to the contract, for a specified tails assay, the customer, not the enricher, has the control over its cost of supplying uranium feedstock.

Discussion

For these final determinations, we find that the enrichment companies are the only producers and exporters of the subject merchandise in these cases and, therefore, are the appropriate respondents for determining EP, CEP and NV. We will address the application of the Department's tolling regulation first, and then the nature and substance of the sales contracts at issue.[7]

Tolling

In establishing general rules for calculating EP, CEP and NV, we promulgated section 351.401(h) of our regulations to address the treatment of subcontractors and tolling operations under the AD law.[8] The purpose of the regulation is to enable the Department to identify the appropriate seller of subject merchandise and foreign like product for purposes of calculating EP, CEP and NV. *SRAMS from Taiwan* (''The company that is the first ''price setter'' for subject merchandise is also the company that is the producer of the merchandise.''). To that end, the tolling regulation states that the Department will not consider a toller or subcontractor to be a manufacturer or producer where the toller or subcontractor (i) does not acquire ownership of the subject merchandise; and (ii) does not control the sale of subject merchandise. 19 CFR 351.401(h) (2000).

Department Precedents

In *SRAMs from Taiwan,* the key case relied upon by the respondents and AHUG, we addressed the issue of whether producer status should be conferred upon the U.S. design house or the Taiwan foundry. In that case, the issue for the Department was which sale—the sale by the design house or the sale by the foundry—should be used to calculate EP and CEP. The Department stated that ''the ''relevant sale'' must be a sale by the company that owns the merchandise entirely, including all essential components, can dispose of the merchandise at its own discretion and, thus, controls the pricing of the merchandise and not merely the pricing of certain portions of production.'' *Id.* at 4.

In making the distinction between the sale by the foundry and the sale by the U.S. design house, we examined the role played by the foundries and design houses in the production of subject SRAMs, as well as the nature of the product produced. We found that the design was not only an important component of the product, but in fact defined the essence of the finished product. Because the design house not only developed the design, but also controlled how it was used in production by the foundry and the way that the products incorporating it were distributed in the marketplace, the Department concluded that the design house directed the production of the subject merchandise. *Id.* at 5. In our view, the role played by each entity as well as the nature of the product produced are important considerations in identifying the appropriate party as the producer of the subject merchandise.

In addition, since the enactment of the tolling regulation, the Department has also recognized that the regulation ''does not purport to address all aspects of an analysis of tolling arrangements.'' *Polyvinyl Alcohol from Taiwan: Final Results of Antidumping Duty Administrative Review,* 63 FR 32810, 82813 (June 16, 1998). In that case, we acknowledged that, in assessing whether a company is a producer, we are not restricted to the four corners of the sales contract. Moreover, we emphasized that we will make our decision as to whether a party is a producer or manufacturer for purposes of determining EP, CEP and NV based upon the totality of the circumstances. *Id.* In *Polyvinyl Alcohol from Taiwan,* we further recognized that, while examining the production activities of a party may not be decisive in every case, whether a party has engaged directly or indirectly in some aspect of production is an important consideration in identifying the appropriate party as the producer. *Id.* at 32814.

[7] This discussion addresses the concepts of export price, CEP, and who is the producer/exporter of the subject merchandise—all issues that are relevant under the antidumping law. We note that, under the countervailing duty law, section 771(5)(E)(iv) defines as a benefit the purchase of goods for more than adequate remuneration. Because we have determined that SWU contracts involve the purchase of LEU, we determine that these transactions constitute the purchase of goods.

[8] *Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27295, 27411 (May 19, 1997).

Enrichment Companies Are Producers/Exporters of LEU

In this case, we have determined that the enrichment companies are the producers and exporters of the subject merchandise for purposes of establishing EP, CEP and NV for several reasons. First, the enrichment process is such a significant operation that it establishes the fundamental character of LEU. Second, the enrichers control the production process to such an extent that they cannot be considered tollers in the traditional sense under the regulation. Third, utility companies do not maintain production facilities for the purpose of manufacturing subject merchandise. Finally, we find that the overall arrangement, even under the SWU contracts, is an arrangement for the purchase and sale of LEU. Each element is discussed further below. While no single factor is dispositive of our determination, on balance we have determined that the enrichment companies are the producers and exporters of the subject merchandise.

