June 5, 2017

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

THROUGH: Carole Showers
Executive Director
Office of Policy
Enforcement and Compliance

FROM: Sally C. Gannon
Director for Bilateral Agreements
Office of Policy
Enforcement and Compliance

SUBJECT: Issues and Decision Memorandum for the Fourth Sunset Review of the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation; Final Results

SUMMARY

We have analyzed the substantive responses of interested parties in the expedited sunset review of the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation (Agreement).\(^1\) We recommend that you approve the positions we have developed in the “Discussion of the Issues” section of this memorandum. Below is the complete list of the issues in this expedited final sunset review for which we received substantive responses by domestic interested parties only:

\(^1\) See Antidumping; Uranium from Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Ukraine, and Uzbekistan; Suspension of Investigations and Amendment of Preliminary Determinations, 57 FR 49220, 49235 (October 30, 1992) (1992 Suspension Agreement); Amendment to Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation, 59 FR 15373 (April 1, 1994) (1994 Amendment); Amendments to the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation, 61 FR 56665 (November 4, 1996) (1996 Amendments); Amendment to Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation, 62 FR 37879 (July 15, 1997) (1997 Amendment); and Amendment to the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation, 73 FR 7705 (February 11, 2008) (2008 Amendment).
1. Likelihood of Continuation or Recurrence of Dumping

2. Magnitude of Margin Likely to Prevail

**Scope of the Agreement**

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.

Uranium ore from Russia that is milled into U\(_3\)O\(_8\) and/or converted into UF\(_6\) in another country prior to direct and/or indirect importation into the United States is considered uranium from Russia and is subject to the terms of this Suspension Agreement.

For purposes of this Suspension Agreement, uranium enriched in U\(^{235}\) or compounds of uranium enriched in U\(^{235}\) in Russia are covered by this Suspension Agreement, regardless of their subsequent modification or blending. Uranium enriched in U\(^{235}\) in another country prior to direct and/or indirect importation into the United States is not considered uranium from Russia and is not subject to the terms of this Suspension Agreement.\(^2\)

HEU is within the scope of the underlying investigation, and HEU is covered by this Suspension Agreement. For the purpose of this Suspension Agreement, HEU means uranium enriched to 20 percent or greater in the isotope uranium-235.\(^3\)

Imports of uranium ores and concentrates, natural uranium compounds, and all forms of enriched uranium are currently classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 2612.10.00, 2844.10.20, 2844.20.00, respectively. Imports of natural uranium metal and forms of natural uranium other than compounds are currently classifiable under HTSUS subheadings: 2844.10.10 and 2844.10.50. HTSUS subheadings are provided for

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\(^2\) As noted below, the second amendment of two amendments to the Agreement effective on October 3, 1996, in part included within the scope of the Agreement Russian uranium which had been enriched in a third country prior to importation into the United States. According to the amendment, this modification remained in effect until October 3, 1998. *See 1996 Amendments.*

\(^3\) Section IV.M of the Agreement in no way has prevented Russia from selling directly or indirectly any or all of the highly-enriched uranium (HEU) in existence at the time of the signing of the Agreement and/or LEU produced in Russia from HEU to the U.S. Department of Energy (DOE), its governmental successor, its contractors, assigns, or U.S. private parties acting in association with DOE or the United States Enrichment Corporation and in a manner not inconsistent with the agreement between the United States and Russia concerning the disposition of HEU resulting from the dismantlement of nuclear weapons in Russia (now expired). *See 1992 Suspension Agreement*, at 49237.
convenience and Customs purposes. The written description of the scope of this proceeding is dispositive.

**History of the Agreement**


On December 25, 1991, the USSR dissolved and the United States subsequently recognized the twelve newly independent states (NIS) which emerged: Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russian Federation (Russia), Tajikistan, Turkmenistan, Ukraine, and Uzbekistan. The Department continued the investigations against each of these twelve countries. On June 3, 1992, the Department issued an affirmative preliminary determination that uranium from Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Ukraine, and Uzbekistan was being sold at less-than-fair-value by a weighted-average dumping margin of 115.82 percent, and a negative determination regarding the sale of uranium from Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Turkmenistan.

On October 30, 1992, the Department suspended the antidumping duty investigations involving uranium from Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Ukraine, and Uzbekistan on the bases of agreements by the countries’ respective governments to restrict the volume of direct or indirect exports to the United States in order to prevent the suppression or undercutting of price levels of United States domestic uranium. The Department also amended its preliminary determination to include highly-enriched uranium (HEU) in the scope of the investigations.

The first amendment to the Agreement, effective on March 11, 1994, authorized “matched sales” in the United States of Russian-origin and U.S.-origin natural uranium and separative work units (SWU). The amendment also extended the duration of the Agreement to March 31, 2004. Effective on October 3, 1996, the Department and the Government of Russia agreed to two amendments to the Agreement. One amendment provided for the sale in the United States of feed associated with imports of Russian low-enriched uranium (LEU) derived from HEU, making the Agreement consistent with the United States Enrichment Corporation Privatization

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5 See *Preliminary Determinations of Sales at Less Than Fair Value: Uranium From Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Ukraine and Uzbekistan; and Preliminary Determinations of Sales at Not Less Than Fair Value: Uranium From Armenia, Azerbaijan, Belarus, Georgia, Moldova and Turkmenistan*, 57 FR 23380 (June 3, 1992) (1992 Preliminary Determinations).

6 See *1992 Suspension Agreement*.

7 *Id.*

8 See *1994 Amendment*.

9 *Id.*
Act (42 U.S.C. 2297h, *et seq.*) (USEC Privatization Act). The second amendment restored previously-unused quota for SWU and included Russian uranium which had been enriched in a third country within the scope of the Agreement. According to this second amendment, these modifications would remain in effect until the date two years after the effective date of the amendment.\textsuperscript{10}

The next amendment to the Agreement, effective on May 7, 1997, doubled the amount of Russian-origin uranium that may be imported into the United States for further processing prior to re-exportation, and lengthened the period of time uranium may remain in the United States for such processing to up to three years.\textsuperscript{11}

On July 31, 1998, the Department notified interested parties of a change in the administration of the matched sales quota in that the Department would, effective immediately, use a calendar year basis (*i.e.*, January 1-December 31) rather than the previously-used quota year basis (*i.e.*, April 1-March 31).\textsuperscript{12}

On August 2, 1999, the Department published a notice of initiation of the first five-year sunset review of the Agreement, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).\textsuperscript{13} On July 5, 2000, the Department published its notice of the final results of the full sunset review, finding that revocation of the Agreement would be likely to lead to continuation or recurrence of dumping at a percentage weighted-average margin of 115.82 percent for all Russian manufacturers/exporters.\textsuperscript{14} On August 22, 2000, the Department published a notice of continuation of the Agreement pursuant to the Department’s affirmative determination and the ITC’s affirmative determination that termination of the Agreement would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.\textsuperscript{15}

On July 1, 2005, the Department published a notice of initiation of the second five-year sunset review of the Agreement.\textsuperscript{16} On June 6, 2006, the Department published its notice of the final results of the full sunset review, finding that termination of the Agreement would be likely to lead to continuation or recurrence of dumping at a percentage weighted-average margin of 115.82 percent for all Russian manufacturers/exporters.\textsuperscript{17} On August 11, 2006, the Department

\textsuperscript{10} See 1996 Amendments.

\textsuperscript{11} See 1997 Amendment.

