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Suspension Agreement – Admin Review
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June 17, 2020

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

FROM: Joseph A. Laroski Jr. *JAL*
Deputy Assistant Secretary
for Policy and Negotiations
Enforcement and Compliance

SUBJECT: Post-Preliminary Analysis Memorandum in the 2017-2018
Administrative Review of the Agreement Suspending the
Antidumping Investigation on Uranium from the Russian
Federation

I. BACKGROUND

On December 18, 2019, the U.S. Department of Commerce (Commerce) published its *Preliminary Results* in the 2017-2018 administrative review of the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation (Agreement)¹ for the period October 1, 2017 through September 30, 2018.² The signatory to the Agreement, State Atomic Energy Corporation “ROSATOM” (Rosatom), and its affiliates, TENEX, Joint-Stock Company (TENEX) and TENEX-USA, Incorporated (TENEX-USA), and TENEX’s unaffiliated resellers, Centrus Energy Corp. and United States Enrichment Corporation (USEC) (collectively, Centrus) and Nukem, Inc. (Nukem), are subject to individual examination in this review.

In its *Preliminary Results*, Commerce noted that certain supplemental questionnaire responses from respondents would be received after the issuance of its preliminary results; therefore,

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

² See *Agreement Suspending the Antidumping Investigation on Uranium From the Russian Federation: Preliminary Results of 2017- 2018 Administrative Review and Postponement of Final Results*, 84 FR 69357 (December 18, 2019) (*Preliminary Results*).



Commerce intended to continue its review of respondents' compliance with the Agreement in a post-preliminary analysis. Commerce also required additional time and information to complete its examination of whether the Agreement continues to meet the statutory requirements set forth in sections 734(d)(1) and 734(i)(1)(B) of the Tariff Act of 1930, as amended (the Act).

On December 11, 2019, Louisiana Energy Services, LLC (LES) submitted factual information to rebut, clarify, or correct factual information submitted on November 12, 2019 by Centrus and TENEX, respectively, pursuant to section 351.301(c)(5) of Commerce's regulations. On December 20, 2019, TENEX submitted its response to Commerce's supplemental questionnaire.

On January 10, 2020, TENEX and Centrus, respectively, submitted factual information to rebut, clarify, or correct factual information submitted by LES on November 18, 2019. On January 13, 2020, Exelon Generation Company, LLC and the Ad Hoc Utilities Group (collectively, AHUG) submitted factual information to rebut, clarify, or correct factual information submitted by LES on November 18, 2019. On the same day, LES submitted comments on TENEX's supplemental questionnaire response. On January 31, 2020, LES submitted comments and sur-rebuttal factual information to rebut, clarify, or correct factual information submitted on January 10, 2020 by TENEX and Centrus, respectively, and on January 13, 2020 by AHUG.

On February 28, 2020, Commerce issued a supplemental questionnaire to Centrus. On March 30, 2020 and April 1, 2020, Centrus submitted its response to Commerce's supplemental questionnaire. On April 23, 2020 and April 24, 2020, respectively, LES and AHUG submitted factual information to rebut, clarify, or correct the supplemental questionnaire response from Centrus. On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days, thereby extending the deadline for the final results of this review until August 4, 2020.³

As stated in its Preliminary Decision Memorandum, Commerce required additional time to review responses to certain supplemental questionnaires, as well as submissions containing comments and factual information, received prior to, and to be received after, the issuance of its *Preliminary Results*.⁴ For its post-preliminary analysis, Commerce is considering responses to supplemental questionnaires from TENEX and Centrus as well as submissions of factual information from various parties. In addition, Commerce is continuing to consider interested party pre-preliminary comments and factual information submitted prior to the *Preliminary*

³ See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID-19," dated April 24, 2020.

⁴ See Memorandum to Jeffrey I. Kessler, Assistant Secretary for Enforcement and Compliance, from P. Lee Smith, Deputy Assistant Secretary for Policy & Negotiations, "Decision Memorandum for the Preliminary Results of the 2017-2018 Administrative Review of the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation" (December 10, 2019) (Preliminary Decision Memorandum) at 13.

