MEMORANDUM TO: Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Issues and Decision Memorandum for the Final Results of the Administrative Review of the Agreement Suspending the Antidumping Duty Investigation on Uranium from the Russian Federation, for the period October 1, 2016 through September 30, 2017

June 24, 2019

At the request of Louisiana Energy Services LLC (LES), a domestic interested party, the Department of Commerce (Commerce) conducted an administrative review of 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).

Based on analysis of comments from interested parties, we continue to find 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 during the POR. Further, we continue to 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. As noted in its June 3, 2019, memorandum, Commerce intends to defer its analysis concerning whether the Agreement continues to meet the statutory requirements set forth in section 734(l) of the Tariff Act of 1930, as amended (the Act); specifically, whether the Agreement continues to prevent price suppression or undercutting and whether the Agreement continues to be in the public interest; until the next administrative review.1

1 See Memorandum to Interested Parties, “Establishment of Briefing Schedule for Preliminary Results in the 2016 – 2017 Administrative Review of the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation” (June 3, 2019) (Briefing Schedule Memorandum).
The following is a list of the issues for which we have received comments and rebuttal comments:

1. Alleged Violations of the Agreement
2. Failure to Meet the Statutory Requirements

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 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 Agreement.

For purposes of this Agreement, uranium enriched in U$^{235}$ or compounds of uranium enriched in U$^{235}$ in Russia are covered by this 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 Agreement.\(^2\)

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.

\(^2\) 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 Amendments to the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation, 61 FR 56665 (November 4, 1996).
III. BACKGROUND

On November 14, 2018, Commerce published the Preliminary Results of this administrative review. After the Preliminary Results, we received a number of submissions, including responses to supplemental questionnaires issued by Commerce prior to the Preliminary Results. In accordance with 19 CFR 351.309(c), we invited interested parties to comment on the Preliminary Results. On June 11, 2019, LES; Centrus; and Power Resources, Inc. and Crow Butte Resources, Inc. (collectively, Cameco) submitted case briefs. On June 14, 2019, LES; ROSATOM, TENEX, and TENAM (collectively, ROSATOM et al.); Centrus; Cameco; and Exelon Generation Company, LLC and the Ad Hoc Utilities Group (collectively, AHUG) submitted rebuttal briefs.

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5 See Briefing Schedule Memorandum.
Commerce conducted verification in Moscow, Russia, of the questionnaire and supplemental questionnaire responses of ROSATOM and TENEX during May 20-24, 2019.12 On June 6, 2019, Commerce issued its verification report.13

On December 12, 2018, LES requested a hearing in the administrative review proceeding, and, on December 14, 2018, Centrus and Cameco requested a hearing as well. On June 20, 2019, Commerce held a public hearing.14

For its final analysis, Commerce considered briefs from interested parties that commented on the Preliminary Results and the verification report.

Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018, through the resumption of operations on January 29, 2019.15 If the new deadline falls on a non-business day, in accordance with Commerce’s practice, the deadline will become the next business day. The revised deadline for the final results is now June 24, 2019.

IV. DISCUSSION OF THE ISSUES

Issue 1: Alleged Violations of the Agreement

LES’ Comments

- LES argues that Commerce should find that the Russian industry has violated the terms of the Agreement.16
- TENEX, LES claims, conceded in its supplemental questionnaire response that it failed to submit contract amendments for review that contained significant price revisions.17
- TENEX should have volunteered this information to Commerce.18
- TENEX’s actions constitute a violation of the Agreement.19

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12 See Letter to ROSATOM and TENEX, “Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation: Verification Agenda for State Atomic Energy Corporation “ROSATOM” and Joint Stock Company “TENEX” (March 1, 2019); see also Memorandum to the File, “Correction to Verification Dates” (April 10, 2019).
14 See Letter from Commerce to Interested Parties, dated June 17, 2019; see also Hearing Transcript, dated June 24, 2019.
15 See Memorandum to the Record from 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, “Deadlines Affected by the Partial Shutdown of the Federal Government,” dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.
16 See LES Case Brief.
17 Id. at 3, citing TENEX November 7 SQR at 14.
18 Id.
19 Id.
• Commerce noted in the Preliminary Results that there were inconsistencies in TENEX’s reporting.\textsuperscript{20} These inconsistencies were confirmed in the verification report.\textsuperscript{21}
• Such violations are sufficient to void the Agreement.\textsuperscript{22}

\textbf{Centrus’ Comments}

• Centrus contends that Commerce should conclude that there have been no violations of the Agreement.\textsuperscript{23}
• Commerce’s Preliminary Results did not find violations of the Agreement or discrepancies in the utilization of export limits.\textsuperscript{24}
• Nothing has occurred since the Preliminary Results that should undermine the conclusions contained therein.\textsuperscript{25}
• Commerce should continue to find that all parties acted in accordance with the Agreement and that the Agreement should continue in full force.\textsuperscript{26}
• Commerce should continue to find Centrus unaffiliated with TENEX.\textsuperscript{27}
  o The records support that Centrus is the “unaffiliated reseller” for TENEX.\textsuperscript{28}
  o Centrus and TENEX do not share equity, do not have overlapping directors, and have independent management.\textsuperscript{29}
  o Commerce’s verification report found no discrepancies with the affiliations presented in ROSATOM’s response or with TENEX’s list of affiliates.\textsuperscript{30}

\textbf{Cameco’s Comments}

• Commerce must determine whether parties have complied with Commerce’s requirements for the treatment of returned feed.\textsuperscript{31}
  o Commerce must address whether any inconsistencies existed with respect to treatment of natural uranium feed returned to the seller pursuant to sales of Russian separative work units (SWU) in the United States.\textsuperscript{32}
  o Commerce must address the respondents’ treatment of natural uranium feed returned to them outside the United States, including how the respondents ensured that feed returned outside the United States pursuant to a sale of Russian SWU was deemed Russian and not permitted to re-enter the United States outside the quota limits.\textsuperscript{33}

\textsuperscript{20} \textit{Id.} at 4, citing \textit{Preliminary Results} at 56803.
\textsuperscript{21} \textit{Id.}
\textsuperscript{22} \textit{Id.} at 4.
\textsuperscript{23} \textit{See} Centrus Case Brief.
\textsuperscript{24} \textit{Id.} at 8-9, citing \textit{Preliminary Results} at 56803.
\textsuperscript{25} \textit{Id.} at 9.
\textsuperscript{26} \textit{Id.}
\textsuperscript{27} \textit{Id.} at 10.
\textsuperscript{28} \textit{Id.}
\textsuperscript{29} \textit{Id.}
\textsuperscript{30} \textit{Id.}
\textsuperscript{31} \textit{See} Cameco Case Brief at 16.
\textsuperscript{32} \textit{Id.}
\textsuperscript{33} \textit{Id.}
ROSATOM et al.’s Rebuttal Comments

- Finding grounds for a violation would be unwarranted in view of the Russian industry’s full compliance and Commerce’s verification findings, which confirmed compliance during the POR.
- The failure of TENEX to submit contract amendments for review is not a violation of the Agreement.\(^{34}\) An inadvertent and inconsequential omission is not a violation of the Agreement, as occurred here.\(^{35}\)
  - None of the contract amendments in question changed contract quantities, and thus did not require Commerce’s approval.
  - Although section V.F. of the Agreement stipulates “approval” for both contracts and amendments, the Agreement limits the circumstances under which Commerce may decline to approve a contract or amended to those affecting quantity; it does not include amendments containing only changes to price.\(^{36}\) The only reason provided in the Agreement for Commerce to reject a contract or amendment is insufficient quota. Thus, under the Statement of Administrative Intent (SAI), price amendments require only “review” by Commerce.\(^{37}\)
- LES/URENCO incorrectly allege that TENEX’s omission is a violation because TENEX was required to submit the amendments for approval. However, the SAI states that TENEX is to submit for “review” (not “approval”) amendments affecting material terms that do not include quantity adjustments.
  - LES/URENCO incorrectly claim that “the Department had to make a specific and supplemental – request to elicit this information from TENEX.”\(^{38}\)
  - The remedial actions of TENEX after discovering the omissions further demonstrates that the failure to submit was inadvertent.
- TENEX has never failed to submit for approval a contract amendment that changed quantities, however TENEX neglected to submit for review certain contract amendments which changed the contract’s price terms but not its quantity terms.\(^{39}\)
  - The omissions were incapable of substantially frustrating the purpose of the Agreement because they were adjustments to price that had no effect on the quantities delivered, the amended prices were consistent with contemporaneous market price indicators, and it affected only de minimis quantities.
- The verification report confirms that ROSATOM and TENEX complied with their obligations under the Agreement.
- LES/URENCO falsely claim that Commerce’s Preliminary Results “confirmed that TENEXs failed reporting constitutes an unambiguous violation of the {Agreement}.”\(^{40}\) However, the Preliminary Results unambiguously stated that there is “no evidence that

\(^{34}\) ROSATOM et al. Rebuttal Brief at 4.
\(^{35}\) Id. at 5.
\(^{36}\) Id. at 5, citing Agreement, Section V.F.
\(^{37}\) Id. at 6, citing Statement of Administrative Intent at 4 (February 2, 2010).
\(^{38}\) Id. at 9, citing LES Case Brief at 3.
\(^{39}\) Id. at 6.
\(^{40}\) Id. at 11, citing LES Brief at 4.
the Agreement’s export limits have not been complied with, or evidence of any violation of the Agreement, during the POR.”

- LES/URENCO falsely state that the Verification Report “confirm{ed} TENEX’s failure to respect the terms of the {Agreement}.” To the contrary, the Verification Report reflects only that TENEX acknowledged the failure to submit certain contract amendments “for Commerce’s review that contained changes to non-quantity materials including price.”

**LES’ Rebuttal Comments**

- TENEX violated the Agreement by not submitting certain contract amendments containing significant price revisions to Commerce for approval.
- TENEX has admitted to its failure to report contract amendments, as indicated in Commerce’s verification report.

**Commerce’s Position**

As stated in its Preliminary Decision Memorandum, Commerce examined the individual contracts, contract amendments, and shipment documentation included in certain respondents’ initial questionnaire responses and 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. In regard to ROSATOM, Commerce finds, based on record evidence, that ROSATOM was in compliance with the terms of the Agreement and Commerce’s February 2, 2010 Statement of Administrative Intent (SAI) during the POR. Commerce has reviewed the information submitted by ROSATOM and found, in particular, no evidence of non-compliance regarding sales or exports in excess of the Agreement’s export limits and no evidence of non-compliance regarding the anti-circumvention requirements in section VII of the Agreement or the reporting requirements in Appendix 3 pursuant to section VIII of the Agreement.

**Contracts and Contract Amendments**

In its supplemental questionnaire to TENEX, Commerce requested further explanation and documentation regarding certain contracts, contract amendments, and returned natural uranium feed and associated certifications. TENEX identified the contracts in question, numbers 08843672/090188-051D dated July 21, 2009, 08843672/090290-051D dated January 25, 2010, and 08843672/140002-051D dated June 1, 2009, in its listing of Commerce-approved contracts and contract amendments in its initial questionnaire response but did not place them on the

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41 Id., citing Preliminary Results at 56802-56803.
42 Id. at 11, citing LES Case Brief at 4.
43 Id. at 12, citing Verification Report at 19.
44 LES Rebuttal Brief at 2.
45 Id. at 2, citing Verification Report at 19.
46 See 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, “Decision Memorandum for the Preliminary Results of the Administrative Review of the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation” (November 5, 2018) (Preliminary Decision Memorandum) at 5.
record of the administrative review.\footnote{See TENEX July 2, 2018 Initial Questionnaire Response (TENEX’s July 2 IQR) at 25-28 and Exhibit TX-05.} TENEX provided these contracts in its supplemental questionnaire response, on the record of this administrative review;\footnote{See TENEX November 7 SQR at 15 and Exhibits Supp. TX-10, TX-11, and TX-12.} therefore, we find for these final results of review that TENEX complied with the Agreement and the SAI in that it had submitted to Commerce for approval the initial contracts applicable to both sales and exports of Russian Uranium Products\footnote{“Russian Uranium Products” is defined in Section II(l) of the Agreement.} to the United States during the POR and subsequently submitted the same contracts on the record of the administrative review.