\textsuperscript{12} See Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation, 63 FR 40879 (July 31, 1998).

\textsuperscript{13} See Initiation of Five-Year ("Sunset") Reviews, 64 FR 41915 (August 2, 1999).

\textsuperscript{14} See Notice of Final Results of Full Sunset Review: Uranium from Russia, 65 FR 41439 (July 5, 2000) (First Sunset Review).

\textsuperscript{15} See Notice of Continuation of Suspended Antidumping Duty Investigation: Uranium from Russia, 65 FR 50958 (August 22, 2000). See also Uranium from Russia: Corrected Continuation of Suspended Antidumping Duty Investigation, 65 FR 52407 (August 29, 2000).

\textsuperscript{16} See Initiation of Five-year ("Sunset") Reviews, 70 FR 38101 (July 1, 2005).

\textsuperscript{17} See Final Results of Five-Year Sunset Review of Suspended Antidumping Duty Investigation on Uranium From the Russian Federation, 71 FR 32517 (June 6, 2006) (Second Sunset Review).
published a notice of continuation of the Agreement pursuant to the Department’s affirmative
determination and the ITC’s affirmative determination that termination of the suspended
investigation on 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.\(^\text{18}\)

On February 1, 2008, the Department and the Government of Russia signed another amendment
to the Agreement instituting new quotas through 2020 for commercial Russian uranium exports
sold directly or indirectly to U.S. utilities or otherwise.\(^\text{19}\) Of particular relevance to this sunset
review, Section XII of the 2008 Amendment states in part that:

In addition, the Department shall conduct sunset reviews under 19 U.S.C. 1675(c) in the
years 2011 and 2016. All parties agree that the sunset reviews shall be expedited,
pursuant to 19 U.S.C. 1675(C)(4) and (C)(3)(B), respectively, at both the Department of
Commerce and the International Trade Commission.\(^\text{20}\)

The Department issued its memorandum regarding the 2008 Amendment’s prevention of price
suppression or undercutting on May 14, 2008.\(^\text{21}\)

In September 2008, Congress enacted legislation which codified many provisions in the
amended Agreement and instituted import quotas through 2020 that in large part mirror the
quotas in the 2008 Amendment.\(^\text{22}\) On February 2, 2010, the Department issued its Statement of
Administrative Intent which contained guidelines clarifying the Department’s intent with regard
to the implementation of the amended Agreement and to take into consideration the requirements
of the Domenici Amendment.\(^\text{23}\)

On July 1, 2011, the Department initiated the third sunset review of the suspended antidumping
duty investigation on uranium from Russia.\(^\text{24}\) On November 4, 2011, the Department published
its notice of the final results of the expedited sunset review, finding that termination of the
Agreement would be likely to lead to continuation or recurrence of dumping at a percentage

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\(^{18}\) See Continuation of Suspended Antidumping Duty Investigation: Uranium From the Russian Federation, 71 FR
46191 (August 11, 2006).

\(^{19}\) See 2008 Amendment.

\(^{20}\) Id at 7707. See also Continuation of Suspended Antidumping Duty Investigation: Uranium From the Russian
Federation, 77 FR 14001 (March 8, 2012) (Third Sunset Continuation) (wherein the Department stated that
“Pursuant to sections 751(c)(2) of the Act, the Department intends to initiate the next five-year sunset review of this
Suspension Agreement not later than February 2017.”).

\(^{21}\) See Memorandum to David M. Spooner, Assistant Secretary for Import Administration, from Ronald K.
Lorentzen, Deputy Assistant Secretary for Policy and Negotiations, “Prevention of Price Suppression or
Undercutting of Price Levels of Domestic Products by the Amended Agreement Suspending the Antidumping

\(^{22}\) See Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009, H.R. 2638, 110th
Cong. Section 8118, p.110-123 (2008) (Domenici Amendment) (Section 8118 of the Domenici Amendment amends
the USEC Privatization Act).


\(^{24}\) See Initiation of Five-Year (“Sunset”) Review, 76 FR 38613 (July 1, 2011).
weighted-average margin of 115.82 percent for all Russian manufacturers/exporters. On March 8, 2012, the Department published a notice of continuation of the Agreement pursuant to the Department’s affirmative determination and the ITC’s affirmative determination that termination of the suspended investigation on 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.

On May 19, 2017, the Department issued its final calculations of adjustments to the 2008 Amendment export limits through 2020, as required by the amendment and the Domenici Amendment to take place in 2016 and 2019, in order to match projected reactor demand in subsequent years.

There have been no completed administrative reviews of the Agreement. The Agreement remains in effect for all manufacturers, producers, and exporters of uranium from Russia.

**Background**

On February 3, 2017, the Department initiated the fourth sunset review of the suspended antidumping duty investigation on uranium from Russia, pursuant to section 751(c) of the Act. The Department received a notice of intent to participate in this sunset review from Louisiana Energy Services, LLC (LES), Power Resources, Inc. (PRI) and Crow Butte Resources, Inc. (Crow Butte), and Centrus Energy Services Corp. and United States Enrichment Corporation (USEC) (collectively, Centrus) on February 21, 2017, and from ConverDyn on February 24, 2017, within the applicable deadline specified in section 351.218(d)(1)(i) of the Department’s regulations. Each claimed interested-party status under section 771(9)(C) of the Act as producers of the domestic like product.

The Department also received complete substantive responses from LES, PRI and Crow Butte, and Centrus (collectively, domestic interested parties) within the 30-day deadline specified in the Department’s regulations under section 351.218(d)(3)(i). The Department did not receive a substantive response from the Russian government or any Russian producer/exporter of the subject merchandise. Based on the lack of any substantive response from respondent interested parties, the Department determined to conduct an expedited (120-day) sunset review, in accordance with 19 CFR 351.218(e)(1)(ii)(C)(2).

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26 See Third Sunset Continuation.


Discussion of the Issues

Legal Framework

In accordance with section 751(c)(1) of the Act, the Department is conducting this sunset review to determine whether termination of the suspended investigation would be likely to lead to continuation or recurrence of dumping. Sections 752(c)(1)(A) and (B) of the Act provide that, in making this determination, the Department shall consider both the weighted-average dumping margins determined in the investigation and subsequent reviews, and the volume of imports of the subject merchandise for the period before, and the period after, the issuance of the antidumping duty order or the acceptance of the suspension agreement. When analyzing import volumes for subsequent sunset reviews, the Department's practice is to compare import volumes during the year preceding initiation of the underlying investigation to import volumes since the issuance of the last continuation notice.30 In accordance with the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act, specifically the Statement of Administrative Action,31 the House Report,32 and the Senate Report,33 the Department’s determination of likelihood will be made on an order-wide (or suspension agreement-wide) basis, rather than on a company-specific basis.34 In addition, the Department normally determines that revocation of an antidumping duty order or termination of a suspension agreement, as appropriate, is likely to lead to continuation or recurrence of dumping when, among other scenarios: (a) dumping continued at any level above de minimis after the issuance of the order or suspension agreement; (b) imports of the subject merchandise ceased after issuance of the order or suspension agreement; or (c) dumping was eliminated after the issuance of the order or suspension agreement and import volumes for the subject merchandise declined significantly.35

Alternatively, the Department normally will determine that revocation of an antidumping duty order or termination of a suspension agreement, as appropriate, would not be likely to lead to continuation or recurrence of dumping where dumping margins declined or were eliminated and import volumes remained steady or increased after issuance of the order or suspension agreement.36 In addition, as a base period of import volume comparison, it is the Department’s

34 See SAA at 879; House Report at 56.
36 See SAA at 889-90; House Report at 63; and Senate Report at 52.
practice to use the one-year period immediately preceding the initiation of the investigation, rather than the level of pre-order or pre-suspension agreement import volumes, as the initiation of an investigation may dampen import volumes and, thus, skew the comparison.\(^\text{37}\)

The Department also explained that the data pertaining to weighted-average dumping margins and import volumes may not be conclusive in determining the likelihood of future dumping.\(^\text{38}\) Thus, in the context of the sunset review of a suspended investigation, the Department may be more likely to take other factors into consideration, provided good cause is shown. Therefore, in accordance with 752(c)(2) of the Act, the Department shall also consider such other price, cost, market, or economic factors as it deems relevant when good cause is shown.

