November 5, 2018

MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance.

FROM: P. Lee Smith
Deputy Assistant Secretary
for Policy and Negotiations
Enforcement and Compliance

SUBJECT: Decision Memorandum for the Preliminary Results of the Administrative Review of the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation

I. Summary

In response to a request from domestic interested party Louisiana Energy Services LLC (LES), the Department of Commerce (Commerce) is conducting an administrative review to review the current status of, and compliance with, the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation (Agreement) for the October 1, 2016, through September 30, 2017 period of review (POR). For the reasons stated in this memorandum, Commerce preliminarily finds that State Atomic Energy Corporation “ROSATOM” (ROSATOM) and its affiliates Joint Stock Company “TENEX” (TENEX) and TENAM Corporation (TENAM) are in compliance with the Agreement, although Commerce intends to continue examining after the issuance of these preliminary results certain clarifying information requested in supplemental questionnaires. Further, we preliminarily find that TENEX’s unaffiliated reseller, Centrus Energy Corp. and United States Enrichment Corporation (collectively, Centrus), also subject to individual examination in this review, is in compliance with the Agreement, although Commerce similarly intends to continue examining after the issuance of these preliminary results certain clarifying information requested in its supplemental questionnaire. Additionally, we are continuing our examination of the current status of the Agreement and whether the Agreement continues to meet the statutory requirements, as set forth in section 734(l) of the Tariff Act of 1930, as amended (the Act), after these preliminary results. Commerce, therefore, needs to obtain additional information and needs additional time to evaluate information received, and to be received, from respondents and interested parties in
order to confirm whether the Agreement continues to meet the relevant statutory requirements referenced above.

II. Scope of the Agreement

The product covered by this Agreement is 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 \(^{235}\text{U}\) and its compounds; alloys, dispersions (including cermets), ceramic products, and mixtures containing uranium enriched in \(^{235}\text{U}\) or compounds of uranium enriched in \(^{235}\text{U}\); and any other forms of uranium within the same class or kind.

Uranium ore from Russia that is milled into \(\text{U}_3\text{O}_8\) and/or converted into \(\text{UF}_6\) 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 Agreement.

For purposes of this Agreement, uranium enriched in \(^{235}\text{U}\) or compounds of uranium enriched in \(^{235}\text{U}\) in Russia are covered by this Agreement, regardless of their subsequent modification or blending. Uranium enriched in \(^{235}\text{U}\) 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 Agreement.\(^1\)

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

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 convenience and Customs purposes. The written description of the scope of this proceeding is dispositive.

III. Background

On October 16, 1992, Commerce signed an agreement under section 734(l) of the Act with the Russian Federation’s Ministry for Atomic Energy (MINATOM), the predecessor to ROSATOM, suspending the antidumping duty investigation on uranium from the Russian Federation.\(^2\) There have been five amendments to the Agreement, the most recent of which was signed on

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\(^1\) 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.

\(^2\) 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).

On October 30, 2017, LES submitted a request for an administrative review of the Agreement pursuant to Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review, 82 FR 46217 (October 4, 2017). On December 7, 2017, Commerce initiated a review. On May 14, 2018, we extended the due date for issuance of these preliminary results from July 6, 2018, to no later than November 5, 2018.

On February 1, 2018, TENEX, LES, Power Resources, Inc. and Crow Butte Resources, Inc. (collectively, PRI and CBR), the Ad Hoc Utilities Group (AHUG), and Centrus filed comments on the focus of the review. On April 27, 2018, Commerce issued questionnaires to ROSATOM, TENEX, and any other affiliated or unaffiliated exporters and resellers, as applicable. On June 26, 2018, Nukem, Inc. (Nukem) submitted information for the record of the review. On July 2, 2018, ROSATOM, TENEX, TENAM, and Centrus submitted their responses to Commerce’s initial questionnaire.

On August 10, 2018, Exelon Generation Company, LLC (Exelon) and AHUG collectively submitted factual information to clarify the July 2, 2018 initial questionnaire responses from ROSATOM, TENEX, TENAM, and Centrus. On August 13, 2018, LES submitted factual information to rebut, clarify, or correct the initial questionnaire responses from ROSATOM, TENEX, TENAM, and Centrus. On August 31, 2018, Centrus, and separately ROSATOM, TENEX, and TENAM in a joint submission, submitted factual information to rebut, clarify, or correct the factual information submitted by LES on August 13, 2018. On September 10, 2018, PRI and CBR submitted comments on the initial questionnaire responses from ROSATOM, TENEX, TENAM, and Centrus. On the same date, LES submitted sur-rebuttal factual information to rebut and clarify the factual information submitted by ROSATOM, TENEX, TENAM, and Centrus on August 31, 2018.

On September 21, 2018 and September 28, 2018, Commerce issued supplemental questionnaires to ROSATOM and TENAM, respectively. On October 12, 2018, TENEX submitted comments

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4 LES is a U.S.-based uranium enrichment company owned by European enrichment consortium, URENCO Ltd.