Results, including information from the 2016-2017 administrative review placed on the record of this administrative review.^{5,6}

II. POST-PRELIMINARY ANALYSIS

In this administrative review, Commerce is reviewing the status of, and compliance with, the Agreement. In particular, Commerce is reviewing respondents' compliance with the terms of the Agreement and whether the Agreement continues to meet the statutory criteria set forth in section 734(l) of the Act, including whether effective monitoring of the Agreement is practicable, whether the Agreement will prevent the suppression or undercutting of price levels of domestic products by imports of subject merchandise, and whether the Agreement is in the public interest.

A. Compliance with the Agreement

In its Preliminary Decision Memorandum, Commerce noted that it intended to continue its review of TENEX's compliance with the terms of the Agreement and Commerce's February 2, 2010 Statement of Administrative Intent (SAI) by reviewing certain clarifying information requested from TENEX in a supplemental questionnaire.⁷ Commerce also intended to continue its examination of Centrus's compliance and to issue a supplemental questionnaire to Centrus.⁸ Based on its review of the record evidence received in the supplemental questionnaire responses from TENEX and Centrus, Commerce continues to preliminarily find TENEX and Centrus to be in compliance with the terms of the Agreement and the SAI during the October 1, 2017 through September 30, 2018 period of review (POR).

TENEX

In its supplemental questionnaire to TENEX, Commerce requested clarifying information with regard to certain contracts, contract amendments, and side letters applicable to sales and exports during the POR. In particular, Commerce requested a listing of TENEX's contracts and contract amendments executed during the POR, whether or not submitted to Commerce for review and/or approval. Regarding Commerce's requested listing of contracts and contract amendments executed during the POR, TENEX provides the listing and notes in its supplemental response that it inadvertently omitted from its initial questionnaire response "certain contracts and amendments or side letters which did not have deliveries during the POR but which were

⁵ Commerce noted in its *Final Results* for the 2016-2017 administrative review that, in order to conduct a more fulsome analysis over a larger time period, it was deferring its analysis of whether the Agreement continues to meet the statutory requirements to this administrative review. See *Agreement Suspending the Antidumping Investigation on Uranium From the Russian Federation: Final Results of the 2016-2017 Administrative Review*, 84 FR 31022 (June 28, 2019) (*Final Results*) and accompanying Issues and Decision Memorandum.

⁶ See LES's August 29, 2019 Submission; Nukem's August 29, 2019 Submission; Power Resources, Inc. and Crow Butte Resources, Inc. (collectively, PRI and CBR) August 29, 2019 Submission; Rosatom, TENEX, and TENEX-USA's August 30, 2019 Submission; AHUG's August 30, 2019 Submission; and Centrus's September 3, 2019 Submission.

⁷ See Preliminary Decision Memorandum at 1 and 8.

⁸ *Id.* at 1 and 9.

executed during the POR (all of which were submitted to Commerce for approval or review if containing changes to material terms).”⁹ Commerce has reviewed information on the record regarding these additional contracts, contract amendments, and side letters and confirms that those with changes to material terms were submitted to Commerce for approval and/or review. Based on record evidence, Commerce finds no evidence of non-compliance by TENEX with regard to Section V.F and Appendix 2 of the Agreement and to the SAI. Therefore, Commerce continues to preliminarily find TENEX to be in compliance with the terms of the Agreement and the SAI during the POR.

Centrus

In response to Centrus’s initial questionnaire response, Commerce requested additional clarifying information regarding Centrus’s contracts, contract amendments, and shipments during the POR in a supplemental questionnaire. Regarding contracts and contract amendments, Commerce has reviewed information provided by Centrus with respect to certain contracts and contract amendments executed during the POR, as applicable,¹⁰ and continues to find no evidence of non-compliance by Centrus with Section V.F and Appendix 2 of the Agreement and with the SAI. Regarding shipments, Commerce requested copies of shipment submissions and Commerce approval memoranda for certain shipments entered during the POR and identified in Centrus’s initial questionnaire response.¹¹ Commerce has reviewed this documentation related to shipments provided by Centrus in its supplemental questionnaire response and continues to find no evidence of non-compliance during the POR with Section V.C of the Agreement and the SAI.¹² In addition, Commerce finds no evidence of non-compliance by Centrus regarding Section VII.D and the SAI with respect to the required anti-circumvention statements in Centrus’s shipment documentation.¹³ Based on a review of record evidence, Commerce continues to preliminarily find Centrus to be in compliance with the terms of the Agreement and the SAI during the POR.