Further, section 752(c)(3) of the Act states that the Department shall provide to the ITC the magnitude of the margin of dumping likely to prevail if the order is revoked or the suspension agreement is terminated. Section 752(c)(3) also instructs that the Department “shall normally choose a margin that was determined under section 735 or under subsection (a) or (b)(1) of section 751.” Generally, the Department selects the antidumping duty margins from the final determination in the original investigation, as these rates are the only calculated rates that reflect the behavior of exporters without the discipline of an order or a suspension agreement, as appropriate, in place.\(^\text{39}\) However, in some instances a more recently calculated rate may be more appropriate.\(^\text{40}\)

In February 2012, the Department announced that it was modifying its practice in sunset reviews such that it would not rely on weighted-average dumping margins that were calculated using the methodology found to be World Trade Organization (WTO)-inconsistent, i.e., zeroing/the denial of offsets.\(^\text{41}\) In the Final Modification for Reviews, the Department stated that “only in the most extraordinary circumstances” would it rely on margins other than those calculated and published in prior determinations, pursuant to 19 CFR 351.218(e)(2).\(^\text{42}\) To that end, the Department further stated that apart from the “most extraordinary circumstances,” it would “limit its reliance to margins determined or applied during the five-year sunset period that were not determined in a manner found to be WTO-inconsistent” and that it “may also rely on past dumping margins that were not affected by the WTO-inconsistent methodology, such as dumping margins recalculated pursuant to Section 129 proceedings, dumping margins determined based on the use of total adverse facts available, and dumping margins where no offsets were denied because all

\(^{37}\) See, e.g., Stainless Steel Bar from Germany; Final Results of the Sunset Review of the Antidumping Duty Order, 72 FR 56985 (October 5, 2007), and accompanying Issues and Decision Memorandum at Comment 1.

\(^{38}\) See SAA at 890.

\(^{39}\) See SAA at 890; see also Persulfates from the People’s Republic of China: Notice of Final Results of Expedited Second Sunset Review of Antidumping Duty Order, 73 FR 11868 (March 5, 2008), and accompanying Issues and Decision Memorandum at Comment 2.

\(^{40}\) See SAA at 890-891.

\(^{41}\) See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification, 77 FR 8101, 8103 (February 14, 2012) (Final Modification for Reviews).

\(^{42}\) Id.
comparison results were positive."  

Finally, pursuant to section 752(c)(4)(A) of the Act, a dumping margin of zero or de minimis shall not by itself require the Department to determine that revocation of an antidumping duty order or termination of a suspension agreement would not be likely to lead to a continuation or recurrence of sales at less than fair value.

We address the comments received from interested parties below.

1. **Likelihood of Continuation or Recurrence of Dumping**

   **LES’s Comments**

LES states that the Agreement remains critically important for the U.S. domestic uranium industry. The fact that the Agreement was in place and providing a framework for relief from unfair trade was an important factor in LES’s decision to build its enrichment facility in New Mexico, URENCO USA, which began operating in 2011. The Agreement has also provided stability to the U.S. uranium market in the face of weak global demand and a drop in global prices. The Agreement, LES contends, provides critical additional restrictions and procedures not found in the Domenici Amendment, which LES states established import quotas for Russian uranium products that numerically match the amended Agreement’s export quotas. In particular, the anti-circumvention provisions in Section VII of the Agreement prevent swaps, arrangements, or other exchanges that would allow Russia to circumvent or exceed the established quotas.

LES cites to the Department’s decision in previous sunset reviews to consider other factors besides volume of imports, such as price, cost, market, or economic factors, in its determination of the likelihood of continuation of dumping. LES’s comments speak to and provide evidence for these other factors, and they request that this same approach be used in the current sunset review. LES argues that, in the absence of the Agreement, Russia would dump substantial amounts of uranium into the U.S. market, and they point to capacity, demand, and price factors as the drivers for a continuation of dumping should the Agreement be terminated.

LES contends that Russia has a large, underutilized capacity for uranium at all levels of the nuclear fuel cycle and “substantial access to both natural uranium and conversion capacity to provide feedstock for LEU production.” With respect to natural uranium, Russia’s substantial

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43 Id.
44 See Domenici Amendment at 114. See also 2008 Amendment at 7706.
45 See 2008 Amendment at 7707.
domestic resources account for nine percent of global resources.48 LES points out that on top of domestic resources, Russian State Atomic Energy Corporation ROSATOM (ROSATOM) owns a mining operation, Uranium One, in Kazakhstan gives “Russia’s industry access to an additional 7,629 tonnes of uranium (‘tU’) to serve as feedstock.”49 Russia’s enrichment capacity, LES argues, “is both large in absolute and relative terms and vastly disproportionate to its domestic demand.”50 Furthermore, LES contends that enrichment capacity in Russia is continuing a modest expansion, even in light of excess capacity in the domestic industry. LES cites World Nuclear Association (WNA) figures for capacity expansion, with Russia increasing capacity from “26,578 thousand SWU/yr in 2015 to 28,663 thousand SWU/yr in 2020.”51 According to LES, Russia currently has a “massive” excess enrichment capacity52 and several factors unique to Russia’s industry have allowed it to maintain its significant enrichment production capacity, including the ability to re-enrich tails, reprocess spent fuel, and down-blend higher assay products with reprocessed uranium.53 They cite to the ITC’s second sunset review to make the argument that such practices as re-enriching tails help to keep Russia’s industry at a high capacity utilization rate, even if such production processes are “uneconomic.”54 Further, LES states that Russia’s excess enrichment capacity allows it to routinely engage in the production practice of “underfeeding” (operating at low tails assays, and minimizing the quantity of natural uranium used, in producing LEU).55 Of additional concern, LES notes, is Russia’s large stockpiles of uranium products, including LEU and depleted uranium. They argue that the combination of Russia’s excess capacity, large stockpiles, and export-focused industry means that Russia has the ability to export exceedingly large volumes to the United States absent the Agreement’s restrictions being in place and, further, that dumping would likely recur if the Agreement and underlying investigation were terminated.