First, in this case it is the enricher who creates the essential character of the LEU. The enrichment process is not merely a finishing or completion operation, but is instead the most significant manufacturing operation involved in the production of LEU. Enrichment raises to a specified assay the level of U235 contained in the product. While the types of advanced technology used to perform this operation vary, without the enrichment process, one would not be able to separate the molecules necessary to produce LEU. Like the design mask in *SRAMs,* the enrichment process establishes the essential features of the LEU, creating a clearly distinct product from uranium feedstock. Moreover, the enrichment process imparts the essential character of the product, LEU, and delineates the purpose for which the product is to be used. As noted above, LEU is a product for which there is virtually no alternative commercial use but as part of the nuclear fuel cycle. Without the enrichment of natural uranium, LEU could not be produced.

There are currently two technologies in use to enrich feedstock, gaseous diffusion and centrifuge. Each method requires a huge financial investment in facilities and a technically skilled work force. In fact, the centrifuge technology has been years in the making and has required millions of dollars in research. So highly specialized is it, and so expensive to develop, that three major European governments combined their resources to develop the technology and create Urenco. While there are hundreds of nuclear facilities around the world that require LEU for fabrication into fuel rods in order to operate their reactors, there are only five major enrichers in the world. This underscores the technological sophistication and expense required to enrich uranium into LEU. Adding to the expense and complexity of establishing an enrichment operation is an intricate web of national and international regulatory regimes and oversight commissions.

Enrichment facilities are similar to design houses in the semiconductor industry. It is the patented design of the mask that incorporates the intellectual property, accounts for a substantial portion of the value, and constitutes the essence of the microchip. The design is what makes the chip and what gives it its unique function: storing memory and thus enabling a computer to operate. Just as the design imparts the essential characteristics of a microchip, enrichment imparts the essential characteristics of LEU.

Second, we find that enrichers not only have complete control over the enrichment process, but in fact control the level of usage of the natural uranium provided by the utility company. We are aware that SWU is universally defined as the standard measure of enrichment services. However, the definition of SWU further provides that it is the effort expended in separating a specified amount of feed into a specified amount of enriched uranium at a specified product assay and a specified amount of waste at a specified assay. In each of the contracts, while the amount of LEU being purchased is not expressly stated (unless it is an EUP contract) the product assay, tails assay, and number of SWU are specified. It is the precise combination of the product assay order and the number of SWUs specified in the SWU contract that results in an exact amount of LEU to be delivered over the life of the contract. The most important factor in determining whether the contract is fulfilled is whether the utilities receive the precise amount of LEU that results from the application of the SWU equation that is explicitly spelled out and agreed upon in the SWU contract. And it is this bottom line (*i.e.,* a precise amount of LEU delivered over the life of the contract) that forms the fundamental nature of the agreement between buyer and seller in a SWU contract. With this understanding in mind, the enricher then has extraordinary leeway in determining the precise combination of SWU and feedstock to be used in the production of the LEU required by the SWU contract. The enricher's decision will depend upon such factors as the relative costs of electricity, feedstock, even the market price of ''SWU,'' which, for all intents and purposes, trades like a commodity. As the record reflects, enrichers therefore run their facilities in a manner that they determine is most efficient.

For example, an enricher, in fulfillment of a SWU contract, may actually use more or less natural uranium and more or less SWU than is provided for in the contract (and by the utility customer). The enricher has complete control over these important production decisions. The utility company, on the other hand, provides the specifications and receives a product, as specified in the contract through the application of the SWU equation. Thus, the utility company obtains no more control over the production process than any customer who orders custom-made merchandise would obtain. In our view, the enricher has extensive control over the production process, and complete control over the amount of SWU or feed to be used in any given transaction. The extensive control further demonstrates that the enricher is not acting in a tolling capacity for the transactions at issue.

Third, in this case, the U.S. utility companies do not maintain production facilities for the purpose of manufacturing subject merchandise. Unlike the U.S. design house in *SRAMs from Taiwan,* but like the U.S. importer in *Polyvinyl Alcohol from Taiwan,* the U.S. utility companies perform no manufacturing function whatsoever with respect to the production of LEU. These companies have no LEU manufacturing operations; no capital investment in production facilities; no employees dedicated to manufacturing LEU; and add no value to the product through the performance of manufacturing operations. Most important, we find that the utility companies are the only purchasers of LEU and can only obtain LEU from enrichment companies. By contrast, enrichment companies' sole activity is to produce LEU for use by utility companies.

Finally, we find that the overall arrangement under both types of contracts is, in effect, an arrangement for the purchase and sale of LEU. The parties have made a comprehensive comparison of the terms of the contracts for SWU and EUP, arguing that the terms of the contract demonstrate that the contracts designated as SWU sales are not, in fact, sales of LEU. While we recognize that the provision of uranium feedstock may not be a payment-in-kind in the formal sense under these

contracts, we maintain that the arrangement between buyer and seller in a SWU contract nonetheless is dedicated to the delivery of LEU, and critical to the trade in LEU. In reaching this conclusion, we have looked beyond the four corners of the contract and have examined the totality of the circumstances surrounding the transactions in deciding which sale is a valid representation of subject merchandise.