B. Price Suppression or Undercutting

Pursuant to section 734(l) of the Act, Commerce may enter into a suspension agreement to restrict the volume of the imports of subject merchandise if such an agreement, among other things, “...will prevent the suppression or undercutting of price levels of domestic products by imports of the merchandise under investigation.”¹⁴ In this administrative review, LES alleges that: 1) information on the record in this administrative review shows that the scheduled termination of the Agreement on December 31, 2020¹⁵ has caused, and will continue to cause, price suppression and undercutting of U.S. domestic prices by imports of subject merchandise; and 2) record evidence confirms that the Agreement failed to prevent price suppression and

⁹ See TENEX’s December 20, 2019 Supplemental Questionnaire Response (TENEX’s December 20 SQR) at 18-19.

¹⁰ See Centrus’s March 30, 2020 Supplemental Questionnaire Response (Centrus’s March 30 SQR) at 13-15 and Exhibit S-11.

¹¹ *Id.* at 23-24; see also Centrus’s July 24, 2019 Initial Questionnaire Response (Centrus’s July 24 IQR) at Exhibit 7.

¹² See Centrus’s March 30 SQR at Exhibits S-16 and S-17.

¹³ *Id.*

¹⁴ See section 734(l)(1)(B).

¹⁵ See Section XII of the 2008 Amendment.

undercutting during the October 1, 2016 through September 30, 2018 period (hereinafter referred to as the extended POR¹⁶).¹⁷

The Termination Provision of the Agreement is Causing Price Suppression and Undercutting

In its comments on the record, LES argues that the scheduled termination of the Agreement “has rendered it unable to prevent price suppression” during the extended POR because of the long-term nature of contracting in the industry and the ability of U.S. utilities to have already contracted for supply of uranium products post-2020.¹⁸ Furthermore, LES alleges, suppliers of Russian uranium products “could enter into new orders that anticipated a market not governed by the disciplines of the Agreement; these orders have already affected U.S. pricing.”¹⁹ Below, Commerce discusses this allegation.

1. Analysis of Post-2020 Contract Deliveries’ Market Share: Methodology

As part of Commerce’s analysis of whether the Agreement continues to prevent the suppression or undercutting of U.S. prices by imports of Russian uranium products, as required by section 734(l) of the Act Commerce examined relevant contracts entered into between TENEX and U.S. customers on the record of this administrative review in order to determine the extent such contracts contained post-2020 deliveries and the magnitude of associated quantities. Commerce determined to focus on a three-year period, from 2021-2023, as a sufficiently representative period for determining the U.S. market share accounted for by such contract deliveries. By analyzing the deliveries under relevant contracts during this representative period, Commerce was preliminarily able to draw conclusions as to the extent of contracting during the life of the Agreement for deliveries post-2020 and its likely effect on the U.S. market. Commerce discusses business proprietary details of its methodology and conclusions with respect to this analysis in a separate, proprietary memorandum.²⁰

Commerce based its analysis of U.S. market share on the Lower Scenario estimate of U.S. enrichment demand issued by the World Nuclear Association (WNA) in its latest report, “*The Nuclear Fuel Report: Global Scenarios for Demand and Supply Availability 2019-2040*” (2019) (2019 WNA Report). Using the Lower Scenario is consistent with Commerce’s 2016 and 2019 adjustments, as required under the Agreement’s terms, of the export limits to match the projected nuclear reactor demand for subsequent years.²¹ In examining whether the relevant contract

¹⁶ The “extended POR” encompasses the October 1, 2016 through September 30, 2017 period of review of the 2016-2017 administrative review as well as the POR from this administrative review.

¹⁷ See Letter to Wilbur L. Ross, Jr., Secretary of Commerce, from LES, “Uranium from the Russian Federation: Pre-Preliminary Comments of LES” (November 25, 2019) (LES Pre-Preliminary Comments) at 2 and 9.

¹⁸ *Id.* at 3.