LES asserts that weak global demand and certain restrictions in other export markets make the United States an attractive market for Russian uranium exports. Global demand collapsed in the wake of the Fukushima nuclear accident, and nuclear generation capacity has been declining since then. LES states in its response that Japan “is not a viable market for excess Russian uranium products in the foreseeable future.”56 The Fukushima accident led Japan to contract its nuclear sector, LES notes, so that in late 2016 only three of their 54 reactors were in operation.57 Furthermore, LES contends that existing supply contracts mean that Japan has a significant level of uranium inventory, in excess of demand, that preclude it from being a major importer. LES

48 Id.
49 Id at 13.
50 Id at 14.
51 Id.
52 See LES Response at 15 and Exhibit 1, citing Ux Consulting Company, LLC, UxC Market Outlook: Q4 2016, 63 (2016) (UxC Market Outlook) at Table 16.
53 Id at 15.
54 Id at 16 and ITC, “Uranium from Russia: Publication 3872,” (August 11, 2006).
55 Id at 15 and Exhibit 8, citing World Nuclear Association, Uranium Enrichment (Nov. 2016).
56 Id at 20.
57 Id at 20 and Exhibit 13, citing U.S. Energy Information Administration, “Five and a half years after Fukushima, 3 of Japan’s 5 nuclear reactors are operation,” (September 13, 2016).
asserts that Europe has also lost viability as an export market due to the following factors which have necessarily led to declining uranium demand in Europe: 1) EURATOM’s regulation of the European uranium market that prevents or limits supply contracts between Russia and European Union member states; and 2) the move by certain European countries away from nuclear power generation in favor of renewables (e.g. Germany). China, on the other hand, is not likely to become much of a viable market for Russian exports because of its intention to achieve self-sufficiency in both nuclear power generation and enrichment capacity and to become an exporter itself, according to LES and the WNA. As export potential of the Japanese, European, and Chinese markets has diminished, LES contends that the United States “serves as one of the few viable options for the Russian industry,” as the “United States is, by far, the largest market in terms of uranium demand, constituting nearly 30 percent of the global market.”

Absent the Agreement, LES asserts, there would also be nothing to prevent Russia from underselling to the United States and causing price suppression. LES notes that in each of the ITC’s determinations (original investigation, first sunset review, second sunset review, and third sunset review), the ITC found in favor of a likelihood of underselling by Russian uranium imports that would lead to significant price suppression. Additionally, LES points to the ITC’s first sunset review in which the ITC determined that, since uranium is price sensitive as a commodity product, Russia was highly likely to price uranium aggressively in order to gain market share in the United States. In the ITC’s second sunset review, as LES cites, the ITC found not only that Russia’s high capacity utilization would exacerbate underselling to the United States (which suggested Russia’s motivation to sell off uranium at any price in order to keep production facilities operating at high capacity utilization rates), but also that Russia’s aggressive pricing negatively affects the uranium spot market prices, which in turn negatively affects contract pricing. LES also points to the Department’s Third Sunset Review in which the Department found that prices would likely decline, and dumping would again occur, if the Agreement was terminated. Citing to the WNA, LES points to statements by ROSATOM indicating that it is able to undercut by 30 percent world prices for nuclear fuel and services, including in the United States. LES argues that the same industry and market conditions that provided evidence for the Department and the ITC to continue the Agreement are still in effect; notably, uranium is a fungible, price-sensitive commodity, Russia’s access to other export markets (e.g. Japan, Europe, and China) is limited, and Russia remains capable of underselling uranium to the United States.

58 Id at 22 and Exhibit 21, citing World Nuclear Association, *China’s Nuclear Fuel Cycle* (December 6, 2016).
59 Id at 23.
60 Id at 23-24.
61 Id at 26-27, citing WNA Russia Report.
62 Id at 24-26.
PRI and Crow Butte’s Comments

PRI and Crow Butte begin their comments by providing an overview of the economic outlook of the U.S. uranium industry, noting that the mining industry enjoyed a recovery period between 2004 and 2014. Since 2014, however, PRI and Crow Butte state that uranium production, employment, and investment have declined, and production estimates were expected to decline further in 2016. PRI and Crow Butte note that, absent the Agreement, there would have been less chance for a recovery period and the current downturn would have been exacerbated. PRI and Crow Butte cite to the SAA and the Department’s Sunset Policy Bulletin in order to argue that the Department should consider other factors besides the level of imports to determine the likelihood of continuation of dumping. PRI and Crow Butte point to demand, inventory levels, prices, and production as good cause factors for determining the impact of the Agreement’s termination.

In PRI and Crow Butte’s Response, they argue that Russia has both a large natural uranium production capacity and a large enrichment capacity. Citing to the World Nuclear Association, they state that Russia has nine percent of reasonably assured resources for natural uranium and is not producing to full capacity. PRI and Crow Butte further argue that Russia plans on a significant increase in uranium production through 2021, from 2,908 tonnes (7.6 million pounds U₃O₈) in 2015 to as much as 4,089 tonnes (10.6 million pounds U₃O₈) in 2021. According to PRI and Crow Butte, Russia maintains large inventories of uranium products that could potentially be exported to the United States, though the exact size of such inventories is unclear. PRI and Crow Butte state, however, that Russia has known stockpiles of HEU above and beyond the amounts of HEU that were down-blended pursuant to the Agreement Between the Government of the United States of America and the Government of the Russian Federation Concerning the Disposition of Highly Enriched Uranium Extracted from Nuclear Weapons (HEU Agreement). In addition to Russia’s mining sources for natural uranium, PRI and Crow Butte cite each of the ITC’s three sunset reviews in which the ITC determined that large inventories of depleted uranium (from both Russian and Western European producers) and a sizeable domestic capacity for re-enriching tails potentially provided Russia with another large source of natural uranium. While the ITC determined that the process of re-enriching tails has low economic feasibility, PRI and Crow Butte assert that Russia nevertheless devotes some of its enrichment capacity to re-enriching tails because: 1) Russia has extensive, underutilized enrichment capacity; and 2) Russia seeks to operate its enrichment sector at a high level of capacity utilization – achieved, in part, by re-enriching tails. PRI and Crow Butte point to the WNA’s estimate that 25-40 percent of Russia’s enrichment capacity “is

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63 See PRI and Crow Butte’s March 6, 2017 Substantive Response to the Notice of Initiation (PRI and Crow Butte’s Response) at 11.
64 Id at 14, citing WNA Russia Report at 1 and 3-4.
66 Id at 16-17.
used for underfeeding and tails re-enrichment, generating 5,000 metric tons of uranium (13 million pounds \( \text{U}_3\text{O}_8 \)) annually.”

PRI and Crow Butte state that Russia intends to both increase its enrichment capacity and undergo modernization of existing capacity (which would effectively increase capacity levels), despite having already the “largest uranium enrichment capability in the world, accounting for over 46 percent of total global enrichment capacity in 2016.” PRI and Crow Butte note that Russia is also the largest supplier of enriched uranium, accounting for roughly 40 percent of 2017 global production. Russia, they contend, has a sizeable amount of excess enrichment capacity as the industry capacity utilization rate in 2015 was only 86 percent, with an estimated 4.1 million SWU of excess capacity. PRI and Crow Butte note that Russia’s total enrichment capacity in 2015 was estimated to be 26.6 million SWU – dwarfing 2015 U.S. demand of 15 million SWU. Furthermore, they state that domestic enrichment demand in Russia is dwarfed by domestic capacity, accounting for just under 14 percent of capacity in 2015, and that this indicates Russia is export-oriented.