5 See Letter from LES, re “Uranium from Russia: Request for Administrative Review” (October 30, 2017).


7 See Memorandum to P. Lee Smith, Deputy Assistant Secretary for Policy and Negotiations, re “Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation: Extension of Deadline for Preliminary Results of Administrative Review” (May 14, 2018).
on Commerce’s upcoming preliminary results. On the same date, ROSATOM submitted its response to Commerce’s supplemental questionnaire. On October 16, 2018, Commerce issued a supplemental questionnaire to TENEX. On October 19, 2018, LES submitted comments on Commerce’s upcoming preliminary results. On October 22, 2018, TENAM submitted its response to Commerce’s supplemental questionnaire. On October 23, 2018, Centrus submitted factual information to clarify the supplemental questionnaire response from ROSATOM. On October 24, 2018, Commerce issued a supplemental questionnaire to Centrus, and Centrus submitted comments on Commerce’s upcoming preliminary results. On October 25, ROSATOM, TENEX, and TENAM jointly filed comments in response to LES’ October 19, 2018, comments on Commerce’s upcoming preliminary results. On October 29, 2018, Exelon and AHUG collectively submitted comments on Commerce’s upcoming preliminary results. On the same date, PRI and CBR submitted factual information to rebut, clarify, or correct the supplemental questionnaire response from ROSATOM. On November 2, 2018, PRI and CBR submitted comments on Commerce’s upcoming preliminary results.8

IV. Preliminary Results of Review

Section 751(a)(1)(C) of the Act specifies that Commerce shall “review the current status of, and compliance with, any agreement by reason of which an investigation was suspended.” In this case, Commerce and MINATOM (the predecessor to ROSATOM) signed the Agreement suspending the underlying antidumping investigation on October 16, 1992, which was subsequently amended on March 11, 1994, October 3, 1996, May 7, 1997, and February 1, 2008. Because Commerce determined that the Russian Federation was a non-market economy at the time the Agreement was signed, the Agreement was entered into under section 734(l) of the Act. Section 734(l) provides that Commerce may suspend an investigation upon acceptance of an agreement with a non-market-economy country to restrict the volume of imports into the United States, if Commerce determines that such an agreement is in the public interest, effective monitoring is possible, and the agreement “will prevent the suppression or undercutting of price levels of domestic products by imports of the merchandise under investigation.” For this purpose, ROSATOM agreed in the context of the 2008 amendment that Russian uranium products would be subject to export limits through 2020, as outlined in Section IV.B.1 of the amended Agreement. Further, under the amended Agreement,9 ROSATOM has also agreed to other conditions including Commerce approval of Section IV.B.1 contracts, Commerce approval of incoming shipments under all provisions of the Agreement, and the submission of various required certifications.

In its initial questionnaire response, ROSATOM maintains that the information provided in its response illustrates that sales of Russian uranium products to the United States during the POR were sold and exported within the export limits, and in compliance with the terms, of the Agreement and the SAI. For example, ROSATOM outlined the procedures for the issuance of export licenses to exporters of subject merchandise and how these procedures ensure the Russian

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8 Due to timing, we were unable to consider PRI and CBR’s comments in these preliminary results but will do so in a post-preliminary analysis.
9 Commerce’s SAI also details specific procedures and requirements related to the 2008 amendment to the Agreement.
Federation’s compliance with the Agreement. TENEX, TENAM, and Centrus similarly maintained in their respective initial questionnaire responses that Commerce-approved contracts, contract amendments, and shipments executed during the POR were made in compliance with the terms of the Agreement. In examining respondents’ individual contracts, contract amendments, and shipment documentation filed on the record of the review, we found certain inconsistencies that required further examination and clarification. Consequently, Commerce issued supplemental questionnaires to TENEX, TENAM, and Centrus regarding, in part, certain contracts in force and shipments executed during the POR. We have not yet received all of the supplemental questionnaire responses and/or had the opportunity to undertake a fulsome review of the responses to these supplemental questionnaires. In addition, interested parties have submitted a multitude of submissions containing factual information and pre-preliminary results comments within the past month leading up to the due date for issuance of the preliminary results. Commerce has not had time to fully examine these submissions in the context of these preliminary results, nor have the interested parties had their full opportunities to complete the submission of comments allowed under Commerce’s regulations (e.g., to submit factual information to rebut, clarify, or correct the supplemental responses of the respondents). Therefore, Commerce needs additional time to analyze these responses, the factual information, and comments submitted on the record and will issue post-preliminary findings on the relevant issues as soon as practicable. We note, however, that no party has placed evidence on the record of this review suggesting that ROSATOM, TENEX, or any affiliated or unaffiliated resellers sold Russian uranium products in the United States in excess of the export limits or that any violations of the Agreement occurred during the POR.