¹⁹ *Id.*

²⁰ See Memorandum to the File, from Sally C. Gannon, Director for Bilateral Agreements, “2017-2018 Administrative Review of the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation: Post-Preliminary Analysis Proprietary Memorandum” (June 17, 2020) (Proprietary Memorandum) at 1-4.

²¹ See Memorandum to Ronald K. Lorentzen, from Carole Showers, “Decision Memorandum for the Final 2016 Export Limit Adjustments under the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation” (May 19, 2017) at 9; and Memorandum to Jeffrey I. Kessler, from P. Lee Smith, “Decision

delivery quantities exceeded a price suppressive threshold, Commerce calculated 20 percent of U.S. enrichment demand, as estimated by the WNA, for the years 2021 through 2023. Commerce determined to use 20 percent of the U.S. enrichment market based on the prior analysis related to the Agreement, specifically the 2008 Amendment,²² that a market share for exports of Russian uranium products of approximately 20 percent of U.S. enrichment demand *through 2020* would prevent the suppression or undercutting of the price levels of domestic uranium products.²³ Commerce preliminarily finds that using a 20-percent market share, based on the 2008 Price Suppression Memorandum, is an appropriate benchmark for this particular analysis.

With regard to Commerce's calculations of the relevant contract quantities estimated for post-2020 delivery, in the period 2021-2023, Commerce, in general, used the methodology it utilizes for the approval of contracts and contract amendments pursuant to this Agreement, *i.e.*, the calculation of maximum contract quantities. This methodology is detailed in Commerce's SAI and is based on the necessity of ensuring that, at the contract approval stage, the maximum potential quantities that may be imported and delivered do not exceed the export limit in that year.²⁴ Commerce made certain adjustments to the methodology, where necessitated by the contracts or contract amendments, or the absence of information from the record, as well as for purposes of calculating a conservative estimate of U.S. market share.²⁵

Commerce's calculations of the maximum estimated delivery quantities for 2021-2023, to be compared to a 20-percent U.S. market share, is contained in a proprietary chart attached to the Proprietary Memorandum.²⁶

2. Conclusions on Post-2020 Market Share

In examining the extent of contracting for deliveries during 2021-2023 while the Agreement has been in place, as detailed above, Commerce has determined that, in anticipation of the scheduled termination of the Agreement and underlying investigation on December 31, 2020, TENEX's contracting for sales of Russian uranium products in the U.S. market is of concern in comparison to a 20-percent U.S. market share.²⁷ Commerce can only conclude that the impending end of the Agreement resulted in not inconsequential contracting and capture of U.S. market share in the lead up to this period.

Memorandum for the Final 2019 Export Limit Adjustments under the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation" (January 2, 2020), at 31.

²² See 2008 Amendment at Section IV.B.1.

²³ See Memorandum to David M. Spooner, Assistant Secretary for Import Administration, from Ronald K. Lorentzen, Deputy Assistant Secretary for Policy and Negotiations, "Prevention of Price Suppression or Undercutting of Price Levels of Domestic Products by the Amended Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation" (2008 Price Suppression Memorandum) at 7, placed on the administrative review in LES's August 29, 2019 Submission at Attachment 2 at Exhibit 2.

²⁴ See SAI at 1.

²⁵ See Proprietary Memorandum at 2-3.

²⁶ *Id.* at Attachment 1.

²⁷ *Id.* at Attachment 2.

In its most-recent five-year sunset review of the Agreement, Commerce made the following finding:

The likely outcome of the removal of the restrictions of the Agreement would be the increase in the availability and supply of Russian uranium products that could be traded directly into the United States, or through other arrangements, swaps, or exchanges, resulting in increased availability and supply of uranium products in the U.S. market. Such an increase in supply would, in turn, drive down prices for U.S. uranium products, in addition to any price declines related to the lifting of the legal requirements of section 734(l), as noted above. The Department has already determined in at least two previous cases that the basic laws of supply and demand suggest that an increase in supply, all else being equal, would be accompanied by downward pressure on prices.²⁸ Therefore, we find that, due to the fungible nature of uranium products, the lifting of the requirements of section 734(l), and the likely increase of supply of Russian uranium products into the U.S. market absent the Agreement, the likely outcome of termination the Agreement and suspended investigation would be the decline of domestic prices for uranium products, and a continuation or recurrence of dumping, in the U.S. market.²⁹

Given the concerning level of TENEX's contracting for post-2020 deliveries during the time the Agreement has been place, as shown in Attachment 1 to the Proprietary Memorandum, it is evident that Commerce's statements in the 2017 Sunset Review Memorandum accurately reflected the potential increase in the availability and supply of Russian uranium products in the absence of the Agreement. In light of the pending termination of the Agreement and its export limit restrictions, a concerning level of supply of Russian uranium products is poised to enter the U.S. market post-2020. As noted in the 2017 sunset review, the basic laws of supply and demand suggest that downward pressure on U.S. prices will accompany a potential increase in supply and, in fact, given the long-term nature of contracting in the uranium market, we preliminarily find that this concerning level of contracting during the life of the Agreement for post 2020 deliveries has affected U.S. price levels. Further, we preliminarily find, therefore, that absent a reversal of the pending termination of the Agreement and underlying investigation, the level of contracting during the life of the Agreement for post-2020 deliveries will contribute to the inability of the current Agreement to prevent the suppression and undercutting of domestic price levels. *See also* the below section on "Public Interest" where we preliminarily determine that the Agreement's termination clause has led to the Agreement no longer being in the public interest.

²⁸ *See Preliminary Results of Full Sunset Review: Silicomanganese From Ukraine*, 65 FR 34440 (May 30, 2000), and accompanying Issues and Decision Memorandum. *See also Preliminary Results of Five-year Sunset Review of Suspended Antidumping Duty Investigation on Ammonium Nitrate from the Russian Federation*, 70 FR 61431 (October 24, 2005), and accompanying Issues and Decision Memorandum (Ammonium Nitrate from Russia). In Ammonium Nitrate from Russia, the Department found that "removal of the Suspension Agreement on ammonium nitrate from Russia will likely cause Russian producers to increase import levels of ammonium nitrate in the U.S. market and lower their prices."

²⁹ *See* Memorandum to Ronald K. Lorentzen, through Carole Showers, from Sally C. Gannon, "Issues and Decision Memorandum for the Fourth Sunset Review of the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation; Final Results" (June 5, 2017) (2017 Sunset Review Decision Memorandum) at 21.

Failure to Prevent Price Suppression or Undercutting during the Extended POR

Alongside its allegation that the termination of the Agreement and underlying investigation are causing the Agreement to fail to prevent price suppression or undercutting, LES also alleges that the Agreement failed to prevent price suppression or undercutting of sales of domestic uranium products by Russian imports during the extended POR. LES argues that the pricing behavior of TENEX and its affiliated reseller TENEX-USA and unaffiliated reseller Centrus shows that “there has been rampant price suppression and undercutting in the U.S. market.”³⁰ To this end, LES conducts a series of comparisons of invoices, contracts, and offers placed on the record by respondents TENEX, TENEX-USA, and Centrus in their respective responses to Commerce’s questionnaires to its own invoices, contracts, and offers placed on the record in its November 18 Submission. LES argues that a comparison of its own contracts, invoices, and offers during the extended POR to those of TENEX, TENEX-USA, and Centrus “provides concrete evidence of undercutting.”³¹ Furthermore, LES makes two additional allegations that it says demonstrate that the Agreement has failed to prevent price suppression or undercutting during the extended POR. The first of these allegations Commerce discusses in the Proprietary Memorandum.³² LES’s second allegation is that a comparison of respondents’ invoice prices to the prevailing market prices at the time the respective contracts were executed shows evidence of price suppression or undercutting.

1. Comparison of Invoices

In its comparison of invoices, LES calculates weighted-average separative work unit (SWU) prices for itself and TENEX and TENEX-USA based on prices from invoices issued during the extended POR.³³ As an initial matter, Commerce believes LES’s analysis does not take into account several important factors necessary to determine whether price suppression or undercutting occurred during the extended POR. We find it informative that several parties raise the example of the International Trade Commission’s (ITC) own price analyses of uranium product sales in past investigations and review proceedings.³⁴ Central to the ITC’s price analysis was an accounting for not only the type of contract executed between suppliers and customers but also the types of price mechanisms used in long-term contracts.³⁵ The ITC recognized that a

³⁰ See Letter to Wilbur L. Ross, Jr., Secretary of Commerce, from LES, “Uranium from the Russian Federation: Comments and Factual Information Demonstrating Price Suppression and Undercutting by Russian Uranium Products” (November 18, 2019) (LES November 18 Submission) at 4.