PRI and Crow Butte argue that declining uranium demand and trade restrictions in Europe and Asia mean that the United States is an attractive market for Russia’s uranium exports and that, absent the restraint put in place by the Agreement, Russia would increase its exports to the United States. PRI and Crow Butte state that, in Europe, EURATOM has placed import restrictions on natural uranium in an effort “to limit the ‘maximum dependency’ that European utilities may have on former Soviet and other suppliers.” Further, they cite to a United States Trade Representative (USTR) report on foreign trade barriers in which USTR determined that the European Union maintains quantitative import restrictions on enriched uranium that are neither transparent nor notified to the World Trade Organization. PRI and Crow Butte contend that public safety concerns post-Fukushima have led a number of European countries to end or delay the expansion of their domestic nuclear programs – which has put significant negative pressure on uranium demand and lessened the number of Russia’s potential export markets. PRI and Crow Butte note the following: the German government has shut down nine nuclear reactors and will shutter an additional nine by 2022; the Italian government’s plan to restart its nuclear program was defeated in a 2011 referendum; and Poland’s plan to install two new reactors has been delayed. Prior to the Fukushima accident, PRI and Crow Butte contend, Japan had begun to source an increasing share of its enriched uranium imports from Russia. However, PRI and Crow Butte note that post-Fukushima, Japan took all of its reactors offline and only three have returned to operation, thereby significantly lowering Japan’s demand of uranium from Russia in the near-term for its utilities. In Vietnam, PRI and Crow Butte’s Response notes a delayed

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68 Id at 19-20, citing WNA 2015 Market Report at 127 and UxC Market Outlook at 125, Table B-9.
69 Id at 19.
70 Id at 20, citing UxC Market Outlook at 125, Table B-9.
71 Id at 20.
72 Id at 21.
73 Id.
74 Id at 22.
Rosatom project for building a new reactor was ultimately cancelled in late 2016 in favor of non-nuclear energy projects.

These depressed demand conditions in Europe and Asia, PRI and Crow Butte assert, mean an increase in the attractiveness of the U.S. market as a destination for Russian exports, particularly absent the Agreement. According to PRI and Crow Butte and the WNA, the United States accounts for over a quarter of global uranium requirements and is the largest market for uranium in the world. PRI and Crow Butte, but as their markets close to Russia (either through import restrictions or depressed demand), the United States will become a long-term focal point for Russian uranium exports. In the near-term, PRI and Crow Butte contend that “U.S. utilities have significantly greater uncommitted near term demand so that in the absence of the Agreement, the U.S. presents by far the most attractive market for immediate sales” from Russian exporters. PRI and Crow Butte further argue that Russian uranium supplier, Joint Stock Company “TENEX” (TENEX), has made it extremely clear that it has strong interest in the U.S. market by: 1) opening a U.S. office for its wholly-owned subsidiary TENAM Corp. to aide in direct contracting with U.S. utilities, concluding long-term contracts, and enhancing business opportunities; 2) making “substantial use of its quotas” under the Agreement – reportedly filling over 90 percent of the quota for the 2014-2020 period; 3) entering into a contractual arrangement with USEC whereby USEC would purchase SWU from TENEX equivalent to at least half of the annual SWU content of the now-expired HEU Agreement; and 4) strongly urging for a quota increase under the Department’s 2016 proposed quota adjustment.

Regarding prices, PRI and Crow Butte assert that Russia would significantly undersell U.S. domestic uranium in the absence of the Agreement. They cite to the Department’s Third Sunset Review in which the Department determined that the fungibility of uranium and the increase in imports from Russia would likely cause decreases in prices and a continuation or recurrence of dumping. PRI and Crow Butte maintain that current market conditions have not changed from those cited by the Department in its Third Sunset Review and that “Russian uranium would quickly be sold at below-market prices to find a home in the U.S. market.” Furthermore, they contend that Russia has made its aggressive pricing practices and interest in expanding its export markets clear and that ROSATOM both claims to be able to undercut world prices by 30 percent and aims to earn half of its revenue from exports. In the absence of the Agreement, PRI and Crow Butte argue that Russia would send large volumes of uranium products, much of it enriched uranium, to the United States, effectively displacing domestic sales and suppressing prices. Given these factors, PRI and Crow Butte assert, Russian uranium would quickly be sold at below-market prices in the U.S. market, underselling U.S. producers, depressing U.S. uranium

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75 Id at 25, citing WNA 2015 Market Report at 63-64, Table 5.1.
76 Id at 26-27, citing Ux Consulting Uranium Market Outlook, 4Q 2016 (UxC Uranium Market Outlook) at 139, Table B-10.
77 Id at 27-29.
78 Id at 30-31.
79 Id at 31.
80 Id at 31, citing WNA Russia Report at 26-27.
prices, and expanding Russia's already significant market share, citing to previous sunset reviews from both the ITC and the Department. PRI and Crow Butte contend that aggressive pricing behavior by Russia would continue, considering its capacity expansion plans and depressed global and U.S. demand.

Continuation of the Agreement, PRI and Crow Butte assert, is critical given the expiration of the HEU Agreement, which provided stability and predictability to the market vis-à-vis Russian uranium products during its 20-year life (1993-2013). PRI and Crow Butte contend that the HEU Agreement was “inextricably intertwined” with the Agreement. PRI and Crow Butte state that the 2008 Amendment to the Agreement provides predictability to the market that “has been especially important during the transition following the completion of the HEU Agreement, as Russian suppliers began to deal directly with U.S. utilities.” Specifically, PRI and Crow Butte point out that the 2008 Amendment provides for post-2013 quotas, accounting for approximately 20 percent of U.S. uranium demand, thereby limiting how much of Russia’s enormous supply will be available in the U.S. market. The 2008 Amendment, they maintain, offers stability to the U.S. uranium market through: 1) the provision that contracts must be approved by the Department (thus ensuring that the contract terms do not undermine the quota limits); 2) additional Departmental oversight via the anti-circumvention, reporting, and certification provisions that ensure limited participation by Russian sellers in the U.S. market; and 3) the provision that the Agreement remain in effect until 2020. PRI and Crow Butte further assert that the Department’s requirements regarding returned natural uranium feed, which must be quarantined and re-exported within one year, provide stability in the U.S. natural uranium market. According to PRI and Crow Butte, although the quota levels are incorporated into the Domenici Amendment, those “simple quotas” are not enough to provide the limits on Russian participation in the market that the Agreement’s requirements impose. Thus, PRI and Crow Butte assert, the termination of the suspended investigation would end the market equilibrium achieved through the noted linked initiatives, causing U.S. producers to lose revenue and market share and resulting in further material injury to already-vulnerable U.S. producers.

**Centrus’s Comments**

Centrus remains in favor of continuing the Agreement, as the Agreement encourages a stable and predictable uranium market for domestic producers through 2020. Centrus states that a stable market allows the U.S. uranium industry to adjust to changing conditions and invest in future projects. The Agreement, Centrus argues, provides a critical and more comprehensive framework to limit imports of Russian uranium, above what is provided for by the Domenici Amendment. Centrus states that while the Domenici Amendment does provide the United States

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81 Id at 33.  
82 Id at 35.  
83 Id at 34-35.  
84 Id at 35-36.  
85 See Centrus’s March 6, 2017 Substantive Response to Notice of Initiation of Five-Year Review (Centrus’s Response) at 7-8.
with import quotas on Russian uranium, the Agreement continues to provide the Department additional flexibility to handle unforeseen changes in the uranium market, such as the Fukushima disaster’s impact, and implementation tools with regard to the quotas.86

**Centrus’s Rebuttal**

In Centrus’s rebuttal to PRI and Crow Butte’s Response, Centrus seeks to correct information PRI and Crow Butte included in their substantive response regarding the contractual agreement between Centrus (through its USEC subsidiary) and TENEX.87 Centrus states that their Transitional Supply Arrangement (TSA) with TENEX serves to maintain their supply of imported uranium from Russia in light of the end of the HEU Agreement and their transition away from LEU production, rather than serving as a way to increase their imports from Russia. Centrus asserts that the TSA was modified in 2015 in response to downward demand pressure, their share of the quantitative restrictions under the Agreement is fixed, and they fully support, like PRI and Crow Butte, continuation of the Agreement.

**Department’s Position**

As explained in the Legal Framework section above, when determining whether termination of a suspended investigation would be likely to lead to a continuation or recurrence of dumping, sections 752(c)(1)(A)-(B) of the Act instruct the Department to consider: (1) the weighted-average dumping margins determined in the investigation and subsequent reviews; and (2) the volume of imports of the subject merchandise for the period before and after the issuance of the antidumping duty order or the acceptance of the suspension agreement. “Declining import volumes accompanied by the continued existence of dumping margins after the issuance of a suspension agreement may provide a strong indication that, absent a suspended investigation, dumping would be likely to continue, because the evidence would indicate that the exporter needs to dump to sell at pre-suspended investigation volumes.”88 The Department also explained that the data pertaining to weighted-average dumping margins and import volumes may not be conclusive in determining the likelihood of future dumping.89 Thus, in the context of the sunset review of a suspended investigation, the Department may be more likely to take other factors into consideration, provided good cause is shown. Therefore, in accordance with 752(c)(2) of the Act, the Department shall also consider such other price, cost, market, or economic factors as it deems relevant when good cause is shown.

The Agreement has contained several quota provisions—some now expired—since its inception in 1992, including Section IV.M which allowed for imports of Russian low-enriched uranium (LEU) down-blended from HEU through 2013 pursuant to the now-expired HEU Agreement.90

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86 See Centrus’s Response at 7.
87 See Centrus’s March 13, 2017 Rebuttal to Substantive Response to Notice of Initiation.
88 See SAA at 889.
89 Id at 890.
90 See 1992 Suspension Agreement.
The volumes of the imports of LEU down-blended from HEU, allowed entry without restriction pursuant to the Agreement, were governed by the terms of the HEU Agreement and its implementing contract and, at the time of the 2008 Amendment, satisfied over 40 percent of U.S. market demand for enrichment.\(^{91}\) As last amended in February 2008, the Agreement currently allows for imports of Russian uranium products under Section IV.H, for re-processing and re-export; under Section IV.B.1, for direct and indirect sales to U.S. utilities; and under Section IV.B.2, for the supply of initial cores in the United States.\(^{92}\) With respect to the re-export provision (Section IV.H), imports of up to six million pounds U3O8 equivalent are allowed entry for 12- or 36-month periods, for re-processing, but then must be re-exported; thus, these imports are not for consumption in the U.S. market. Exports of Russian uranium products for the supply of initial cores under Section IV.B.2 are not subject to the Section IV.B.1 export limits.

Section IV.B.1 of the Agreement provides export limits through 2020 for sales of Russian uranium products directly to U.S. utilities or otherwise. Starting in quota year 2014, after the expiration of the HEU Agreement, these quotas represented approximately 20 percent of the U.S. demand for enriched uranium.\(^{93}\) The Domenici Amendment subsequently codified in large part the Agreement’s Section IV.B.1 export quota limits--but on the basis of import quota limits. The Agreement is the vehicle through which the Secretary of Commerce, as authorized by Congress, enforces the import limitations under the Domenici Amendment. In addition, the February 2, 2010, SAI contains guidelines clarifying the Department’s intent with regard to the implementation of the amended Agreement and to take into consideration the requirements of the Domenici Amendment. The Department’s 2016 Export Limit Adjustments followed a similar calculation methodology, and used the same 20 percent enrichment demand assumption, as was used for the original Section IV.B.1 export limit calculations.\(^{94}\)

For these reasons, and as also determined in the final results of the First Sunset Review, Second Sunset Review, and Third Sunset Review, we do not believe that the import trends for imports under these provisions of the Agreement are particularly indicative of the likelihood of continued dumping in the absence of the Agreement. The export limit provisions contained in the Agreement since its inception, and in particular the currently-active Section IV.B.1 and Section IV.H quota provisions, have provided a stable and measured framework for Russian uranium products entering the U.S. market and will do so through 2020. Therefore, for this sunset review, we have determined to consider the additional information submitted by the parties with respect to future volumes of imports. In accordance with 752(c)(2) of the Act, the Department shall also consider such other price, cost, market, or economic factors as it deems relevant when good cause is shown. In this sunset review, as in the First Sunset Review, Second Sunset Review, and Third Sunset Review, other factors play a significant role due to the unique nature of the product and industry at issue and the structured framework for Russian uranium products entering the United States under the Agreement (and Domenici Amendment).

\(^{91}\) See Price Suppression Memo at 3.
\(^{92}\) See 1997 Amendment and 2008 Amendment.
\(^{93}\) See Price Suppression Memo at 4.
\(^{94}\) See 2016 Export Limit Adjustments at 3.
We have considered the compelling arguments and evidence placed on the record by LES and PRI and Crow Butte regarding Russia’s considerable uranium production capacity and its massive inventories. Citing to the World Nuclear Association, LES and PRI and Crow Butte state that Russia has nine percent of reasonably assured resources for natural uranium and is not producing to full capacity. Further, PRI and Crow Butte argue that Russia plans on a significant increase in uranium production through 2021, from 2,908 tonnes (7.6 million pounds U₃O₈) in 2015 to as much as 4,089 tonnes (10.6 million pounds U₃O₈) in 2021. In addition, Russia has the largest enrichment capacity in the world, amounting to nearly half of the total world’s enrichment capacity in 2016, yet, per LES’s cite to Ux Consulting, Russia’s domestic demand for enrichment accounts for just over 10 percent of its current enrichment capacity. Moreover, both LES and PRI and Crow Butte offer evidence that Russia has significant excess, unused enrichment capacity, leaving a significant portion available for export.

With respect to inventories, Russia possesses large stockpiles of depleted uranium, or tails, which it re-enriches. The WNA estimates Russia’s tails stockpile to be 545,000 tonnes at the end of 2014 and states that Russia devotes a significant portion of its enrichment capacity to re-enriching depleted uranium. Furthermore, due to an excess of capacity, Russia keeps plants operating by both re-enriching tails and underfeeding. As noted by LES and PRI and Crow Butte, tails re-enrichment is not the most economically-viable use of Russia’s capacity, in comparison with enriching natural uranium for commercial SWU sales. Thus, in the absence of the Agreement, we believe it is highly likely that Russia would redirect its enrichment capacity to commercial export sales of uranium products to the United States.

The domestic interested parties all make note in their substantive responses of the impact that Japan’s Fukushima nuclear incident has had on the global uranium market. LES and PRI and Crow Butte provide further evidence of the significant downward pressure the incident has had, and will continue to have, on global demand for uranium products. In Japan, all 54 remaining nuclear reactors were taken offline as a safety precaution, and since then five have restarted and only three are operational. Continued closure of the great majority of their reactors has meant Japan’s demand for uranium products is unlikely to return to prior levels, placing limits on the needs of its utilities for imports from Russia. As noted in LES’s and PRI and Crow Butte’s responses, public safety concerns over nuclear power generation in other markets, such as Germany, Italy, Poland, and Vietnam, have contributed to the closure of reactors, delays in constructing new plants, and outright cancellation of nuclear power projects. In addition, LES and PRI and Crow Butte present compelling arguments regarding the restrictions on the imports

95 See LES’s Response at 13, citing WNA Russia Report, See also PRI and Crow Butte’s Response at 14, citing WNA Russia Report at 1 and 3-4.
96 See PRI and Crow Butte’s Response at 15, citing WNA 2015 Market Report at 82.
97 See WNA 2015 Market Report at 131 and Ux Market Outlook at 75.
98 See Ux Market Outlook at 125, Table B-9 and Table 16.
100 Id.
101 See U.S. Energy Information Administration, “Five and a half years after Fukushima, 3 of Japan’s 54 nuclear reactors are operating,” (September 13, 2016).
of Russian uranium in other third-country markets, particularly the European Union. The decreased demand from a host of markets in the wake of the Fukushima nuclear accident, coupled with the limited access to other third-country markets, makes it even more likely that Russia would redirect its uranium exports to the U.S. market in the absence of the Agreement.

It is also clear from the evidence presented by LES and PRI and Crow Butte that the United States is the largest market for uranium products in the world and accounts for between 25 to 30 percent of the world’s requirements. The U.S. market, while showing some negative trends in uranium production and employment since 2014, has fared better than other third-country markets. In addition, PRI and Crow Butte cite to UxConsulting in asserting that the United States is expected to account for a significant portion of “uncommitted” or “uncovered” demand for natural uranium concentrate in the near term. Further, LES and PRI and Crow Butte provide compelling evidence of Russia’s export-oriented focus and their assertions that the “attractiveness” of the U.S. market make it a focal point for Russian suppliers absent the discipline of the Agreement. Based on the record evidence, we determine that there is a likelihood that Russia would significantly increase its future exports of uranium products to the United States, including through swaps, exchanges, or other arrangements, if necessary, in the absence of the Suspension Agreement. The U.S. market is unquestionably the largest market in the world for uranium products, and Russia clearly has the world’s largest enrichment capacity and a significant production capacity for uranium ore (and these capacities are growing), as well as significant inventories of uranium. These facts, accompanied by the evidence regarding decreased global demand in Europe and Asia after the Fukushima nuclear accident and other third-country market restrictions, lead us to conclude that it is highly likely that Russia would seek sales opportunities in the U.S. market for uranium products, including for natural and enriched uranium and/or SWU, if the restrictions of the Agreement and its significant enforcement tools were no longer in place. Therefore, we find that there is a likelihood that future import volumes of uranium products into the U.S. market, whether directly or indirectly, would increase in the absence of the Agreement.

We agree with the domestic interested parties’ statements that the Agreement has provided predictability and a stabilizing effect on the U.S. uranium market over its life, including during the period of its inter-relationship with the now-expired HEU Agreement. We also agree that the Agreement and the Domenici Amendment are inextricably linked. The Agreement continues to ensure that Russia’s imports for domestic consumption, pursuant to the both the Agreement and Domenici Amendment, can enter the U.S. market in an orderly and measured manner in light of the expiration of the HEU Agreement at the end of 2013 (during this sunset period of review). For example, the Agreement’s Section IV.B.1 export limits represent approximately 20 percent

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102 See UxC Uranium Market Outlook at 139, Table B-10.
103 See WNA Russia Report.
104 Also inter-related was the now-completed successful and measured entry into the U.S. market of returned natural uranium feed from the down-blended HEU pursuant to the USEC Privatization Act. See Procedures for Delivery of HEU Natural Uranium Component in the United States, 64 FR 42925 (August 6, 1999).
of the U.S. demand for enriched uranium.\textsuperscript{105} Further, as noted above, the Department’s 2016 Export Limit Adjustments followed a similar calculation methodology, and used the same 20 percent enrichment demand assumption, as was used for the original Section IV.B.1 export limit calculations.\textsuperscript{106} In addition, the Agreement provides the tools for effectively monitoring the entry and re-export of Russian uranium products under the re-export provision.

We acknowledge that the import limitations provided under the Domenici Amendment will stand even in the event that the Agreement is terminated. However, we strongly agree with the domestic interested parties that the Agreement provides the critical tools necessary to enforce the Domenici Amendment’s quotas and maintain stability and predictability in the U.S. uranium market. For example, the Department reviews and approves every contract and contract amendment submitted under the Section IV.B.1 export limits and approves every shipment of Russian uranium products that enters the United States under the Agreement’s provisions. In this way, the Department’s monitoring and enforcement of the Agreement and Domenici Amendment ensures the intended orderly and measured entry of Russian uranium products into the U.S. market. The fact that the import limits under the Domenici Amendment in large part mirror the Section IV.B.1 export limits in the 2008 Amendment, and the fact that Congress gave the Secretary of Commerce the responsibility for enforcing the Domenici Amendment import quotas, are indicative of Congress’ reliance upon the Agreement as inextricably linked with the Domenici Amendment.

The Agreement, but not the Domenici Amendment, provides for comprehensive monitoring and reporting with respect to both the domestic consumption (Section IV.B.1) and the re-export (Sections IV.H) quotas. Without such monitoring and reporting, the continuing stability and predictability created by the Agreement is jeopardized. In addition, the Agreement contains various other explicit enforcement tools, such as the requirement for export licensing by the Russian government, not contained in the Domenici Amendment which makes it indispensable for administering the export and import quota limitations in the Agreement and Domenici Amendment, respectively.

Further, Section VII of the Agreement provides anti-circumvention provisions which prohibit any arrangements, swaps, or other exchanges designed to circumvent the export limitations established by the Agreement. This provision was included in the Agreement precisely because of the unique nature of this industry and the fungibility of the product at issue. In the absence of the Agreement, there is the potential for the U.S. market to be flooded with Russian uranium products sold directly to U.S. utilities or indirectly swapped or displaced by transactions involving Russian uranium exported to third countries.

As noted, since uranium is a fungible commodity, the potential price effects which may result in the absence of the Agreement are also worthy of consideration in the context of our likelihood determination. LES and PRI and Crow Butte have put forth compelling arguments concerning

\textsuperscript{105}See Price Suppression Memo at 4.
\textsuperscript{106}See 2016 Export Limit Adjustments at 3.
the impact on prices in the U.S. market for both natural and enriched uranium absent the Agreement. For example, these parties, citing to the WNA, have pointed to ROSATOM’s own claims of its ability to significantly undercut U.S. prices. We agree with these parties that, absent the Agreement, imports of Russian uranium products, including natural and enriched uranium and/or SWU, would likely undercut and depress, or suppress, U.S.-market prices for uranium products. The Department has consistently agreed with the domestic industry’s contentions that uranium is a highly fungible commodity for which purchasing decisions are based almost exclusively on price.\textsuperscript{107} Further, section 734(l) of the Act requires that the Agreement prevent the suppression or undercutting of the price levels of domestic products by imports of the subject merchandise. While the Department previously determined that imports of Russian uranium products limited by the quota limitations instituted in the \textit{2008 Amendment} would not cause price suppression or undercutting of domestic uranium prices, the Agreement provides the mechanisms to review and address, possibly via an amendment, potential price suppression or undercutting.\textsuperscript{108} By contrast, the Domenici Amendment provides no such mechanisms either to review or address price suppression or undercutting, and, thus, these mechanisms are not available, absent an act of Congress. Therefore, absent the Agreement and left only with the Domenici Amendment import limitations, this legal requirement with respect to price levels of domestic products would no longer apply.