As discussed above, pursuant to section 734(l) of the Act, Commerce must ensure that the Agreement is in the public interest, effective monitoring is possible, and the Agreement “will prevent the suppression or undercutting of price levels of domestic products by imports of the merchandise under investigation.” In this administrative review, LES has alleged that the Agreement is not preventing price suppression or undercutting and that the Agreement is no longer in the public interest. Specifically, LES argues that contract pricing practices of certain respondents have undercut U.S. market prices, thereby undermining the ability of the Agreement to prevent price suppression or undercutting. LES also alleges that the scheduled termination of the Agreement on December 31, 2020, is not only causing price suppression or undercutting as the future absence of the discipline of the Agreement is adversely affecting long-term, and in turn short-term, U.S. market prices but is also causing the Agreement to no longer be in the public interest. LES argues that termination of the Agreement would negatively affect U.S. energy security and the domestic industry. In contrast, TENEX argues that imports of Russian uranium products do not adversely affect U.S. market prices, because the structure of the Agreement, i.e. the export limits that limit Russian uranium products to 20 percent of U.S. demand and the periodic adjustments to the export limits, is designed to prevent price suppression and undercutting. Moreover, ROSATOM, TENEX, and TENAM argue that evidence submitted on the administrative review record supports a conclusion contrary to LES’ assertions—that the scheduled expiration of the Agreement has not caused adverse price effects. Further, they maintain that the Agreement continues to be in the public interest because it supports U.S. national security and diversity of energy supply.

10 See ROSATOM’s July 2, 2018, initial questionnaire response at 1-5.
11 Centrus also references compliance with the SAI.
Similarly, Centrus argues that there is no evidence on the record that imports of Russian uranium products during the POR undercut or suppressed U.S. market prices, nor is there evidence on the record that the Agreement failed to prevent price suppression or undercutting, nor evidence that the Agreement is no longer in the public interest. In addition, Centrus maintains that imports of Russian uranium products were not the source of any declines in U.S. market prices during the POR but that any such price declines were due foremost to the worldwide decline in demand for uranium products following the 2011 Fukushima nuclear incident and the downward pressure that falling demand has had on market prices. Centrus contends that the allegation made by LES that termination of the Agreement is against the public interest is not supported by evidence and is furthermore outside the purview of this review. Exelon and AHUG similarly argue that decreased demand for nuclear fuel in the United States and competition with fossil fuels, which in turn forced the closure of U.S. reactors and increased the size of inventories and enrichment overcapacity, have caused market prices to decline, rather than imports of Russian uranium products. Exelon and AHUG also present arguments that pricing provisions in contracts in effect and shipments executed during the POR show no evidence of price suppression by imports of Russian uranium products and that the scheduled termination of the Agreement is not causing price suppression or undercutting of U.S. market prices. Lastly, Exelon and AHUG, contend that premature termination of the Agreement, *i.e.* through a finding that the Agreement is no longer in the public interest and resumption of the underlying investigation, would cause harm to the U.S. industry and put diversity and security of supply at risk. In light of interested parties’ comments to date and due to the complex nature of these issues, we find that we require additional time and information in order to complete our examination of whether the Agreement continues to meet the statutory requirements, particularly since parties still have the opportunity to submit new factual information and comments on the supplemental responses from respondents received to date and still to be received on the record.

As stated above, before Commerce can reach a final determination on these key issues, we need additional information and time to analyze the information already received and to be received. We preliminarily find no evidence, in the information submitted in initial questionnaire responses and related new factual information and comments from interested parties in this administrative review, that the Agreement’s export limits have not been complied with, or evidence of any violation of the Agreement, during the POR. We note, however, that we need additional time to analyze the respondents’ responses to supplemental questionnaires in which Commerce asked for clarifying information on questions raised in our review of the initial questionnaire responses. Further, Commerce needs more time to examine related new factual information and comments received from interested parties, and to be received, on the broader issues related to whether the Agreement remains in the public interest and whether it continues to prevent price suppression and undercutting. Therefore, we intend to continue our examination after the issuance of these preliminary results in order to reach a full preliminary determination on whether the Agreement has been complied with during the POR and whether the Agreement continues to meet the statutory requirements set forth in section 734(l) of the Act.
V. Recommendation

Based on the record evidence discussed above, we recommend preliminarily finding that ROSATOM and its affiliates TENEX and TENAM, as well as Centrus, all subject to individual examination in this review, have been in compliance with the Agreement. However, after the issuance of these preliminary results, we are continuing our examination of the current status of, and compliance with the Agreement, including whether the Agreement continues to meet the statutory requirements, as set forth in section 734(l) of the Act, after these preliminary results. Further, we recommend, once Commerce has obtained and reviewed supplemental information required to complete its examination, that a post-preliminary analysis be released as soon as practicable. If this recommendation is accepted, we will publish the preliminary results of review in the Federal Register.

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Agree Disagree

11/5/2018

Signed by: GARY TAVERMAN

Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance