

70 FR 39998, July 12, 2005

C-427-819  
AR: CY 2003  
Public Document  
Operations, Office 3: KJ

July 5, 2005

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

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

SUBJECT: Issues and Decision Memorandum: Final Results of  
Administrative Review of the Countervailing Duty Order on Low  
Enriched Uranium from France

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### Summary

We have analyzed the comments and rebuttal comments of interested parties in the administrative review of the countervailing duty (CVD) order on low enriched uranium from France for the period January 1, 2003, through December 31, 2003. After analyzing the comments, we have made no modifications to the Preliminary Results of Countervailing Duty Administrative Review: Low Enriched Uranium from France, 70 FR 10989 (March 7, 2005) (LEU Preliminary Results 2003). The “Subsidies Valuation Information” and “Analysis of Programs” sections below describe the methodology followed in this review with respect to Eurodif S.A. (Eurodif)/Compagnie Generale Des Matieres Nucleaires (COGEMA), the producer/exporter of subject merchandise covered by this review. Also below is the “Analysis of Comments” section, which contains the Department of Commerce’s (Department’s) response to the issues raised in the briefs. We recommend that you approve the positions we have developed in this memorandum.

We received comments on the following issues:

Comment 1: Benefit from Transaction  
Comment 2: Draft Customs Instructions

## METHODOLOGY AND BACKGROUND INFORMATION

### I. SUBSIDIES VALUATION INFORMATION

#### A. Calculation of Ad Valorem Rates

Consistent with our approach in the LEU Final Results of the first administrative review,<sup>1</sup> and LEU Preliminary Results 2003, we calculated the ad valorem subsidy rate for 2003, using the following formula:

$$\frac{A}{\text{Where;}}$$

$$= \frac{B * (C / D)}{E}$$

Where;

A	=	<u>Ad Valorem Rate</u>
B	=	Subsidy Benefit
C	=	Sales of Subject Merchandise to the United States during the Calendar Year
D	=	Total Sales during the Calendar Year (including COGEMA sales on behalf of Eurodif)
E	=	Sales that Entered U.S. customs territory during the Calendar Year

We received no comments on this calculation formula. Therefore, we continue to apply this formula to calculate the ad valorem subsidy rate in these final results for the January 1, 2003, through December 31, 2003, period of review (POR).

### II. ANALYSIS OF PROGRAMS

#### A. Programs Determined to Confer Subsidies

##### 1. Purchases at Prices that Constitute “More than Adequate Remuneration”

Eurodif provides low enriched uranium (LEU) to Electricite de France (EdF), a wholly owned French government agency that supplies, imports, and exports electricity. EdF is the major supplier of electricity in France, and is regulated by the Gas, Electricity, and Coal Department of the Ministry of Industry and the Budget and Treasury Departments of the Ministry of Finance. To date, EdF has entered into three long-term contracts with Eurodif to secure LEU. The first contract was negotiated in 1975, and Eurodif began enrichment at its Georges-Besse gaseous diffusion facility in 1979. Eurodif and EdF entered into a subsequent contract in 1995, under which the POR purchases were made.

In the Final Affirmative Countervailing Duty Determination: Low Enriched Uranium from France, 66 FR 65901 (December 21, 2001) (LEU Final Determination), and LEU Final Results, we found this program to be countervailable. The facts on which this determination was made have not changed. EdF is still owned by the Government of France (GOF), and because

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<sup>1</sup> See Final Results of Countervailing Duty Administrative Review: Low Enriched Uranium from France, 69 FR 40871 (July 7, 2004) (LEU Final Results).

EdF is purchasing a good from Eurodif, a financial contribution is being provided under section 771(5)(D)(iv) of the Tariff Act of 1930, as amended (the Act). The program is specific under section 771(5A)(D)(i) of the Act because it is available only to Eurodif.

Under section 771(5)(E)(iv) of the Act, a countervailable benefit may be provided by a government's purchase of a good for "more than adequate remuneration." Pursuant to section 771(5)(E)(iv) of the Act, the adequacy of remuneration will be determined in relation to the prevailing market conditions for the good being purchased in the country which is subject to the review. Therefore, in order to determine whether the prices paid by EdF constitute "more than adequate remuneration," we compared the prices paid by EdF to Eurodif with the prices paid by EdF to its other suppliers.

Due to the difference in the pricing structure between EdF and Eurodif, as compared with the pricing structure between EdF and its other suppliers, it is necessary to make certain adjustments for the comparison. Unlike most other customers, EdF provides its own energy for Eurodif to use when producing LEU. Beginning in 2002, EdF started to pay Eurodif in energy for the energy that Eurodif uses to produce EdF's LEU. Eurodif however charges EdF for the operational costs associated with the production of the LEU. As EdF does not supply electricity to its other LEU suppliers, these suppliers charge EdF a single price per separative work unit (SWU).<sup>2</sup> Thus, we have used this single price per-SWU as our benchmark price. In order to make a proper comparison between the benchmark price and the actual price (*i.e.*, the price paid by EdF to Eurodif), we included both an operational and energy price paid by EdF to Eurodif.

As part of the arrangement for obtaining LEU, customers often provide an amount of natural uranium equal to that which theoretically went into the LEU they are purchasing. The record does not contain information on the value of the natural uranium provided by EdF or other customers to Eurodif. In the "Issues and Decision Memorandum from Bernard T. Carreau, Deputy Assistant Secretary for AD/CVD Enforcement II to Faryar Shirzad, Assistant Secretary for Import Administration, concerning the Final Affirmative Countervailing Duty Determination: Low Enriched Uranium from France - Calendar Year 1999" (Final Determination Decision Memorandum) dated December 13, 2001, we assumed that the value of all natural uranium is the same (*see* discussion of Purchases at Prices that Constitute "More Than Adequate Remuneration" at section "Analysis of Programs"). In making purchase comparisons in this review, we continue to assume that the value of all natural uranium is the same in instances where EdF supplied its own feed material for enrichment. Thus, we have not included a value for the natural uranium component of the LEU delivered to EdF by Eurodif.

In order to determine whether a benefit was provided to Eurodif/COGEMA during the POR, we calculated a per-SWU price for both the energy and operational components of the LEU purchased by EdF from Eurodif. *See* the July 5, 2005, Memorandum concerning the Calculations for the Final Results of Administrative Review of Countervailing Duty Order on Low Enriched Uranium from France (Final Calculations 2003 Memorandum).<sup>3</sup> After adding

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<sup>2</sup> The "separative work unit" or (SWU) is the unit of measure of effort required to carry out isotopic separation of the uranium from its natural state to the concentration or "assay" required for power plant use.

<sup>3</sup> A public version of the document is available on the public record in the Central Records Unit (CRU) located in room B-099 of the main Commerce Building.

these two components together, we compared the per-SWU price paid to Eurodif by EdF in 2003, with the per-SWU price paid by EdF to its other LEU suppliers in 2003. Based on our analysis, we find that the per-SWU price paid by EdF to Eurodif was not higher than the per-SWU price paid by EdF to its other suppliers and, therefore, EdF's LEU purchases from Eurodif did not confer a countervailable benefit during the POR.

Also, as explained in the LEU Preliminary Results 2003, we have calculated a countervailable benefit from a sale pursuant to the contract listed in Exhibit 21 of Eurodif/COGEMA's June 1, 2004, questionnaire response.<sup>4</sup> While respondents submitted comments on this issue, we continue to find that it is appropriate to calculate a benefit. See Comment 1, below.

Consistent with our approach in the LEU Final Results, we expensed the benefit in the year of receipt. For a further discussion, see the Final Calculations 2003 Memorandum. We then multiplied the benefit amount by the sales of subject merchandise to the United States divided by total sales, and then divided that result by sales that entered U.S. customs territory during 2003. Thus, we calculated the ad valorem rate for this program using the formula discussed in the "Subsidies Valuation Information" section, above.

On this basis, we find the countervailable subsidy from this program to be less than 0.005 percent ad valorem.<sup>5</sup>

## 2. Exoneration/Reimbursement of Corporate Income Taxes

Under a specific governmental agreement entered into upon Eurodif's creation, Eurodif is only liable for income taxes on the portion of its income relating to the percentage of its private ownership. Eurodif is fully exonerated from payment of corporate income taxes corresponding to the percentage of its foreign government ownership and is eligible for a reimbursement of the amount of corporate income taxes corresponding to the percentage of its French government ownership. In the LEU Final Determination and LEU Final Results, we found this program to be countervailable. No new information has been provided in this review to warrant reconsideration of our determination.

