
Uranium Primer - Trade Restrictions

Soviet Union/CIS Uranium Antidumping Case

Background

In November 1991, a coalition representing the US uranium industry, comprised of uranium mining companies and a labor union (referred to as the “Ad Hoc Committee”), filed an antidumping petition with the US Department of Commerce (DOC) and the International Trade Commission (ITC) alleging that imports of uranium products from the then-Soviet Union were being dumped in the US market and were materially injuring the domestic uranium industry. (Dumping is selling a good at prices below “fair value”—generally the prices charged in the producer’s home country, or its cost of production plus a reasonable profit.)

DOC began an antidumping investigation of such products on December 5, 1991, and on December 23, the ITC made the preliminary determination that such products were causing material injury to the US uranium industry. Two days later, the Soviet Union formally dissolved, which gave rise to the issue of whether the investigation should begin anew. (The antidumping law requires the investigation of dumping on a country-by-country basis.) Because the antidumping petition did not contain country-specific information about production, pricing, or other relevant matters, an investigation of each newly independent Commonwealth of Independent States (CIS) country was not possible. Nonetheless, DOC decided to continue the investigation against the 12 countries that had emerged from the breakup of the Soviet Union without requiring a new petition.

DOC issued its preliminary findings in June 1992, determining that uranium from six CIS countries was being sold in the USA at less than fair value. These countries were Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Ukraine, and Uzbekistan. As a result, DOC set a preliminary antidumping duty rate of 115.82% on uranium from each of these republics.

Suspension Agreements

On October 16, 1992, the governments of the six uranium-producing CIS countries signed quota-based suspension agreements. Under these agreements, DOC suspended further investigations of the alleged dumping. In exchange, the countries agreed to price-tied quotas on US imports of CIS uranium, effectively prohibiting imports of such products unless and until DOC determined that the US price of uranium oxide (U_3O_8) rose to a level of US\$13.00 per pound. However, the agreements provided for other avenues of imports, including “grandfathered” contracts, and a special one-time importation of low-enriched uranium (LEU) from Russia.

Not long after the agreements were concluded, the governments of Tajikistan and Ukraine terminated their respective suspension agreements with DOC. As provided in the antidumping law, DOC resumed its antidumping investigation of uranium products from these two countries, calculating a final dumping margin of 129% each. In its final determinations, the ITC unanimously found that imports of Tajik uranium were not materially injuring the US uranium industry and that, while imports of natural uranium and LEU from Ukraine were materially injuring the US industry, imports of highly enriched uranium (HEU) from Ukraine were not causing material injury. Accordingly, DOC issued an antidumping duty order covering only natural uranium

and LEU products from Ukraine. In addition, DOC determined that Ukrainian uranium enriched in a third country was not subject to the antidumping duty order.

Matched Sales Amendment – Russia

Because the US uranium price did not rise to \$13.00 per pound by September 30, 1993, DOC began consultations for a tentative amendment to the Russian suspension agreement, known as the “matched sales” amendment, which was announced in December 1993. The amendment to the Russian agreement was finalized in March 1994, which eliminated the price-tied quota for Russia and replaced it with specific limits based on sales of equal amounts of Russian and US uranium. Both natural uranium and SWU are covered by the amendment, although the SWU provisions were only in place for the first two years of the agreement. The first year of the matched uranium sales program was quite successful, with about 73% of the quota realized.

Since the antidumping petition was initiated, many filings, agreements, amendments, bills, measures, and deals emerged over several years. By September 1, 2001, all US restrictions were terminated against all but Russian-origin uranium.

DOC issued a final ruling on June 1, 2006, that unfair dumping of uranium products would likely occur again in the USA if the existing Russian suspension agreement were terminated. The department analyzed the US uranium market as part of a “sunset review” of the agreement that is conducted every five years. On July 18, 2006, the ITC concurred that the suspension agreement should continue. Under the current suspension agreement, Russian uranium is allowed into the USA only for re-export according to certain criteria and under the US-Russian HEU Agreement.

Unfair Government Subsidies

On December 7, 2000, US enrichment company, USEC Inc., petitioned DOC to conduct an investigation of dumping into the USA of enriched uranium imports from Europe, and on December 27, DOC agreed to initiate such an investigation.

In petitions filed with DOC and the ITC, USEC charged that its European competitors, France’s Eurodif S.A., through its US sales agent AREVA NC and Urenco Ltd., a British-Dutch-German consortium, were selling enriched uranium into the US market below their cost of production and benefiting from unfair government subsidies in their home markets.

Following a year-long investigation, DOC ruled on December 31, 2001 that both European enrichers were receiving unfair subsidies and, in the case of Eurodif, dumping LEU in the US market. The department determined that subsidies in the amount of 12.15% had been provided on LEU imports from the French government-owned Eurodif and 2.23% on imports from Urenco. The department also found a dumping margin of 19.95% with regard to Eurodif imports.