The Nature of the SWU Contract

In this case, based upon the way in which the industry produces and sells LEU, we find that the overall arrangement between the parties indicates that enrichment companies are engaged in selling, and utility companies are engaged in purchasing, LEU. These transactions may be construed differently in other contexts, such as for purposes of taxation, or for purposes of establishing the liabilities of the parties to the contract. However, for purposes of calculating a price for LEU, based upon our examination of the overall circumstances of the arrangement under both types of contracts, we find that the contracts designated as SWU contracts are functionally equivalent to those designated as EUP transactions.

First, both types of transactions have one fundamental objective—the delivery of LEU at a specific time and location, with a specific product assay, as agreed upon in the contract, under the same warranties and guarantees that apply to all LEU delivered by respondents. Second, utility customers are not concerned with how LEU is produced or the amount of work expended (SWU) to produce such LEU. Instead, utility customers are interested in obtaining a specific quantity of a standardized product at a specified product assay. This pertains to both types of transactions. Indeed, SWU contracts are based upon a set formula that provides the utility company with a fixed quantity of LEU over the life of the contract.

Further, under both types of contracts, because the LEU is produced at an operating tails assay determined by the enricher, the enricher ultimately determines how much uranium feed is used, the amount of SWU actually applied, and the assay of the tails that will be produced. Thus, it is clear that enrichers not only exercise the same level of control over the production process for both types of contracts, but also perform the exact same manufacturing operations, regardless of whether the sale was made under a SWU contract or an EUP contract.

In addition, there are provisions in SWU contracts that further demonstrate that the underlying arrangement is designed to operate in much the same manner, regardless of the type of contract, and that whether the enricher or the utility company provides the uranium feedstock does not substantially alter that arrangement. These provisions are proprietary. *See, e.g.,* Urenco Business Proprietary Section A Response, Volume 1, Tab B1, Contract section F.3. Furthermore, for both types of contracts ownership of the LEU is only transferred to the utility customer upon delivery of the LEU. Consistent with this provision, for both types of transactions, the enricher incurs the risk of loss with respect to the LEU. In light of the above, therefore, we believe, as a practical matter, that the arrangement between the utility company and the enricher under a SWU contract is functionally equivalent to the arrangement under an EUP contract for purposes of determining EP and CEP.

Moreover, as discussed above, the enrichment companies engage in the most significant portion of the production of LEU, and thus the value of enrichment is beyond question the most significant element of value in determining the price of LEU. In addition, LEU, the subject merchandise, is the merchandise resulting from this production operation. Accordingly, we believe the pricing behavior of the enrichment companies in these transactions is relevant to the Department's determination of whether the LEU in question is introduced into the commerce of the United States at less than fair value.

Therefore, because the pricing behavior of the enrichers in these transactions is relevant to the Department's determination and because the arrangement between the utility company and the enricher under a SWU contract is functionally equivalent to the arrangement under an EUP contract for purposes of determining EP and CEP, we have included these sales in our determination of EP and CEP in these investigations.

In assigning a specific monetary value to the natural uranium component, we estimated the market value using the average price the enrichers charged their customers for natural uranium for LEU contracts. For SWU contracts, when comparing U.S. Price with Normal Value based on constructed value, we valued natural uranium using exactly the same value for both sides of the equation. For example, for any given shipment pursuant to a SWU contract we determined the quantity (*i.e.* kgs) of associated feed uranium by applying the industry standard formula for product and tails assay specified in the contract. We valued this quantity using POI average per-kg price for natural uranium charged by enrichers. This exact same amount was included in normal value.

Period of Investigation

The period of investigation (POI) is October 1, 1999, through September 30, 2000. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.,* December 2000).

Verification

As provided in section 782(i) of the Act, we conducted verification of the sales information submitted by Cogema/Eurodif from July 23 through July 27, 2001, in France, and from August 13 through August 16, 2001, in the United States. We conducted verification of the constructed value (CV) information submitted by Cogema/Eurodif from July 30 through August 3, 2001. We used standard verification procedures including examination of relevant accounting and production records, and original source documents provided by the respondent.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this antidumping proceeding are listed in the Appendix to this notice and addressed in the *Decision Memorandum* for this investigation, dated December 13, 2001, which is hereby adopted by this notice. The *Decision Memorandum* for this case is on file in room B–099 of the main Department of Commerce building. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the World Wide Web at http://ia.ita.doc.gov/frn/summary/list.htm. The paper and electronic versions of the *Decision Memorandum* are identical in content.