During the POR, (*i.e.*, calendar year 2003), Eurodif filed its 2002 corporate income tax return. Based on the governmental tax agreement, Eurodif was exonerated from a portion of its 2002 income taxes filed during the POR. Eurodif was also reimbursed that portion of its 2002 income taxes attributable to its percentage of French government ownership during the POR. This tax exemption and reimbursement constitute a financial contribution within the meaning of section 771(5)(D)(ii) of the Act. Further, because the tax exemption and reimbursement is limited to Eurodif, the benefit is specific in accordance with section 771(5A)(D)(i) of the Act.

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<sup>4</sup> The details of this transaction are business proprietary.

<sup>5</sup> Where the countervailable subsidy rate for a program is less than 0.005 percent, the program is not included in the total countervailing duty rate. See, *e.g.*, the Other Programs Determined to Confer Subsidies section of the Issues and Decision Memorandum that accompanied the Final Results of Administrative Review: Certain Softwood Lumber Products from Canada, 69 FR 75917 (December 20, 2004).

In accordance with 19 CFR 351.509(b), we calculated the benefit under this program by determining the amount of corporate income taxes that Eurodif would have otherwise paid, absent the program, on the tax return it filed during the POR. Specifically, we added the amount of exonerated taxes and the amount of reimbursable taxes during the POR. We then divided the total benefit amount by Eurodif's total sales for calendar year 2003. We adjusted Eurodif's sales denominator using the methodology described in the "Subsidies Valuation Information" section, above. This methodology is consistent with our approach in the LEU Final Results. On this basis, we find a net countervailable subsidy of 1.23 percent ad valorem under this tax program.

### III. TOTAL AD VALOREM RATE

The total net subsidy rate for Eurodif/COGEMA is 1.23 percent ad valorem for the period January 1, 2003, through December 31, 2003.

### IV. ANALYSIS OF COMMENTS

#### *Comment 1: Benefit from Transaction*

Respondents argue that the Department improperly calculated a benefit attributed to Eurodif/COGEMA based upon "a sale pursuant to the contract listed in Exhibit 21 of Eurodif/COGEMA's June 1, 2004 questionnaire response,"<sup>6</sup> and should not have calculated a benefit in connection with any purchases made during the period of review. Respondents make further arguments pertaining to these issues; however, their comments are proprietary and cannot be summarized in this document. See the July 5, 2005, Memorandum to the File regarding Proprietary Comments on "Benefit from Transaction."

Petitioners agree with the Department's finding of a benefit to Eurodif/COGEMA from the additional transaction and calculation of the program-specific rate. They make further arguments pertaining to these issues; however, their comments are proprietary and cannot be summarized in this document. See Id.

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#### *Department's Position*

We continue to find that Eurodif/COGEMA realized a benefit from the additional transaction which was for more than adequate remuneration, and that the transaction should be treated as a sale consistent with Eurodif/COGEMA's own treatment of the transaction. We, therefore, have not made any modifications to the methodology used to calculate the benefit generated by this transaction or any modifications to the methodology used to calculate the program-specific rate. The facts on which the Department's reasoning is based are proprietary and cannot be discussed in this document. See Id.

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<sup>6</sup> See LEU Preliminary Results 2003 at 10,991.

*Comment 2: Draft Customs Instructions*

Respondents urge the Department to adhere to its statement in the LEU Preliminary Results 2003 and not issue Customs instructions in light of the applicable injunctions covering entries of subject merchandise. Specifically, the Department stated that it “do{es} not intend to issue liquidation instructions for these entries until such time as the injunctions, issued on June 24, 2002, and November 1, 2004, are lifted.” See LEU Preliminary Results 2003 at 10,991-92. If, however, the Department does issue liquidation instructions following its final results, the respondents state that the instructions should include an admonition against liquidation, similar to the above statement made in the preliminary results.

Petitioners did not submit a rebuttal comment to the respondents’ argument.

Department’s Position

As we stated in LEU Preliminary Results 2003, while the countervailing duty deposit rate for Eurodif/COGEMA may change as a result of this administrative review, we have been enjoined from liquidating any entries of the subject merchandise. See Id. Consequently, we will not issue liquidation instructions for these entries until such time as the injunctions, issued on June 24, 2002, and November 1, 2004, are lifted.

Recommendation

Based on our analysis of the comments received, we recommend adopting the above positions. If these recommendations are accepted, we will publish the final results of the review in the Federal Register.

\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

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Joseph A. Spetrini  
Acting Assistant Secretary  
for Import Administration

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Date