On July 1, 2004, DOC calculated final countervailing duty rates for subsidized LEU imports entering the USA from May 14, 2001 through December 31, 2002, subsequent to that covered by the original investigation. For the case involving Eurodif, DOC calculated a countervailing duty rate of 3.63% for 2001 and 0.71% for 2002. The 2002 rate serves as the new estimated countervailing duty rate on future imports.

For Urenco, DOC calculated a countervailing duty rate of 1.57% for the 2001 period and 1.47% for 2002. The department did not establish a new countervailing duty rate for future Urenco imports based on its conclusion that the subsidies identified ended in 2002. However, the existing countervailing duty order remains in force, and Urenco could again face duties if found to have received unfair subsidies in the future.

Unfair Trade Practices

Final results of a follow-up trade proceeding issued by DOC on July 8, 2004, found that Eurodif had curtailed its unfair pricing of LEU imports in the US market. Antidumping duties had been in effect against Eurodif since July 2001, when DOC made its first dumping finding in the case. This review determined the magnitude of dumping during the 19-month period (July 13, 2001-January 31, 2003) since DOC made its first dumping determination.

In its ruling, DOC calculated a final antidumping duty rate of 5.43% on imported LEU produced by Eurodif. The rate reflects the actual margin of dumping that occurred on imports made during the 19-month review period. It will serve as the new estimated antidumping duty rate on future imports, in place of the existing 19.95% estimated rate that had applied since the antidumping order was imposed.

Courts' Rulings

Appeals Court Reaffirms Uranium Trade Case Ruling

On September 9, 2005, the US Court of Appeals for the Federal Circuit decided not to reconsider its decision on a key issue in the trade case involving LEU imports from France.

The court reaffirmed its March 2005 ruling that enrichment contracts are exempt from antidumping and countervailing duties because enrichment is a service, not a good, and therefore is not subject to US trade duties.

This decision had no immediate impact on the US government's collection of countervailing and antidumping duty deposits on LEU imports from France. Collection of duties continued pending resolution of other issues to be addressed by the lower US Court of International Trade (CIT). (The CIT had suspended its consideration of several appeals of the US government's initial ruling on European LEU imports to await the outcome of this appeal.)

CIT Ruling Favors Eurodif/AREVA

On May 18, 2006, the CIT issued rulings that favored Eurodif/COGEMA (now known as AREVA) in the LEU trade case with USEC. In the countervailing duties case involving COGEMA's (AREVA's) exports of LEU to the USA, the CIT accepted DOC's remand filing and ordered them to make it final. DOC's revised determination stated that import duties apply only to LEU exports in which COGEMA (AREVA) provided both the uranium feed and the enrichment component, not those exports that involved only enrichment.

In the antidumping duties case, the CIT asked DOC to rewrite its determination so that duties are not applied to the enrichment component of exports.

In October 2006, the ITC's position was that "enrichment is a manufacturing process resulting in a product," and therefore they would defend their decision on antidumping duties up to the US Supreme Court if necessary.

ITC Favors Antidumping Duty Order

The ITC voted on November 29, 2007 in favor of maintaining the antidumping duty order on imports of LEU from France.

The Commission's vote concluded the "sunset review" of the 2002 antidumping order against French uranium imports, conducted every five years by the ITC and DOC. This positive ruling from the ITC supported DOC's May 2007 determination that dumping of French LEU is likely to continue or recur if the antidumping order were terminated.

USEC plans to continue its support for US government efforts to address dumping of foreign-produced uranium imports. The company also intends to seek US Supreme Court review of the US Court of Appeals for the Federal Circuit's decision that enrichment transactions under SWU contracts are sales of services, not goods, and thus outside the scope of US antidumping law.

Suspension Agreement Revisited

A draft amendment by DOC and Rosatom, Russia's Federal Atomic Energy Agency, was published in the Federal Register on December 4, 2007. DOC's International Trade Administration requested comments on the tentative agreement, which was expected to be finalized following a 30-day comment period that ended on January 4, 2008. Specifically, the amendment would allow Russia to export limited quantities of LEU to the USA in 2011-2013, with higher export quantities permitted in 2014-2020, which reflects the expiration of the US-Russian HEU deal at the end of 2013. Two clarifications under the amendment focus on Russian uranium imported to the USA for initial reactor cores, which is exempt from the annual quotas, and uranium contained in fuel rods, which is included under the annual export limits. The amendment notes that the agreement, as well as DOC's antidumping investigation, will terminate at the end of 2020.

However, the signing of the amendment to the US-Russian Suspension Agreement was postponed in January 2008. It is widely believed that DOC initiated the postponement of the signing, originally scheduled for January 29. The reason for the delay seemed to be related to DOC's inability to address in a timely manner some issues raised during the public comment process in the USA. Nonetheless, the amendment was eventually signed by DOC and Rosatom representatives on February 1, 2008.

The US-Russian HEU Agreement is scheduled to expire in 2013.

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