The likely outcome of the removal of the restrictions of the Agreement would be the increase in the availability and supply of Russian uranium products that could be traded directly into the United States, or through other arrangements, swaps, or exchanges, resulting in increased availability and supply of uranium products in the U.S. market. Such an increase in supply would, in turn, drive down prices for U.S. uranium products, in addition to any price declines related to the lifting of the legal requirements of section 734(l), as noted above. The Department has already determined in at least two previous cases that the basic laws of supply and demand suggest that an increase in supply, all else being equal, would be accompanied by downward pressure on prices.\textsuperscript{109} Therefore, we find that, due to the fungible nature of uranium products, the lifting of the requirements of section 734(l), and the likely increase of supply of Russian uranium products into the U.S. market absent the Agreement, the likely outcome of termination the Agreement and suspended investigation would be the decline of domestic prices for uranium products, and a continuation or recurrence of dumping, in the U.S. market.

\textsuperscript{107} See \textit{First Sunset Review} and accompanying Issues and Decision Memorandum dated June 27, 2000 at Comment 3.
\textsuperscript{108} See Price Suppression Memo. See also 19 C.F.R 351.213 (under which interested parties may request an administrative review of the Agreement).
\textsuperscript{109} See \textit{Preliminary Results of Full Sunset Review: Siliconmanganese From Ukraine}, 65 FR 34440. (May 30, 2000), and accompanying Issues and Decision Memorandum. See also \textit{Preliminary Results of Five-year Sunset Review of Suspended Antidumping Duty Investigation on Ammonium Nitrate from the Russian Federation}, 70 FR 61431 (October 24, 2005), and accompanying Issues and Decision Memorandum (Ammonium Nitrate from Russia). In Ammonium Nitrate from Russia, the Department found that “removal of the Suspension Agreement on ammonium nitrate from Russia will likely cause Russian producers to increase import levels of ammonium nitrate in the U.S. market and lower their prices.”
2. **Magnitude of Margin Likely to Prevail**

**LES’s Comments**

LES states that the Department should provide the ITC with the margin of 115.82 percent from the preliminary determination in the underlying investigation as it is the only margin on the record since there have been no completed administrative reviews “. . . or any other action to establish a new margin for the Russia {sic} Federation, partly because the Russian industry has not asked.” LES maintains that the rate found in the original investigation is the best indicator of the dumping margin should the Agreement be terminated because: 1) the high rate indicates Russia’s inability to sell uranium to the United States without a substantial degree of dumping; and 2) despite graduation to market-economy status, Russia’s uranium sector is still state-owned and state-controlled, as it was when the margin from the original investigation was calculated. Lastly, LES notes that in the previous three sunset reviews the Department reported the rate from the underlying investigation to the ITC as the margin likely to prevail in the absence of the Agreement.

**Centrus’s Comments**

In Centrus’s substantive response, they cite the SAA and the Department’s regulations regarding sunset reviews, particularly certain provisions that state that the Department will normally select a margin from the original investigation. Therefore, Centrus asserts, the margin calculated in the original investigation, 115.82 percent, is the only one on which there is a basis to determine the margin in absence of the Agreement. Centrus notes that there have been no new margins calculated in either an administrative review or sunset review proceeding thus far.

**PRI and Crow Butte’s Comments**

PRI and Crow Butte state, in the event of termination of the Agreement, the Department should provide the ITC with the 115.82 percent margin from the preliminary determination as it is the only margin that: 1) is on the record in the underlying investigation; and 2) reflects the behavior of Russian exporters in the absence of the Agreement. PRI and Crow Butte point out that the Department may provide to the ITC the margin from the preliminary determination in certain situations, such as where the Department did not issue a final determination because the investigation was suspended. As there have been no completed administrative reviews and no final determination issued in the underlying investigation, PRI and Crow Butte contend that the Department has no other rate from which it could select. PRI and Crow Butte further argue that

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110 See LES Response at 11.
111 Id at 11-12.
112 See Centrus’s Response at 8-9, citing 1992 Preliminary Determinations at 23380, 23384.
113 See PRI and Crow Butte’s Response at 37.
114 Id, citing to Sunset Policy Bulletin, 63 FR at 18873.
the 115.82 percent margin remains appropriate as it is not WTO-inconsistent since no zeroing or denial of offsets were applied in the calculation.\textsuperscript{115}

**Department’s Position**

As discussed in the Legal Framework section above, section 752(c)(3) of the Act provides that the Department shall provide to the ITC the magnitude of the margin of dumping that is likely to prevail if the order is revoked, or a suspension agreement is terminated. Normally, the Department will provide to the ITC the company-specific, weighted-average antidumping duty margin from the investigation for each company.\textsuperscript{116} The Department’s preference for selecting a rate from the investigation is based on the fact that it is the only calculated rate that reflects the behavior of exporters without the discipline of an order or suspension agreement in place.\textsuperscript{117} For this fourth sunset review, as in the prior sunset reviews, the Department has determined that the antidumping duty margin established in the preliminary determination of the underlying investigation, since the investigation was not completed, is representative of the magnitude of the margin of dumping most likely to prevail if the Agreement and suspended investigation were terminated. This dumping margin is a rate from the investigation, in accordance with the legislative history to the sunset review provisions,\textsuperscript{118} and no new margins have been calculated in subsequent administrative reviews. We further determine that the Department can continue to rely on this dumping margin, because, as noted by PRI and Crow Butte, the rate being reported to the ITC, the rate from the investigation, is consistent with the *Final Modification for Reviews* because it was based on best information available (now known as adverse facts available) derived from the rates alleged in the petition and did not involve zeroing/the denial of offsets.\textsuperscript{119} Accordingly, we find it appropriate to provide the ITC with the rate from the preliminary determination in the investigation because this rate best reflects the behavior of exporters without the discipline of the Agreement in place.

**Final Results of Expedited Review**

We determine that termination of the Agreement and the suspended investigation would be likely to lead to continuation or recurrence of dumping and that the magnitude of the margin of dumping likely to prevail would be 115.82 percent.

**Recommendation**

Based on our analysis of the substantive responses received and the record evidence, we recommend adopting the above positions. If these recommendations are accepted, we will

\textsuperscript{115} See PRI and Crow Butte’s Response at 38, citing *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101 (February 14, 2012) (*Final Modification for Reviews*).

\textsuperscript{116} See SAA at 890; *Eveready Battery Co., Inc. v. United States*, 77 F. Supp. 2d 1327, 1333 n.9 (CIT 1999).

\textsuperscript{117} See SAA at 890; *Eveready Battery*, 77 F. Supp. 2d at 1333 n.9.

\textsuperscript{118} See SAA at 890 and *Sunset Policy Bulletin*, 63 FR at 18873.

\textsuperscript{119} See *Final Modification for Reviews*, 77 FR at 8103. See also 1992 Preliminary Determination.
publish the final results of review in the *Federal Register*, and notify the ITC of our determination.

☐ ☐

Agree Disagree

6/5/2017

Signed by: RONALD LORENTZEN

Ronald K. Lorentzen
Acting Assistant Secretary for
Enforcement and Compliance