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Administrative Review
POR: 5/14/2001-12/31/2002
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June 30, 2004

MEMORANDUM TO: Jeffrey May
Acting Assistant Secretary
for Import Administration

FROM: Gary Taverman
Acting Deputy Assistant Secretary
for Import Administration, Group I

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

Summary

We have analyzed the comments and rebuttal comments of interested parties¹ in the administrative review of the countervailing duty (CVD) order on low enriched uranium from France for the period May 14, 2001, through December 31, 2002. As a result of our analysis, we have made certain modifications to the Preliminary Results of Countervailing Duty Administrative Reviews: Low Enriched Uranium from France, 69 FR 5502 (February 5, 2004) (Preliminary Results). The “Subsidies Valuation Information” and “Analysis of Programs” sections below describe the methodology followed in this review with respect to Eurodif S.A. (Eurodif)/Compagnie Generale Des Matieres Nucleaires (COGEMA), the producer/exporter of subject merchandise covered by this review. Also below is the “Analysis of Comments” section, which contains the Department of Commerce’s (Department’s) response to the issues raised in the briefs. We recommend that you approve the positions we have developed in this memorandum.

Below is a complete list of the issues in this review for which we received comments and rebuttal comments from parties:

¹ The Ad Hoc Utilities Group (AHUG), although not an interested party within the meaning of section 771(a) of the Tariff Act of 1930, as amended (the Act), submitted comments in accordance with section 782(h) of the Act, which provides industrial users/consumers an opportunity to comment.

- Comment 1: Currency Conversion Errors
- Comment 2: Electricite de France's (EdF's) purchases from Eurodif made at More than Adequate Remuneration
- Comment 3: Benchmark used for More than Adequate Remuneration Program
- Comment 4: Inclusion of Pre-POR Transactions in the Subsidy Calculation
- Comment 5: Additional Benefit from Transaction
- Comment 6: Tax Benefit
- Comment 7: Draft Customs Instructions
- Comment 8: Total Sales
- Comment 9: "Part Energie" Charges for 2002
- Comment 10: Use of Separative Work Units (SWUs) Delivered for the Calculation of "Part Usine"
- Comment 11: Comparison between Prices Paid by EdF to Eurodif and to other Suppliers
- Comment 12: Changes to Calculations if the CIT Sustains USEC's Appeal

METHODOLOGY AND BACKGROUND INFORMATION

I. SUBSIDIES VALUATION INFORMATION

A. Calculation of Ad Valorem Rates

In the LEU Final² and Preliminary Results, we calculated the ad valorem subsidy rates for 2001 and 2002 using the following formula:

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

Where;

- A = Ad Valorem Program Rate
- B = Subsidy Benefit (in U.S. Dollars)³
- C = Sales of Subject Merchandise to the United States during the Calendar Year (in Euros)
- D = Total Sales during the Calendar Year (in Euros) (Including COGEMA sales on behalf of Eurodif)
- E = Sales that Entered the U.S. during the Calendar Year (in U.S. Dollars)

We received no comments on this calculation formula. Therefore, we continue to apply this formula to calculate the ad valorem subsidy rates in these final results for 2001 and 2002.

² Notice of Final Affirmative Countervailing Duty Determination: Low Enriched Uranium from France, 66 FR 65901 (December 31, 2001) (LEU Final).

³ The subsidy benefit allocable to the POR for each program originally is calculated in the currency in which it was provided. In calculating the program rate, we converted the value of the subsidy benefit from the original currency to U.S. dollars.

II. ANALYSIS OF PROGRAMS

A. Programs Determined to Confer Subsidies

1. Purchases at Prices that Constitute More than Adequate Remuneration

In the LEU Final we determined that Eurodif/COGEMA provides low enriched uranium to Electricite de France (EdF) and that EdF is a wholly-owned French government agency that supplies, imports and exports electricity. See LEU Final and December 13, 2001, accompanying Issues and Decision Memorandum (Decision Memorandum), Analysis of Program I: Purchase at Prices that Constitute “More Than Adequate Remuneration.” In the LEU Final and Preliminary Results, we found this program to be countervailable. The facts on which this determination was made have not changed. EdF is still owned by the Government of France (GOF), and because EdF is purchasing a good from Eurodif/COGEMA, a financial contribution is being provided under section 771(5)(D)(iv) of the Act. In addition, because this program is available only to Eurodif/COGEMA, we continue to find that this program is specific under section 771(5A)(D)(i) of the Act.