³¹ *Id.* at 9.

³² See Proprietary Memorandum at 11.

³³ *Id.* at 5 provides additional summation.

³⁴ See, e.g., Letter to Wilbur L. Ross, Jr., Secretary of Commerce, from TENEX, “Uranium from the Russian Federation – Factual Information to Rebut, Clarify, or Correct Factual Information Submission from Louisiana Energy Services, LLC” (January 10, 2020) (TENEX January 10 Rebuttal) at 2-4; Letter to Wilbur Ross, Jr., Secretary of Commerce, from AHUG, “Uranium from the Russian Federation (A-821-802): AHUG Rebuttal Factual Information in Response to LES’s Filing Regarding Price Suppression” (January 13, 2020) (AHUG January 13 Rebuttal) at 2; and Letter to Wilbur L. Ross, Jr., Secretary of Commerce, from Centrus, “Uranium from the Russian Federation: Pre-Preliminary Comments” (November 27, 2019) (Centrus Pre-Preliminary Comments) at 13-14.

³⁵ See, e.g., ITC, *Uranium from the U.S.S.R.*, Investigation No. 731-TA-539 (Preliminary), Publication 2741 (December 1991) (ITC December 1991 Preliminary Determination), provided in TENEX January 10 Rebuttal at

comparison of delivered prices pursuant to long-term contracts negotiated and signed at different points in time inserted bias into the analysis.³⁶ Even more, the ITC recognized the importance of long-term contracts in the industry and the varied nature of contract pricing structures.³⁷ To this end, the ITC sought to compare sales price data by separate transaction categories based on the price mechanisms in sales contracts.³⁸ Due to Commerce's own practices of establishing a "date of sale" in order to perform reasonable comparisons of sales prices, we find merit in a similar approach as to that used by the ITC that focuses on the factors inherent to the industry to guide a reasonable analysis of price suppression or undercutting. These factors include the long-term nature of contracting in the industry and the types of price mechanisms contained in such contracts.

a. Long-Term Nature of Contracting

Contracts for the sale of uranium products vary in duration between spot, mid-term, and long-term contracts. Spot contracts establish delivery dates within one year of contract execution, while deliveries under long-term contracts do not begin until approximately five years from the date a contract is signed. Mid-term contracts provide for delivery dates between one to five years after contract execution.³⁹ Among the available contract duration options, it is well documented that executing long-term contracts for the sale of uranium products is a standard commercial practice in the industry.⁴⁰ Evidence on the record demonstrates a high degree of variability in contract duration.⁴¹

As described in the Glossary of Terms in its initial questionnaire, Commerce places importance on the establishment of the date of sale in its analysis of prices in an antidumping duty investigation, "{b}ecause Commerce attempts to compare sales made at the same time."⁴² Commerce "will normally use the date of invoice" but "may use a date other than the date of invoice (e.g., the date of contract in the case of a long-term contract)" in its analysis if "a

Exhibit 1; and ITC, *Uranium from Russia, Ukraine and Uzbekistan*, Investigation No. 731-TA-539-C, E and F (Review) (May 2000) (ITC May 2000 Review), provided in TENEX January 10 Rebuttal at Exhibit 3.

³⁶ See ITC December 1991 Preliminary Determination at 26, n. 96 ("Although the record contains price comparisons for Soviet and domestically-produced uranium concentrate sold pursuant to contractual arrangements, these comparisons may be biased because the contracts being compared were not negotiated at the same time.")

³⁷ See ITC May 2000 Review at V-7 ("Because of the importance of long-term contracts in this industry, separate price/toll-fee data were requested for three categories of transactions involving uranium and uranium toll processing.")