However, in reviewing TENEX’s initial questionnaire response, Commerce found instances in which TENEX had not provided certain contract amendments to Commerce either during the POR or on the record of this administrative review. In its supplemental questionnaire response, TENEX noted its understanding that the SAI requires “approval only for amendments that increase quantities” and requires “the company to submit for review (but not approval) amendments to contracts that concern material non-quantity terms such as pricing.”\footnote{Id. at 13, citing the SAI at Section B.2.} As an initial matter, we note that the language in section V.F of the Agreement states the following:

Any contract, or amendment thereto, for the sale of Russian Uranium Products for exportation to the United States shall be submitted to the Department for approval, along with the documents listed in Appendix 2 to this Amendment. If the maximum quantities to be exported under a contract, when cumulated with the maximum quantities that may be exported under all other approved contracts, are not in excess of the export limits under this Agreement, and the information listed in Appendix 2 has been submitted to the Department, the Department shall approve the contract within 15 days (or the next business day if the 15th day falls on a weekend or holiday).\footnote{See Agreement at Section V.F.}

Further, the SAI requires applicants to submit to Commerce “for approval any amendments to contracts, or exercise of contract options, which involve additional quantities over and above the contract quantities already approved, whether unconditionally or on a conditional basis” and to submit to Commerce “for review any other amendments and addenda to contracts that concern material terms, such as pricing or estimated delivery dates” (emphasis added).\footnote{See SAI at 4.} Therefore, given that under section 734(l) of the Act the Agreement must prevent suppression and/or undercutting of domestic prices, it is clear that applicants must submit to Commerce any amendments to approved contracts that change material terms, such as quantity, price, or estimated delivery dates.\footnote{See Section 734(l) of the Act; see also 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 Investigation on Uranium from the Russian Federation” (May 14, 2008).} In fact, Commerce has in general approved amendments to previously-approved contracts that were submitted by applicants pursuant to the Agreement,
including during the POR. Because the full analysis involves business proprietary information, we provide additional details in a separate, business proprietary memorandum.

TENEX stated that it “has never failed to submit a contract amendment requiring approval” that changed the quantities of the initial contract. However, TENEX confirmed that “in several instances since the institution of the amended Agreement in 2008 TENEX inadvertently failed to submit for review contract amendments that contained significant revisions to prices.” To remedy this oversight, TENEX submitted a full listing of its U.S. contracts and contract amendments executed since 2008 and copies of previously unsubmitted contract amendments, whether within the POR or not. Commerce has reviewed the supplemental documentation provided and finds that contract amendments containing revisions to material price terms or delivery dates should have been submitted to Commerce in order to fully comply with the SAI and the intent of the Agreement with respect to the export limits and other enforcement provisions (e.g., sections IV.E and IV.F of the Agreement) and the prevention of price suppression or undercutting. Regarding this point, however, we agree with ROSATOM, et al., that TENEX’s failure to provide the identified contract amendments for Commerce’s review, by its inadvertent nature, does not rise to the level of a violation of the Agreement. Going forward, however, Commerce expects TENEX’s full compliance with the contract amendment review requirements detailed in the SAI which provide key tools for enforcing the Agreement’s export limits and other important provisions and statutory requirements.

In its supplemental questionnaire to Centrus, Commerce requested further explanation and documentation regarding certain contracts and shipment documentation. Certain contracts were identified in Centrus’s listing of Commerce-approved contracts and contract amendments but were not placed on the record. Centrus provided these contracts in its supplemental questionnaire response, and we, therefore, find that Centrus complied with the Agreement and the SAI in that it submitted to Commerce for approval the initial contracts applicable to both sales and exports of Russian Uranium Products to the United States during the POR and subsequently submitted the same contracts on the record of the administrative review. In addition, certain shipment documentation packets were identified in Centrus’s listing of the shipments under Commerce-approved contracts and contract amendments applicable to exports of Russian Uranium Products to the United States during the POR but were not placed on the

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54 See, e.g., TENEX July 2 IQR at Exhibit TX-05, No. 13.
55 See Memorandum to the File from Sally C. Gannon, Director for Bilateral Agreements, “Proprietary Discussion of Issues for the Final Results of the Administrative Review of the Agreement Suspending the Antidumping Duty Investigation on Uranium from the Russian Federation, for the period October 1, 2016, through September 30, 2017,” dated concurrently with this memorandum (Proprietary Memorandum).
56 See TENEX’s November 7 SQR at 14.
57 Id. at Exhibit Supp. TX-08.
58 Id. at Exhibit Supp. TX-09.
59 The Agreement, in section XI, defines “Violation” as “noncompliance with the terms of this Agreement caused by an act or omission by MINATOM except, at the discretion of the Secretary, an act or omission which is inadvertent or inconsequential.”
61 See Centrus July 2, 2018 Initial Questionnaire Response (Centrus’s July 2 IQR) at 33-34 and Exhibit 10.
62 See Centrus November 16 SQR at 20 and Exhibit S-3.
record.63 Centrus provided these shipment documentation packets in its supplemental questionnaire response,64 and we, therefore, find that Centrus complied with the requirements of the Agreement (section V.C), the SAI, and Commerce’s contract approval memoranda in that it submitted the required shipment documentation to Commerce for approval during the POR and subsequently submitted the same shipment documentation on the record of the administrative review.

Returned Feed and Associated Certifications
With respect to returned natural uranium feed and associated certification requirements, we find no issues in the submissions from TENEX, TENAM, and Centrus that frustrate the purposes of, or rise to the level of non-compliance with, Commerce’s requirements regarding returned natural uranium feed, as specified in its contract and shipment approval memoranda. Because the full analysis involves business proprietary information, we address these issues in a separate, business proprietary memorandum.65

Commerce finds no evidence of non-compliance by TENEX, TENAM, and Centrus during the POR regarding the contract and shipment approval requirements provided for in section V of the Agreement, established by the SAI, and requested by Commerce. We have reviewed the submissions to Commerce requesting approval of contracts or contract amendments applicable to both sales and exports of Russian Uranium Products to the United States during the POR from TENEX, TENAM, and Centrus and find that each party has complied with the contract approval documentation requirements in sections V.C and V.F and Appendix 2 of the Agreement and the SAI. We note that, while TENEX through an oversight failed to provide to Commerce for review certain contract amendments that changed the material terms of contracts in effect as required by the SAI.66 We find that, while this oversight by TENEX is not insignificant, it does not rise to the level of a violation of the Agreement and does not imperil Commerce’s ability to ensure its strict quota accounting through the contract and shipment approval processes as established in the Agreement and the SAI.67 Regarding submissions to Commerce requesting approval of a shipment under an approved contract or contract amendment which entered for delivery during the POR, we have reviewed the submissions from TENEX, TENAM, and Centrus and find that each party has complied with the shipment approval documentation requirements established in the Agreement and the SAI and requested by Commerce. Lastly, on returned natural uranium feed and associated certification requirements, we find no issues in the submissions from TENEX, TENAM, and Centrus that rise to the level of non-compliance with Commerce’s requirements regarding returned natural uranium feed, as specified in its contract and shipment approval memoranda.

63 See Centrus July 2 IQR at 35-36 and Exhibit 7.
64 See Centrus November 16 SQR at 20 and Exhibit S-4.
65 See Proprietary Memorandum.
66 See SAI at 4.
67 Id. at 1-4.
Issue 2: Failure to Meet the Statutory Requirements

LES’ Comments

- LES asserts that 2020 expiration of the Agreement and the underlying investigation cause the Agreement to no longer prevent price suppression or undercutting.  
- Excess Russian capacity during the POR and the impending expiration of the Agreement threaten the relative stability that the Agreement has provided. This will result in increased Russian imports at low prices as Russia attempts to expand its U.S. market share.
- U.S. producers will be forced to lower their prices (or to not increase their prices) – LES and other domestic producers are already experiencing these negative impacts.
- The International Trade Commission (ITC) and Commerce have already found that Russian uranium products are poised to enter the U.S. market at greater volumes and lower pricing if the Agreement terminates.
- The U.S. market is attractive for TENEX in light of falling global demand and growing Russian capacity.
  - Global demand has fallen since the Fukushima incident.
  - The U.S. market continues to be the largest market for uranium.
  - As global demand has contracted, global supply is growing. The global supply-demand imbalance will become more pronounced through at least 2020.
  - Russian supply is massive and growing. In contrast, Russian domestic demand for enrichment services accounts for about fourteen percent of Russian capacity.
  - Russia is heavily dependent on exporting and could easily increase its shipments to the United States.
  - Russia’s structural overcapacity is consistently used to underfeed and re-enrich tails material.
  - Post-Fukushima, Russia searched for a market for its overcapacity.
  - These market forces mean that:
    - Russia is export-oriented;
    - The United States is an attractive market;

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68 See LES Case Brief at 5.
69 Id.
70 Id.
71 Id. at 5-6.
72 Id. at 6.
73 Id.
74 Id. at 7.
75 Id.
76 Id.
77 Id. at 8.
78 Id.
79 Id. at 9.
80 Id.
81 Id.
82 Id. at 10.
83 Id.
84 Id.
The U.S. market is susceptible to pricing pressure by dumped Russian material.\textsuperscript{85} 

The pending expiration of the Agreement is already resulting in price suppression, which will continue without a revised agreement.

- Commerce and the ITC have found that levels of Russian imports would increase without the discipline of the Agreement.\textsuperscript{86} Commerce has found that dumping would continue or recur, and the ITC has found that imports would cause price depression or suppression.\textsuperscript{87} 
- According to the ITC, the Russian industry has touted its ability to undersell the U.S. industry—ROSATOM has claimed it can undercut global nuclear fuel prices by 30 percent.\textsuperscript{88} 
- The global imbalance between supply and demand still impacts U.S. pricing and Russia is reported to be increasing its capacity through 2020.\textsuperscript{89} Expiration of the Agreement will increase downward pressure on U.S. market prices through increased supply from Russia and pricing practices of Russia.\textsuperscript{90} 
- Russia has acknowledged its desire to increase exports to the United States.\textsuperscript{91} 
- Trade marketing reports have shown changes to the U.S. market by aggressive pricing offers.\textsuperscript{92} 
- TENEX and its customers know the Agreement ends in 2020 and have been using that information to push down prices.\textsuperscript{93}

- Price suppression is occurring as a result of TENEX’s and Centrus’s contract provisions.\textsuperscript{94} 
- Certain provisions of contracts lead to price undercutting of the prevailing market prices.\textsuperscript{95} 
- These contract provisions undermine the Agreement’s ability to prevent price suppression.\textsuperscript{96} 

- Pricing information during the POR shows that the Agreement is not preventing price suppression and undercutting.\textsuperscript{97} 
  - Commerce should compare the market price at the date of contract execution to the actual price paid.\textsuperscript{98}

\textsuperscript{85} Id. at 10-11. 
\textsuperscript{86} Id. at 11. 
\textsuperscript{87} Id. 
\textsuperscript{88} Id. at 12. 
\textsuperscript{89} Id. 
\textsuperscript{90} Id. at 12-13. 
\textsuperscript{91} Id. at 13. 
\textsuperscript{92} Id. 
\textsuperscript{93} Id. at 14. 
\textsuperscript{94} Id. 
\textsuperscript{95} Id. at 15. 
\textsuperscript{96} Id. at 16. 
\textsuperscript{97} Id. 
\textsuperscript{98} Id.
Invoices corresponding to deliveries made during the POR show clear price suppression and undercutting when compared to the price at the time of contracting.\textsuperscript{99} 

Centrus’s sales strategy leads to price suppression.\textsuperscript{100} 

Even if Commerce accepted the position of the respondents that date of invoice is the appropriate date of sale, there is still evidence of underselling during the POR.\textsuperscript{101} 

- The pending expiration at the end of 2020 of the Agreement and the underlying suspended investigation cause the Agreement to no longer serve the public interest.\textsuperscript{102} 
  - Commerce should address issues related to the public interest in its final results.\textsuperscript{103} 
  - At a minimum, Commerce should state that 2020 expiration of the suspended investigation is not legally permissible absent a changed circumstance review (CCR).\textsuperscript{104} 
  - U.S. law does not allow termination of the suspended investigation without a CCR.\textsuperscript{105} 
    - Commerce has not initiated a CCR and revocation of the underlying investigation is thus not permissible.\textsuperscript{106} 
    - A CCR is not an available means for Commerce in any event because LES accounts for significantly more than 15 percent of domestic production.\textsuperscript{107} 
    - Commerce should clearly state that U.S. law does not support termination of a suspended investigation absent a CCR—this could play an important role in halting the flood of unfairly traded imports after 2020.\textsuperscript{108} 
  - The Agreement contributes to U.S. energy independence and is therefore in the public interest.\textsuperscript{109} 
    - The ownership chains of TENAM, TENEX, and ROSATOM lead to the Russian Government.\textsuperscript{110} 
    - Russia has made recent attempts to undermine the energy security and independence of the United States.\textsuperscript{111} 
    - The final results should conclude that termination of the Agreement, and potentially the underlying investigation, would have public interest impacts to U.S. energy security.\textsuperscript{112} 

\textsuperscript{99} Id. at 17. 
\textsuperscript{100} Id. at 18. 
\textsuperscript{101} Id. at 19. 
\textsuperscript{102} Id. 
\textsuperscript{103} Id. 
\textsuperscript{104} Id. 
\textsuperscript{105} Id. at 20. 
\textsuperscript{106} Id. at 21. 
\textsuperscript{107} Id. 
\textsuperscript{108} Id. 
\textsuperscript{109} Id. at 22. 
\textsuperscript{110} Id. 
\textsuperscript{111} Id. 
\textsuperscript{112} Id. at 23.
**Centrus’ Comments**

- Centrus argues that the Agreement should not be terminated prior to the Agreement’s scheduled termination at the end of 2020.\(^{113}\)
- The Agreement has provided a framework for reliable supply of nuclear material for the U.S. nuclear industry for over two decades.\(^{114}\)
- The Agreement provides assurance of supply to those who signed contracts relying on its terms.\(^{115}\)
- Centrus is a supplier of low enriched uranium (LEU) to U.S. nuclear power plants and a partner of the U.S. government in meeting U.S. national security needs.\(^{116}\)
- Centrus continues to engage in activities that ensure the readiness of its U.S. advanced enrichment technology for future deployment.\(^{117}\)
- Centrus is engaged in a project to develop fuel for advanced nuclear reactors and Centrus’ technology is the only advanced enrichment technology that could produce LEU for defense purposes.\(^{118}\)
- Centrus is the only company investing in U.S. enrichment technology that is usable for commercial and defense requirements.\(^{119}\)
- Centrus is involved in numerous activities to return to domestic production of enriched uranium and maintain advanced capabilities for that purpose.\(^{120}\)
- The U.S. government would face a significant challenge in meeting America’s national security requirements for enriched uranium absent a strong industrial partner like Centrus.\(^{121}\)
- During the period when Centrus would not have its own enrichment production, Centrus signed contracts with key suppliers to maintain its relationships with customers—these contracts ensure Centrus can provide the U.S. market with an alternative to foreign-government-owned LEU suppliers.\(^{122}\)
- Centrus and its utility customers have relied on Russian LEU as an important source of supply diversity since the 1990s.\(^{123}\)
- The Agreement supported Centrus and facilitated the “Megatons to Megawatts” program and that resulted in successful non-proliferation efforts.\(^{124}\)
- LES supported the Agreement at the time of signing, noting that it was an important element of a predictable market environment and that it continued to encourage development of domestic nuclear fuel supply capabilities.\(^{125}\)

\(^{113}\) See Centrus Case Brief at 2.
\(^{114}\) Id.
\(^{115}\) Id.
\(^{116}\) Id.
\(^{117}\) Id. at 2-3.
\(^{118}\) Id. at 3.
\(^{119}\) Id.
\(^{120}\) Id. at 4.
\(^{121}\) Id.
\(^{122}\) Id.
\(^{123}\) Id.
\(^{124}\) Id. at 5-6.
\(^{125}\) Id. at 6.
• Post-Fukushima, Centrus relied on the Agreement that the parties agreed to in 2008, including the termination provision, and entered into a long-term transitional supply contract in order to meet its obligations to U.S. utilities. Centrus also took a long-term approach to deployment of new enrichment capacity based on U.S. enrichment technology.

• Centrus relies on revenue from the Transitional Supply Contract (TSC) to sustain and advance its efforts toward restoring domestic enrichment capability.

• Commerce should not give the impression that it has evidence that the Agreement did not meet the statutory requirements during the POR.
  o If Commerce implied that there was sufficient record evidence to support a finding that Russian imports suppressed or undercut prices, that could inject significant uncertainty into the market that could have commercial effects.
  o Uncertainty could discourage purchases of Russian SWU and encourage purchases of SWU and LEU from URENCO, Ltd., a foreign owned enricher that dominates the U.S. market.
  o This uncertainty could result in further U.S. dependence on imports from URENCO’s European plants and could negatively affect Centrus’s ability to earn the revenues it needs to pursue its domestic enrichment goals.

Cameco’s Comments

• Commerce’s decision to defer key determinations must not deprive parties of any substantive rights to examine and comment on the record.
  o The statute sets forth clear determinations to be made in administrative reviews of suspension agreements.
    ▪ In assessing compliance with the Agreement, Commerce should determine whether parties are complying with the full terms of the Agreement, the SAI, and other requirements established by Commerce.
    ▪ The statute requires Commerce to determine whether, during the POR, the Agreement remained in the public interest and prevented the suppression or undercutting of price levels of domestic uranium products by imports of Russian uranium products.
  o The statute and the regulations establish clear procedural steps to be followed for administrative reviews of suspension agreements.

126 Id. at 7-8.
127 Id. at 8.
128 Id.
129 Id. at 10-11.
130 Id. at 11.
131 Id.
132 See Cameco Case Brief at 4.
133 Id.
134 Id. at 5.
135 Id.
136 Id.
This includes the mandate that Commerce issue preliminary results and provide all interested parties an opportunity to comment on factual information and submit legal arguments.\textsuperscript{137}

Commerce did not issue preliminary results on critical issues in the review.\textsuperscript{138}

- Commerce’s decision to delay key determinations must not deprive parties of their rights.\textsuperscript{139}
  - Commerce preliminarily found no evidence of failure to comply with the export limits or evidence of any violation of the Agreement.\textsuperscript{140}
  - Commerce, however, found certain inconsistencies that required further examination and clarification.\textsuperscript{141}
  - Originally, Commerce intended to issue a post-preliminary analysis as soon as practicable.\textsuperscript{142}
  - Citing no authority for the delay and providing an incomplete explanation, Commerce deferred key issues in the review.\textsuperscript{143}

- Commerce has conducted the review “mostly” in accordance with normal administrative review procedures.\textsuperscript{144} However, Commerce should make clear, given its departures from normal practice, that parties will have an opportunity to comment on the complete preliminary results for issues and information submitted pursuant to the 2016-2017 review in the subsequent review.\textsuperscript{145}

- Commerce must examine price suppression in enrichment and natural uranium markets in its preliminary and final results of the review.\textsuperscript{146}
  - The relevant U.S. market includes the markets for both enrichment and natural uranium.\textsuperscript{147}
    - Both natural uranium and SWU markets are relevant when conducting a price suppression analysis.\textsuperscript{148}
    - The Agreement includes all forms of uranium, including natural uranium.\textsuperscript{149}
    - The natural uranium market and the enriched uranium market have multiple suppliers.\textsuperscript{150}
  - Any suppression or undercutting of SWU prices affects the natural uranium market.\textsuperscript{151}

\textsuperscript{137} Id. at 6.

\textsuperscript{138} Id. at 7.

\textsuperscript{139} Id.

\textsuperscript{140} Id.

\textsuperscript{141} Id.

\textsuperscript{142} Id. at 7-8.

\textsuperscript{143} Id. at 9.

\textsuperscript{144} Id.

\textsuperscript{145} Id.

\textsuperscript{146} Id. at 10.

\textsuperscript{147} Id.

\textsuperscript{148} Id.

\textsuperscript{149} Id. at 11.

\textsuperscript{150} Id.

\textsuperscript{151} Id. at 12.
SWU and natural uranium markets are inextricably linked so that undercutting or suppression of SWU prices will drive down natural uranium prices.\textsuperscript{152} 

As the price of SWU declines relative to uranium, uranium enrichers can generate secondary supplies of natural uranium to sell by underfeeding or re-enriching depleted tails to the levels found in natural uranium.\textsuperscript{153} This will increase supply or inventories of natural uranium and drive down price.\textsuperscript{154} 

In enriched uranium product (EUP) contracts, Commerce must look at the pricing of each component and the whole to determine whether the contract undersold domestic prices during the POR.\textsuperscript{155} 

- Date of contract is relevant\textsuperscript{156}
  - Although the respondents claim date of sale should be defined as invoice date, for long-term contracts the sale would be lost to losing bidders on the date the contract is signed—this is when the market opportunity closes if the winning supplier has undercut U.S. prices or pricing mechanisms.\textsuperscript{157} 
  - For long-term contracts, a winning supplier could lose revenue if forced to meet the Russian price.\textsuperscript{158} 
  - The impact of price undercutting and the loss of potential revenue occurs on the date of contracting.\textsuperscript{159}

- Regarding public interest, Commerce must consider the weakened state of the natural uranium market.\textsuperscript{160} 
  - Market conditions for natural uranium have been extremely difficult since Fukushima.\textsuperscript{161} 
  - Many U.S. producers can no longer afford to mine uranium when long-term prices will not cover the cost of production.\textsuperscript{162} 
  - Natural uranium producers cannot pass on production cost increases to their customers.\textsuperscript{163} 
  - The situation for U.S. uranium miners is dire and Commerce should consider that when conducting its public interest analysis.\textsuperscript{164} 
  - The Russian market remains completely closed to exports of U.S-origin uranium.\textsuperscript{165} Commerce should consider, therefore, whether it was in the public

\textsuperscript{152} Id. 
\textsuperscript{153} Id. 
\textsuperscript{154} Id. 
\textsuperscript{155} Id. at 13. 
\textsuperscript{156} Id. 
\textsuperscript{157} Id. 
\textsuperscript{158} Id. 
\textsuperscript{159} Id. at 14. 
\textsuperscript{160} Id. at 14. 
\textsuperscript{161} Id. 
\textsuperscript{162} Id. 
\textsuperscript{163} Id. at 14-15. 
\textsuperscript{164} Id. at 15. 
\textsuperscript{165} Id.
interest to allow Russian exporters to have access to the U.S. market when U.S. uranium producers face challenges and had no access to the Russian market.  

**ROSSATOM et al.’s Rebuttal Comments**

- The arguments of LES/URENCO and Cameco on public interest, price effects, and withdrawal of the petition are outside the scope of this review.  
- The record contains no evidence that imports from Russia have undersold or suppressed the domestic sales prices of LES/URENCO.  
- Commerce should disregard arguments by LES/URENCO that attempt to deny the legal effect of the Agreement in terminating the underlying antidumping investigation.
  - The Agreement states that the Agreement will terminate, and the petition be withdrawn on December 31, 2020, regardless of the composition of the domestic industry on that date. Withdrawal of the petition was confirmed by irrevocable withdrawal letters submitted by the petitioners and an exchange of letters between ROSATOM and Commerce.  
- TENEX’s Pre-Preliminary Comments demonstrated that the quota level established in the Agreement not only precludes Russian uranium from causing alleged adverse price effects, but also has insulated the domestic market, dominated by URENCO, from general international price trends.

**AHUG’s Rebuttal Comments**

- Commerce should not entertain arguments from Cameco and LES regarding price suppression and the public interest as it is beyond the scope of this briefing.  
- LES and Cameco wrongly suggest that the Agreement contributes to price suppression and the weakened state of the uranium market.  
  - The record does not support a finding of price suppression or that the Agreement is not in the public interest.  
  - There are several world-wide and U.S.-based market factors that have and continue to drive prices down in the domestic uranium market, including the Fukushima nuclear incident, premature reactor shutdowns, the buildup of inventories, and excess enrichment capacity deployed to generate additional natural uranium feed.  
  - Prices decreased when imports were cut in half after the expiration of the U.S.-Russia Highly-Enriched Uranium (HEU) Agreement, which suggests that the Agreement itself is not contributing to price suppression. If Russian imports had

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166 *Id.*  
167 **ROSSATOM et al.** Rebuttal Brief at 13.  
169 **See AHUG Rebuttal Brief at 4.**  
170 *Id.* at 5.  
171 *Id.*, citing Letter from AHUG, “Factual Information to Clarify Questionnaire Responses of ROSATOM Entities and Centrus Energy Corp. and United States Enrichment Corporation,” dated August 13, 2018, at Exhibit 2 at 6 (citing UxC, Enrichment Market Outlook, The Enrichment Industry One Year After Fukushima, Q1 2012).
been driving the market price down, there should have been an increase in market prices when imports were cut in half.\footnote{Id. at 8, citing Letter from Centrus, “Uranium from the Russian Federation: Pre-Preliminary Comments”, dated October 24, 2018.}

- LES claims that Commerce should compare the market price at the date of contract execution to the actual price paid when conducting its price suppression analysis.\footnote{Id. at 9, citing LES Case Brief at 16.} However, AHUG believes this approach could only be appropriate for base-price escalated contracts and not for contracts with other pricing mechanisms.
- Current pricing practices in the market with respect to long-term contracts that cover post-2020 deliveries do not differ from contract pricing practices during the POR.
  - TENEX is not attempting to increase its market share in the U.S. market through low pricing practices.
- There is public interest in diversity of supply, in other words, avoiding over-reliance on one supplier.\footnote{Id. at 11.}

\textit{LES’ Rebuttal Comments}

- The record of this administrative review supports revision or termination of the Agreement prior to its scheduled expiration at the end of 2020.\footnote{See LES Rebuttal Brief at 1.}
  - Centrus omits key information in support of its claim that “there is no reason for the Department to conclude in the Final Results that the \{Agreement\} should be terminated prior to its expiration at the end of 2020.”\footnote{Id. at 4.}
    - The stabilizing disciplines of the Agreement have eroded to the point of failure due to the Agreement’s expiration at the end of 2020.\footnote{Id.}
    - The record of this review only indicates that Centrus will continue to rely on Russian material to claim market share rather than investing in U.S. production operations.\footnote{Id.}
    - Reliance on the government of Russia to fulfill the energy needs of the United States is antithetical to U.S. national security requirements.\footnote{Id., citing LES Case Brief at 22.}
  - Centrus wrongly implies that Russian material is necessary to serve U.S. nuclear requirements.\footnote{Id. at 4.}\footnote{Id. at 5.}
    - According to the World Nuclear Association, there are at least thirteen countries that have enrichment production capability or near-capability.\footnote{Id. at 5.}
- Price suppression and underselling in the U.S. market are occurring because of the signals generated by the Agreement’s upcoming expiration as well as the termination of the suspended investigation. Suppliers and customers have begun to contract now for a market not governed by the disciplines of the Agreement.\footnote{Id. at 5.}
• Centrus fails to discuss signals due to the upcoming termination, but rather claims that the Agreement signals to the U.S. nuclear industry that it will have a “reliable source of supply of nuclear material.”183

**Centrus’ Rebuttal Comments**

• In the final review, Commerce should stand by its commitment not to address price undercutting or suppression, and whether the Agreement is in the public interest. Since LES devotes a significant portion of its brief to address the issues, a “point-by-point refutation” of LES’s arguments is neither required nor appropriate.184
  - Centrus and other interested parties relied on Commerce’s statement in preparing case briefs; thus, it would be “entirely unfair” for Commerce to address these issues.185
  - Centrus urges Commerce to refrain from making predictions as it could potentially have a negative impact on the market.

• Contrary to LES’ comments, Russian imports under the Agreement have not caused adverse price effects, and there is nothing on the record to support this claim. Price undercutting within the meaning of the Act requires evidence of predatory pricing, and price suppression under the Act means more than simply declining prices.
  - Adverse price effects require some sort of causal effect on pricing due to imports.
  - There is almost no evidence of the price at which the “domestic like product,” i.e., U.S.-produced uranium products, was sold during the POR.186
  - Centrus has reported prices for its shipments of U.S.-produced uranium under open origin contracts, and these shipments were made at the same price as contemporaneous shipments of Russian-origin products.
  - Price effects determination cannot be made, because, during this review, LES has not submitted contracts or prices for enriched uranium, SWU, or natural uranium on the record of this proceeding. Additionally, no U.S. producer of natural uranium submitted information on contracts or sales prices for U.S.-produced natural uranium products during the POR.

• LES focuses on “market prices,” which is not the relevant benchmark for determining price suppression or undercutting under the Act; the relevant benchmark is “domestic like product.”187
  - LES relies on prices published in sources like Ux Weekly and TradeTech, which provide only indicative information about their perception of prices in the global market.

• LES references the prices at which Centrus sold the subject merchandise and Centrus’ activities in the U.S. enrichment market;188 however, because Commerce has concluded

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183 Id. at 5, citing Centrus Case Brief at 2.
184 See Centrus Rebuttal Brief at 2.
185 Id. at 3.
186 Id. at 3.
187 Id. at 4.
188 Id. at 5, citing LES Case Brief at 6.
that TENEX and CENTRUS are not affiliated, the prices at which Centrus re-sold the subject merchandise are irrelevant to Commerce’s analysis.

- LES’ arguments about the potential suppression of future prices are legally irrelevant.
  - The purpose of this administrative review is to examine developments during the POR.
  - Contrary to LES’s assertion that prices for uranium products have “consistently fallen” since Fukushima, prices for uranium products have trended upwards and are projected to trend further upwards in the future.

- URENCO commands a significant percentage of the U.S. market for enriched uranium products, and thus has an impact on prices for the domestic like product.
  - URENCO sales far exceed what it produces from its LES plant in New Mexico.
  - Due to the lack of demand in Europe and the planned closure of nuclear reactors in Germany, URENCO relies more on the U.S. market.
  - With LES operating at capacity, the Agreement primarily benefits URENCO, which supplied 60 percent of the U.S. market in 2017, including imports from its three European plants as well as the New Mexico plant (whose output in 2017 was not greater than 37 percent of the U.S. market).
  - Like LES, URENCO did not submit prices on the record of this review, meaning Commerce could not make an informed assessment of the impact of the prices of subject merchandise versus the impact of prices of non-subject merchandise on the prices for the domestic like product.

- Cameco asserts that the Agreement does not include a pricing benchmark; however, Commerce has repeatedly found that the Agreement prevents price suppression or undercutting through its export limit mechanism. The absence of an explicit pricing mechanism does not mean that the Agreement does not prevent price suppression or undercutting.

- No determination of date of sale is necessary or appropriate in this review since Commerce has decided not to reach a determination on price effects, although both LES and Cameco have argued that Commerce should consider contract execution date to be the relevant “date of sale” for the purposes of this review.

- Commerce should give little consideration to LES’ arguments that the Agreement failed to meet the “public interest.”

- Centrus’s resales of Russian SWU should be irrelevant in the analysis. Centrus notes that it normally resells Russian SWU, not EUP, and as a result, those sales do not negatively affect the U.S. uranium market. To the contrary, Centrus’ sales generate sales for miners.

189 Id. at 5, citing Preliminary Results.
190 See Centrus Rebuttal Brief at 5, citing LES Case Brief at 6.
191 See Centrus February 12 NFI Comments at 7.
192 See Centrus Rebuttal Brief at 5.
193 Id. at 6.
194 Id. at 6, citing Cameco Case Brief at 2.
195 Id. at 7, citing LES Case Brief at 62 and Cameco Case Brief at 13-15.
196 Id. at 9.
197 Id. at 10 and 11.
o URENCO uses underfeeding to subsidize its sales of SWU which causes more damage to U.S. miners.
o Centrus agrees that the natural uranium and enrichment markets are connected, and, as a result, Commerce should examine all uranium products when making its determination in relation to price effects. However, Russia does not sell much natural uranium to the United States, and any analysis must isolate the effects of Russian enriched uranium from the effects stemming from imports of natural uranium from non-Russian sources.

- In its case brief, Cameco makes several points that are more focused on the 2017-2018 administrative review than on the 2016-2017 administrative review. Thus, it is inappropriate for Commerce to make any pronouncement regarding that separate legal proceeding. In particular, Commerce should decline to accept Cameco’s offer to make predictive statements about how it will consider the issues of price effects and public interest in that future review.

**Cameco’s Rebuttal Comments**
- Cameco reserves the right to address substantive issues of compliance, price suppression, and public interest once Commerce issues its complete preliminary results in the next administrative review. Given Commerce’s decision to postpone its full analysis until the next review, Cameco requests Commerce to make clear in its final results that parties will be given a meaningful opportunity to comment on the full preliminary analysis once issued in the next review.

**Commerce’s Position**

As stated previously, Commerce is deferring its analysis of whether the Agreement continues to meet the statutory requirements until the next administrative review. This deferral will allow Commerce to conduct a more fulsome analysis of a larger time period which it believes is necessary to resolve the issues raised regarding price suppression or undercutting and public interest in this current review.

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198 *Id.* at 11, citing Cameco Case Brief at 4-7.
199 See Cameco Rebuttal Brief at 3.
200 *See* Briefing Schedule Memorandum.
V. RECOMMENDATION

Based on the record evidence discussed above, we recommend finding that ROSATOM and its affiliates TENEX and TENAM, as well as unaffiliated reseller Centrus, all subject to individual examination in this review, have been in compliance with the Agreement. As noted, Commerce is deferring its analysis concerning whether the Agreement continues to meet the statutory requirements set forth in section 734(l) of the Act, specifically whether the Agreement continues to prevent price suppression or undercutting and whether the Agreement continues to be in the public interest, until the next administrative review. If this recommendation is accepted, we will publish the final results of review in the Federal Register.

☐ ☐

Agree Disagree

Jeffrey I. Kessler
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