In determining whether a benefit is provided to Eurodif/COGEMA under section 771(5)(E)(iv) of the Act, where the government purchases a good for “more than adequate remuneration,” the adequacy of remuneration will be determined in relation to the prevailing market conditions for the goods being purchased in the country subject to investigation. See Preliminary Results, 69 FR 5503. In determining whether the prices paid by EdF constitute “more than adequate remuneration,” we compared the prices paid by EdF to Eurodif/COGEMA with the prices paid by EdF to its other suppliers. Due to the difference in the pricing structure between Eurodif/COGEMA and EdF, as compared with the pricing between EdF and its other suppliers, we made certain adjustments to our comparison. Id.

Unlike most other customers, EdF provides its own energy for Eurodif/COGEMA to use when producing LEU for EdF. In 2001, Eurodif/COGEMA paid EdF for the energy it used and re-billed EdF an identical amount. In 2002, Eurodif/COGEMA and EdF changed their billing practice so that EdF now pays Eurodif/COGEMA in energy for the energy Eurodif/COGEMA uses to produce EdF’s LEU. For both years, Eurodif/COGEMA charged EdF for the operational costs associated with the production of its LEU. As EdF does not supply electricity to its other LEU suppliers, these suppliers charge EdF a single price per SWU. In the preliminary results calculation we used this single price per SWU as our benchmark price. In order to make a proper comparison between the benchmark price and the government price (i.e., the price paid by EdF), the Department included both operational and energy prices paid by EdF to Eurodif/COGEMA. In addition, to further ensure a proper comparison and after reviewing comments by respondents and petitioners, we also included additional charges paid by EdF to Eurodif/COGEMA in the calculation of the total enrichment price. See Comment 11, below.

As explained in the Preliminary Results and the Decision Memorandum, we did not calculate a value for the natural uranium since the record does not contain this information. See Decision Memorandum at 5. We therefore continue to find that the value of all natural uranium is the same. Id.

In making the comparison in this review, we assumed that the value of all natural uranium is the same in instances where EdF supplied its own feed material for enrichment. Thus, we continue to not include a value for the natural uranium component of the LEU delivered to EdF by Eurodif/COGEMA.

In determining whether a benefit was provided to Eurodif/COGEMA during 2001 and 2002, we calculated a per-SWU price for both the energy and operational components of the LEU purchased by EdF from Eurodif/COGEMA based on the price for the component divided by the quantity of SWU. To derive the per-SWU energy component cost under the new billing arrangement in 2002 where we did not have a euro price, we multiplied the Mwh/SWU rate paid by EdF to Eurodif/COGEMA by Eurodif/COGEMA's cost of electricity from EdF. After adding these two components together, we compared the per-SWU price paid to Eurodif/COGEMA by EdF during each calendar year with the per-SWU price paid by EdF to its other LEU suppliers during each calendar year. Based on our analysis, we preliminarily determined that prices paid by EdF to Eurodif/COGEMA were higher than prices EdF paid to its other suppliers. While parties submitted comments, we continue to find that, in accordance with section 771(5)(E)(iv) of the Act, this program conferred countervailable benefits to Eurodif/COGEMA during both 2001 and 2002. Because EdF's purchases of this product from Eurodif/COGEMA are not exceptional but, rather, are made on an ongoing basis from year to year, we determine that the benefit conferred under this program is recurring under section 351.524(c) of the Department's regulations. Therefore, we expensed the benefit in the year of receipt, *i.e.*, the year in which the purchases were made. To calculate the benefit conferred to Eurodif/COGEMA, we multiplied the calculated price differential by the quantity of SWU component of the LEU purchased from Eurodif/COGEMA by EdF during each calendar year.

Although the cash component of EdF's LEU purchases from Eurodif/COGEMA was paid on a "per-SWU" basis, the contracts also contained provisions for the natural uranium component of the LEU as well as the electricity used by Eurodif/COGEMA in the production of EdF's LEU. As stated above, we have determined that the value of the natural uranium component of the LEU produced by Eurodif/COGEMA from EdF's feed material is equal to the value of the natural uranium component of the LEU produced by EdF's other suppliers from EdF's feed material. Therefore, we did not need to calculate a price differential for the natural uranium component of the LEU. Rather, the natural uranium components of the LEU cancelled each other out.

Also, as explained in the Preliminary Results, we calculated an additional benefit from sales pursuant to the contract listed in Exhibit 16 J of Eurodif/COGEMA's June 19, 2003, questionnaire response. While parties submitted comments on this issue, we continue to find that it is appropriate to calculate a benefit. See Comment 5, below.

Next, we multiplied the benefit amount by the sales of subject merchandise to the United States, divided by total sales, and divided the result by sales of subject merchandise that entered the United States during calendar years 2001 and 2002, respectively. We calculated the ad valorem rate for this program using the formula discussed above in the "Subsidies Valuation Information Section."

On this basis, we find that Eurodif/COGEMA received a net countervailable subsidy under this program of 2.80 percent ad valorem for 2001 and 0.09 percent ad valorem for 2002.

2. Exoneration/Reimbursement of Corporate Income Taxes

In the LEU Final and the Preliminary Results, the Department found that Eurodif/COGEMA is fully exonerated from payment of corporate income taxes corresponding to the percentage of its foreign government ownership and is eligible for a reimbursement of the amount of corporate income taxes corresponding to its percentage of French government ownership. Based on this governmental agreement, Eurodif/COGEMA was exonerated from a portion of its 2000 and 2001 corporate income taxes filed during calendar years 2001 and 2002. This tax exemption constitutes a financial contribution within the meaning of section 771(5)(D)(ii) of the Act. Further, because the tax exemption is limited to Eurodif/COGEMA, the benefit is specific in accordance with section 771(5A)(D)(i) of the Act.

As noted above, Eurodif/COGEMA was also eligible for a reimbursement of the amount of income taxes corresponding to its percentage of French government ownership. Eurodif/COGEMA reported that the portion of its taxes attributable to French government ownership was paid in 2000 and 2001, and was reimbursed in 2001 and 2002. In LEU Final, we found this program to be countervailable. See Decision Memorandum at 7.

To calculate the benefit conferred upon Eurodif/COGEMA from both parts of this program, we divided the amount of exonerated and reimbursed taxes in each calendar year by Eurodif/COGEMA's total sales during that calendar year. In these final results, we have reconsidered our attribution methodology of Eurodif/COGEMA's tax reimbursement since the Preliminary Results. We are now attributing the benefit received from Eurodif/COGEMA's tax reimbursement to the year in which Eurodif/COGEMA should have paid its taxes, as opposed to the time the reimbursement was granted. See Comment 6, below. We adjusted Eurodif/COGEMA's sales denominator using the methodology described in the "Subsidies Valuation Information" section, above. On this basis, we determine a net countervailable subsidy to Eurodif/COGEMA from this program of 0.83 percent ad valorem in 2001 and 0.62 percent ad valorem in 2002.

III. TOTAL AD VALOREM RATE

The total net subsidy rate for Eurodif/COGEMA for 2001 is 3.63 percent ad valorem and for 2002 is 0.71 percent ad valorem.

IV. ANALYSIS OF COMMENTS

Comment 1: Currency Conversion Errors

Respondents allege that the Department overstated Eurodif/COGEMA's ad valorem subsidy rate by applying a U.S. dollar-to-Euro exchange rate incorrectly when converting COGEMA's 2001 and 2002 total U.S. entered values for French LEU. In addition, respondents assert that the error affects the denominator used in the subsidy calculation. Respondents claim that this error significantly understated the benchmark prices used in the more than adequate remuneration benefit calculation.

Petitioners did not comment on this issue.

Department's Position

We agree with respondents' argument that we used the U.S. dollar-to-Euro exchange rate incorrectly in calculating the 2001 and 2002 total U.S. entered value of French LEU, and in calculating the benchmark prices used in the more than adequate remuneration benefit calculation. This has been corrected in these final results.

Comment 2: EdF's purchases from Eurodif made at "more than adequate remuneration"

Respondents claim that the Department did not take into account market conditions in analyzing whether EdF made purchases from Eurodif/COGEMA at more than adequate remuneration. Respondents stress that under the statute, analyzing the adequacy of remuneration should include prevailing market conditions for the goods being purchased, including: price, quality, availability, marketability, transportation, and other conditions. Respondents argue that the Department did not take into account these factors for the Preliminary Results. Specifically, respondents argue that the decision in the Preliminary Results did not account for specificity, availability and other conditions of purchase or sale. They claim that these factors demonstrate that EdF had no viable alternative to Eurodif/COGEMA for its enrichment needs and that the contractual relationship offered EdF several advantages. See Preliminary Results at 5503. Respondents contend that the advantages to EdF for purchasing from Eurodif/COGEMA include: (1) EdF's ability to supply its own electricity for its SWU needs, and (2) the 1995 contract has built-in flexibility for EdF regarding deliveries over the life of the contract. Respondents conclude that these factors should lead the Department to find that no subsidy was conferred by EdF's purchases from Eurodif/COGEMA.