Changes Since the Preliminary Determination

Based on our findings at verification and analysis of comments received, we have made adjustments to the calculation methodology in calculating the final dumping margins in this proceeding. These adjustments are discussed in detail in the *Calculation Memorandum,* dated December 13, 2001. For the final determination, we made the following revisions:

(1) We adjusted the transportation insurance amounts to account for the respondent's clerical errors.

(2) We adjusted movement expenses and U.S. duty charges for certain

deliveries to correct the respondent's clerical errors.

(3) We revised the inventory carrying costs for various U.S. deliveries to account for the respondent's clerical errors.

(4) We adjusted the total cost of manufacturing reported in the U.S. sales database to be consistent with changes made to the total cost of manufacturing in the constructed value (CV).

(5) To reflect the opportunity cost of a particular contract provision exercised by one customer, we calculated an imputed expense and applied it to the indirect selling expense ratio of that customer, for all deliveries to the customer.

(6) Based on the respondent's revised calculation from verification, we adjusted the home market indirect selling expense ratio used to calculate indirect selling expenses added to CV.

(7) We recalculated the defluorination expenses included in CV based on the tails produced during the POI.

(8) We excluded purchased LEU from the calculation of the weighted-average cost of LEU produced in the POI.

(9) We recalculated the financial expense rate based on the financial statements of CEA Industrie, the entity that consolidates Cogema's accounts.

(10) We recalculated selling, general and administrative expenses to include certain research and development expenses.

Final Determination of Investigation

We determine that the following weighted-average percentage dumping margins exist for the period October 1, 1999, through September 30, 2000:

Manufacturer/exporter	Margin (percent)
Cogema/Eurodif	19.57
All Others	19.57

Continuation of Suspension of Liquidation

Pursuant to section 735(c)(1)(B) of the Act, we are instructing the U.S. Customs Service to continue to suspend liquidation of all entries of LEU from France that are entered, or withdrawn from warehouse, for consumption on or after July 13, 2001 (the date of publication of the *Preliminary Determination* in the **Federal Register**). The Customs Service shall continue to require a cash deposit or the posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown above. The suspension of liquidation instructions will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will determine, within 45 days, whether imports of subject merchandise are causing material injury, or threaten material injury, to an industry in the United States. If the ITC determines that material injury or threat of injury does not exist, the proceedings will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping order directing Customs Service officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: December 13, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix—Issues in Decision Memorandum

1. Common antidumping and countervailing duty scope issues
2. Amendment of the scope to exclude imported enriched uranium consumed in the conversion or fabrication of exported uranium
3. Double-counting the subsidy in the calculation of the dumping margin
4. Treatment of ''blended price'' contracts
5. Calculation of the less than fair value (LTFV) margin based on delivered and undelivered sales
6. Valuation of electricity as a component of low enriched (LEU)
7. Whether to collapse Eurodif and Cogema
8. Whether defluorination costs are at arm's length
9. Accrual for tails disposal
10. Calculation of a constructed export price (CEP) offset
11. Recalculation of inventory carrying costs
12. Imputing certain expenses to Cogema/Eurodif
13. Selling, general and administrative (SG&A) expenses
14. Financial expenses
15. Purchased product
16. Constructed value (CV) profit

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–412–820; A–421–808; A–428–828]

Notice of Final Determinations of Sales at Not Less Than Fair Value: Low Enriched Uranium From the United Kingdom, Germany and the Netherlands

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 21, 2001.

ACTION: Notice of final determinations of sales at not less than fair value.

FOR FURTHER INFORMATION CONTACT: Frank Thomson or James Terpstra, Office of AD/CVD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4793 or (202) 482–3965, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department of Commerce (Department) regulations refer to the regulations codified at 19 CFR part 351 (April 2000).

Final Determination

We determine that low-enriched uranium (LEU) from the United Kingdom, Germany and the Netherlands is not being sold, or is not likely to be sold, in the United States at less than fair value (LTFV), as provided in section 735 of the Act.

Case History

The preliminary determinations in these investigations was published on July 13, 2001. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Low Enriched Uranium From the United Kingdom; Preliminary Determinations of Sales at Not Less Than Fair Value: Low Enriched Uranium From Germany and the Netherlands; and Postponement of Final Determinations,* 66 FR 36748 (July 13, 2001) *(Preliminary Determinations).* The petitioners [1] and the respondents,

[1] The petitioners in these investigations are USEC, Inc. and its wholly-owned subsidiary, United States Enrichment Corporation (collectively