

**DEPARTMENT OF COMMERCE****International Trade Administration**

[(C-428-829); (C-421-809); (C-412-821)]

**Preliminary Results of Countervailing Duty Administrative Reviews: Low Enriched Uranium From Germany, the Netherlands, and the United Kingdom**

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

**SUMMARY:** The Department of Commerce (the Department) is conducting administrative reviews of the countervailing duty (CVD) orders on low enriched uranium from Germany, the Netherlands, and the United Kingdom for the period January 1, 2003, through December 31, 2003. For information on the net subsidy for the reviewed companies, please see the "Preliminary Results of Reviews" section of this notice. Interested parties are invited to comment on these preliminary results. (See the "Public Comment" section of this notice).

**EFFECTIVE DATE:** March 7, 2005.

**FOR FURTHER INFORMATION CONTACT:**

Darla Brown or Robert Copyak at (202) 482-2786, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:****Background**

On February 13, 2002, the Department published in the **Federal Register** the CVD orders on low enriched uranium from Germany, the Netherlands, and the United Kingdom. See *Notice of Amended Final Determinations and Notice of Countervailing Duty Orders: Low Enriched Uranium from Germany, the Netherlands and the United Kingdom*, 67 FR 6688 (February 13, 2002) (*Amended Final*). On February 3, 2004, the Department published a notice of opportunity to request an administrative review of these CVD orders. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 69 FR 5125 (February 3, 2004). On February 25, 2004, we received a timely request for review from Urenco Ltd. (Urenco), the producer and exporter of subject merchandise. We note that this request covered all subject merchandise produced by Urenco in Germany, the Netherlands, and the United Kingdom. On February 26, 2004, we received a timely request for review from

petitioners.<sup>1</sup> On March 26, 2004, the Department initiated administrative reviews of the CVD orders on low enriched uranium from Germany, the Netherlands, and the United Kingdom. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 69 FR 15788 (March 26, 2004).

On April 13, 2004, the Department issued a questionnaire to the Government of the United Kingdom (UKG) and Urenco (Capenhurst) Ltd. (UCL), Urenco's producer of subject merchandise in the United Kingdom. Also on April 13, 2004, the Department issued a separate questionnaire to the Government of the Netherlands (GON) and Urenco Nederland B.V. (UNL), Urenco's producer of subject merchandise in the Netherlands. On April 16, 2004, the Department issued a questionnaire to the Government of Germany (GOG) and Urenco Deutschland GmbH (UD), Urenco's producer of subject merchandise in Germany.

We received questionnaire responses from the GON, the UKG, UCL, and UNL on May 20, 2004, from the GOG on May 14, 2004, and from UD on May 24, 2004.

On October 19, 2004, we issued an extension of the due date for these preliminary results from October 31, 2004, to February 28, 2005. See *Low Enriched Uranium from France, Germany, the Netherlands, and the United Kingdom: Extension of Preliminary Results of Countervailing Duty Administrative Reviews*, 69 FR 61470 (October 19, 2004) (*Extension Notice*).

In accordance with 19 CFR 351.213(b), these reviews cover only those producers or exporters for which a review was specifically requested. The companies subject to these reviews are UD, UNL, UCL, Urenco Ltd., and Urenco Inc. These reviews cover four programs.

**Scope of the Order**

The product covered by these orders is all low enriched uranium (LEU). LEU is enriched uranium hexafluoride (UF<sub>6</sub>) with a U<sup>235</sup> product assay of less than 20 percent that has not been converted into another chemical form, such as UO<sub>2</sub>, 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 these orders. Specifically, these orders do not cover enriched uranium

hexafluoride with a U<sup>235</sup> assay of 20 percent or greater, also known as highly enriched uranium. In addition, fabricated LEU is not covered by the scope of these orders. For purposes of these orders, fabricated uranium is defined as enriched uranium dioxide (UO<sub>2</sub>), whether or not contained in nuclear fuel rods or assemblies. Natural uranium concentrates (U<sub>3</sub>O<sub>8</sub>) with a U<sup>235</sup> concentration of no greater than 0.711 percent and natural uranium concentrates converted into uranium hexafluoride with a U<sup>235</sup> concentration of no greater than 0.711 percent are not covered by the scope of these orders.

Also excluded from these orders 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<sub>2</sub>) 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 these orders is currently classifiable 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 is dispositive.

**Period of Review**

The period of review (POR) for these administrative reviews is January 1, 2003, through December 31, 2003.

**International Consortium**

In our *Notice of Final Affirmative Countervailing Duty Determinations: Low Enriched Uranium From Germany, the Netherlands, and the United Kingdom*, 66 FR 65903 (December 21, 2001) (*LEU Final*) and accompanying Issues and Decision Memorandum (LEU Decision Memo) at Comment 2: International Consortium Provision, we found that the Urenco Group operates as an international consortium within the meaning of section 701(d) of the Tariff Act of 1930, as amended (the Act). No new information or evidence of changed circumstances has been presented since

<sup>1</sup> Petitioners are the United States Enrichment Corporation (USEC) and USEC Inc.

the *LEU Final* which would persuade us to reconsider this conclusion. Therefore, we continue to find that the Urenco Group of companies constitutes an international consortium. Accordingly, we have continued to cumulate all countervailable subsidies received by the member companies from the GOG, the GON, and the UKG, pursuant to section 701(d) of the Act.

### Subsidies Valuation Information

#### Allocation Period

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

In the *LEU Final*, we derived an AUL of 10 years for the Urenco Group (see LEU Decision Memo at Comment 3: Average Useful Life). The AUL issue is currently subject to litigation related to the investigation. Because there has been no final and conclusive court decision changing the AUL, and no new information or evidence of changed circumstances has been submitted, for these reviews, we continue to apply the 10-year AUL that was calculated in the *LEU Final*.

### Programs Preliminarily Determined Not To Confer a Benefit From the Government of Germany

#### 1. Enrichment Technology Research and Development Program

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

technologies and to fund the research of lasers and other advanced technologies. The grant disbursements under this program were made during the years 1980 through 1993.

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

In the *LEU Final*, we determined that the assistance provided under this program constitutes countervailable subsidies within the meaning of section 771(5) of the Act. Specifically, we found that the grant disbursements constitute a financial contribution and confer a benefit, as described in sections 771(5)(B) and 771(5)(D)(i) of the Act. We further found that this program is specific under section 771(5A)(D)(i) of the Act because the provision of assistance under this program was limited to one company. In addition, we found that the program provided non-recurring benefits under section 351.524(c)(2) of the Department's regulations because the assistance was made pursuant to specific government agreements and was not provided under a program that would provide assistance on an ongoing basis from year to year. See LEU Decision Memo at the "Enrichment Technology Research and Development Program" section. No new information or evidence of changed circumstances has been presented to warrant reconsideration of this determination; therefore, for these preliminary results, we continue to determine that this program is countervailable.

In the first administrative reviews, we determined that grant disbursements made under this program prior to 1992, including the 1985 disbursement made

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

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

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

#### 2. Forgiveness of Centrifuge Enrichment Capacity Subsidies

In accordance with the "Risk Sharing Agreement" (RSA) and the "Profit Sharing Agreement" (PSA) signed between the GOG and Uranit, the GOG agreed to provide funds to UD to support the promotion of an uranium enrichment industry. These two agreements were signed on July 18, 1975, and the GOG provided a total of DM 338.3 million from 1975 to 1993 to Uranit in support of the Treaty of Almelo's goal of creating and promoting the enrichment industry.<sup>2</sup> Under the terms of the agreements, repayment of the funds was conditional and based upon the financial performance of the company. However, in no case was the amount of the total repayments to exceed twice the amount of the funds provided to UD by the GOG.

In 1987, Uranit signed a new agreement with the GOG. This

<sup>2</sup> In March 1970, the GOG, the GON, and the UKG signed the Treaty of Almelo, which became effective in July 1971. The purpose of the treaty was for the three governments to collaborate in the development and exploitation of the gas centrifuge process for producing enriched uranium. Prior to 1971, the centrifuge R&D programs in each country were independent.

