UNITED STATES INTERNATIONAL TRADE COMMISSION

URANIUM FROM RUSSIA, UKRAINE, AND UZBEKISTAN
Investigations Nos. 731-TA-539-C, E, and F (Review)

DETERMINATIONS AND VIEWS OF THE COMMISSION
(USITC Publication No. 3334, August 2000)

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DETERMINATIONS

On the basis of the record[1] developed in the subject five-year reviews, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)) (the Act), that (1) termination of the suspended investigation on uranium from Russia would be likely to lead to continuation or recurrence of material injury in the United States within a reasonably foreseeable time; (2) revocation of the antidumping duty order on uranium from Ukraine would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time; and (3) termination of the suspended investigation on uranium from Uzbekistan would not be likely to lead to continuation or recurrence of material injury in the United States within a reasonably foreseeable time.

BACKGROUND

The Commission instituted these reviews on August 2, 1999 (64 F.R. 41965) and determined on November 4, 1999, that it would conduct full reviews (64 F.R. 62691, November 17, 1999). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* on January 24, 2000 (65 F.R. 3737). The hearing was held in Washington, DC, on June 13, 2000, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these reviews to the Secretary of Commerce on August 7, 2000. The views of the Commission are contained in USITC Publication 3334 (August 2000), entitled *Uranium from Russia, Ukraine and Uzbekistan: Investigations Nos. 731-TA-539-C, E and F (Review).*

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

VIEWS OF THE COMMISSION

Based on the record in these five-year reviews,[2] we determine under section 751(c) of the Tariff Act of 1930, as amended ("the Act"), that termination of the suspended investigation covering uranium from Russia would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time; and that termination of the suspended investigation covering uranium from Uzbekistan and revocation of the antidumping duty order covering uranium from Ukraine would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[3]

I. BACKGROUND

On December 23, 1991, the Commission determined that there was a reasonable indication that an industry in the United States was being materially injured by reason of imports of uranium from the U.S.S.R. that allegedly were being sold at less than fair value.[4] Two days later, the Soviet Union dissolved into separate republics. The Department of Commerce ("Commerce") and the Commission continued its respective investigations, with the 12 independent countries that occupied the territory of the former Soviet Union becoming the respondents in 12 separate investigations.[5] Commerce issued preliminary determinations against the newly independent countries in June 1992.[6] On October 16, 1992, Commerce entered into suspension agreements with the six Soviet successor countries (Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Ukraine, and Uzbekistan) that produced uranium.[7]

In early 1993, Tajikistan and Ukraine requested the termination of their suspension agreements. Accordingly, in April 1993, Commerce resumed the investigations of those countries and issued final affirmative determinations as to both of them.[8] The Commission resumed its final investigations under the name Uranium from Tajikistan and Ukraine, and issued a negative determination with respect to Tajikistan

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[2] For purposes of these determinations, we are disregarding the following new factual information, not included in the factual record which closed on July 14, 2000, which was submitted in final comments of the Russian Respondents of July 18, 2000: Attachment A (Affidavit of ***) and references to that affidavit in the text of the final comments, including the paragraph on pages 3 and 4.
See 19 U.S.C. § 1677m(g); 19 C.F.R. § 207.68(b).

[3] Vice Chairman Deanna Tanner Okun not participating.

[4] Uranium from U.S.S.R., Inv. No. 731-TA-539 (Preliminary) USITC Pub. 2471 (Dec. 1991) ("Soviet Uranium").

[5] 57 Fed. Reg. 11064 (Apr. 1, 1992).

[6] 57 Fed. Reg. 23380 (June 3, 1992).

[7] See, e.g., Agreement Suspending the Antidumping Investigation on Uranium from Russia (Oct. 16, 1992) ("Russian Suspension Agreement"), in 57 Fed. Reg. 49220, 49235 (Oct. 30, 1992) and Agreement Suspending the Antidumping Investigation on Uranium from Uzbekistan (Oct. 16, 1992) ("Uzbek Suspension Agreement"), in 57 Fed. Reg. 49220, 49255 (Oct. 30, 1992). Commerce also terminated the investigations against the remaining six countries that did not produce uranium on the grounds that there were no LTFV sales from those countries. 57 Fed. Reg. 48505 (Oct. 26, 1992).

[8] Uranium From Ukraine and Tajikistan, 58 Fed. Reg. 36640 (July 8, 1993) (final) ("Final LTFV Determination – Ukraine").

and an affirmative determination with respect to Ukraine in August 1993.[9] Commerce subsequently issued an antidumping duty order on imports of uranium from Ukraine.[10]

The suspension agreements against Kazakhstan, Kyrgyzstan, Russia, and Uzbekistan remained in effect, but were subject to a series of amendments that broadened the range of products subject to the agreements, gave the subject countries a larger quota for U.S. imports, and, in the case of Russia, made changes to correspond with the Russian HEU Agreement and the USEC Privatization Act.[11] One amendment made to both the Russian and Uzbek Suspension Agreements was to change the original termination date for the suspension agreement from October 15, 2000 to March 31, 2004 for the Russian Agreement, and October 12, 2004 for the Uzbekistan Agreement, as long as the Russian Federation or the Government of Uzbekistan have not been found to have violated the Agreements in any substantive manner.[12]

In early 1999, the suspension agreement with Kazakhstan was terminated at the request of the Government of Kazakhstan. As a result of the termination, Commerce and the Commission resumed their investigations, and the Commission reached a negative final determination on July 13, 1999.[13]

On August 2, 1999, the Commission instituted these reviews pursuant to section 751(c) of the Act to determine whether termination of the suspended investigations on uranium from Russia and Uzbekistan and revocation of the antidumping duty order on uranium from Ukraine would likely lead to continuation or recurrence of material injury.[14]

In five-year reviews, the Commission initially determines whether to conduct a full review (which would include a public hearing, the issuance of questionnaires, and other procedures) or an expedited review, as follows. First, the Commission determines whether individual responses of interested parties to the notice of institution are adequate. Second, based on those responses deemed individually adequate, the Commission determines whether the collective responses submitted by two groups of interested parties - domestic interested parties (producers, unions, trade associations, or worker groups) and respondent interested parties (importers, exporters, foreign producers, trade associations, or subject country governments) - demonstrate a sufficient willingness among each group to participate and provide information requested in a full review.[15] If the Commission finds the responses from both groups of interested parties to be adequate, or if other circumstances warrant, it will determine to conduct a full review.

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[9] Uranium From Tajikistan and Ukraine, Inv. Nos. 731-TA-539D-539E (Final), USITC Pub. 2669 (Aug. 1993) ("Uranium From Ukraine").

[10] 58 Fed. Reg. 45483 (Aug. 30, 1993).

[11] See, e.g., 59 Fed. Reg. 15373 (April 1, 1994) (Russia); 60 Fed. Reg. 55004 (Oct. 27, 1995)(Uzbekistan); 61 Fed. Reg. 56665 (Nov. 4, 1996) (Russia).

[12] 59 Fed. Reg. 15373 (April 1, 1994) (Russia); 60 Fed. Reg. 55004 (Oct. 27, 1995) (Uzbekistan). The Suspension Agreements indicate that Commerce's review and termination shall be conducted consistent with §353.25 (1994) (i.e., procedures for revocation of an order/termination of a suspension agreement), or as amended in §351.222 (1999), of the Department's regulations. 57 Fed. Reg. at 49240 and 49260 (Oct. 30, 1992).

[13] Uranium From Kazakhstan, 64 Fed. Reg. 10317 (Mar. 3, 1999) (notice of continuation of review); Uranium From the Republic of Kazakhstan, 64 Fed. Reg. 31179 (June 10, 1999) ("Final LTFV Determination – Kazakhstan"); Uranium from Kazakhstan, Inv. No. 731-TA-539A (Final), USITC Pub. 3213 (July 1999).

[14] 64 Fed. Reg. 41965 (Aug. 2, 1999). The Commission also instituted a review of the suspended investigation on uranium from Kyrgyzstan, but terminated that review pursuant to Commerce's notice that it was terminating its suspended investigation. 64 Fed. Reg. 61939 (Nov. 15, 1999).

[15] See 19 C.F.R. § 207.62(a); 63 Fed. Reg. 30599, 30602-05 (June 5, 1998).

In these reviews, the Commission received a response to the notice of institution from the Uranium Coalition that contained company-specific information submitted by domestic producers of uranium. The Uranium Coalition was comprised of domestic producers Rio Algom Mining Corporation ("Rio Algom"), Uranium Resources, Inc., ("URI"), and the United States Enrichment Corporation ("USEC"), and the Paper, Allied-Industrial, Chemical & Energy Workers International Union, AFL-CIO ("PACE"), a union representing the workers at production facilities owned by USEC and ConverDyn, a domestic producer that is not a member of the Coalition. In the review concerning Russia, the Commission received a joint response containing company-specific information for the Ministry of the Russian Federation for Atomic Energy ("Minatom") (the sole producer of uranium in Russia), AO Techsnabexport ("Tenex") (the sole exporter of uranium from Russia), and Globe Nuclear Service and Supply GNSS, Ltd. ("GNSS") (a related U.S. importer of Russian uranium), (collectively, "Russian Respondents"). In the review concerning Uzbekistan, the Commission received a joint response containing company-specific information for the Government of Uzbekistan and Navoi Mining and Metallurgical Combinat (the only producer of uranium in Uzbekistan) (collectively, "Uzbek Respondents"). The Commission also received a response from the Ad Hoc Utilities Group, a coalition of U.S. industrial users of uranium, which is a party to the proceeding, but not an interested party, as defined by the statute. The Commission did not receive a response from any respondent interested party in the review concerning Ukraine.

On November 4, 1999, the Commission determined that both the domestic and respondent interested party group responses to its notice of institution for the reviews concerning Russia and Uzbekistan were adequate. Pursuant to 19 U.S.C. § 1675(c)(5), the Commission decided to conduct a full review with regard to Russia and Uzbekistan. Because no respondent interested party responded for the review of uranium from Ukraine, the Commission determined that the respondent interested party group response for that review was inadequate. However, the Commission decided to conduct a full review of the order covering Ukraine to promote administrative efficiency in light of the Commission's decision to conduct full reviews with respect to Russia and Uzbekistan.[16]

The Uranium Coalition, consisting of the Ad Hoc Committee of Domestic Uranium Producers ("Ad Hoc Committee"),[17] PACE, and USEC, filed briefs and appeared at the hearing in opposition to revocation of the order and termination of the suspended investigations. The Russian Respondents filed briefs and appeared at the hearing in support of termination of the suspended Russian investigation. The Uzbek Respondents filed briefs and appeared at the hearing in support of termination of the suspended Uzbek investigation. The Ad Hoc Utilities Group filed briefs supporting revocation of the order and termination of the suspended investigations and appeared at the hearing.

II. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. Domestic Like Product

In making its determination under section 751(c), the Commission defines "the domestic like product" and the "industry."[18] The Act defines "domestic like product" as "a product which is like, or in

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[16] See Explanation of Commission Determination on Adequacy in Uranium from Russia, Ukraine, and Uzbekistan. See also 64 Fed. Reg. 62694 (Nov. 17, 1999).

[17] The Ad Hoc Committee consists of four uranium mining and milling companies and the sole uranium converter in the United States, ConverDyn.

[18] 19 U.S.C. § 1677(4)(A).

the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle."[19]

In its final full sunset review of the suspended Russian investigation, Commerce defined the scope of the review as the subject merchandise covered by the agreement suspending the antidumping investigation on uranium from the Russian Federation, including:

> natural uranium in the form of uranium ores and concentrates; natural uranium metal and natural uranium compounds; alloys, dispersions (including cermets), ceramic products and mixtures containing natural uranium or natural uranium compounds; uranium enriched in U^{235} and its compounds; alloys, dispersions (including cermets), ceramic products, and mixtures containing uranium enriched in U^{235} or compounds of uranium enriched in U^{235}; and any other forms of uranium within the same class or kind.
>
> In addition, Section III of the suspension agreement provides that uranium ore from Russia that is milled into U_3O_8 and/or converted into UF_6 in another country prior to direct and/or indirect importation into the United States is considered uranium from Russia and is subject to the terms of the Russian agreement, regardless of any subsequent modification or blending. . . .
>
> Under the terms of suspension agreement HEU is within the scope of this investigation, and HEU is covered by this Russian suspension agreement. (HEU means uranium enriched to 20 percent or greater in the isotope uranium-235.)[20]

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[19] 19 U.S.C. § 1677(10). See NEC Corp. v. Department of Commerce, 36 F. Supp.2d 380, 383 (CIT 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Torrington Co. v. United States, 747 F. Supp. 744, 749 n.3 (CIT 1990), aff'd, 938 F.2d 1278 (Fed. Cir. 1991). See also S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979).

[20] Commerce also stated regarding the scope of the Russian review:

> the second amendment to the Russian suspension agreement, on November 4, 1996, permitted, among other things, the sale in the United States of Russian low-enriched uranium ("LEU") derived from HEU and included within the scope of the suspension agreement Russian uranium which has been enriched in a third country prior to importation into the United States. According to the amendment, these modifications would remain in effect until October 3, 1998.
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> On August 6, 1999, USEC, Inc. and its subsidiary, United States Enrichment Corporation (collectively, "USEC") requested that the Department issue a scope ruling to clarify that enriched uranium located in Kazakhstan at the time of the dissolution of the Soviet Union is within the scope of the Russian suspension agreement. Respondent interested parties filed an opposition to the scope request on August 27, 1999. That scope request is pending before the Department at this time.

65 Fed. Reg. 41439, 41440-41441 (July 5, 2000).

Commerce's definition of the subject merchandise for each of the three reviews is similar with the primary exception that the definition for the Russian and Uzbek[21] reviews explicitly includes imports of HEU in the scope of review and the definition for the Ukrainian review[22] explicitly does not include HEU.[23] The scope of review for all three reviews clarifies that milling or conversion in third countries does not change the country of origin from that of the original country. The Uzbek and Russian suspension agreements also were amended to modify the scope to include the natural component of uranium enriched in a third country. This scope amendment has expired regarding the Russian review but still applies to the Uzbek review.

The subject merchandise is a radioactive metal used principally as fuel to generate electricity in nuclear power plants and secondarily as a fuel to propel naval vessels and as an active ingredient in atomic

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[21] In its final full sunset review of the suspended Uzbek investigation, Commerce defined the scope of the review as the subject merchandise covered by the agreement suspending the antidumping investigation on uranium from the Uzbekistan, including:

> natural uranium in the form of uranium ores and concentrates; natural uranium metal and natural uranium compounds; alloys, dispersions (including cermets), ceramic products and mixtures containing natural uranium or natural uranium compounds; uranium enriched in U^{235} and its compounds; alloys, dispersions (including cermets), ceramic products, and mixtures containing uranium enriched in U^{235} or compounds of uranium enriched in U^{235}; and any other forms of uranium within the same class or kind.
> . . . . The notice [suspending the original investigation] amended the scope of the investigation to include HEU. The suspension agreement provided that uranium ore from Uzbekistan that is milled into U_3O_8 and/or converted into UF_6 in another country prior to direct and/or indirect importation into the United States is considered uranium from Uzbekistan and is subject to the terms of the Agreement. . . .
> On October 13, 1995, the Department issued an amendment to the suspension agreement on uranium from Uzbekistan. Among other things, this amendment modifies the agreement to include Uzbek uranium enriched in a third country prior to importation into the United States.

65 Fed. Reg. 41441, 41442 (July 5, 2000).

[22] In its final expedited sunset review of the antidumping duty order on uranium from Ukraine, Commerce defined the subject merchandise as:

> Ukrainian natural uranium in the form of uranium ores and concentrates; natural uranium metal and natural uranium compounds; alloys, dispersions (including cermets), ceramic products, and mixtures containing natural uranium or natural uranium compounds; uranium enriched in U^{235} and its compounds; alloys, dispersions (including cermets), ceramic products and mixtures containing uranium enriched in U^{235} or compounds or uranium enriched in U^{235}. Low enriched uranium ("LEU") is included within the scope of the order; highly enriched uranium ("HEU") is not. LEU is uranium enriched in U^{235} to a level of up to 20 percent, while HEU is uranium enriched in U^{235} to a level of 20 percent or more. . . . The Department clarified, in the scope of the order that: "milling" or "conversion" performed in a third country does not change the country of origin for purposes of this order. Milling consists of processing uranium ore into uranium concentrate. Conversion consists of transforming uranium concentrate into natural uranium hexafluoride (UF_6). Since milling or conversion does not change the country of origin, uranium ore or concentrate of Ukrainian origin that is subsequently milled and/or converted in a third country will be considered of Ukrainian origin and subject to the antidumping duties.

65 Fed. Reg. 11552, 11553 (March 3, 2000).

[23] While HEU is included in the scope for both the Russian and Uzbek reviews, it is only an issue as discussed below for the Russian review because there is no HEU in Uzbekistan.

weaponry.[24] In processing uranium ore to a usable form as fuel in a nuclear reactor, uranium takes on four different forms and involves four successive stages of preparation. The entire traditional production process of transforming U_3O_8 into enriched UO_2 is known as the "uranium fuel cycle."[25] In the first stage, "concentrators" mine uranium ore and extract the uranium in a concentrated form of U_3O_8, resulting in a product known as "uranium concentrate."[26] In the second stage, "converters" transform the U_3O_8 into natural uranium hexafluoride (UF_6), which is a powder at room temperature but becomes a gas with relatively little addition of energy.[27] In the third stage, the "enricher" vaporizes the natural UF_6 and processes it using units of effort called "separative work units" ("SWU") to increase the percentage of U^{235} (the only naturally occurring uranium isotope that is easily fissionable), thereby producing enriched UF_6.[28] Enriched UF_6 (enriched uranium hexafluoride) is processed for use in nuclear power plants to a proportion of U^{235} in the uranium from 0.71 percent to 3-5 percent by weight (low-enriched uranium or LEU) and for use in nuclear weapons and nuclear propulsion to a proportion of U^{235} in uranium of 20 percent or more (highly-enriched uranium or HEU). The enriching process also produces a waste stream, or "tails," which is depleted in its natural concentration of U^{235}, but can be re-enriched with U^{235} and recycled into nuclear fuel.[29] In the fourth and final stage, "fabricators" convert the "enriched UF_6" into uranium dioxide (UO_2),[30] which they then pelletize and encase the pellets into protective metal sheaths, called fuel assembly rods, to meet the needs of specific nuclear power plants.[31] The UO_2 in powder or pellet form, in addition to the previous uranium forms, is part of the subject merchandise, but the fuel assembly rods are not.[32] LEU can also be produced by de-enriching or blending down surplus HEU, i.e., by diluting its concentration of U^{235} to LEU levels.

In the 1991 preliminary determination for the original investigation of Uranium from the U.S.S.R. and the 1993 final determination in Uranium from Ukraine, the Commission found that the five-factor semifinished product analysis dictated a single like product encompassing all four forms of uranium.[33] In

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[24] Confidential Staff Report ("CR") at I-7-I-13; Public Staff Report ("PR") at I-5 - I-9.

[25] CR/PR at II-1. Electric utilities have typically purchased the uranium concentrates, contracted with converters and enrichers to toll-produce the natural uranium hexafluoride (natural UF_6) and low-enriched uranium hexafluoride (LEU-HF) or enriched UF_6, and then contracted with fabricators both to toll-produce the LEU-HF into low-enriched uranium dioxide (LEU-DO) and pelletize this latter product, and to construct the fuel assemblies. Id.

[26] For the purposes of these reviews, we use the terms "uranium concentrate" and "U_3O_8" interchangeably. The concentrate accounts for about 31 percent of the total subject nuclear fuel costs. CR at I-9; PR at I-6-7.

[27] At this point, the uranium consists of several isotopes, which are forms of the uranium molecule that contain different numbers of neutrons. Conversion accounts for about 3 percent of total subject nuclear fuel costs. CR at I-10; PR at I-7.

[28] Enrichment represents about 59 percent of subject total nuclear fuel costs. CR at I-11; PR at I-8.

[29] Depleted uranium or uranium tails remain a large potential source of natural uranium. It has not been economically feasible for widespread commercial exploitation of the substantial supply of uranium tails, i.e., re-enrichment of the depleted uranium waste. Only Russia's enricher, Minatom, has re-enriched significant quantities of depleted uranium in recent years. CR at I-15; PR at I-10.

[30] Fabricators also may convert enriched UF_6 into a uranium nitrate, metal, or ceramic product. CR at I-12; PR at I-8. For the sake of simplicity, we refer to all of the fabricated forms of enriched uranium as UO_2.

[31] The converting and pelletizing process represents about 7 percent of the total cost of producing the subject product. CR at I-12; PR at I-9.

[32] See 65 Fed. Reg. at 41440-41441 (Russia); 65 Fed. Reg. at 41442 (Uzbekistan); and 65 Fed. Reg. at 11553 (Ukraine).

[33] Soviet Uranium, USITC Pub. 2471 at 8-9 (The Commission concluded "that the lack of significant independent uses for unenriched forms of uranium other than for nuclear fuel and the presence of the 'essential'

Uranium from Ukraine, the Commission evaluated whether there were two like products composed of enriched and unenriched uranium. It found that three of the factors favored a single like product: (1) that all forms of uranium were dedicated for use in the production of nuclear fuel; (2) that all forms shared the same essential characteristic, the presence of fissionable U^{235}; and (3) that there were no independent markets for the various forms of uranium. The Commission found that these three factors outweighed the two that militated for separate like products, namely: (1) that the enrichment step involved a more than nominal cost and added substantial value to natural UF_6, and (2) that the various forms of uranium were not interchangeable.[34]

The record indicates that the product itself has remained essentially unchanged since the original 1991 preliminary investigation of Uranium from the U.S.S.R. and the original 1993 final investigation of Uranium from Ukraine.[35] [36] The parties have presented no arguments and the record does not suggest a reason for revisiting the Commission's original determination of the domestic like product in the preliminary investigation or the final investigation involving Ukraine. We therefore define a single domestic like product consisting of all forms of uranium coextensive with the scope of review for each of the three reviews.[37]

The parties have raised two additional issues, which involve challenges to the definition of the scope of the review, particularly the scope of the Russian review. The two issues are: 1) the Russian Respondents contend that Commerce's inclusion of HEU in the scope is invalid and thus the Commission

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U^{235} isotope in all pertinent forms of uranium outweigh the countervailing criteria and support designation of a single like product coextensive with the articles under investigation." Id. at 8.) Uranium from Ukraine, USITC Pub. 2669 at 12. Vice Chairman Watson and Commissioner Nuzum dissented from the majority's like product determination in Uranium from Ukraine, deciding instead that there were two like products, consisting of HEU and uranium other than HEU. They voted in the negative with regard to HEU and in the affirmative with regard to LEU. Of the Commissioners who found a single like product covering all uranium, two voted in the affirmative, and two in the negative. Therefore, the final affirmative determination applied only to uranium other than HEU. Id. at 35-39 (separate views of Vice Chairman Watson and Commissioner Nuzum).

Likewise, in Uranium from Kazakhstan, the Commission found a single like product encompassing all four forms of uranium. The Commission considered and decided that fuel assemblies should be explicitly excluded from the like product. Uranium from Kazakhstan, Inv. No. 731-TA-539-A (Final), USITC Pub. 3213 at 6-8 (July 1999)(The Commission found that the factors favoring a single like product, especially the similarity of functions and the lack of independent markets among the forms of uranium, outweigh the factors suggesting multiple like products.).

[34] See Ukrainian Uranium, Pub. 2669 at 10-12.

[35] CR/PR at II-1. For example, the traditional production stages and successive forms of uranium in the LEU fuel cycle remain the same. Id. at II-1-2.

[36] While there has been a significant new alternative source of supply of LEU-HF produced directly by blending down HEU, and thus eliminating for this new source the first three stages of the fuel cycle, the dominant process by which electric utilities obtain LEU remains the four stage uranium fuel cycle. Blended down LEU-HF in the U.S. market is supplied largely under the terms of the Russian HEU Agreement with the United States, although ***. CR/PR at II-1 and II-2.

[37] We note that this domestic like product definition is broader than the scope of the Ukrainian review because it includes HEU, and the Ukrainian scope does not. However, while the domestic like product definition includes HEU, as well as other forms of uranium, HEU has not been produced during the period of review and thus there is no HEU data to include in the domestic industry. Thus, the difference in the domestic like product and Ukrainian scope of review definitions has no effect on our analysis of the actual data regarding the domestic industry since no HEU production data are included.

should disregard it;[38] [39] and 2) the Uranium Coalition maintains that uranium tails are included in the scope of review for all three reviews.[40]

While the parties' questions regarding the scope of review should be directed to Commerce, Commerce has yet to resolve these issues, and the Commission has no choice other than to use the plain language of Commerce's definition of the scope of review in considering any of the issues before it.[41] We briefly discuss each of these arguments below, although we note that they have little practical effect on the definition of the domestic like product and principally involve defining the potential likely volume of imports.

On the first issue regarding HEU, Commerce's scope definition for both the Russian and Uzbek reviews explicitly states that HEU is included.[42] It is contrary to law for the Commission to look behind Commerce's determination as to what merchandise is subject to review.[43] That, however, is exactly what the Russian Respondents would have the Commission do in urging the Commission to disregard Commerce's scope because they allege it is invalid. The Commission properly cannot look behind Commerce's definition. Moreover, this issue of whether HEU is in the scope and thus is equivalent domestic material within the domestic like product has little effect on the Commission's definition of the

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[38] While Commerce's definition of the scope of the Uzbek review includes HEU, as well as other forms of uranium, the Uzbek Respondents have not challenged this definition since there is no HEU inventory, nor capabilities to produce HEU in Uzbekistan; thus, whether HEU is or is not included in the scope is not an issue for the Uzbekistan review.

[39] The Russian Respondents contend that HEU is not within the scope of the suspended Russian investigation. These respondents acknowledge that "the Department of Commerce included HEU material within the scope of the suspended investigation," but charge that "this determination should be disregarded by the Commission." According to the Russian Respondents, "[t]he issue is not whether the Commission should look behind a valid scope determination of the Department, but whether there was any validity to that decision in the first instance." Russian Respondents' Posthearing Brief, Attachment H at 1-4.

[40] The Uranium Coalition contends that depleted uranium, or uranium "tails," are included within the scope of these reviews because the "scope definition does not define the scope of the subject merchandise based on the concentration level of U^{235}." Uranium Coalition's Prehearing Brief, Appendix A at n.2; Ad Hoc Committee's Posthearing Brief, Appendix A (Coalition's Response to Questions) at 8 and 9.

[41] Commerce indicated in its "Issues and Decision Memorandum," adopted in its notice of final results in both the Russian and Uzbek reviews, that it was not appropriate to evaluate scope issues or revise the scope language in the course of sunset proceedings. Issues and Decision Memorandum for the Sunset Review of Uranium from Russia; Final Results, from Jeffrey A. May, Director, Office of Policy, Import Administration to Troy H. Cribb, Acting Assistant Secretary for Import Administration, dated June 27, 2000 at 6; Issues and Decision Memorandum for the Sunset Review of Uranium from Uzbekistan; Final Results, from Jeffrey A. May, Director, Office of Policy, Import Administration to Troy H. Cribb, Acting Assistant Secretary for Import Administration, dated June 27, 2000 at 5.

[42] 65 Fed. Reg. at 41441 and 41442 (July 5, 2000).

[43] See Statement of Administration Action ("SAA"), H.R. Rep. No. 103-316, vol. I (1994) at 887. See e.g., NEC Corp., 36 F. Supp.2d at 383 (CIT 1998)("the Commission must accept the determination of Commerce as to the scope of the imported merchandise sold at less than fair value. . . ."); Goss Graphics, 33 F. Supp.2d at 1093 (ITA included certain presses in the class of merchandise sold at LTFV and Commission properly included it in its injury analysis); Algoma, 688 F. Supp. at 645 (CIT 1988)(ITC bases "its decision on affects of relevant imports from companies determined [by Commerce] to have sold the subject merchandise at LTFV."), aff'd 865 F. 2d 240 (Fed. Cir. 1988), cert. denied, 492 U.S. 919 (1989); Makita Corp., 974 F. Supp. at 783 (CIT 1997); Nippon Steel, 19 CIT at 467 (CIT 1995); United Engineering & Forging, 779 F. Supp. at 1391 (CIT 1991).

domestic product and industry because there is no U.S. production of HEU at the present time, only a large stockpiled surplus, ***.[44]

The implication of HEU's inclusion in or exclusion from the scope of the Russian review could have a significant effect on the likely volume of imports under consideration. The Russian Respondents' argument focuses on the fact that the importation of LEU blended down from HEU is governed by the Russian HEU Agreement and the USEC Privatization Act.[45] The language in the Russian Suspension Agreement, however, appears to indicate that where there is an overlap regarding product coverage between the Russian Suspension Agreement and the Russian HEU Agreement that raises a conflict in terms, the Russian HEU Agreement controls.[46] The Russian Suspension Agreement indicates that it covers HEU, and this language does not imply otherwise.[47] Finally, while the Russian HEU Agreement governs the blending down of 500 metric tons of Russian HEU for importation into the United States as LEU, any additional Russian HEU would not be covered by the Russian HEU Agreement at this time but would be covered by the Russian Suspension Agreement.

The second issue raised, whether the scope of review includes depleted uranium or uranium tails, makes little difference in practice as to whether it is included or not in our definition of the domestic like product. While stockpiles of this waste product of the enrichment process have accumulated in the United States and worldwide, it remains economically prohibitive to commercially exploit this waste product in the United States.[48] Thus, there is no production data on U.S. re-enrichment of uranium tails that could be included in the domestic industry data.[49] This scope issue, however, does have a bearing on the likely

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[44] CR at II-12 and n. 46; PR at II-8 and n.46.

[45] The Russian Respondents also argue that termination of the suspended investigation would be irrelevant to imports of LEU derived from Russian HEU because such imports are not controlled by the suspension agreement, but rather by the Russian HEU Agreement and the USEC Privatization Act. See also Ad Hoc Utilities Group's Posthearing Brief at 6-9. USEC, however, maintains that the "Russian Suspension Agreement is . . . a critical legal component in the success of the Russian HEU Agreement." USEC's Posthearing Brief at 12-13. USEC contends that "the HEU Agreement and the USEC Privatization Act have moderated the adverse price and volume effects that would have occurred if the Russian HEU Agreement material flooded the U.S. market unchecked, and the Russian Suspension Agreement has proven to be a flexible tool in accommodating these mechanisms." Id. at 12. According to USEC, "[i]f the Russian Suspension Agreement is terminated, aside from the material injury that would result, the HEU Agreement would also be vulnerable to the uncertainty of future trade action against unfairly priced uranium imports from the Russian Federation." Id. at 12, n.38.

[46] The Russian Suspension Agreement in fact explicitly states that:

> M.1. This Agreement in no way prevents the Russian Federation from selling directly or indirectly any or all of the HEU in existence at the time of the signing of this Agreement and/or low enriched uranium ("LEU") produced in Russia from this HEU to the DOE, its governmental successor, its contractors, assigns, or U.S. private parties acting in association with DOE or the U.S. Enrichment Corporation and in a manner not inconsistent with the Agreement between the United States of America and the Russian Federation concerning the disposition of HEU resulting from the dismantlement of nuclear weapons in Russia.

57 Fed. Reg. 49220, 49237 (Oct. 30, 1992). See also 65 Fed. Reg. at 41441 (July 5, 2000).

[47] Moreover, the Russian Suspension Agreement has been amended to be consistent with changes in the USEC Privatization Act, which governs sales of the natural uranium component (HEU feed) of the HEU-derived material under the Russian HEU Agreement; this amendment arguably would not have occurred if the Russian Suspension Agreement had no effect on the HEU derived product. See 61 Fed. Reg. 56665 (Nov. 4, 1996).

[48] CR at I-14 and I-15; PR at I-10.

[49] CR at II-4; PR at II-3.

production and supply of uranium in Russia. The Russian industry reportedly has been re-enriching uranium tails to use as a feed component (i.e., natural uranium) in its enrichment operations, including the HEU-to-LEU blend down operations.[50] While Commerce's scope of review in each of these reviews does not explicitly include depleted uranium, neither does it explicitly exclude it. The scope includes language regarding uranium compounds without reference to concentration levels that arguably could include depleted uranium.

Thus, we define the domestic like product coextensive with the scope of reviews for the each of the three reviews.

B. Domestic Industry

Section 771(4)(A) of the Act defines the relevant industry as the domestic "producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product."[51] In defining the domestic industry, the Commission's general practice has been to include in the industry producers of all domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market, provided that adequate production-related activity is conducted in the United States.[52] The Commission bases its analysis on a firm's production-related activities in the United States.[53]

U.S. producers of uranium are divided into four types of generally independent producers corresponding to the four successive processes in the uranium fuel cycle -- concentrators, converters, enrichers, and fabricators. There are five uranium concentrate producers, one converter (ConverDyn), one enricher (USEC), and four subject fabricators.[54] Except for the producers of uranium concentrates, the uranium producers at the other stages in the uranium cycle primarily provide only toll-services to further process uranium.[55] For the reasons discussed below and consistent with our domestic like product

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[50] CR at II-23; PR at II-14. See also Uranium Coalition's Prehearing Brief, Exhibit 14 at 1 and 2 (report in Nuclear Fuel of possible Urenco deal to sell uranium tails re-enriched by Russia under contract).

[51] 19 U.S.C. § 1677(4)(A).

[52] See, e.g., Uranium from Kazakhstan, Inv. No. 731-TA-539-A (Final), USITC Pub. 3213 at 8-9 (July 1999); Manganese Sulfate from the People's Republic of China, Inv. No. 731-TA-725 (Final), USITC Pub. 2932, at 5 & n.10 (Nov. 1995) ("the Commission has generally included toll producers that engage in sufficient production-related activity to be part of the domestic industry"). See, e.g., United States Steel Group v. United States, 873 F. Supp. 673, 682-83 (CIT 1994), aff'd, 96 F.3d 1352 (Fed. Cir. 1996).

[53] The Commission typically considers six factors: (1) the extent and source of a firm's capital investment; (2) the technical expertise involved in U.S. production activity; (3) the value added to the product in the United States; (4) employment levels; (5) the quantities and types of parts sourced in the United States; and (6) any other costs and activities in the United States leading to production of the like product. See Certain Cut-to-Length Steel Plate from France, India, Indonesia, Italy, Japan, and Korea, Inv. Nos. 701-TA-387-391 and 731-TA-816-821 (Final), USITC Pub. 3273 at 8-9 (Jan. 2000).

[54] CR at I-10-I-12 and III-1-III-5; PR at I-7 - I-9 and III-1 - III-3. Consolidations and closings have substantially reduced the number of operating concentrate producers in the United States from 15 in 1992 to 7 during the 1997-1999 period of review; two of the seven ceased production in 1999. The five remaining concentrate producers are: Cogema, Inc. ("Cogema"); Power Resources, Inc. ("Power Resources"); Rio Algom (one of the original petitioners); International Uranium; and Cotter. Id. at I-10, n.8. The four subject fabricators are: ABB; GE; Siemens; and Westinghouse. CR at I-12; PR at I-7. The U.S. production data in the record represents 100 percent of the U.S. industry. CR at I-21; PR at I-14.

[55] CR at II-7; PR at II-5. Electric utilities typically have purchased the uranium concentrates and then contracted with the converter, enricher, and fabricators to toll produce their stage of the process. Id. at II-1. The

determination, we find one domestic industry, consisting of all domestic producers of uranium, including concentrators, the converter, the enricher, and fabricators.

Two domestic industry issues have been raised in these reviews regarding (1) whether the U.S. fuel assembly fabricators should be included in the domestic industry, and (2) whether appropriate circumstances exist to exclude any related parties.

1. Domestic Producers to be Included in Definition of Domestic Industry

We have considered the Uranium Coalition's argument that "the Commission should exclude U.S. fabricators from the U.S. industry,"[56] also raised in Uranium from Kazakhstan, and again reject it.[57] The parties presented no new information and the record does not suggest a reason to revisit our decision to include fabricators in the domestic industry in the Kazak determination. The record in these reviews indicates that subject uranium processing by the fabricators represents about 7 percent of the total subject nuclear fuel costs, while conversion represents only 3 percent.[58] Moreover, the subject manufacturing operations, processing uranium into LEU-DO and pelletizing it, account for over half of the fabrication process for production of fuel assembly rods.[59] All enriched UF_6 or LEU-HF is sent to a fabricator to process it into LEU-DO and pelletize it for encapsulation in fuel assembly rods. Therefore, based on the available information, we include fabricators in the domestic industry.

2. Related Parties

In defining the domestic industry in these reviews, we have considered whether any U.S. producers of uranium should be excluded from the domestic industry pursuant to 19 U.S.C. § 1677(4)(B). That provision of the statute allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry for the purposes of an injury determination producers that are related to an exporter or

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converter, ConverDyn, prices its toll-services based on the number of kilograms of uranium in the converted uranium, while the enricher, USEC, prices its toll-service based on the SWU required to enrich the natural uranium. On the other hand, the fabricators toll-process uranium into LEU-DO and pelletize this product as part of the total contract agreement to produce fuel-rod assemblies. Id. at II-7 and II-8.

[56] In the alternative, the Coalition urged that the Commission should "at a minimum ***." Uranium Coalition's Prehearing Brief, Appendix A at 10-13; Ad Hoc Committee's Posthearing Brief, Appendix A (Coalition's Response to Questions) at 10-12. According to the Uzbek Respondents, the Uranium Coalition has "offered nothing new from the *Kazakh* case, therefore the Commission should follow this same analysis and find that fabricators are part of the domestic industry." Uzbek Respondents' Posthearing Brief, Response to Questions at 20-21; see also Ad Hoc Utilities Group's Posthearing Brief at 14.

[57] In the Kazakhstan determination, the Commission viewed fabricators as essentially toll producers that make subject merchandise (UO_2) for captive consumption in their production of nonsubject merchandise (fuel assemblies). In comparing the fabricator with the converter, which clearly is a member of the domestic industry, the Commission found that, based on the available information, the fabricators' costs of converting enriched UF_6 into UO_2 are at least as significant as the converter's cost of making natural UF_6. The Commission explicitly excluded fabricators' manufacturing operations for fuel assemblies, which are not part of the subject merchandise nor the domestic like product, from the domestic industry. Uranium from Kazakhstan, USITC Pub. 3213 at 8-9 (July 1999).

[58] CR at I-10 and I-12; PR at I-7 and I-9. Further, the fabricators employ about *** as many production workers as employed by the converter. Compare Table I-4 with Table I-6.

[59] CR at I-12; PR at I-9.

importer of the subject merchandise, or which are themselves importers.[60] Exclusion of such a producer is within the Commission's discretion based upon the facts presented in each case.[61]

In the original preliminary investigation regarding the U.S.S.R. and the final investigation regarding Ukraine, the Commission considered whether domestic producers which imported subject product should be excluded from the domestic industry, and found that appropriate circumstances to do so did not exist.[62] [63]

The Commission's questionnaires show that ***[64] Under the terms of the relevant suspension agreement, the natural component of these imports of *** involving Russian and Uzbek natural uranium are subject imports,[65] while the natural component of imports enriched in a third country involving

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[60] 19 U.S.C. § 1677(4)(B).

[61] See Sandvik AB v. United States, 721 F. Supp. 1322, 1331-32 (CIT 1989), aff'd without opinion, 904 F.2d 46 (Fed. Cir. 1990); Empire Plow Co. v. United States, 675 F. Supp. 1348, 1352 (CIT 1987). 19 U.S.C. § 1677(4)(B). The primary factors the Commission has examined in deciding whether appropriate circumstances exist to exclude a related party include:

> (1) the percentage of domestic production attributable to the importing producer;
> (2) the reason the U.S. producer has decided to import the product subject to investigation, i.e., whether the firm benefits from the LTFV sales or subsidies or whether the firm must import in order to enable it to continue production and compete in the U.S. market; and
> (3) the position of the related producer vis-a-vis the rest of the industry, i.e., whether inclusion or exclusion of the related party will skew the data for the rest of the industry.

See, e.g., Torrington Co. v. United States, 790 F. Supp. 1161, 1168 (CIT 1992), aff'd without opinion, 991 F.2d 809 (Fed. Cir. 1993). The Commission has also considered the ratio of import shipments to U.S. production for related producers and whether the primary interest of the related producer lies in domestic production or importation. See, e.g., Carbon Steel Butt-Weld Pipe Fittings from Brazil, China, Japan, Taiwan, and Thailand, Inv. Nos. 731-TA-308-310 and 520-521 (Review), USITC Pub. 3263 at 5-7 (Dec. 1999); Stainless Steel Plate from Sweden, Inv. No. AA1921-114 (Review), USITC Pub. 3204 at 10 (July 1999); Sugar from the European Union; Sugar from Belgium, France, and Germany; and Sugar and Syrups from Canada, Inv. Nos. 104-TAA-7, AA1921-198-200, and 731-TA-3 (Review), USITC Pub. 3238 at 14 (Sept. 1999). See also S. Rep. No. 249, 96th Cong., 1st Sess. 83 (1979).

[62] Soviet Uranium, USITC Pub. 2471 at 14-16; Uranium from Ukraine, USITC Pub. 2669 at 13-14.

[63] In these reviews, the Uranium Coalition alleges that Cogema and Power Resources, which are domestic concentrators, are related parties because their parent corporations, Cogema, S.A. and Cameco Corp. ("Cameco"), are involved in a joint venture to exploit and export natural uranium in Uzbekistan, and the importation and sale of subject merchandise from Russia, respectively. Uranium Coalition's Prehearing Brief, Appendix A at 9; Ad Hoc Committee's Posthearing Brief, Appendix A (Coalition's Response to Questions) at 13-15 and 18-19. In noting that the Uranium Coalition does not argue that Cogema should be excluded by virtue of its imports of uranium, the Uzbek Respondents allege that any such arguments regarding appropriate circumstances to exclude importers as related parties would be equally applicable to USEC. Uzbek Respondents' Posthearing Brief, Response to Questions at 21, n.13.

[64] CR at IV-2/PR at IV-1 and ***. *** of Russian natural uranium, valued at about ***. *** of Ukrainian natural uranium valued at about ***. *** of Uzbek natural uranium, valued at ***. Id.

[65] Under the terms of amendments to the Russian and Uzbek suspension agreements, enrichment in a third country did not confer origin from 1996 to 1998 for Russian natural uranium and from 1995 to the present for Uzbek natural uranium. 61 Fed. Reg. at 56666 (Nov. 1996) (Russia) and 60 Fed. Reg. at 55004 (Oct. 27, 1995) (Uzbekistan).

Ukrainian natural uranium are not subject imports under the terms of the antidumping duty order.[66] Under the terms of the Russian HEU Agreement, USEC imports LEU blended down in Russia from HEU and sells it directly to utilities.[67] Cogema and USEC are importers of subject merchandise and thus can be excluded from the industry if appropriate circumstances exist.

Cogema is a subsidiary of French enricher, Cogema, S.A. Although Cogema, S.A. is allegedly involved in an uranium mining joint-venture in Uzbekistan, the evidence shows that this project has not progressed beyond a feasibility study, which has found that project economically infeasible under current market conditions.[68] Thus, there is no evidence suggesting that ore production will commence in the imminent future.[69] ***, which is considered subject imported product under the terms of the suspension agreements as noted above. U.S. concentrate producer, Cogema, accounted for *** of U.S. concentrate producers' net sales by quantity from 1997 to 1999 and *** of net sales by value from 1997 to 1999.[70] ***.[71] [72] ***, it has made significant investments in the U.S. market and its interests appear to be as a domestic producer rather than importer.[73] Moreover, since its imports are for enriched uranium, a later stage product, which results in a reduced need for its earlier stage product, uranium concentrate, it would appear that rather than benefit from the imports, Cogema would be harmed by them. In fact, Cogema's net sales have *** to the other concentrate producers.[74]

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[66] Under the terms of the antidumping duty order covering imports of uranium from Ukraine, enrichment confers origin. While Commerce's scope of review for the Ukraine five-year review is silent on the issue of enrichment, the original antidumping duty order states: "The Department continues to regard enrichment of uranium as conferring country of origin." 58 Fed. Reg. 45483, 45484 (Aug. 30, 1993).

[67] The volume of enrichment services is measured in SWU, which measure the effort expended in the enrichment process. CR at I-11; PR at I-8. The SWU component of the enriched UF_6 (LEU) is the effective import since the natural UF_6 feed component of the imported LEU is credited/returned to the Russians and retains Russian ownership; the Russian feed may be sold separately under the provisions and quotas of the USEC Privatization Act and the Russian Suspension Agreement. USEC's imports of the SWU component of Russia's LEU blended down under the Russian HEU Agreement were: ***. Id. at IV-1 and ***. USEC is committed to purchasing 5.5 million SWU annually during 2000-2014 pursuant to the Russian HEU Agreement. CR at II-2 and III-4; PR at II-1 and III-2.

[68] Uzbek Respondents' Posthearing Brief, Response to Questions at 21-23. The Uzbek Respondents contend that "Cogema Inc.'s parent, Cogema S.A., has merely expressed an interest in establishing a joint venture in Uzbekistan, and has indicated that the uncompleted feasibility study for the Uzbek uranium reserves would be economically infeasible to proceed under current market conditions." They contend that "there has been absolutely no activity beyond the feasibility study." Id. at 22.

[69] Uzbek Respondents' Posthearing Brief, Response to Questions at 21-23.

[70] Cogema accounted for ***. Cogema accounted for ***. Calculated from CR/PR at Table III-2.

[71] CR at IV-2; PR at IV-1.

[72] Chairman Koplan and Commissioners Miller and Hillman do not find that Cogema is benefitting significantly from its current level of subject imports such that its inclusion in the domestic industry would affect their assessment of the industry's vulnerability. They also do not find that Cogema is likely to benefit substantially from subject imports if the order is revoked or the suspended investigations terminated such that Cogema's inclusion in the domestic industry would affect their assessment of the likelihood of material injury.

[73] Imports of enriched uranium were made from about *** of Uzbek and Russian natural uranium from 1997 to 1999 compared to Cogema's net sales by quantity of the concentrate it produced of *** from 1997 to 1999. CR at Table III-2 and IV-2; ***.

[74] CR/PR at Table III-2.

USEC is the sole U.S. enricher of uranium.[75] Since the enrichment process accounts for about 59 percent of the subject total nuclear fuel costs, USEC accounts for a substantial share of total domestic production of the domestic like product.[76] USEC imports Russian enriched uranium in its role as Executive Agent under the Russian HEU Agreement. As USEC indicates, "[i]ts imports of subject merchandise are made to support a nuclear non-proliferation agreement, not as a result of a commercial decision to buy the subject merchandise rather than make the domestic like product."[77] In fact the SWU that USEC is required to purchase under the Russian HEU Agreement have forced it to use correspondingly less of its enrichment capacity, resulting in higher unit production costs at the plants it operates.[78] While USEC's imports are substantial, USEC claims that it "is now and intends to remain a producer of enriched uranium."[79]

Finally, U.S. concentrate producer, Power Resources, is a subsidiary of Cameco, a converter in Canada.[80] Cameco is a member of the consortium of Cogema, Cameco, and Nukem which contracted with the Russians in 1999 to sell the Russian feed component, natural UF_6, resulting from the HEU to LEU shipments under the Russian HEU Agreement.[81] However, there is no evidence regarding Cameco's sales under this contract, i.e, whether the Russian feed has been imported into the United States.[82] Power Resources cannot be excluded from the domestic industry since there is no evidence that Cameco has imported Russian or other subject uranium into the United States.[83] Any future imports of further processed uranium are unlikely to have conveyed any benefit to Cameco's U.S. concentration operations, Power Resources, that would shield Power Resources from the effects of dumping or otherwise distort their financial performance.

Therefore, we find that Power Resources is not a related party and that appropriate circumstances do not exist to exclude Cogema or USEC from the domestic industry.

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[75] CR at II-17; PR at II-11.

[76] CR/PR at II-1.

[77] Ad Hoc Committee's Posthearing Brief, Appendix A (Coalition's Response to Questions) at 17. USEC stated that its does not import uranium from any other source, nor any Russian uranium except pursuant to the Russian HEU Agreement. Id. and Tr. at 82. The Uranium Coalition urged the Commission to consider "the reason that USEC is an importer of subject merchandise" and maintained that exclusion of USEC from the domestic industry would be inappropriate. Ad Hoc Committee's Posthearing Brief, Appendix A (Coalition's Response to Questions) at 16-18.

[78] CR at III-3; PR at III-2.

[79] Ad Hoc Committee's Posthearing Brief, Appendix A (Coalition's Response to Questions) at 17. USEC claims that it "is vigorously participating in this review in order to maintain its ability to do so [remain a producer]. Thus, while USEC's ratio of imports-to-production is high . . . , this is principally a function of the size of the Russian HEU Agreement rather than a commercial decision by USEC to supplant its own production." Id. at 18.

[80] CR at I-10; PR at I-7.

[81] CR at I-17, n.18; PR at I-11, n.18.

[82] The Uranium Coalition's allegation provided no additional evidence on this issue. Power Resources did not respond to the Commission's questionnaire in these reviews; its response in the Kazak investigation was used for these reviews. CR/PR at III-1, n.1.

[83] The Commission previously has decided that "control does not exist, absent evidence to the contrary, if the ownership interest is less than that necessary, in and of itself, to establish control." Certain Structural Steel Beams from Germany, Japan, Korea, and Spain, Inv. Nos. 701-TA-401 and 731-TA-852-855 (Preliminary), USITC Pub. 3225 at 8, n.40 (Sept. 1999); see also Engineered Process Gas Turbo-Compressor Systems from Japan, Inv. No. 731-TA-748 (Preliminary), USITC Pub. 2976 at 8 (July 1996).

III. CUMULATION [84]

A. Framework

Section 752(a) of the Act provides that:

> the Commission may cumulatively assess the volume and effect of imports of the subject merchandise from all countries with respect to which reviews under section 1675(b) or (c) of this title were initiated on the same day, if such imports would be likely to compete with each other and with domestic like products in the United States market. The Commission shall not cumulatively assess the volume and effects of imports of the subject merchandise in a case in which it determines that such imports are likely to have no discernible adverse impact on the domestic industry.[85]

Thus, cumulation is discretionary in five-year reviews. However, the Commission may exercise its discretion to cumulate only if the reviews are initiated on the same day and the Commission determines that the subject imports are likely to compete with each other and the domestic like product in the U.S. market. The statute precludes cumulation if the Commission finds that subject imports from a country are likely to have no discernible adverse impact on the domestic industry.[86] We note that neither the statute nor the Uruguay Round Agreements Act ("URAA") Statement of Administrative Action ("SAA") provides specific guidance on what factors the Commission is to consider in determining that imports "are likely to have no discernible adverse impact" on the domestic industry.[87] With respect to this provision, the Commission generally considers the likely volume of the subject imports and the likely impact of those imports on the domestic industry within a reasonably foreseeable time if the orders are revoked.[88] [89]

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[84] Commissioner Bragg does not join in Section III. Commissioner Bragg provides a separate analysis of cumulation in these reviews. See Separate Views of Commissioner Lynn M. Bragg Regarding Cumulation. For a complete statement of Commissioner Bragg's analytical framework regarding cumulation in sunset reviews, see Separate Views of Chairman Lynn M. Bragg Regarding Cumulation in Sunset Reviews, found in Potassium Permanganate From China and Spain, Inv. Nos. 731-TA-125-126 (Review), USITC Pub. 3245 (Oct. 1999); see also Separate Views of Chairman Lynn M. Bragg Regarding Cumulation, found in Brass Sheet and Strip From Brazil, Canada, France, Germany, Italy, Japan, Korea, the Netherlands, and Sweden, Inv. Nos. 701-TA-269 & 270 (Review) and 731-TA-311-317 and 379-380 (Review), USITC Pub. 3290 (April 2000).

[85] 19 U.S.C. § 1675a(a)(7).

[86] 19 U.S.C. § 1675a(a)(7).

[87] SAA, H.R. Rep. No. 103-316, vol. I (1994).

[88] For a discussion of the analytical framework of Chairman Koplan and Commissioners Miller and Hillman regarding the application of the "no discernible adverse impact" provision, see Malleable Cast Iron Pipe Fittings From Brazil, Japan, Korea, Taiwan, and Thailand, Inv. Nos. 731-TA-278-280 (Review) and 731-TA-347-348 (Review). For a further discussion of Chairman Koplan's analytical framework, see Iron Metal Construction Castings from India; Heavy Iron Construction Castings from Brazil; and Iron Construction Castings from Brazil, Canada, and China, Inv. Nos. 803-TA-13 (Review); 701-TA-249 (Review) and 731-TA-262, 263, and 265 (Review) (Views of Commissioner Stephen Koplan Regarding Cumulation).

[89] Commissioner Askey notes that the Act clearly states that the Commission is precluded from exercising its discretion to cumulate if the imports from a country subject to review are likely to have "no discernible adverse impact on the domestic industry" upon revocation of the order. 19 U.S.C. § 1675a(a)(7). Thus, the Commission must focus on whether the imports will impact the condition of the industry discernibly as a result of revocation, and not solely on whether there will be a small volume of imports after revocation, i.e., by assessing their negligibility after revocation of the order. For a full discussion of her views on this issue, see Additional Views of

The Commission has generally considered four factors intended to provide a framework for determining whether the imports compete with each other and with the domestic like product.[90] Only a "reasonable overlap" of competition is required.[91] In five-year reviews, the relevant inquiry is whether there likely would be competition even if none currently exists. Moreover, because of the prospective nature of five-year reviews, we have examined not only the Commission's traditional competition factors, but also other significant conditions of competition that are likely to prevail if the orders under review are revoked. The Commission has considered factors in addition to its traditional competition factors in other contexts where cumulation is discretionary.[92]

In these reviews, the statutory requirement for cumulation that all reviews be initiated on the same day is satisfied.[93] [94]

B. Likelihood of No Discernible Adverse Impact

The Commission finds that subject imports of uranium from Ukraine would be likely to have no discernible adverse impact on the domestic industry if the order is revoked and, therefore, does not cumulate subject imports from Ukraine with subject imports from either Russia or Uzbekistan.[95] [96]

Commissioner Thelma J. Askey in Potassium Permanganate from China and Spain, Inv. Nos. 731-TA-125-126 (Review), USITC Pub. 3245 (Oct. 1999).

[90] The four factors generally considered by the Commission in assessing whether imports compete with each other and with the domestic like product are: (1) the degree of fungibility between the imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions; (2) the presence of sales or offers to sell in the same geographical markets of imports from different countries and the domestic like product; (3) the existence of common or similar channels of distribution for imports from different countries and the domestic like product; and (4) whether the imports are simultaneously present in the market. See, e.g., Wieland Werke, AG v. United States, 718 F. Supp. 50 (CIT 1989).

[91] See Mukand Ltd. v. United States, 937 F. Supp. 910, 916 (CIT 1996); Wieland Werke, AG, 718 F. Supp. at 52 ("Completely overlapping markets are not required."); United States Steel Group v. United States, 873 F. Supp. 673, 685 (CIT 1994), aff'd, 96 F.3d 1352 (Fed. Cir. 1996)). We note, however, that there have been investigations where the Commission has found an insufficient overlap in competition and has declined to cumulate subject imports. See, e.g., Live Cattle from Canada and Mexico, Inv. Nos. 701-TA-386 and 731-TA-812-813 (Preliminary), USITC Pub. 3155 at 15 (Feb. 1999), aff'd sub nom, Ranchers-Cattleman Action Legal Foundation v. United States, 74 F. Supp.2d 1353 (CIT 1999); SRAMs from the Republic of Korea and Taiwan, Inv. Nos. 731-TA-761-762 (Final), USITC Pub. 3098 at 13-15 (Apr. 1998).

[92] See, e.g., Torrington Co. v. United States, 790 F. Supp. at 1172 (affirming Commission's determination not to cumulate for purposes of threat analysis when pricing and volume trends among subject countries were not uniform and import penetration was extremely low for most of the subject countries); Metallverken Nederland B.V. v. United States, 728 F. Supp. 730, 741-42 (CIT 1989); Asociacion Colombiana de Exportadores de Flores v. United States, 704 F. Supp. 1068, 1072 (CIT 1988).

[93] The Uranium Coalition urged the Commission to exercise its discretion and cumulate imports from Russia, Ukraine, and Uzbekistan in these reviews. Uranium Coalition's Prehearing Brief at 61-73.

[94] Commissioners Miller and Hillman do not join Section III.B. and III.C. See Separate Views on Cumulation of Commissioners Marcia E. Miller and Jennifer A. Hillman.

[95] Chairman Koplan finds that subject imports from Ukraine are likely to have no discernible adverse impact on the domestic industry and therefore does not cumulate subject imports from Ukraine with subject imports from Russia or Uzbekistan. Initially Chairman Koplan observes that as Ukraine did not participate in these reviews, the data are limited and while there is no Ukrainian import data for the 1990-1992 period, there were no direct imports from Ukraine during the 1997-1999 period of investigation. CR-II-23-24; PR at II-14-15. More importantly,

Although the Russian Respondents and the Uzbek Respondents urged the Commission to find that imports from Russia and Uzbekistan also would be likely to have no discernible adverse impact on the domestic industry if the suspended investigations were terminated,[97] we find that the no discernible adverse impact provision is not satisfied with respect to subject imports from either Russia or Uzbekistan.

Subject imports from Uzbekistan have remained in the U.S. market in the years since the imposition of the suspension agreement. The value of uranium imports from Uzbekistan increased from 1997 to 1999.[98] Uzbek exports of uranium to the United States are projected to increase in 2000 from actual 1999 levels.[99] Moreover, since imports of Uzbek uranium have been restricted by quotas, which generally have been fully subscribed, it is likely that uranium shipments from Uzbekistan would increase without the suspension agreement quotas. Uzbekistan, which has no home market demand, is thus completely export-oriented. Data believed to account for all uranium concentrate production in Uzbekistan show that between *** of total Uzbek uranium shipments were exported to the United States from 1997 to 1999 and are projected to account for *** of all Uzbek shipments in 2001.[100] Accordingly, we do not find that the subject imports from Uzbekistan would be likely to have no discernible adverse impact on the domestic industry if the suspended investigation is terminated.

Ukraine can only produce concentrate, and while its reserves may be extensive, they are characterized as too deep and of sufficiently low grade as to be not economically reasonable to recover. CR at II-24; PR at II-14. Additionally, current production of Ukraine concentrate is estimated to be 3.1 million pounds, but it is believed that domestic demand is between 5 to 6 million pounds annually, as Ukraine relies on nuclear energy to provide over 35 percent of its home electricity requirements. CR at II-24 and IV-6; PR at II-14 and IV-3. Thus, while the volume of Ukrainian production may be increasing, Ukraine is a net importer of uranium. In addition, Ukraine must rely on Russia for all of its conversion, enrichment and fabrication supply and services as well the remainder of its need for concentrate. CR-IV-6; PR at IV-3. Finally, it appears that any likely direct competition in the U.S. market for concentrate would be limited by the fact that Ukraine's principal competition would be from non-subject importers whose product can be recovered at lower cost. Consequently, any subject imports from Ukraine likely would have no discernable adverse impact on the domestic uranium industry.

[96] Commissioner Askey determines that imports from Ukraine would have no discernable adverse impact on the domestic industry if the order were revoked. There were no reported direct U.S. imports of uranium from Ukraine during 1997-1999, although there may have been some nonsubject imports containing Ukrainian uranium. *See supra*, section II.B.2. While Ukraine produces concentrates, it has no ability to convert, enrich or fabricate. More than one third of Ukraine's electricity is generated by nuclear power plants. CR at II-23-24 and PR at II-14-15. However, Ukraine's domestic production of concentrates can only satisfy just over half of their home market demand for concentrates, making the country a net importer of uranium products. CR at IV-6 and PR at IV-3. Even in the unlikely event that Ukraine would divert all of its production to exports to the United States, the country's total reported production of uranium concentrate would represent only approximately *** of U.S. utilities' projected reactor requirements in 2000, 2001 and 2002. *See* CR at II-29 and IV-6, and PR at II-18 and IV-3. Accordingly, it is unlikely that imports from Ukraine would have a discernible adverse impact on the domestic industry.

[97] Russian Respondents' Prehearing Brief at 61-62; Uzbek Respondents' Prehearing Brief at 9-13.

[98] CR/PR at Table I-2. The value of direct U.S. imports of uranium from Uzbekistan *** in 1999. Id. The value of direct U.S. imports of uranium concentrates from Uzbekistan, based on questionnaire responses, accounted for 5.1 percent of the total value of all U.S. imports of uranium concentrates during the period of review and *** of the total value of U.S. sales and imports of uranium concentrate in 1998 and 1999, respectively. CR at II-24/PR at II-15 and calculated from Table I-3.

[99] CR at IV-7; PR at IV-4. Direct Uzbek exports to the United States of uranium concentrate were *** in 2000. Id. and ***. In addition, nonsubject imports of enriched UF_6 were imported into the United States containing ***.

[100] CR at IV-7/PR at IV-4 and ***.

Subject imports from Russia have remained in the U.S. market in the years since the imposition of the suspension agreement. Moreover, imports of Russian uranium have accounted for a significant and increasing share of both total imports and domestic consumption from 1997 to 1999.[101] Based on the current level of imports from Russia and the likely volume of subject imports in the reasonably foreseeable future, we do not find that the subject imports from Russia would be likely to have no discernible adverse impact on the domestic industry if the suspended investigation is terminated.

C. Reasonable Overlap of Competition and Other Considerations

In determining whether to exercise our discretion to cumulate subject imports from Russia with those from Uzbekistan, we examined whether, upon termination of the suspended investigation, subject imports from Russia would likely compete in the U.S. market under similar conditions of competition with subject imports from Uzbekistan and with the domestic like product. As an initial matter, we considered the likelihood of a reasonable overlap of competition among the products from Russia, Uzbekistan, and the United States. In this regard, the parties generally agreed that uranium from one country is generally physically interchangeable with uranium from another.[102] Moreover, these subject imports and the U.S. product have similar channels of distribution,[103] appear to have had a geographic overlap of sales,[104] and have been simultaneously present in the market during the period of review.[105]

The record, however, indicates that if the suspended investigations were terminated, subject imports from Russia and Uzbekistan would likely not compete under similar conditions of competition. Uzbekistan only produces, and thus exports, uranium in one form, i.e., uranium concentrate. Russia, on the other hand, produces and exports uranium at all of the four stages of production, with most of its exports to the United States likely to be at a further stage than uranium concentrate, primarily at the enriched uranium level (including LEU blended down from HEU).[106] In addition, substantial imports from Russia will continue to enter the U.S. market under the terms of the HEU Agreement.

We have limited data regarding Russian production, capacity, and inventories. The evidence, however, indicates that Russia has the capacity to produce large volumes of uranium at the concentrate, conversion, and enriched levels, as well as the re-enrichment of uranium tails and reprocessing of spent nuclear fuel.[107] Russia reported it has the capacity to produce *** of uranium concentrate per year.[108] Its annual conversion capacity to produce natural UF_6 is *** and its enrichment capacity to produce enriched

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[101] CR/PR at Table I-2.

[102] CR at II-34 and II-37; PR at II-21 and II-24.

[103] All uranium, whether U.S., Russian, Uzbek, or from other countries is sold principally to U.S. electric utilities, but may also be sold to U.S. producers, processors and traders. CR at II-2, II-3, and II-8; PR at II-2 and II-4.

[104] Questionnaire responses indicate that utilities in the same states have purchased or held both Russian and Uzbek material. Uranium Coalition's Prehearing Brief at 66, n. 196 and Exhibit 11.

[105] Uranium concentrate from Russia and Uzbekistan, and enriched uranium from Russia were present in the U.S. market simultaneously with U.S. uranium in all four forms in all three years of the review. CR/PR at Tables I-4 and I-6.

[106] From 1997-1999, U.S. imports of Russian enriched uranium accounted for over 95 percent of the value of total imports of all uranium from Russia. Calculated from CR/PR at Tables I-3 and I-5.

[107] CR at II-22-23, and IV-4; PR at II-13-14 and IV-2-3.

[108] CR at IV-4; PR at IV-2. In contrast, about 4.9 million pounds of concentrate is produced in the United States per year. Id.

UF_6, or LEU-HF, is ***.[109] The extent of inventories of uranium concentrate, natural UF_6, LEU-HF, as well as HEU, located in Russia are not precisely known, but arguably make Russia the largest source of uranium in the world.[110] Moreover, Russia's home market demand for enrichment reportedly is only about *** of its enrichment capacity.[111] Thus, a substantial share of its enrichment capacity is, or can be, used for export shipments. Russian exports to the United States account for a significant share of that SWU capacity. Under the terms of the HEU Agreement, the United States has guaranteed that it will purchase 5.5 million SWU per year from Russia through 2014. These guaranteed imports of LEU-HF containing 5.5 million Russian SWU account for about half of U.S. nuclear reactor annual requirements for SWU and a significant share of total U.S. uranium demand.[112]

Uzbekistan has the capacity to produce uranium concentrate, but does not have the capacity to produce other products in the uranium fuel cycle. It has production capacity of about *** of uranium concentrate annually.[113] While Uzbekistan has no home market demand, it reportedly is ***. In stark contrast to U.S. imports of Russian uranium that even under the restraints of the Suspension Agreement have accounted for a significant share of the value of total U.S. sales and imports of uranium, direct U.S. imports of Uzbek uranium concentrate accounted for only about *** of the value of total U.S. uranium sales and imports in 1999.[114]

Thus, we find that if the suspended investigations were terminated, subject imports from Russia and Uzbekistan would likely not compete under similar conditions of competition and do not exercise our discretion to cumulate subject imports from Russia and Uzbekistan in these reviews.

IV. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF MATERIAL INJURY IF THE SUSPENDED INVESTIGATIONS ON RUSSIA AND UZBEKISTAN ARE TERMINATED OR THE ANTIDUMPING DUTY ORDER ON UKRAINE IS REVOKED[115]

A. Legal Standard In A Five-Year Review

In a five-year review conducted under section 751(c) of the Act, Commerce will revoke a countervailing or antidumping duty order or terminate a suspended investigation unless: (1) it makes a determination that dumping is likely to continue or recur, and (2) the Commission makes a determination that revocation of an order or termination of a suspended investigation "would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time."[116] The SAA states that "under the likelihood standard, the Commission will engage in a counter-factual analysis; it must decide the likely impact in the reasonably foreseeable future of an important change in the status quo – the revocation

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[109] CR at IV-4; PR at IV-2.

[110] CR at II-23 and IV-3; PR at II-14 and IV-2.

[111] CR at II-22-23; PR at II-13-14.

[112] CR at II-29; PR at II-18. For example, U.S. imports from Russia of *** of the total value of U.S. sales and imports of all uranium products. Calculated from CR/PR at Tables I-2 and I-5, and ***.

[113] CR at IV-7; PR at IV-4.

[114] Calculated from CR/PR at Table I-2. Uzbek direct imports of uranium concentrate accounted for only *** of the total value of U.S. sales and imports of uranium concentrate in 1999. Calculated from CR/PR at Table I-3. The disparity between Russian imports and Uzbek imports is not lessened to a significant degree when the *** to direct Uzbek's imports.

[115] Commissioner Bragg joins the remaining sections of these views.

[116] 19 U.S.C. § 1675a(a).

or termination of a proceeding and the elimination of its restraining effects on volumes and prices of imports."[117] Thus, the likelihood standard is prospective in nature.[118] The statute states that "the Commission shall consider that the effects of revocation or termination may not be imminent, but may manifest themselves only over a longer period of time."[119] According to the SAA, a "'reasonably foreseeable time' will vary from case-to-case, but normally will exceed the 'imminent' time frame applicable in a threat of injury analysis [in antidumping and countervailing duty investigations]."[120] [121]

Although the standard in five-year reviews is not the same as the standard applied in original antidumping or countervailing duty investigations, it contains some of the same fundamental elements. The statute provides that the Commission is to "consider the likely volume, price effect, and impact of imports of the subject merchandise on the industry if the order is revoked or the suspended investigation is terminated."[122] It directs the Commission to take into account its prior injury determination, whether any improvement in the state of the industry is related to the order or the suspension agreement under review, and whether the industry is vulnerable to material injury if the order is revoked or the suspension agreement is terminated.[123] [124]

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[117] SAA, H.R. Rep. No. 103-316, vol. I, at 883-84 (1994). The SAA states that "[t]he likelihood of injury standard applies regardless of the nature of the Commission's original determination (material injury, threat of material injury, or material retardation of an industry). Likewise, the standard applies to suspended investigations that were never completed." SAA at 883.

[118] While the SAA states that "a separate determination regarding current material injury is not necessary," it indicates that "the Commission may consider relevant factors such as current and likely continued depressed shipment levels and current and likely continued [sic] prices for the domestic like product in the U.S. market in making its determination of the likelihood of continuation or recurrence of material injury if the order is revoked." SAA at 884.

[119] 19 U.S.C. § 1675a(a)(5).

[120] SAA at 887. Among the factors that the Commission should consider in this regard are "the fungibility or differentiation within the product in question, the level of substitutability between the imported and domestic products, the channels of distribution used, the methods of contracting (such as spot sales or long-term contracts), and lead times for delivery of goods, as well as other factors that may only manifest themselves in the longer term, such as planned investment and the shifting of production facilities." Id.

[121] In analyzing what constitutes a reasonably foreseeable time, Commissioner Koplan examines all the current and likely conditions of competition in the relevant industry. He defines "reasonably foreseeable time" as the length of time it is likely to take for the market to adjust to a revocation or termination. In making this assessment, he considers all factors that may accelerate or delay the market adjustment process including any lags in response by foreign producers, importers, consumers, domestic producers, or others due to: lead times; methods of contracting; the need to establish channels of distribution; product differentiation; and any other factors that may only manifest themselves in the longer term. In other words, this analysis seeks to define "reasonably foreseeable time" by reference to current and likely conditions of competition, but also seeks to avoid unwarranted speculation that may occur in predicting events into the more distant future.

[122] 19 U.S.C. § 1675a(a)(1).

[123] 19 U.S.C. § 1675a(a)(1). The statute further provides that the presence or absence of any factor that the Commission is required to consider shall not necessarily give decisive guidance with respect to the Commission's determination. 19 U.S.C. § 1675a(a)(5). While the Commission must consider all factors, no one factor is necessarily dispositive. SAA at 886.

[124] Section 752(a)(1)(D) of the Act directs the Commission to take into account in five-year reviews involving antidumping proceedings "the findings of the administrative authority regarding duty absorption." 19 U.S.C. § 1675a(a)(1)(D). Commerce has not issued any duty absorption findings with respect to these reviews. See 65 Fed. Reg. 11552 (Mar. 3, 2000) (Ukraine), 65 Fed. Reg. 41439 and 41441 (July 5, 2000) (Russia and Uzbekistan); CR/PR at Appendix A.

We note that the statute authorizes the Commission to take adverse inferences in five-year reviews, but such authorization does not relieve the Commission of its obligation to consider the record evidence as a whole in making its determination.[125] We generally give credence to the facts supplied by the participating parties and certified by them as true, but base our decision on the evidence as a whole, and do not automatically accept the participating parties' suggested interpretation of the record evidence. Regardless of the level of participation and the interpretations urged by participating parties, the Commission is obligated to consider all evidence relating to each of the statutory factors and may not draw adverse inferences that render such analysis superfluous. "In general, the Commission makes determinations by weighing all of the available evidence regarding a multiplicity of factors relating to the domestic industry as a whole and by drawing reasonable inferences from the evidence it finds most persuasive."[126] In this case, a number of respondent interested parties did not provide questionnaire responses and/or participate in these reviews. Accordingly, we have relied on the facts available in these reviews, which consist primarily of the information collected by the Commission since the institution of these reviews, and information submitted by the domestic producers, respondent parties and other parties in these reviews.

In evaluating the likely volume of imports of subject merchandise if the order under review is revoked, the Commission is directed to consider whether the likely volume of subject imports would be significant either in absolute terms or relative to the production or consumption in the United States.[127] In doing so, the Commission must consider "all relevant economic factors," including four enumerated factors: (1) any likely increase in production capacity or existing unused production capacity in the exporting country; (2) existing inventories of the subject merchandise, or likely increases in inventories; (3) the existence of barriers to the importation of the subject merchandise into countries other than the United States; and (4) the potential for product-shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products.[128]

In evaluating the likely price effects of subject imports if the order is revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared with the domestic like product and whether the subject imports are likely to enter the United States at prices that would have a significant depressing or suppressing effect on the price of domestic like products.[129]

In evaluating the likely impact of imports of subject merchandise if the order is revoked, the Commission is directed to consider all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including but not limited to: (1) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity; (2) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and (3) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more advanced version of the domestic like product.[130] All relevant economic factors are to be considered within the context of the business cycle and the conditions of

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[125] 19 U.S.C. § 1675(e).

[126] SAA at 869.

[127] 19 U.S.C. § 1675a(a)(2).

[128] 19 U.S.C. § 1675(a)(2)(A)-(D).

[129] 19 U.S.C. § 1675a(a)(3). The SAA states that "[c]onsistent with its practice in investigations, in considering the likely price effects of imports in the event of revocation and termination, the Commission may rely on circumstantial, as well as direct, evidence of the adverse effects of unfairly traded imports on domestic prices." SAA at 886.

[130] 19 U.S.C. § 1675a(a)(4).

competition that are distinctive to the industry.[131] As instructed by the statute, we have considered the extent to which any improvement in the state of the domestic industry is related to the antidumping duty order or suspension agreements at issue and whether the industry is vulnerable to material injury if the order is revoked.[132]

For the reasons stated below, we determine that termination of the suspended investigation on uranium from Russia would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time; and that termination of the suspended investigation on uranium from Uzbekistan and revocation of the antidumping duty order on uranium from Ukraine would not be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

B. Conditions of Competition

In evaluating the likely impact of the subject imports on the domestic industry, the statute directs the Commission to consider all relevant economic factors "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."[133]

The following conditions of competition in the uranium industry are relevant to our determinations. First, the various forms of uranium – uranium concentrate (U_3O_8), natural UF_6, enriched UF_6 (LEU-HF), and uranium oxides (UO_2 or LEU-DO) – are fungible, commodity products.[134] Uranium of any form is, for the most part, substitutable with uranium of the same form produced elsewhere in the world.[135] The four basic forms are not physically interchangeable with each other since they are all intermediate products each successively contained in each other. All forms of uranium except uranium oxides (UO_2) are traded on a

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[131] 19 U.S.C. § 1675a(a)(4). Section 752(a)(6) of the Act states that "the Commission may consider the magnitude of the margin of dumping" in making its determination in a five-year review. 19 U.S.C. § 1675a(a)(6). The statute defines the "magnitude of the margin of dumping" to be used by the Commission in five-year reviews as "the dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title." 19 U.S.C. § 1677(35)(C)(iv). See also SAA at 887. In its expedited review of the antidumping duty order regarding subject imports from Ukraine, Commerce found that revocation of the antidumping duty order on uranium from Ukraine would likely lead to continuation or recurrence of dumping at the margin of 129.29 percent for all Ukrainian manufacturers/exporters. 65 Fed. Reg. at 11553 (Mar. 3, 2000). In the final results of its full reviews regarding subject imports from Russia and Uzbekistan, Commerce found termination of the suspended investigations on uranium from Russia and Uzbekistan would be likely to lead to continuation or recurrence of dumping at the margins of 115.82 percent for all Russian manufactures/exporters and 115.82 percent for all Uzbek producer/exporters. 65 Fed. Reg. at 41441 and 41442 (July 5, 2000).

[132] The SAA states that in assessing whether the domestic industry is vulnerable to injury if the order is revoked, the Commission "considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they may also demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports." SAA at 885.

[133] 19 U.S.C. § 1675a(a)(4).

[134] CR at I-13 and II-37; PR at I-9 and II-24.

[135] CR at II-34; PR at II-21. Purchasers rated imported Russian, Uzbekistan, and Ukrainian uranium as generally comparable with U.S. uranium, and stated that they generally purchased their uranium products and toll-processing on an open country basis. Id. at II-37 - II-38. Open country essentially means the purchasers will accept uranium from any country. Purchasers also indicated that uranium from Russia and Uzbekistan is perceived to be less desirable because of the administrative burdens and swap/loan prohibitions of the suspension agreements. Id. at II-34. It is not clear how the U.S. market perceives uranium from Ukraine. Id.

worldwide basis.[136] In the past, there was limited substitution between uranium concentrates (U_3O_8) and toll-enrichment services,[137] and virtually no substitution for the natural conversion and toll-processing for fabrication.[138] However, in the current market, significant volumes of natural UF_6 and LEU-HF act as substitutes for uranium concentrates, natural conversion, and enrichment services, and thus for these sources limit the need for the earlier stages of the fuel cycle.[139]

Second, there have been substantial structural changes to the domestic industry since the original investigations. Consolidations and closings have substantially reduced the number of operating concentrate producers in the United States, from 15 in 1992, to 7 during the 1997-1999 period of review, and 5 in 2000.[140] Similarly, U.S. conversion operations have been reduced from two in 1993 to one during the period of review.[141] The most significant change to the domestic industry has been the privatization of USEC. Created by the U.S. Government in 1992 as the first step toward the privatization of the Department of Energy's uranium enrichment activities, USEC was fully divested of Government ownership and became a publicly-held corporation in July 1998.[142] USEC is the only U.S. enricher of uranium and traditionally has enriched natural UF_6 to produce LEU-HF for electric utilities almost exclusively on a toll basis.[143] However, as the U.S. Government's Executive Agent for the Russian HEU Agreement, USEC is required to import large quantities of Russian enriched UF_6 (LEU-HF blended down from Russian HEU) and sell it directly to utilities.[144] These imports and sales of Russian LEU-HF have led to correspondingly diminished use of USEC's enrichment capacities and have been cited as a factor in its decision to close one of its two plants in June 2001.[145]

Third, U.S. utilities' demand for uranium, as measured by reactor requirements, has been constant during the period of review and is projected to remain relatively flat for the next decade.[146] Uranium consumption is highly dependent on the number of operating nuclear reactors producing electricity and on the level at which each utility is operating.[147] Since 1978, at least 11 nuclear power plants in the United States have been closed and no new plants have been constructed.[148] Demand for uranium also has been affected by deregulation of electrical utilities, which effectively puts nuclear power plants in competition with other sources of electricity.[149] Since the cost of fuel assembly rods represents a significant portion of a nuclear power plant's operating expenses, utilities that own nuclear facilities face increasing pressure to cut

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[136] CR at I-13 and II-1; PR at I-9 and II-1.

[137] An enricher may decrease the number of SWU necessary to achieve a given concentration of U^{235} by increasing the quantity of UF_6 input into the production process. CR at I-11, n.11; PR at I-8, n.11.

[138] CR at II-11; PR at II-8.

[139] CR at II-11; PR at II-8.

[140] CR at I-10; PR at I-7. Two of the seven concentrate producers ceased production in 1999.

[141] CR/PR at III-2 and Uranium from Ukraine, USITC Pub. 2669 at I-17.

[142] CR at I-12; PR at I-8.

[143] CR at II-17; PR at II-11.

[144] CR at I-12; PR at I-8.

[145] CR at II-14 and III-3-4; PR at II-9 and III-2-3.

[146] CR at II-29/PR at II-18 and Uranium Coalition's Prehearing Brief at 45.

[147] CR at II-7; PR at II-5.

[148] CR at I-19; PR at I-13.

[149] CR at I-19; PR at I-13.

costs by obtaining uranium at the lowest costs whether through the traditional fuel cycle or from non-traditional uranium suppliers.[150]

The nature of U.S. demand may be changing as U.S. electric utilities are now able to bypass the fuel cycle by purchasing the processed products directly, especially natural UF_6 and enriched uranium.[151] A majority of U.S. electric utilities' purchases of uranium and uranium processing are based on long-term contracts.[152] The increased availability of processed products has led to shorter lead times and allowed electric utilities to reduce their long-term purchases of uranium in favor of shorter-term contracts, including spot contracts.[153]

Fourth, another significant condition of competition affecting the domestic industry is the overall increase in the supply of uranium, and, in particular, the increased availability of uranium in processed forms. Uranium imports from Russia, under the Russian HEU Agreement, have provided a large and increasing supply of uranium at the LEU stage to the U.S. market. Under this Agreement, the United States has committed to buy low-enriched UF_6 produced in Russia from high enriched uranium (HEU) that was part of the Soviet military stockpile. USEC, as Executive Agent of the U.S. Government, is responsible for implementing this Agreement.[154] During the period of review, USEC imported and shipped to U.S. utilities Russian LEU-HF blended down from HEU containing a total of ***.[155] USEC is committed to purchasing 5.5 million SWU per year from Russia for the 1999-2014 period, which represents *** of the company's U.S. enrichment sales.[156] In addition, under this Agreement, USEC pays Russia in kind for the natural uranium contained in the enriched UF_6 (by crediting Russia an equivalent quantity of natural UF_6) and pays in cash for the value of enrichment (SWU).[157] This natural UF_6 or Russian feedstock, which is owned by Russia and is stored at USEC facilities, may be imported and sold in the U.S. market under an annual limit that began at 2 million pounds in 1998 and increases by 2 million pounds per year, until the annual limit reaches, and continues at, 20 million pounds.[158]

Further adding to the worldwide abundance of uranium have been the developments of the relatively high-grade, low-cost uranium ore reserves in Canada and Australia.[159] During the investigation

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[150] CR at I-19, II-12 and II-13; PR at I-12 and II-8.

[151] CR at II-27; PR at II-16.

[152] CR at II-5 and II-6; PR at II-4.

[153] CR at II-6 and II-27; PR at II-4 and II-16.

[154] CR at II-1 and II-2; PR at II-I.

[155] CR at II-2; PR at II-1.

[156] CR at II-2; PR at II-1. We also note that SWU purchased under the Russian HEU Agreement represented *** of U.S. electric utilities' requirements for enrichment during the period of review, and are projected to represent *** of these requirements in each of the next few years. Calculated from CR at II-2 and II-29, and II-2, n.6; PR at II-1 and II-18, and II-1, n.6.

[157] CR at I-17, n. 18; PR at I-11, n.18.

[158] CR at II-3 and II-4, n.12; PR at II-2 and n.12. The Russian feedstock resulting from the HEU Agreement had accumulated in USEC's storage facilities until 1999, due to restrictions on its distribution under the USEC Privatization Act and Russian Suspension Agreement. As discussed below, in March 1999, the U.S. Government purchased the inventory for $325 million dollars and established these annual limits. At the same time, Russia signed a long-term contract, with market-based pricing, to sell the post-1998 natural uranium component of the HEU-to-LEU shipments to a consortium of Cogema, Cameco, and Nukem. Id. at I-17, n. 18.

[159] CR at I-18; PR at I-12. Australia has the world's most extensive uranium reserves, amounting to 1.2 million metric tons or 35 percent of total world uranium reserves. About 28 percent of Australia's uranium reserves are considered both class 1 and low-cost reserves (well-proven reserves with recovery costs estimated to be under $40/kg U of natural uranium). Canadian uranium reserves also are extensive and account for about 13

period, Canada and Australia each have shipped increasing volumes of uranium concentrate to the United States.[160] Canada and Australia together accounted for almost 72 percent of all U.S. imports of uranium concentrate during the period of review.[161]

An overhang of natural and enriched UF_6 inventories in the United States and throughout the world represent another source of uranium supply. USEC alone holds an inventory of natural UF_6 that ***.[162] Russia also reportedly holds significant and increasing inventories of natural UF_6 in the U.S. market that result largely from sales of the Russian LEU-HF blended down from HEU.[163] The U.S. Department of Energy has a separate large stockpile of natural UF_6, amounting to about 58 million pounds of U_3O_8, which resulted from the U.S. Government's $325 million purchase of the Russian feedstock that had accumulated through 1998 under the HEU Agreement.[164] The U.S. Government committed in March 1999 to withhold this material from the market for 10 years.[165] Increased worldwide availability of uranium, particularly in processed form, as well as cost-cutting measures resulting from deregulation, also have led some utilities to reduce their uranium inventories by selling or trading it on the open market, adding to the number of suppliers and the already existing excess supplies.[166]

Fifth, the inventories, which are typically held by producers and owned by utilities,[167] allow the producers and utilities to engage in a variety of non-cash transactions. Companies holding uranium in different locations may swap equivalent quantities to avoid transportation costs or government restrictions.[168] A company may loan uranium to other companies that need to cover excess demand or optimize inventories.[169] Such alternative transactions can result in the disaggregation of an advanced stage of uranium (such as natural or enriched UF_6) into the raw material (uranium concentrate or natural UF_6) and processing (conversion or enrichment) used to make it.[170] This process creates separate, but interrelated, markets for the uranium and enrichment components of enriched UF_6. Consequently, a given quantity of uranium may change ownership or possession a number of times before its consumption in a nuclear power plant.

Finally, trade restrictions affect exports of uranium from the successor countries to the former Soviet Union. As previously discussed, suspension agreements between Commerce and Russia and Uzbekistan, and, until recently, Kazakhstan and Kyrgyzstan, limited the volume of uranium these countries could sell into the United States. For Russia, the limitation takes the form of a matched sales arrangement, whereby utilities could purchase Russian uranium only if the utilities bought an equivalent quantity of domestically produced uranium.[171] The other suspension agreements imposed numerical quotas, with the

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percent of world reserves and about 20 percent of the world's low-cost reserves. CR at II-25; PR at II-15.

[160] CR at I-18; PR at I-12. Neither Canada nor Australia process uranium further than natural UF_6 or uranium concentrate, respectively. Id. at II-26.

[161] CR at II-25; PR at II-15.

[162] CR at II-13, II-16 and II-17; PR at II-9 and II-11.

[163] CR at II-17; PR at II-11. ***. Id.

[164] CR at I-17, n.18 and II-17, n.58; PR at I-11, n.18 and II-11, n.58.

[165] CR at II-3 and II-17, n.58; PR at II-2 and II-11, n.58.

[166] CR at I-19 and II-3; PR at I-13 and II-2.

[167] CR at II-3; PR at II-2.

[168] CR/ PR at V-1.

[169] CR/ PR at V-1.

[170] CR at II-8 and V-1.

[171] As with the other countries subject to suspension agreements, Russia's quota was originally based on the prevailing market price. See 57 Fed. Reg. at 49241 (Oct. 30, 1992). A subsequent amendment replaced this

quota being increased if the price of uranium in the United States increased.[172] Uranium from Ukraine has been subject to a United States antidumping duty order since 1993, and there were almost no imports from that country during the review period.[173] In addition, the European Atomic Energy Community ("EURATOM") countries limit imports of uranium from these former Soviet states.[174] These restrictions were imposed in the early 1990s in order to maintain diversity of supply in Europe.[175] The Euratom Commission currently allows about 25 percent of its utilities' annual uranium requirements to be filled with uranium from the former Soviet states.[176] Collectively, these restrictions have resulted in a two-tiered pricing structure. Uranium eligible for sale in the United States and EURATOM countries (known as "restricted market uranium") bears a higher price than uranium that can only be sold in countries without import restrictions (known as "unrestricted market uranium").[177]

We find that the foregoing conditions of competition are likely to remain unchanged for the reasonably foreseeable future and thus provide an adequate basis by which to assess the likely effects of revocation or termination within the reasonably foreseeable future.

C. Termination of the Suspended Investigation on Imports of Uranium From Russia Is Likely to Lead to Continuation or Recurrence of Material Injury Within a Reasonably Foreseeable Time

1. Likely Volume of Subject Imports

All sources agree that Russia has vast reserves of unmined uranium and extensive capacity to produce all forms of uranium, including the processing of depleted uranium and the reprocessing of spent fuel. The exact quantities of reserves and capacity as well as extensive inventories and stockpiles are uncertain. Moreover, the Russian Respondents provided the Commission only limited data regarding their industry. We find that Russia has the capabilities to increase significantly shipments of subject uranium to the United States within the reasonably foreseeable future if the suspended investigation is terminated.

Attempting to assign complex transactions involving multiple forms of uranium to one market segment would be arbitrary. Furthermore, strict segmentation would ignore the impact that sales of one form of uranium have on the others. Therefore, we have analyzed the impact of total subject imports from Russia on the entirety of the domestic like product and industry. We recognize, however, that some degree of disaggregated analysis is unavoidable, particularly with respect to quantity data for different segments which are inappropriate to aggregate.

There are several ways to measure volume in the uranium industry: in terms of the value of total imports or sales during a given period, the volume or value sold within each sector, and the volume of uranium required by U.S. utilities each year. The value of U.S. imports of all uranium products from

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system with the matched sales arrangement. See Amendment to the Agreement Suspending the Antidumping Investigation on Uranium From the Russian Federation, 59 Fed. Reg. 15373, 15374 (Apr. 1, 1994).

[172] See, e.g., 57 Fed. Reg. at 49255 (Oct. 30, 1992)(Uzbekistan).

[173] See discussion of non-subject imports of enriched uranium with natural component of Ukraine origin in sections II.B.2 and IV.E.

[174] CR at II-4; PR at II-3.

[175] CR at IV-3; PR at IV-2.

[176] CR at IV-3; PR at IV-2. Since the 25 percent limit is defined in terms of actual usage, purchases and inventories could be higher. Id.

[177] CR at II-4 - II-5, and n. 16; PR at II-3 and n.16.

Russia, based on questionnaire responses, increased steadily during 1997-1999, from *** in 1999.[178] [179] Imports of uranium into the United States from Russia *** of the total value of U.S. sales and imports of uranium in 1997 to *** of the total value of U.S. sales and imports of uranium in 1999.[180] Uranium imported from Russia accounted for about *** percent of the total value of all U.S. imports of uranium during the period of review.[181]

Imports from Russia during the period of review included uranium concentrates and LEU-HF. The value of uranium concentrate directly imported from Russia *** in 1999.[182] Direct imports of uranium concentrate from Russia *** of the total value of U.S. sales and imports of uranium concentrate in 1997 to *** of the total value of U.S. sales and imports of uranium concentrate in 1999.[183] The value of directly imported Russian uranium concentrate accounted for *** percent of total U.S. imports of this product during the period of review.[184] Similarly, the volume of uranium concentrate imported from Russia *** in 1999.[185] These volumes represented *** in 1999.[186] While imports of Russian uranium concentrate represented a relatively small share of total U.S. uranium concentrate sales during the period of review, such imports of enriched uranium, or LEU-HF, accounted for a substantial share of all U.S. uranium requirements.

The value of enriched UF_6 imported from Russia *** in 1999.[187] Similarly, the SWU contained in this enriched UF_6 imported from Russia *** in 1999.[188] The SWU contained in U.S. imports of Russian LEU-HF represented *** in 1999.[189] The value of imported Russian LEU-HF accounted for *** of total U.S. imports of this product during the period of review and *** of the total value of U.S. sales and imports of enriched UF_6 in 1999.[190]

Russia has the capacity to produce all forms of uranium, including re-enrichment of uranium tails and reprocessing of spent nuclear fuel.[191] The Uranium Institute reports that Russia, Kazakhstan, and Uzbekistan together have about 30 percent of the world's class 1 uranium concentrate reserves, or about

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[178] We note that the data in the 1991 original preliminary investigation on imports from the USSR were not available separately for the former republics of the USSR and thus we have no import data for Russia, Ukraine, or Uzbekistan during the 1990-1992 period.

[179] CR/PR at Table I-2.

[180] Calculated from CR/PR at Table I-2.

[181] CR at II-21; PR at II-13.

[182] CR/PR at Table I-3.

[183] Calculated from CR/PR at Table I-3.

[184] CR at II-21; PR at II-13.

[185] Calculated from CR/PR at Table I-3 and ***. The import data for imports of Russian uranium concentrate include direct imports and the *** in 1998 contained in nonsubject imports of enriched UF_6. ***. Due to reporting inconsistencies, the values of these subject indirect imports have not been included in any value-based calculations of market share regarding Russian imports.

[186] Calculated from CR/PR at II-29/PR at II-18, Table I-3 and ***. Expressing imports of Russian uranium concentrate as a percentage of U.S. utilities' deliveries of uranium for enrichment yields similar results, with market shares of *** in 1999. Id.

[187] CR/PR at Table I-5.

[188] ***.

[189] Calculated from CR at II-29/PR at II-18 and ***.

[190] CR at II-21/PR at II-13 and calculated from Table I-5.

[191] CR at II-22; PR at II-13.

1.4 billion pounds of U_3O_8.[192] Russia currently has one conventional mine in operation.[193] In a September 1999 statement, Minatom's Minister indicated that Russia held "around 200,000 t U (0.1-0.2 % grade)" of uranium reserves, which is equivalent to about 520 million pounds of U_3O_8.[194]

Russia produces about *** (compared with about 4.9 million pounds in the United States) at a rated capacity of about ***.[195] Russia's annual concentrate requirements reportedly include about *** for HEU blending.[196] ***.[197] Russia is estimated to have *** of the world's annual light-water-reactor fabrication capacity.[198]

Russia also is estimated to have annual enrichment capacity of ***, although its home market demand for enrichment was estimated to average *** annually during 1997-1999, or *** of its capacity.[199] According to TENEX, however, Russia's enrichment capacity was ***.[200]

We find it likely that significant volumes of Russia's current enrichment capacity will be targeted to the U.S. market. Russia's home market demand is low. Only about *** of its enrichment capacity reportedly is used to meet home market demand, with *** which could be redirected to other enrichment activities for export.[201]

An important aspect of the Russian uranium industry is its stocks or inventories of uranium in addition to the mining reserves already discussed.[202] Russian Respondents provided no data on their inventories of uranium to the Commission. Russia holds substantial inventories of natural UF_6. While the exact quantity is not known, in 1999 the Russian Government agreed, as did the U.S. Government, to

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[192] CR at II-22; PR at II-13.

[193] CR at II-22; PR at II-13. There is evidence that Russia is building a new commercial uranium mine applying the ISL mining method with an annual production volume expected to reach 1500 tonnes (or 3.9 million pounds) and sufficient reserves to ensure at least 50 years of operation. Mining at this deposit is expected to be twice as cheap as at Russia's only other uranium mine. Uranium Institute News Brief dated 3-8 May 2000, item NBOO.19-1; Uranium Coalition's Prehearing Brief at Exhibit 15.

[194] "Supply of Fuel for Nuclear Power - Present Situation and Perspectives," by Evgeny O. Adamov, in Uranium Institute 24th Annual Symposium, (8-10 September 1999-London) at 2; see Uranium Coalition's Prehearing Brief, Exhibit 21 at 2.

[195] CR at IV-4; PR at IV-2. There is evidence that Russia's natural uranium production capacity may be 9.1 million pounds based on information provided by Russia's Minatom to the International Atomic Energy Agency ("IAEA"). Ad Hoc Committee's Posthearing Brief at Attachment 1.

[196] CR at IV-4; PR at IV-2.

[197] CR at IV-4; PR at IV-2.

[198] CR at II-22 and IV-4; PR at II-14 and IV-2.

[199] CR at II-22-23; PR at II-13-14.

[200] CR at IV-4; PR at IV-2.

[201] CR at II-23, n.77 and IV-4; PR at II-14, n.77 and IV-2. See also "Cameco said to be very close to deal to buy re-enriched tails from Urenco," in Nuclear Fuel, Vol. 24, No. 17 at 1 (Aug. 23, 1999) ("According to sources, Cameco will begin buying a least 5 million lb. (and perhaps more) U3O8 equivalent through 2004 in tails that have been enriched for Urenco under a contract with Russia's Techsnabexport. . . . Urenco has been having some of its enrichment tails re-enriched in Russia for some time and then selling the resulting natural product to selected customers." Id. at 1 and 2.); Uranium Coalition's Prehearing Brief, Exhibit 14 at 1 and 2.

[202] The domestic industry has urged the Commission to consider the stockpile of uranium in Kazakhstan as Russian inventory. We note that Commerce indicated in its final results for the Russian review that USEC had requested a scope ruling on this stockpile in August 1999, but Commerce did not decide the issue and only stated that the "scope request is pending before the Department at this time." 65 Fed. Reg. at 41441 (July 5, 2000). Thus, we have not included the Kazak stockpile in our consideration of likely Russian inventory of uranium.

withhold natural UF_6 amounting to an equivalent of 58 million pounds of U_3O_8 from the world market for 10 years.[203] In addition, Russia holds significant and increasing inventories of natural UF_6 in the U.S. market that results largely from sales of the Russian LEU-HF blended down under the HEU Agreement.[204] This inventory can be sold and imported into the U.S. market subject to current limits, but some of the limits increase by 2 million pounds per year with an annual limit of 20 million pounds in 2009 under the USEC Privatization Act.

Russia also holds substantial inventories of uranium tails, a waste product of uranium enrichment production. However, in contrast to other enrichment producers, Russia reportedly uses some of its enrichment capacity to re-enrich uranium tails in its inventory as well as some from Europe, thereby providing another source of uranium.[205] Russia's inventory of uranium tails is estimated to equal about 609.3 million pounds of U_3O_8, or enough to satisfy uranium reactor requirements in the United States for about 12 years.[206]

Finally, while the Russian HEU Agreement governs the blending down of 500 metric tons of Russian HEU for importation into the United States as LEU, Russia holds substantial additional supply of HEU not governed by the HEU Agreement that could be blended down to LEU.[207] The parties disagree about whether this inventory is available for commercial or strategic use.[208] Evidence submitted by the Russian Respondents estimates that Russia's strategic HEU stockpiles in the late 1990s was "over 400 MT" and that "[i]t is possible that additional HEU inventories (possibly, on the order of 100MT) would be declared excess by the Russian government in the future."[209]

Russia's substantial inventories in conjunction with its enrichment capacity further indicate its ability to increase its exports to the United States within a reasonably foreseeable time upon termination of the suspended investigation. Moreover, Russian uranium faces barriers to entry in Europe, because imports of uranium from the former Soviet states are subject to EURATOM sales quotas.[210] The Euratom Commission currently allows about 25 percent of its utilities' annual uranium requirements to be filled with uranium from the former Soviet states.[211]

Russia has the resources and capacity to ship significantly increased volumes of imports of uranium in all forms to the United States. As discussed above, uranium imports from Russia, under the

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[203] CR at II-3; PR at II-2.

[204] CR at II-17; PR at II-11. The Russian feedstock resulting from the HEU Agreement had accumulated to a substantial volume through 1998 when it was purchased by the U.S. Government for $325 million in March 1999. The post-1998 Russian feedstock of the HEU-to-LEU shipments will be sold and possibly imported for the Russians by a consortium of Cogema, Cameco, and Nukem. CR at I-17, n. 18; PR at I-11, n.18. ***. CR at II-17; PR at II-11. GNSS and USEC reported in their questionnaire responses that at the end of 1999 they held combined U.S. inventories of the imported Russian LEU-HF amounting to ***. CR at II-18 and II-19; PR at II-11.

[205] CR at II-22; PR at II-13.

[206] CR at II-22, n.68; PR at II-13, n.68.

[207] CR at II-23; PR at II-14.

[208] The Uranium Coalition alleges that Russia holds another 770 metric tons of HEU which are not covered by the Russian HEU Agreement at this time but are covered by the Russian Suspension Agreement. Uranium Coalition's Prehearing Brief at 76; Tr. at 235-236 (Russian Respondents contend that the additional Russian HEU reportedly ***). CR at IV-5; PR at IV-3.

[209] "HEU-II, I- or 0? (Questions to Dr. Oleg Bukharin)," in The UX Weekly at 1 (dated June 12, 2000), in Russian Respondents' Posthearing Brief at Attachment 3.

[210] CR at II-4 and IV-3; PR at II-3 and IV-2.

[211] CR at IV-3; PR at IV-2. Since the 25 percent limit is defined in terms of actual usage, purchases and inventories could be higher. Id.

Russian HEU Agreement, have provided a large and increasing supply of uranium at the LEU stage to the U.S. market.[212] Under this Agreement, the United States has guaranteed to purchase 5.5 million SWU per year from Russia for the 1999-2014 period, which is projected to represent *** of U.S. electric utilities' requirements for enrichment in the reasonably foreseeable future.[213] In addition, the natural UF_6 or Russian feedstock, which is credited to Russia under the HEU-to-LEU sales and is stored at USEC facilities, may be imported and sold in the U.S. market under increasing annual limits subject to the USEC Privatization Act and the Suspension Agreement.[214] Without the discipline of the Suspension Agreement, Russia would not be restricted to finding matching sales to import more uranium into the U.S. market. Russia likely would import additional volumes of the natural UF_6 that are increasing and already stockpiled in the United States above the limits provided for under the USEC Privatization Act[215] and would not be precluded from importing additional volumes of LEU whether or not blended down from its HEU stockpiles or produced from other reserves and inventories.

Consequently, based on the record in this review, we conclude that the volume of subject imports, which already is substantial, likely would increase significantly within a reasonably foreseeable time if the suspended investigation is terminated.

2. Likely Price Effects

We find that the increased volumes of subject imports of uranium from Russia that would be likely to enter the United States if the suspended investigation were terminated likely would have significant negative price effects for the U.S. product.

As discussed above, uranium is a commodity product and is price sensitive to significant changes in the supply of uranium on the market. Lowest price was the most important purchasing factor reported by U.S. electric utilities.[216] The importance of price reflects the intense competition among suppliers in the U.S. market as worldwide supplies overall have increased, including the growing availability of natural UF_6 and enriched UF_6 as finished products that bypass a portion of the fuel cycle.[217] There also is some evidence that prices for the processed products may have been lower than for products purchased through the traditional fuel cycle process.[218] The significant volumes of natural UF_6 and LEU act as substitutes for uranium concentrates, natural conversion, and enrichment services, and affect the prices, demand, and supply of these latter products/toll services.[219] The strength of such substitution may continue to increase in significance because worldwide inventories of uranium, particularly in the natural UF_6 form, are reportedly large.[220] The combined direct purchases by utilities of natural UF_6 and LEU accounted for 36.5

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[212] During the period of review, USEC imported and shipped to U.S. utilities Russian LEU-HF blended down from HEU containing a total of ***. CR at II-2; PR at II-1.

[213] Calculated from CR at II-2 and II-29, and II-2, n.6; PR at II-1 and II-18, and II-1, n.6. We note that SWU purchased under the Russian HEU Agreement and Suspension Agreement represented *** of U.S. electric utilities' requirements for enrichment during the period of review. Id.

[214] CR at II-3 and II-4, n.12; PR at II-2, n.12.

[215] Currently, if Russia finds matching sales under the Suspension Agreement for sales of this UF_6 stockpile, these sales do not reduce its limits under the USEC Privatization Act. CR at II-4, n.12; PR at II-2, n.12.

[216] CR at II-36; PR at II-22.

[217] CR at II-36; PR at II-22.

[218] CR at II-12; PR at II-8.

[219] CR at II-11 and II-12; PR at II-8.

[220] CR at II-12; PR at II-8.

percent of total deliveries in 1999, substantially higher than the 15.7 percent share in 1997.[221] At the same time, due to deregulation of electricity supply, purchasers are facing increasing pressure to reduce their fuel costs and thus acquire uranium at the lowest possible price.[222]

While long-term contracts are prevalent within this industry, prices are typically negotiated and based on factors including consideration of various published spot prices at the time of negotiation.[223] Thus, subject imported uranium sold in the United States on a spot basis will likely impact domestic uranium sold on a long-term contract basis.[224]

The Commission's pricing analysis in this review does not yield meaningful direct comparisons between the domestic like product and the subject imports from Russia in part due to the matched sales and quota provisions governing imports under the suspension agreement.[225] Other evidence in the record indicates that prices for uranium generally have declined and have been at low levels during the period of review. The U.S. uranium price generally reflects the world price, including the differences in restricted and unrestricted uranium prices, because of extensive world trade in uranium and substantial U.S. imports of uranium through the enrichment stage.[226] World prices for uranium concentrates, as well as conversion and enrichment services, generally declined during 1997 and 1998, remained flat and then increased slightly during 1999, before declining in the first quarter of 2000.[227] Prices of uranium subject to restrictions, including Russian uranium continued to decline in 1999 and the first quarter of 2000.[228]

We find that without the discipline of the suspension agreement, there is a substantial likelihood that the Russian uranium would be priced aggressively in the U.S. market, which already has an abundance of supply, in order to gain market share.[229] The likelihood of price depression or suppression in this market is accentuated by the prevalence of the abundant supply of uranium and Russia's ability to provide large volumes of additional supply of uranium at all levels of production.

For the foregoing reasons, we find that termination of the suspended investigation on uranium from Russia would be likely to lead to significant underselling by the subject imports of the domestic like product, as well as significant price depression and suppression, within a reasonably foreseeable time.

3. Likely Impact

In the original preliminary investigation regarding uranium from the U.S.S.R. and the final investigation regarding uranium from Ukraine, the Commission segmented its analysis based on the four stages of the uranium fuel cycle, for example considering uranium concentrate imports in the context of the

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[221] CR at II-12, n.45; PR at II-8, n.45.

[222] CR at II-36; PR at II-22. Uranium accounts for about one-third of the total costs to produce electricity in nuclear power plants. Id. at II-34.

[223] CR at II-41 and V-6, n.10; PR at II-26 and V-4, n.10.

[224] CR at II-41, n.129; PR at II-26, n.129.

[225] For example, we recognize that imports from Russia under the matched sales provisions of the Russian Suspension Agreement were required to be priced less than the domestic product. CR at II-46, n.140, V-15, and V-25, n.20; PR at II-29, n.140, V-8, and V-9, n.20.

[226] CR at II-5, n.18; PR at II-4, n.18.

[227] CR at II-4; PR at II-3.

[228] CR at II-4 and n.14; PR at II-3 and n.14; Russian Respondents' Prehearing Brief, Tab 3 at Data Table 11.

[229] We find that Russian pricing behavior during the suspended investigation is more indicative of the controls under the suspension agreement than of any likely pricing practices absent the discipline of the agreement. See Russian Respondents' Prehearing Brief at 55.

concentrators, and so on.[230] However, the uranium market has changed substantially since the early 1990's. As stated previously, we have analyzed the impact of the subject imports on the entirety of the domestic like product and industry. We recognize, however, that some degree of disaggregated analysis is unavoidable, particularly with respect to the financial performance of domestic producers at different stages of the uranium fuel cycle.

We find that the likely significant volume of subject imports would adversely impact the domestic industry if the suspended investigation was terminated. While the domestic producers showed disparate financial results during the period of review, all experienced declines in their overall financial performance. In the aggregate, concentrators reported operating losses throughout the review period, with operating loss margins exceeding 40 percent in 1997 and 1999.[231] Two concentrators closed their operations in 1999.[232] ConverDyn, the sole U.S. converter, experienced *** declines in its financial performance during the period of review.[233] The likely significant volume of imports from Russia would particularly affect the demand for USEC's enrichment services.[234] USEC's U.S. sales of its enrichment services experienced significant declines during the period of review and were *** of its sales level reported in the early 1990's.[235] Although the unit value for USEC's enrichment services did not change substantially during the period of review, its unit costs increased substantially when it reduced production levels in response to increased sales of Russian enriched UF_6, thereby sacrificing economies of scale.[236] In June 2000, USEC announced that it would cease uranium enrichment services at one of its two production plants, Portsmouth, in June 2001 in order to align its cost of production with lower market prices.[237] Finally, the reported financial data for fabricators' operations that included both subject and non-subject operations showed large fluctuations between years, although there was a slight improvement reported over the period of review.[238] Given the weak and declining financial performance of the domestic industry overall, we conclude that the domestic industry is in a weakened state and currently is vulnerable to material injury by the likely significant volume of subject imports and subsequent negative price affects that would occur if the suspended investigation is terminated.[239] [240]

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[230] In the original preliminary determination, the Commission found that many indicators pertaining to the condition of the uranium industry were negative and that the industry overall had a very low and declining market share. The Commission found that "the record contains a reasonable indication that the domestic industry is materially injured." Soviet Uranium, USITC Pub. 2471 at 22 and 23.

[231] Operating losses were: $26.5 million in 1997, $9.0 million in 1998, and $26.9 million in 1999. The domestic concentrators' operating losses as a share of net sales were: 40.8 percent in 1997, 12.9 percent in 1998, and 44.9 percent in 1999. CR/PR at Table III-1 and III-2.

[232] CR at I-10 and n.8; PR at I-7 and n.8.

[233] CR/PR at Table III-3. ConverDyn's operating income *** over the review period as follows: *** in 1999. The converter's operating margins as a share of net sales were: *** in 1999. Id.

[234] USEC's enrichment service production was: *** in 1999. By comparison, USEC's annual production in the early 1990's was about ***. CR/PR at Table I-5.

[235] USEC's U.S. sales of its enrichment services were: *** in 1999. By comparison, USEC's annual U.S. sales in the early 1990's were ***. CR/PR at Table I-5.

[236] USEC's unit values for U.S. sales were: *** in the July-December 1999 interim period. The unit cost of goods sold increased from *** in the July-December 1999 interim period. CR/PR at Table III-4.

[237] CR at III-14; PR at III-9.

[238] CR/PR at Table III-5 and III-6.

[239] SAA at 885 ("The term 'vulnerable' relates to susceptibility to material injury by reason of dumped or subsidized imports. This concept is derived from existing standards for material injury and threat of material injury . . . .If the Commission finds that the industry is in a weakened state, it should consider whether the industry

As discussed above, termination of the suspended investigation would likely lead to a significant increase in the volume of subject imports, and these aggressively priced shipments would likely undersell the domestic product and significantly depress or suppress the domestic industry's prices. With U.S. demand for uranium essentially stagnant in a price-sensitive market, the increase in subject imports is likely to cause decreases in both the prices and volume of domestic producers' shipments. We find that these developments would likely have a significant adverse impact on the production, shipments, sales, market share, and revenues of the domestic industry, particularly given its vulnerable condition. This reduction in the industry's production, shipments, sales, market share, and revenues would result in further erosion of the industry's profitability as well as its ability to raise capital and make and maintain necessary capital investments. In addition, we find it likely that termination of the suspended investigation will result in commensurate employment declines for the industry.

Accordingly, based on the record in this review, we conclude that, if the suspended investigation is terminated, subject imports from Russia would be likely to have a significant adverse impact on the domestic industry within a reasonably foreseeable time.

D. Termination of the Suspended Investigation on Imports of Uranium From Uzbekistan Is Not Likely to Lead to Continuation or Recurrence of Material Injury Within a Reasonably Foreseeable Time

1. Likely Volume of Subject Imports

Uzbekistan has capacity to produce only uranium concentrate, and thus its direct imports have only been at that level of the fuel cycle.[241] The value of direct uranium imports from Uzbekistan increased from

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will deteriorate further upon revocation of an order.").

[240] Commissioner Askey notes that the domestic industry is made up of four different segments, concentrators, converters, enrichers and fabricators, and those four groups each showed very different financial results during the review period. The record indicates that the concentrators have been experiencing poor financial performance during the period. CR and PR at Table III-2. By contrast, the enricher, which represents 59 percent of the value-added in the uranium fuel cycle, CR at I-11 and PR at I-8, showed strong financial returns, although there was a declining trend in some indicators. CR and PR at Table III-4. Likewise, the converter's financial indicators were positive but declining during the period. CR and PR at Table III-3. Finally, the fabricators showed a more mixed set of financial indicators. CR and PR at Table III-5. In sum, while the segmentation of the industry complicates the record somewhat, Commissioner Askey finds that the industry as a whole is not vulnerable.

[241] In addition, during the period of review, *** of Uzbek natural uranium. CR at IV-2; PR at IV-1. These indirect subject Uzbek imports were equivalent to approximately *** in 1999. Calculated from ***. We note that the quantity and value of these indirect subject imports were reported by *** in kg of U. While the quantity can be calculated into pounds of U_3O_8 which is the measurement that corresponds to the only form of uranium produced in Uzbekistan, uranium concentrate, a similar adjustment to the value data is inappropriate because the reported data includes value for a later stage of production. Thus, the values of these indirect subject imports have not been included in any value-based calculations of market share regarding Uzbek imports.

1997 to 1999, and accounted for *** in 1999 of the total value of U.S. sales and imports of all uranium products.[242] Uranium concentrate imported directly from Uzbekistan into the United States also accounted for *** of the total value of all U.S. imports of all uranium products and only *** percent of total value of U.S. imports of uranium concentrates during the period of review.[243] The volume of all known uranium concentrate imported from Uzbekistan (direct and indirect) was *** in 1999.[244] Thus, Uzbek imports of uranium concentrate represented a relatively small share of total U.S. uranium sales and imports of all uranium during the period of review. We note, however, that the imports of Uzbek uranium were subject to quantity restrictions under the Suspension Agreement. Nonsubject imports of uranium concentrate accounted for *** percent in 1999 of the total value of U.S. sales and imports of all uranium products and *** percent in 1999 of the total value of U.S. sales and imports of uranium concentrate.[245]

While Uzbek exports of uranium to the United States are projected to *** [246] ***.[247] Uzbekistan's production capacity has remained at almost *** of U_3O_8 annually and ***.[248] Production reportedly is ***.[249] Uzbek production of uranium concentrates was *** in 2000 and 2001.[250] Uzbekistan reportedly does not maintain any significant inventories of uranium.[251]

Uzbekistan has no home market demand and is completely export-oriented. Data believed to account for all uranium concentrate production in Uzbekistan show that between *** of total Uzbek uranium shipments were exported to the United States from 1997 to 1999 and are projected to account for

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[242] Calculated from CR/PR at Table I-2. The value of uranium concentrate imported directly from Uzbekistan was *** in 1999. Id. at Table I-3.

[243] CR at II-21; PR at II-15. Uzbek imports of uranium concentrate accounted for *** in 1999 of the total quantity of U.S. sales and imports of uranium concentrate. Calculated from CR/PR at Tables I-2 and I-3, and ***. While Uzbek imports accounted for *** in 1999 of the total quantity of U.S. sales and imports of uranium concentrate, the concentrate segment of the market accounted for a small share of the total uranium market, i.e., only *** of the value of total U.S. sales and imports of all uranium products in 1999. Id.

[244] Calculated from CR/PR at Table I-3 and ***. These volumes represented *** in 1999. Calculated from CR at II-29/PR at II-18, Table I-3 and ***. Expressing all Uzbek imports of uranium concentrate as a percentage of U.S. utilities' deliveries of uranium for enrichment yields similar results, with market shares of *** in 1999. Id.

[245] Calculated from CR/PR at Tables I-2 and I-3.

[246] CR at IV-7; PR at IV-4. Uzbek direct exports of uranium concentrate to the United States were *** in 2001. Id. and ***.

[247] CR at IV-7; PR at IV-4. Uzbek direct exports of uranium concentrate to the United States were *** in 2000 and 2001. Id. and ***.

[248] CR at IV-7/PR at IV-4 and ***. In fact, Uzbekistan reportedly has ***. Id. and Uzbek Respondents' Prehearing Brief at 17-18. It has been reported that Uzbek's mining company, Navoi, and Cogema had considered a joint venture to increase mining activities of uranium in Uzbekistan. Uranium Coalition's Prehearing Brief at Exhibit 29. However, both Navoi and Cogema have indicated that development and commercialization of new ISL mines in Uzbekistan are economically and politically infeasible, particularly in view of the current market conditions. CR at IV-7 and Uzbek Respondents' Posthearing Brief, Response to Questions at 21-23. Moreover, the record indicates that Cogema is not the first foreign partner with whom the Uzbeks have held discussions and that in prior talks with Nukem the two sides could not reach a satisfactory arrangement. "Cogema and Navoi Explore Joint Venture to Exploit Uzbekistan Uranium Deposits," in Nuclear Fuel (11/16/98); see also The UX Weekly at 4 (May 22, 2000). We find that any future joint venture is uncertain and it would be speculative to find that it would have any product commercially available in the reasonably foreseeable future.

[249] CR at II-24 and IV-7; PR at II-15 and IV-4. Uzbek's capacity utilization for production of uranium concentrate was: *** in 2000 and 2001. Id. at IV-7 and ***.

[250] CR at IV-7/PR at IV-4 and ***.

[251] CR at IV-7; PR at IV-4; Uzbek Respondents' Prehearing Brief at 18-19.

*** of all Uzbek shipments in 2000 and 2001, respectively.[252] Uzbek's uranium concentrate is sold primarily under long-term contracts to utilities in ***.[253] The ***.[254]

Since imports of Uzbek uranium have been subject to quotas, which generally have been fully subscribed, it is likely that uranium shipments from Uzbekistan may increase to some degree without the suspension agreement quotas.[255] However, even if 100 percent of Uzbek's production capabilities were utilized and all such product were shipped only to the U.S. market, the volume of subject imports would still not rise to a significant or injurious level.[256] [257]

Accordingly, based on the facts in the record of this review, we conclude that while there may be some increase in the volume of subject imports of uranium from Uzbekistan if the suspended investigation is terminated, it is not likely to reach significant levels within a reasonably foreseeable time.

2. Likely Price Effects

Based in large part upon our finding of no likely significant volume increase, we also find that, in the event of termination, Uzbek subject imports are not likely to have significant negative price effects on the domestic like product. As discussed above, direct subject imports from Uzbekistan accounted for at most *** of the total value of U.S. sales and imports of uranium during the period of review.[258] We incorporate here our discussion above regarding pricing practices in the U.S. market.[259] The Commission's pricing analysis in this review does not yield meaningful comparisons between the domestic like product and the subject imports in part due to the price and quota provisions governing imports under the suspension agreement. Moreover, the limited evidence does not demonstrate likely significant price underselling by the subject imports from Uzbekistan, or of other price depressing or suppressing effects.[260] In view of our finding that the likely volume of Uzbekistan imports upon termination of the suspended investigation will not be significant, it is unlikely that such imports would result in significant adverse price effects in the U.S. market.

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[252] CR at IV-7/PR at IV-4 and ***.

[253] CR at IV-7; PR at IV-4.

[254] CR at IV-7; PR at IV-4; Uzbek Respondents' Prehearing Brief at 20-21; Uzbek's Posthearing Brief at 3.

[255] Furthermore, we note that since Uzbek's shipments of uranium concentrate actually are committed to Nukem, a trader, it is possible that additional Uzbek uranium shipments could be directed to the U.S. market.

[256] Uzbek's total production capacity for uranium concentrate would represent approximately *** of U.S. utilities' projected reactor requirements in 2000, 2001, and 2002. Calculated from CR at II-29 and IV-7; PR at II-18 and IV-4. In contrast, actual non-Uzbek imports of uranium concentrate have accounted for as high as *** of U.S. utilities' reactor requirements compared to the *** share of these requirements accounted for by all Uzbek imports during the period of review.

[257] Commissioner Bragg does not join this sentence. As set forth in her separate views regarding cumulation, Commissioner Bragg finds that, in the event of termination, the volume of subject imports from Uzbekistan is not likely to exceed *** million pounds.

[258] Calculated from CR/PR at Table I-2.

[259] See IV.C.2. at 49-50 supra.

[260] We note that the Uzbek Respondents maintain that prices of Uzbek uranium would likely increase upon termination because the market would no longer discount Uzbek "unrestricted" market uranium for the restrictions imposed by the U.S. suspension agreement. Uzbek Respondents' Prehearing Brief at 33-36.

3. Likely Impact

As indicated in our discussion of the likely impact of subject imports from Russia, we find that the U.S. uranium industry is in a vulnerable condition.[261] We found above that significant volume changes or price effects are unlikely in the event of termination of the suspended investigation on Uzbekistan. In the absence of such volume or price effects, we conclude that it is not likely that termination of the suspended investigation will result in a significant adverse impact on the domestic industry. We therefore determine that termination of the suspended investigation on uranium from Uzbekistan is not likely to lead to the continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

E. Revocation of the Antidumping Duty Order on Imports of Uranium From Ukraine Is Not Likely to Lead to Continuation or Recurrence of Material Injury Within a Reasonably Foreseeable Time

As discussed above, we find that imports from Ukraine are likely to have no discernible adverse impact on the domestic industry if the order is revoked.[262] There were no reported direct U.S. imports of uranium from Ukraine during 1997-1999. We find that the volume of imports of uranium from Ukraine is not likely to change to a significant degree as a result of revocation of the antidumping duty order.

Similar to Uzbekistan, Ukraine only has capacity to produce uranium concentrates and consequently, Ukraine's conversion, enrichment, and fabricating services are purchased from Russia, along with the remainder of its needs for uranium concentrate.[263] In contrast to Uzbekistan, Ukraine, however, has significant home market demand for uranium since nuclear power reportedly accounts for 35-40 percent of Ukraine's electricity generation. While Ukraine reportedly has extensive uranium ore deposits, most are considered too deep or low grade to be economically recoverable. While Ukraine did not provide the Commission with data for this review, secondary sources report that Ukraine produced about 3.1 million pounds of U_3O_8 annually during 1997-1999, and is estimated to have had an annual home market demand of about 5.6 million pounds of U_3O_8 during the review period, meaning it is a net importer of uranium products.[264]

We recognize that since some fairly traded imports with natural components of Ukraine origin have entered the U.S. market during the period of review, some direct imports from Ukraine may enter the U.S. market upon revocation of the order.[265] Ukraine's need for hard currency could drive it to export even with a home market demand that is almost double its domestic production of uranium concentrate. However, even if 100 percent of Ukraine's production were shipped to the U.S. market upon revocation of the order,

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[261] As noted above in footnote 239, Commissioner Askey does not find the industry as a whole to be vulnerable.

[262] For the reasons discussed herein, Commissioners Miller and Hillman do not exercise their discretion to cumulate subject imports from Ukraine and Uzbekistan. See Separate Views on Cumulation of Commissioners Marcia E. Miller and Jennifer A. Hillman.

[263] CR at II-23-24 and IV-6; PR at II-13-14 and IV-3.

[264] CR at II-24 and IV-6; PR at II-14-15 and IV-3.

[265] *** of Ukrainian natural uranium. CR at IV-2/PR at IV-1 and ***. These indirect nonsubject Ukrainian imports were equivalent to approximately *** in 1999. Calculated from ***. These volumes represented *** in 1999. Calculated from CR at II-29/PR at II-18, Table I-3 and ***. Expressing the natural Ukrainian component of these nonsubject imports as a percentage of U.S. utilities' deliveries of uranium for enrichment yields similar results, with market shares of *** in 1999. Id.

the volume of subject imports would be too small a share of U.S. requirements to rise to a significant or injurious level.[266] [267]

The record in this review contains no evidence regarding the prices of the subject imports of uranium from Ukraine in the U.S. market because the subject imports have virtually ceased to enter the market subsequent to the imposition of the order. We find that the likely volume of subject imports of uranium from Ukraine would be too small to have any likely significant negative affect on domestic uranium prices.

As indicated in our discussion of the likely impact of subject imports from Russia, we find that the U.S. uranium industry is vulnerable to material injury.[268] However, we find that the likely insignificant volume and price effects of imports from Ukraine will not likely result in a significant adverse impact on the domestic industry upon revocation of the order. We therefore determine that revocation of the antidumping duty order on uranium from Ukraine is not likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

CONCLUSION

For the foregoing reasons, we determine that termination of the suspended investigation on imports of uranium from Russia would be likely to lead to continuation or recurrence of material injury to the U.S. uranium industry within a reasonably foreseeable time. We also determine that termination of the suspended investigation on imports of uranium from Uzbekistan and revocation of the antidumping duty order on imports of uranium from Ukraine would not be likely to lead to continuation or recurrence of material injury to the U.S. uranium industry within a reasonably foreseeable time.

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[266] Ukraine's total reported production of uranium concentrate would represent only approximately *** of U.S. utilities' projected reactor requirements in 2000, 2001, and 2002. Calculated from CR at II-24, II-29, and IV-6; PR at II-15, II-18, and IV-3.

[267] Commissioner Bragg does not join this sentence. As set forth in her separate views regarding cumulation, Commissioner Bragg finds that, in the event of revocation, the volume of subject imports from Ukraine is not likely to exceed *** million pounds.

[268] As noted above in footnote 239, Commissioner Askey does not find the industry as a whole to be vulnerable.

SEPARATE VIEWS OF COMMISSIONER LYNN M. BRAGG

Based upon the record in these reviews, I join the Commission majority's discussion of background, domestic like product and domestic industry, and findings that, under section 751(c) of the Tariff Act of 1930, as amended, termination of the suspended investigation on subject uranium imports from Russia would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time;[269] and that revocation of the antidumping duty order on subject imports from Ukraine[270] and termination of the suspended investigation on subject imports from Uzbekistan[271] are not likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. I provide the following separate views to detail my cumulation analysis for these grouped sunset reviews.

I. CUMULATION

A. ANALYTICAL FRAMEWORK

As set forth in previous views,[272] in considering whether to cumulate subject imports in a sunset review, I first assess: (1) whether the reviews were initiated on the same day; and (2) the likely reasonable overlap of competition among subject imports and between subject imports and the domestic like product, in the event the orders are revoked and/or the suspended investigations are terminated.

If, as a result of the foregoing assessment, I determine that subject imports are amenable to cumulation, I then proceed to examine whether the statutory exception precludes cumulation of such imports that are otherwise amenable to cumulation–i.e., I examine whether such imports, when considered individually, are likely to have no discernible adverse impact on the domestic industry. In instances where I find that subject imports from more than one subject country are likely to have no discernible adverse impact, I then consider whether these individual countries for which I have made a likely no discernible adverse impact finding are, in the aggregate, likely to have no discernible adverse impact on the domestic industry.

Upon review of the record in these reviews, I find, as discussed below, that there is likely to be a discernible adverse impact to domestic uranium producers as a result of termination of the suspended investigation on subject imports from Russia. I also find, however, that there is likely to be no discernible adverse impact to the domestic industry as a result of revocation of the antidumping duty order on subject imports from Ukraine and termination of the suspended investigation on subject imports from Uzbekistan, either individually or in the aggregate.

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[269] Section IV.

[270] Section IV.

[271] Section IV.

[272] See Separate Views of Chairman Lynn M. Bragg Regarding Cumulation in Sunset Reviews, Potassium Permanganate from China and Spain, Inv. Nos. 731-TA-125-126 (Review), USITC Pub. 3245 (Oct. 1999) at 27-30. See also, Brass Sheet and Strip from Brazil, Canada, France, Germany, Italy, Japan, Korea, the Netherlands, and Sweden, Inv. Nos. 701-TA-269-270 (Review) and 731-TA-311-317 and 379-380 (Review), *Separate Views of Chairman Lynn M. Bragg Regarding Cumulation*, USITC Pub. 3290, at 27-32 (March 2000).

B. REASONABLE OVERLAP OF COMPETITION

The parties agree that uranium from one country is generally physically interchangeable with uranium from another.[273] In addition, the record indicates that subject imports and the domestic like product have similar channels of distribution,[274] a geographical overlap of sales,[275] and an actual or likely simultaneous presence in the marketplace.[276] I therefore find a reasonable overlap of competition among subject imports and the domestic like product.

C. DISCERNIBLE ADVERSE IMPACT

As set forth below, I find that termination of the suspended investigation on subject imports from Russia would be likely to have a discernible adverse impact on the U.S. industry. I also find, however, that revocation of the antidumping duty order on subject imports from Ukraine and termination of the suspended investigation on subject imports from Uzbekistan would be likely to have no discernible adverse impact on the U.S. industry, both individually and in the aggregate. I therefore do not cumulate subject imports from any of the subject countries.

1. INDIVIDUAL COUNTRY ANALYSIS

A. RUSSIA

Much of the uncertainty in today's uranium market stems from the Russian industry's lack of transparency. The record indicates, however, that Russia has vast reserves of unmined uranium,[277] extensive capacity to produce all forms of uranium (including the processing of depleted uranium and the reprocessing of spent fuel),[278] considerable inventories of HEU which can potentially be blended down to LEU for sale into the United States,[279] and vast inventories of natural uranium (natural UF_6).[280] The record therefore indicates that Russia has the ability to significantly increase the volume of subject imports into the United States.

The record also indicates that Russia has the incentive to significantly increase its uranium imports into the United States in the event of termination of the suspended investigation. The United States is recognized as one of the primary markets for uranium consumption in the world and, in fact, Russia currently ships a large volume of uranium products to the United States. In addition, Russia currently

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[273] CR at II-34 and II-37.
[274] CR at II-2, II-3, and II-8.
[275] Uranium Coalition's Prehearing Brief at 66, n.196 and Exhibit 11.
[276] CR and PR at Tables I-4 and I-6. I note that while there were no subject imports from Ukraine over the period reviewed, subject imports from Ukraine were present in the U.S. market at the time of the Commission's original investigation on subject imports from Ukraine.
[277] CR at I-22.
[278] CR at II-22.
[279] CR at II-23.
[280] CR at II-3 and II-17.

faces barriers to entry in Europe as a result of EURATOM sales quotas on uranium imports from the former Soviet states.[281]

Based upon all of the foregoing, the record indicates that subject imports from Russia will likely have a discernible adverse impact on the U.S. uranium industry. Such imports are therefore amenable to cumulation.

B. UKRAINE

Although no Ukranian respondent interested party participated in these reviews, there is some, albeit minimal, current record evidence regarding Ukranian uranium production. This evidence indicates that Ukranian domestic consumption for uranium exceeds domestic uranium production.[282] Thus, Ukraine is a net importer of uranium products. Because of Ukraine's domestic supply shortfalls and the fact that the country produces only uranium concentrate, Ukraine purchases uranium conversion, enrichment, and fabricating services from Russian, along with the remainder of its needs for concentrate.[283] While Ukraine's need for hard currency could provide an incentive for Ukraine to export uranium concentrate to the United States, the fact that Ukraine's home market demand is nearly double Ukranian uranium concentrate production makes any significant increase in exports unlikely.[284]

The record also indicates that during the period reviewed no uranium concentrate was imported into the United States from Ukraine. I recognize, however, that in 1998 and 1999, the equivalent of *** pounds of uranium concentrate was imported into the United States from *** as non-subject imports.[285] Even if one were to assume that in the event of revocation Ukraine would choose to export uranium concentrate directly to the United States rather than sell the product to the ***, that volume of *** pounds of concentrate would have no discernible adverse impact on the domestic industry if imported into the United States in the event of revocation.

Based upon all of the foregoing, the record indicates that subject imports from Ukraine will likely have no discernible adverse impact on the U.S. uranium industry. Such imports are therefore not amenable to cumulation.

C. UZBEKISTAN

As with Ukraine, Uzbekistan produces only uranium concentrate. However, unlike Ukraine, Uzbekistan exports all of its uranium concentrate production. Uzbek uranium production capacity is forecast at *** pounds in 2000 and 2001.[286] Of this amount, it is expected that approximately *** pounds will be imported into the United States in 2000 and 2001.[287] The remaining production is expected to be sold in *** under long-term supply contracts.[288]

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[281] CR at II-4 and IV-3.
[282] CR at II-24 and IV-6.
[283] CR at II-23-24 and IV-6.
[284] CR at II-24, IV-6, and ***.
[285] CR at IV-2 and ***.
[286] CR at IV-7 and ***.
[287] CR at IV-7 and ***.
[288] CR at IV-7.

The record also indicates that Uzbekistan's uranium concentrate production capacity has *** pounds annually and ***.[289] In addition, the Uzbek uranium concentrate industry operated at *** percent capacity utilization in 1999, and is projected to operate at *** percent capacity utilization in 2000 and 2001, thus indicating that Uzbekistan has *** in order to increase exports to the United States in the event of termination.[290]

The record also indicates that the overwhelming majority of ***.[291] And while these commitments are through the uranium trader Nukem, the record nonetheless indicates that Uzbekistan sells most of its uranium under long term contracts to utilities in ***. I find it unlikely that Uzbekistan would seek to modify these existing contracts so that additional volumes of uranium may be redirected to the U.S. market in the event of termination.

Based upon all of the foregoing, I determine that there is likely to be no discernible adverse impact to the domestic industry in the event of termination of the suspended investigation on uranium imports from Uzbekistan.

2. AGGREGATE ANALYSIS

Upon finding no likely discernible adverse impact in the event of revocation for Ukraine and termination for Uzbekistan, I now turn to the issue of whether these countries in the aggregate are likely to have an adverse impact. Upon review of the record in these grouped reviews, the record indicates that even in the aggregate, subject imports from Ukraine and Uzbekistan are still likely to have no discernible adverse impact on the domestic industry in the event of revocation.

While revocation may lead to a small increase in the volume of subject imports from Ukraine, as discussed above such volume is not likely to exceed *** pounds. In addition, I find that, in the event of termination, the volume of subject imports from Uzbekistan is not likely to exceed *** pounds. It is therefore reasonable to assume that in the event of revocation and termination, the aggregated volume of subject imports from Ukraine and Uzbekistan will not exceed *** pounds. I find that this volume and its approximate value of ***, based upon the highest price received for Uzbek uranium concentrate in the U.S. market over the period reviewed, would be minuscule in relation to the total value of $2.0 billion for 1999 U.S. imports and U.S. uranium sales.[292]

Accordingly, I find that, even in the aggregate, the likely volume of subject imports from Ukraine and Uzbekistan are likely to have no discernible adverse impact on the domestic industry.

II. CONCLUSION

Based upon the foregoing analysis, I find that termination of the suspended investigation on subject imports from Russia is likely to have a discernible adverse impact on the domestic industry, and

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[289] CR at IV-7. I recognize that the Government of Uzbekistan is actively seeking foreign investment partners to assist in the expansion of Uzbekistan's uranium industry. The record indicates, however, that no expansion projects have developed beyond the feasibility stage. The evidence therefore indicates that any proposed expansion in the Uzbek uranium industry will not take place in the reasonably foreseeable future.

[290] CR at IV-7.

[291] CR at IV-7.

[292] CR at V-15; Table C-1 at CR-C-3. I note that this aggregated volume is equivalent to only *** percent of U.S. utilities' year 2000 reactor requirements. CR at II-29.

that revocation of the antidumping duty order on subject imports from Ukraine and termination of the suspended investigation on subject imports from Uzbekistan and are likely to have no discernible adverse impact on the domestic industry, either individually or in the aggregate. I therefore do not cumulate subject imports from any of the subject countries.

SEPARATE VIEWS ON CUMULATION OF COMMISSIONERS MARCIA E. MILLER AND JENNIFER A. HILLMAN

In these views, we discuss our decision not to cumulate subject imports of uranium from Russia, Ukraine, and Uzbekistan.

I. No Discernible Adverse Impact

The Russian and Uzbek respondents have argued that subject imports from the respective countries would be likely to have no discernible adverse impact on the domestic industry if the suspended investigations were terminated. However, given the likely volume of subject imports and impact on the domestic industry in the reasonably foreseeable future, we do not find that the subject imports from any of the three countries are likely to have no discernible adverse impact on the domestic industry if the order on Ukraine is revoked and the suspended investigations on Russia and Uzbekistan are terminated.

Subject imports from Russia have been present in the U.S. market in the years since the imposition of the suspension agreement, and have accounted for a significant and increasing share of both total imports and domestic consumption during the review period.[293] Based on the current level of imports from Russia and the likely volume of subject imports and impact on the domestic industry in the reasonably foreseeable future, we do not find that the subject imports from Russia would be likely to have no discernible adverse impact on the domestic industry if the suspended investigation is terminated.[294]

Although there were no reported subject imports from Ukraine during the period investigated, independent data show that during 1999, over 2 million pounds of Ukrainian U_3O_8 were purchased and delivered to U.S. utilities after further processing in third country facilities.[295] In addition, purchaser questionnaires indicated deliveries of *** to U.S. utilities during 1997-99.[296] Although such imports were further processed in third countries before entering the United States, such data indicate the ability of Ukraine-produced U_3O_8 to enter the U.S. market despite its strong home market.

Subject imports from Uzbekistan have remained in the U.S. market in the years since the imposition of the suspension agreement. The value of uranium imports from Uzbekistan increased from 1997 to 1999.[297] Uzbek exports of uranium to the United States are projected to increase in 2000 from actual 1999 levels.[298] Moreover, since imports of Uzbek uranium have been restricted by quotas, which generally have been fully subscribed, it is likely that uranium shipments from Uzbekistan would increase without the suspension agreement quotas. Uzbekistan, which has no home market demand, is completely

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[293] CR/PR at Table I-2.

[294] CR at II-2, II-4, and IV-3; PR at II-1, II-3, and IV-2-3.

[295] Energy Information Administration, Uranium Industry Annual 1999 at 11 and 16, Fig. 12.

[296] Ad Hoc Committee's Posthearing Brief, Appendix A at 4. Importers' questionnaire responses indicated imports of *** during 1998 and 1999. ***.

[297] CR/PR at Table I-2. The value of direct U.S. imports of uranium from Uzbekistan *** in 1999. Id. The value of direct U.S. imports of uranium concentrates from Uzbekistan, based on questionnaire responses, accounted for 5.1 percent of the total value of all U.S. imports of uranium concentrates during the period of review and *** of the total value of U.S. sales and imports of uranium concentrate in 1998 and 1999, respectively. CR at II-24 and calculated from Table I-3.

[298] CR/PR at IV-7. Direct Uzbek exports to the United States of uranium concentrate were *** in 2000. Id. In addition, nonsubject imports of enriched UF_6 were imported into the United States containing ***.

export-oriented.[299] Accordingly, we do not find that the subject imports from Uzbekistan would be likely to have no discernible adverse impact on the domestic industry if the suspended investigation is terminated.

II. Cumulation

In determining whether to exercise our discretion to cumulate subject imports from Russia, Ukraine, and Uzbekistan, we examine whether upon revocation of the antidumping duty order and termination of the suspended investigations, the subject imports would likely compete in the U.S. market under similar conditions of competition.[300] We find that the subject imports from Russia, Ukraine, and Uzbekistan would not likely compete under similar conditions of competition with each other and therefore we do not exercise our discretion to cumulate subject imports from Russia, Ukraine, and Uzbekistan.

Uranium is a highly fungible product, thus the subject imports are easily physically interchangeable among the different country sources. Further, all uranium travels through similar channels of distribution, reaching electrical utilities nationwide by way of U.S. producers, processors and traders. However, important differences among the uranium industries in Russia, Ukraine, and Uzbekistan lessens the similarity of conditions of competition in the U.S. market.

Russia produces and exports uranium at all four stages of production, with most exports at the enriched uranium level.[301] Ukraine and Uzbekistan have no facilities to further process uranium and all exports are at the uranium concentrate stage. Consequently, Ukraine and Uzbekistan are dependent on other countries for converting and enriching their uranium concentrate.

Russia and Ukraine both have substantial home market demand for uranium products. Russia also reports home market demand for enrichment, but this accounts for only a fraction of its capacity, leaving a substantial share of such capacity for potential export shipments.[302] Ukraine's strong uranium home market consumption exceeds its present production capabilities and it is therefore a net importer of uranium. In contrast, Uzbekistan has no home market demand, and exports all of its uranium concentrate production. The absence of a home market provides additional incentive for Uzbek producers to increase uranium exports to the U.S. market, ***.[303]

Additionally, because Russian uranium is subject to the HEU Agreement, it will continue to enter the U.S. market in the significant quantities at which the United States is required to make purchases. Neither the Ukraine nor Uzbek industries have such guaranteed sales in the U.S. market.

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[299] Data believed to account for all uranium concentrate production in Uzbekistan show that between *** of total Uzbek uranium shipments were exported to the United States from 1997 to 1999 and are projected to account for *** of all Uzbek shipments in 2001. CR at IV-7; PR at IV-4; and ***.

[300] These reviews are unusual in that the Commission during the original investigation did not address cumulation. The original investigation was filed on uranium from the U.S.S.R. and suspension agreements were reached with these three countries after dissolution of the Soviet Union and prior to a final Commission determination.

[301] From 1997-99, U.S. imports of Russian enriched uranium accounted for over 95 percent of the value of total imports of all uranium from Russia. Calculated from CR/PR at Tables I-3 and I-5.

[302] Russia's home market demand for enrichment if estimated at about *** percent of its enrichment capacity. CR at II-22-23; PR at II-13-14. Ukraine's annual production accounts for about half of its annual reactor requirements (10 percent by value), although the country continues to export some uranium concentrate to gain foreign currency. CR at II-24, IV-6; PR at II-14-15, IV-4.

[303] CR at IV-7; PR at IV-4.

Thus, we find that if the antidumping duty order on Ukraine were revoked and the suspended investigations on Russia and Uzbekistan were terminated, the subject imports would not likely compete under similar conditions of competition and we do not cumulate the subject imports in these reviews.