Petitioners state that respondents made this argument in the investigation and that the Department rejected it at that time. See Decision Memorandum at Comment 5. Furthermore, petitioners state that respondents have also raised this issue with the Court of International Trade (CIT), and that it is the Department's practice not to revisit arguments that have been rejected and are the subject of appeal. See Stainless Steel Sheet and Strip from France, 68 FR 53963 (September, 15, 2003) (Stainless Steel from France) and accompanying Issues and Decision Memorandum at Comment 1. See also Carbon and Certain Alloy Steel Wire Rod from Canada, 67 FR 55813 (August, 30 2002) (Wire Rod from Canada). Petitioners note that nothing has changed pertaining to this issue since the investigation, and argue that the Department should continue to reject respondents' argument.

Department's Position

We agree with petitioners that respondents raised a similar argument in the original investigation. In LEU Final we determined that, "with respect to respondents' argument concerning availability, while Eurodif may have been the most attractive supplier to EdF in terms of reliability and risk, record evidence makes clear that Eurodif was not EdF's only viable option for the supply of LEU." See

Comment 5 in the Decision Memorandum. In the current review, we find that while certain billing practices and contracts are different from those in place during the investigation, the factors which respondents contend the Department has failed to examine have not changed. Therefore, we continue to find that it is appropriate to employ the same analysis used in the investigation.

Comment 3: Benchmark for More than Adequate Remuneration

Respondents argue that the Department used an inappropriate benchmark in calculating the benefit of purchases for more than adequate remuneration. They contend that the most appropriate comparison is between transactions involving the respondent and the government purchaser on one hand and transactions involving the respondent and other purchasers on the other. Specifically, respondents assert that EdF's purchases from Eurodif/COGEMA should be compared with other customers' purchases from Eurodif/COGEMA. Furthermore, they argue that a determination of whether the government, EdF, agreed to overpay Eurodif/COGEMA can be properly made by determining what Eurodif/COGEMA charged its other customers for the same good. Respondents stress that the good in question is Eurodif/COGEMA's SWU, not the SWU provided by other suppliers. They assert that the Department should evaluate EdF's purchases from Eurodif/COGEMA by comparing them with Eurodif/COGEMA's transactions with other parties.

Petitioners argue that the Department rejected the approach recommended by respondents in the LEU Final. See Decision Memorandum at 5-6. In addition, they note that respondents have raised this issue in their appeals to the CIT. They state that, for the same reasons as outlined in Comment 2, above, the Department should not reconsider its methodology in this regard.

Department's Position

We disagree with respondents' argument that we used an inappropriate benchmark in calculating the benefit of purchases for more than adequate remuneration. In the LEU Final we determined that it was more appropriate to compare prices that Eurodif received from EdF to prices that other suppliers received from EdF, because the record contained information on "import prices" which reflect actual transactions within France. See Decision Memorandum at 5. We find that it is appropriate to follow the methodology set forth in the investigation, as no new information or arguments for changing our practice were made; therefore, we will not adjust our analysis as requested by respondents.

Comment 4: Inclusion of Pre-POR transaction in the subsidy calculation

Respondents argue that the Department improperly included in the preliminary subsidy calculation transactions that occurred outside of the period of review (POR). Respondents assert that section 351.525(a) of the Department's regulations direct the Department to calculate an ad valorem subsidy rate by dividing the amount of the benefit allocated to the period of review by the sales value during the same period. They note that the POR is May 14, 2001, through December 31, 2002, and

that the Department should not include any purchases or transactions made from January through April 2001, as they do not pertain to the POR. Furthermore, respondents state that excluding pre-POR purchases would be consistent with the Department's benchmark, which is only based on EdF's purchases during the POR.

Respondents also contend that by including pre-POR 2001 transactions in the subsidy calculation, the Department unfairly distorted the 2001 "part energie" charge. Respondents further argue that certain amounts included by the Department in the "part energie" charge are not representative of the charges between the parties during the POR or 2001 due to the change in Eurodif/COGEMA's electricity supply agreement with EdF. Specifically, respondents argue that an aberrant adjustment which occurred prior to the POR is the major basis for the calculation of the part energie per-SWU price for 2001. They argue that this billback should not be included in the part energie.

Petitioners claim that respondents' argument that the Department should not calculate the benefit for 2001 on a full-year basis is not compelling nor directed by 19 CFR 351.525(a). Petitioners further argue that it is the Department's standard to calculate subsidies on an annual basis for reviews that involve partial years. Petitioners cite to Certain Pasta from Italy and Stainless Steel Plate in Coils from Belgium, where the Department calculated annual rates. See Certain Pasta from Italy: Final Results of Countervailing Duty Administrative Review, 63 FR 43905, (August 17, 1998) at 43911 and Stainless Steel Plate in Coils from Belgium: Preliminary Results of Countervailing Duty Administrative Review, 66 FR 20425 (April 23, 2001).

Petitioners further claim that the Department's regulations do not prohibit the use of annual data in a partial-year review and the Department regularly uses annual data for subsidy calculations. In addition, petitioners cite to Fabricated Automotive Glass from Mexico, where the Department stated, "We have traditionally separated the period of review according to calendar or fiscal year, where necessary, in order to facilitate the collection of information. We believe that this standard provides consistency and predictability to both the petitioners and respondents, whereas PPG's choice of periods is arbitrary." See Fabricated Automotive Glass from Mexico, 51 FR 44652 (December 11, 1986) and accompanying Issues and Decision Memorandum (Mexico Decision Memorandum) at Comment 8.

Department's Position

We agree with petitioners that it is the Department's practice to use annual data for the calculation of subsidy rates. See Certain Pasta from Italy at 43911. We further agree that the purpose of using annual information, even when such information is outside of the POR, is to ensure consistency and predictability. See Mexico Decision Memorandum at Comment 8. We note that what respondents characterize as an aberrant adjustment that occurred prior to the POR, was not aberrant. See January 7, 2004, Memorandum to Melissa G. Skinner in reference to the Verification of the Questionnaire Responses of Eurodif in the Countervailing Duty Administrative Review of Low Enriched Uranium from France (Eurodif Verification Report) at 15-16. We note that the reasoning behind this latter position is proprietary and cannot be discussed in this document. See June 30, 2004,

Memorandum to The File from The Team referencing Petitioners' and Respondents' Comments Pertaining to the Final Results in the Administrative Review of the CVD Order on LEU from France (Proprietary Comments Memorandum).

Comment 5: Additional Benefit from Transaction

Respondents argue that the Department incorrectly found that an additional transaction between Eurodif/COGEMA and EdF was for more than adequate remuneration. Furthermore, respondents claim that the benchmark price used by the Department to evaluate the adequacy of remuneration for this transaction was contrary to the Department's regulations and information on the record. They claim that section 351.511(a)(2) of the Department's regulations directs the Department to use a "market-determined price for the good or service." In addition, they claim that the Department used a benchmark price that was not contemporaneous with the evaluated transaction and that the Department incorrectly used a U.S. dollar-to-euro exchange rate in calculating the benefit conferred by this program. Respondents make further arguments pertaining to this issue; however, their comments are proprietary and cannot be summarized in this document. See Proprietary Comments Memorandum.

Petitioners agree with the Department's finding of an additional benefit from this transaction. In addition, petitioners refute respondents' argument that the transaction was not for more than adequate remuneration, based on the fact that Eurodif/COGEMA treated this transaction as a sale for accounting purposes. Petitioners also argue that the benchmark used to evaluate the adequacy of remuneration of this transaction was contemporaneous with the transaction itself and is, therefore, an acceptable benchmark. Petitioners make further arguments pertaining to this issue; however, their comments are proprietary and cannot be summarized in this document. See Proprietary Comments Memorandum.

Department's Position

We agree with petitioners that the transaction was for more than adequate remuneration, and that the transaction should be treated as a sale by the Department, consistent with Eurodif/COGEMA's own treatment of this transaction. See Eurodif Verification Report at 13. Furthermore, we also agree that the benchmark used to evaluate the adequacy of the remuneration is contemporaneous with the transaction itself, and, therefore we have not made any modifications to the methodology used to calculate the benefit generated through this transaction. We note that the reasoning behind this position is proprietary and cannot be discussed in this document. See Proprietary Comments Memorandum. We do, however, agree with respondents that the Department incorrectly used a U.S. dollar-to-euro exchange rate in the Preliminary Results. We have adjusted this exchange rate for these final results.

Comment 6: Tax Benefit

Respondents claim that the Department used a different methodology to calculate the tax subsidy benefit than the methodology used in the original investigation. See Decision Memorandum at comment 6. Specifically, they state that the Department did not attribute the benefit from tax programs

to the year in which the taxes were paid. Furthermore, respondents state that the operation of the program has not changed during the POR to explain the change in methodology. Finally, respondents claim that this treatment doubles up the benefit attributed to 2002.

Petitioners agree with respondents that the methodology the Department used in calculating the subsidy benefit was different from what was used in the investigation. Petitioners submit that in the investigation, the Department calculated the benefit attributable to Eurodif/COGEMA from the reimbursement aspect of the tax subsidy based on the date on which Eurodif/COGEMA requested the reimbursement and not on the date that the reimbursement was actually received; whereas, in the preliminary results calculation, the Department based the calculations on the date that the reimbursement was actually received by Eurodif/COGEMA. While this methodology is different from that employed in the investigation, petitioners note that it would be reasonable and appropriate for the Department to use either the methodology set forth in the investigation or the new methodology used in the preliminary results calculations. Furthermore, petitioners claim that the Department's new methodology does not double the benefit attributed to 2002 as argued by respondents. Petitioners argue that both reimbursements were actually received by respondents in 2002, and that the methodology used in the preliminary results calculation does not double count tax year 2000's reimbursement benefit.

Department's Position

We agree with both petitioners and respondents that the methodology used by the Department to attribute benefits from tax programs to a specific year changed from the LEU Final. Specifically, in the LEU Final, we attributed benefits to the year in which the benefit was received. See Decision Memorandum at Comment 6. While, in this case, Eurodif/COGEMA did not receive reimbursement until 2002, Eurodif/COGEMA never paid the taxes to be reimbursed in the first place. As stated in the Decision Memorandum at 7:

Eurodif deposited the amount of tax that would have otherwise been due into a three month certificate of deposit that is rolled over if Eurodif has not yet received reimbursement by the end of the term of the certificate. Because Eurodif did not pay the tax during the POI, but rather deposited the amount of the tax into an interest-bearing account knowing it would receive the full amount of the deposit at a future date, and because the GOF had no discretion regarding whether to reimburse the funds deposited or to decide on the amount to be reimbursed, Eurodif received a countervailable benefit under section 351.509(b) at the time the tax would otherwise have been paid.

Eurodif/COGEMA's actions during the POR are no different from its actions during the investigation; therefore, we will apply the methodology used in the investigation in these final results and attribute the benefit from the reimbursement of Eurodif/COGEMA's taxes to the year in which the taxes otherwise would have been paid, as opposed to the year in which the reimbursement was formally granted.

Comment 7: Draft Customs Instructions

Respondents state that the Department should reference “COGEMA” as well as Eurodif in paragraph three of the cash deposit instructions. With respect to the liquidation instructions, respondents point out that the CIT has enjoined CBP’s liquidation of entries of LEU during the pending litigations and therefore, the Department should not send out any liquidation instructions. In addition, respondents note that the regulations cited in paragraph three of the draft liquidation instructions refer incorrectly to section 351.12(c) of the Department’s regulations. Respondents further state that paragraph four should also refer to “COGEMA” as well as to Eurodif.

Department’s Position

We agree with respondents that the Department should reference “COGEMA” as well as Eurodif in the third and fourth paragraph of the cash deposit instructions. These mistakes have been corrected in the final instructions. Respondents’ comment pertaining to an incorrect reference to the Department’s regulations in paragraph three is unfounded. No reference to section 351.12(c) of the Department’s regulations was included in any paragraph of our draft liquidation instructions. We note, however, that we have added an additional paragraph which instructs CBP to liquidate all entries from companies not being reviewed in the instant review at the rates in effect prior to this review. With respect to respondents’ comments about the issuance of liquidation instructions in the midst of pending litigation, we note that the Department previously addressed this issue in the memorandum which accompanied the issuance of the draft customs instructions, where we stated that, “liquidation instructions for any cases currently enjoined will not be published until a judgement has been made”. See March 3, 2004, Memorandum to The File from The Team referencing Draft Customs Instructions.

Comment 8: Total Sales

Petitioners argue that the Department used an inaccurate total sales figure for calculating Eurodif/COGEMA’s ad valorem subsidy rate for the more than adequate remuneration program. Petitioners argue that section 351.525(a) of the Department’s regulations directs the Department to only include sales that relate to the production of LEU through the enrichment of uranium for the total sales figures that are used in calculating the ad valorem rates for the more than adequate remuneration program

Respondents assert that the Department should continue to calculate Eurodif/COGEMA’s ad valorem subsidy rate for the more than adequate remuneration program using Eurodif/COGEMA’s total sales. Respondents claim that petitioners’ argument is not supported by evidence on the record and that this program should not be “tied” only to sales relating to the production of LEU through the enrichment of natural uranium.

Department's Position

We agree with respondents that the benefit provided by the GOF through the purchase of LEU for more than adequate remuneration is not tied to Eurodif/COGEMA's sales of the subject merchandise. The Department, contrary to petitioners' argument, is directed to allocate domestic subsidies to all products that are sold by a firm. See Section 351.525(b)(3) of the Department's regulations. While section 351.525(b)(5) of the Department's regulations does allow for subsidies tied "to the production or sale of a particular product" to be attributed only to that product, the subsidy received by Eurodif/COGEMA cannot be characterized in this manner. The subsidy which Eurodif/COGEMA receives through the purchase of the subject merchandise for more than adequate remuneration is dependent on the quantity and price associated with EdF's purchases of subject merchandise, not on the total sales or production of LEU. See Preliminary Results for a discussion of this program. Therefore, as this subsidy is not dependent on the quantity or value of total sales of subject merchandise or on the production of subject merchandise, we will continue to use Eurodif/COGEMA's total sales to calculate Eurodif/COGEMA's ad valorem rate for this program. See "Explanation of the Final Rules" of Countervailing Duties, Final Rule, 63 FR 65348, 65403 (November 25, 1998) (Preamble).

Comment 9: "Part Energie" Charges for 2002

Petitioners argue that the figure that the Department used to calculate the "part energie" charge is flawed. First, petitioners argue that the figure is not the transfer price at which Eurodif/COGEMA and EdF settled the provision of electricity for 2002. Petitioners also note that the figure was not reflected in parties' financial statements. Petitioners argue that the figure does not bear any relationship to EdF's actual cost of supplying electricity. Moreover, petitioners claim that they provided the Department with EdF's average cost of producing electricity for 2002, and that this figure is different from the figure used by the Department in the Preliminary Results. Petitioners point out that in the parallel antidumping administrative review of LEU from France, the Department acted upon this information and used EdF's weighted average cost of production to calculate the value of the electricity supplied by EdF to Eurodif/COGEMA. See Notice of Preliminary Results of Antidumping Administrative Review: Low Enriched Uranium from France, 69 FR 3883 (January 27, 2004). Petitioners assert that the Department should use a transfer price that at least covers EdF's cost of production for the electricity that it produces. Petitioners allege that respondents have manipulated the transfer price and that this manipulation casts doubt on the supposed arm's length relationship between Eurodif/COGEMA and EdF.

Petitioners further note that they requested that the Department solicit all of the information pertaining to this topic and the Department did not make this request. Therefore, petitioners allege that the only information available on the record related to EdF's cost of production is that placed on the record by petitioners in their deficiency comments. See August 25, 2003, Letter from Steptoe & Johnson LLP to the Honorable Donald L. Evans referencing the CVD Administrative Review of LEU from France: Deficiency Comments of USEC Inc. at 24.

Respondents argue that petitioners' claim, that the "part energie" price used in the preliminary results calculation is questionable, is contradicted by verified record facts. Respondents claim that the figure used was also the same price charged by EdF to Eurodif/COGEMA for Eurodif/COGEMA's other electricity needs and, therefore, the figure is objectively grounded. Furthermore, respondents argue that petitioners' allegation that the Department should use non-record cost information from the parallel antidumping proceeding should be rejected.

In addition, respondents refute petitioners' contention that respondents concocted the electricity price by citing to Eurodif's Verification Report. Specifically, respondents claim that the "part energie" price was contractually agreed upon by the parties. See Eurodif Verification Report at 15. Moreover, respondents also point to the fact that EdF charged Eurodif/COGEMA the same price for the electricity used to provide enrichment for Eurodif/COGEMA's other customers. See Eurodif Verification Report at 11. Respondents conclude that the record demonstrates that the pricing of electricity between EdF and Eurodif/COGEMA is in accordance with prevailing market conditions, which is a condition for the adequacy of remuneration analysis.

Department's Position

We agree with respondents that the price used by the Department for Eurodif/COGEMA's energy costs is acceptable for the purposes of calculating the benefit received by Eurodif/COGEMA from EdF. Contrary to petitioners' argument that the contracted price was never used to settle a bill for the provision of electricity, we reviewed provisional and final invoices for energy prices and found no discrepancies pertaining to the prices charged by EdF for electricity. See Eurodif Verification Report at 15 and Exhibit 11. Furthermore, we specifically examined the contract which determined these prices. See Eurodif Verification Report at 15.

In response to petitioners' argument that the price charged by EdF is not consistent with EdF's cost of production, we note that in determining the adequacy of remuneration, the Department is directed to "compare the government price" that was paid, to the benchmark, and that the provision referring to prevailing market conditions pertains to the benchmark price, and not the government price. See section 351.511(a)(2)(I) of the Department's regulations. Therefore, the Department is concerned with identifying the actual price paid by the EdF and not with determining whether such a price is consistent with the government's cost of production. As a result, the Department will not make any adjustments to the verified price charged by EdF and will continue to calculate a benefit using the same methodology as outlined in the Preliminary Results.

Comment 10: Use of SWUs Delivered for the Calculation of "Part Usine"

Petitioners claim that the Department should reconsider the methodology used in the original investigation for calculating the per-SWU "part usine" paid by EdF. Petitioners allege that evidence on the record demonstrates that the Department's figure does not relate to the deliveries of SWU from Eurodif/COGEMA to EdF. Moreover, petitioners contend that the "part usine" figure used in the original investigation and in the preliminary results calculation does not reflect EdF's real needs or actual

deliveries. Therefore, petitioners argue that the Department should use the amount of SWU that EdF actually received during the year to calculate the per-SWU “part usine” figure. Petitioners claim that by using the amount of SWU actually delivered, the calculations will more accurately account for the economic value to Eurodif/COGEMA.

Respondents assert that the Department properly used the amount of SWU purchased under its contract rather than the amount delivered to EdF during the year. Respondents reference Eurodif’s Verification Report at 11, that under the contract between Eurodif/COGEMA and EdF, the “part usine” charge is based on “the contractual amount of SWU sold.” Respondents argue that petitioners’ contentions do not change the quantity of SWU that was purchased. Furthermore, respondents claim that petitioners’ recommendation to use SWU delivered would distort the Department’s comparison and would effectively inflate the per-SWU price.

Department’s Position

We agree with respondents and will continue to calculate the “part usine” unit price using the quantity of SWUs purchased by EdF during the POR. Petitioners are correct that Eurodif/COGEMA does not always deliver all of the SWU purchased by EdF in any given year. See Eurodif Verification Report at 11. However, the quantity of SWU purchased by EdF, as well as the price charged for that SWU, are laid out in the parties’ contract. See Exhibit 16A of Eurodif’s June 19, 2003, response. Furthermore, the behavior that petitioners cite as a reason to discredit the purchase quantity outlined in the contract is entirely within the provisions of that contract. See Id. See also Eurodif Verification Report at 12. Based on this information, we have no reason to question the validity of Eurodif/COGEMA’s contract with EdF; therefore, we will not make any adjustments to the quantity of SWU used to calculate the “part usine” unit price.

Comment 11: Comparison between prices paid by EdF to Eurodif and to other Suppliers

Petitioners allege that the per-SWU prices calculated by the Department for EdF’s purchases from other suppliers include certain other charges, while the per-SWU prices for EdF’s purchases from Eurodif/COGEMA do not. See January 29, 2004, Memorandum to The File Through Eric Greynolds Re: Calculations for the Notice of Preliminary Countervailing Duty Results: Low Enriched Uranium from France (Prelim Calc Memo), Attachment 1 at 12 and 14. Petitioners argue that to make a more appropriate comparison, the Department should include similar charges in the per-SWU price calculated for sales from Eurodif/COGEMA.

Respondents agree with petitioners that the Department should include certain other charges in the calculation of the enrichment price between EdF and Eurodif/COGEMA. Furthermore, respondents assert that the Department should only use values that were actually paid by EdF for its POR purchases of enrichment services, as verified by the Department. See January 7, 2004, Memorandum to Melissa G. Skinner in reference to the Verification of the Questionnaire Responses of the GOF and EdF in the Countervailing Duty Administrative Review of Low Enriched Uranium from France (GOF Verification Report) at 3.

Department's Position

We agree with both respondents and petitioners that all charges included in the benchmark price should also be included in EdF's price to Eurodif/COGEMA to ensure an appropriate comparison. We also agree with respondents that the other charges included should only be those associated with the enrichment paid for during the POR. We verified the difference between the other charges cited by petitioners and those which respondents have requested be used. See GOF Verification Report at 3. However, we note that the appropriate other charges were included in the calculation of the "part energie" unit price in the Preliminary Results. See Prelim Calc Memo, Attachment 1 at 13. Therefore, for these final results, we have not made any adjustments to the other charges included in the total enrichment price paid by EdF to Eurodif/COGEMA.

Comment 12: Changes to Calculations if the CIT Sustains USEC's Appeal

Petitioners claim that the Department should treat a portion of the pre-2000 more than adequate remuneration subsidy benefit received by Eurodif/COGEMA as a non-recurring benefit, if the CIT agrees with petitioners' argument which is currently under appeal.

Respondents state that it is not necessary or appropriate to address petitioners' arguments, as petitioners have not offered any new arguments or evidence pertaining to this issue.

Department's Position

Although the LEU Final is currently being appealed, until there is a final and conclusive decision regarding the pre-2000 more than adequate remuneration subsidy benefit, we will continue to apply that methodology (as we did in the Preliminary Results) for the purposes of these final results.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of reviews and the final net subsidy rates for the reviewed producers/exporters of the subject merchandise in the Federal Register.

Agree

Disagree

Jeffrey May
Acting Assistant Secretary
for Import Administration

Date