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

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

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

In *2001–2002 LEU*, we determined that Urenco would not benefit from Forgiveness of Centrifuge Enrichment Capacity subsidies from the GOG after 2002 because the grants were fully allocated at the end of 2002. See *2001–2002 LEU Decision Memo* at Comment 3: Cash Deposit Rate for Future Urenco Imports. Therefore, we preliminarily determine that the grant has been fully allocated prior to the POR, and, therefore, no benefit was received under this program during the POR.

#### **Programs Preliminarily Determined To Be Not Used From the Government of the Netherlands**

##### *1. Wet Investeringsrekening Law (WIR)*

In the *LEU Final*, we found that the WIR program was not used. In the instant administrative reviews, we asked UNL if it received or used benefits under this program during the POR. UNL responded that it did not apply for, use, or receive benefits from the WIR program during the POR. Furthermore, UNL reported that the WIR program ended in 1988 and investment credits could only be claimed through the 1989 tax year. Therefore, we preliminarily find that the WIR was not used during the POR.

##### *2. Regional Investment Premium*

In the *Amended Final*, we found that, after correcting for a ministerial error in the *LEU Final*, the subsidy from the Regional Investment Program (IPR) was less than 0.5 percent of the Urenco Group’s combined sales and, in accordance with 19 CFR 351.524(b)(2), was allocable to the year of receipt (1985). As a result of this revision, the net subsidy for this program decreased from 0.03 percent *ad valorem* to 0.00 percent *ad valorem*. See *Amended Final*, 67 FR 6688. Moreover, in the instant reviews, UNL reported that it did not apply for nor did it use the IPR program during the POR. Therefore, we preliminarily determine that UNL did not use the IPR program during the POR.

#### **Programs From the Government of the United Kingdom**

We preliminarily determine that UCL neither received any subsidies nor benefitted from any subsidies during the POR.

#### **Preliminary Results of Reviews**

In accordance with 19 CFR 351.221(b)(4)(i), we calculated an individual subsidy rate for UD, UNL, UCL, Urenco Ltd., and Urenco Inc, the only producers/exporters subject to these administrative reviews, for the POR, *i.e.*, calendar year 2003. We

preliminarily determine that the total estimated net countervailable subsidy rate is 0.00 percent *ad valorem*.

If the final results of these reviews remain the same as these preliminary results, the Department intends to instruct U.S. Customs and Border Protection (CBP), within 15 days of publication of the final results of these reviews, to liquidate without regard to countervailing duties all shipments of subject merchandise from the producers/exporters under review, entered, or withdrawn from warehouse, for consumption during the POR. Should the final results of these reviews remain the same as these preliminary results, the Department also will instruct CBP not to collect cash deposits of estimated countervailing duties on all shipments of the subject merchandise from the reviewed entity, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of these reviews.

Because the Uruguay Round Agreements Act (URAA) replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2)(B) of the Act. The requested review will normally cover only those companies specifically named. See 19 CFR 351.213(b). Pursuant to 19 CFR 351.212(c), for all companies for which a review was *not* requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected, at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. See *Federal-Mogul Corporation and The Torrington Company v. United States*, 822 F. Supp. 782 (CIT 1993), and *Floral Trade Council v. United States*, 822 F. Supp. 766 (CIT 1993) (interpreting 19 CFR 353.22(e), the old antidumping regulation on automatic assessment, which is identical to the current regulation, 19 CFR 351.212(c)(1)(ii)). Therefore, the cash deposit rates for all companies except those covered by these reviews will be unchanged by the results of these reviews.

We will instruct CBP to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash

deposit rate that will be applied to a non-reviewed company covered by these orders will be the rate for that company established in the most recently completed administrative proceeding. *See Amended Final*, 67 FR 6688. These cash deposit rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested.

#### Public Comment

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within five days after the date of the public announcement of this notice. Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to these preliminary results. Unless otherwise indicated by the Department, case briefs must be submitted within 30 days after the publication of these preliminary results. Rebuttal briefs, which are limited to arguments raised in case briefs, must be submitted no later than five days after the time limit for filing case briefs, unless otherwise specified by the Department. Parties who submit argument in this proceeding are requested to submit with the argument: (1) A statement of the issue, and (2) a brief summary of the argument. Parties submitting case and/or rebuttal briefs are requested to provide the Department copies of the public version on disk. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f). Also, pursuant to 19 CFR 351.310, within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments to be raised in the case and rebuttal briefs. Unless the Secretary specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs.

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 351.309(c)(ii), are due. The Department will publish the final results of these administrative reviews, including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

These administrative reviews and this notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: February 28, 2005.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[C-427-819]

#### Preliminary Results of Countervailing Duty Administrative Review: Low Enriched Uranium From France

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

**SUMMARY:** The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty order on low enriched uranium from France for the period January 1, 2003, through December 31, 2003. For information on the net subsidy for the reviewed company, please see the "Preliminary Results of Review" section of this notice. Interested parties are invited to comment on these preliminary results. (See the "Public Comment" section of this notice).

**EFFECTIVE DATE:** March 7, 2005.

**FOR FURTHER INFORMATION CONTACT:**

Kristen Johnson at (202) 482-4793, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 4014, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:**

#### Background

On February 13, 2002, the Department published in the *Federal Register* the countervailing duty order on low enriched uranium from France. *See Amended Final Determination and Notice of Countervailing Duty Order: Low Enriched Uranium from France*, 67 FR 6689 (February 13, 2002) (*Amended LEU Final Determination*). On February 3, 2004, the Department published an opportunity to request an administrative review of this countervailing duty order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity to Request an Administrative Review*, 69 FR 5125 (February 3, 2004). We received a timely request for review of Eurodif S.A. (Eurodif)/Compagnie Generale Des Matieres Nucleaires (COGEMA), the producer/exporter of subject merchandise covered under this review

by both respondents and petitioners.<sup>1</sup> On March 26, 2004, the Department published the initiation of the administrative review of the countervailing duty order on low enriched uranium from France, covering the January 1, 2003, through December 31, 2003 period of review (POR). *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Revocation in Part*, 68 FR 15788 (March 26, 2004).

On April 21, 2004, the Department issued a questionnaire to the Government of France (GOF) and Eurodif/COGEMA. On June 1, 2004, the Department received questionnaire responses from the GOF and Eurodif/COGEMA. On October 19, 2004, the Department published in the *Federal Register* an extension of the deadline for the preliminary results. *See Low Enriched Uranium From France, Germany, the Netherlands, and the United Kingdom: Extension of Time Limit for Preliminary Results of Countervailing Duty Administrative Reviews*, 69 FR 61470 (October 19, 2004). On October 4, 2004, and January 13, 2005, we issued supplemental questionnaires to respondents. On November 1, 2004, and January 28, 2005, we received supplemental responses from respondents.

In accordance with 19 CFR 351.213(b), this review covers only those producers or exporters for which a review was specifically requested. The company subject to this review is Eurodif/COGEMA. This review covers two programs.

#### Scope of Order

The product covered by this order is all low enriched uranium (LEU). LEU is enriched uranium hexafluoride (UF<sub>6</sub>) with a U<sup>235</sup> product assay of less than 20 percent that has not been converted into another chemical form, such as UO<sub>2</sub>, 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 order. Specifically, this order does not cover enriched uranium hexafluoride with a U<sup>235</sup> assay of 20 percent or greater, also known as highly enriched uranium. In addition, fabricated LEU is not covered by the scope of this order. For purposes of this order, fabricated uranium is defined as enriched uranium dioxide (UO<sub>2</sub>), whether or not contained in nuclear fuel rods or assemblies. Natural uranium

<sup>1</sup> Petitioners are USEC Inc. and its wholly owned subsidiary, United States Enrichment Corporation.