³⁸ *Id.* at V-8 ("In addition, the price data are discussed by each sales category; the majority of the uranium products and toll services are sold under sales category 3 {i.e., "long-term contract sales where prices/toll fees are fixed or subject to escalator clauses specified in the contract"}").

³⁹ See TENEX's July 24, 2019 Initial Questionnaire Response (TENEX's July 24 IQR) at 13-14; and Centrus's July 24 IQR at 29-30.

⁴⁰ See, e.g., TENEX's July 24 IQR at 21-22 and 28-31; TENEX's December 20 SQR at 13-14; Centrus's July 24 IQR at 29-30; Nukem's October 25, 2019 Supplemental Questionnaire Response (Nukem's October 25 SQR) at 3-4; and AHUG January 13 Rebuttal at 2.

⁴¹ See Proprietary Memorandum at 5.

⁴² See Letter to State Atomic Energy Corporation "ROSATOM" from Sally C. Gannon, Director for Bilateral Agreements, "Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation; Questionnaire for the October 1, 2017 through September 30, 2018, Period of Review" (April 24, 2019) at Appendix I, page 5.

different date better reflects the date on which the exporter or producer establishes the material terms of sale (*e.g.*, price, quantity).”⁴³ While different than a dumping analysis, Commerce nevertheless has the objective to conduct the instant analysis of price suppression or undercutting by examining comparable price levels between domestic sales and imports of subject merchandise. An examination of comparable price levels in the instant analysis requires an examination of the proper date of sale precisely because of the prevalence of long-term contracts in the industry. As we discuss below, Commerce preliminarily finds that the material terms in long-term contracts for the sale of uranium products are established at the date of contract.

As cited above, Commerce’s practice for establishing the date of sale in any dumping analysis hinges on the date that the material terms of a sale are established. TENEX, TENEX-USA, and Centrus each argue that Commerce should consider the date of invoice to be the date of sale. According to TENEX and Centrus, unique factors associated with long-term contracts mean that the exact amount of uranium products to be delivered by the supplier and payment to be remitted by the buyer under a long-term contract may not be known until the date of invoice. TENEX states that “in almost all cases the invoice is the document in which all the material terms of sale are finally established” and that “the final price is not known and cannot be calculated” at the date of contract.⁴⁴ In its Proprietary Memorandum, Commerce further examines date of invoice arguments made by TENEX and Centrus.⁴⁵ Ultimately, however, a review of the long-term contracts on the record demonstrates that the initial parameters establishing the material terms of quantity and price are agreed upon by parties at the date a contract is signed. Therefore, Commerce preliminarily finds that the material terms of quantity and price are established at the date of contract.⁴⁶

Though we have established the date of contract to be the date of sale with which to account for the long-term nature of contracts in our analysis, Commerce acknowledges that the type of price mechanism used in long-term contracts may inject a degree of uncertainty into the actual invoice price for deliveries made in the future. Therefore, though Commerce does not find the date of invoice to be the date of sale, we find it reasonable to account for the type of contract price mechanism used in long-term contracts in any comparable analysis of invoice prices for uranium products. A discussion of the types of price mechanisms commonly used in long-term contracts follows.

b. Contract Price Mechanisms

There is ample evidence on the record that contracts for the sale of uranium products use a variety of mechanisms and formulas for determining the invoice price of the material delivered.⁴⁷ For example, AHUG notes that U.S. utility customers enter into contracts with suppliers using

⁴³ *Id.*

⁴⁴ See TENEX’s July 24 IQR at 5.

⁴⁵ See Proprietary Memorandum at 5-7.

⁴⁶ Commerce notes the material quantity and/or price terms may change pursuant to a contract amendment; therefore, the date of sale would be adjusted to the date of contract amendment. In addition, Commerce notes an additional scenario in its Proprietary Memorandum in which the applicable date of sale may change for those long-term contracts employing a base-escalated price mechanism. See Proprietary Memorandum at 7.

⁴⁷ See, *e.g.*, TENEX’s July 24 IQR at Exhibit TX-05; Centrus’s July 24 IQR at Exhibit 12; LES November 18 Submission at Exhibit 3.

three common contract price mechanisms, including “market prices at the time of delivery,” hybrid contracts that use a combination of fixed price and market-based price components, and fixed or based-escalated price components.⁴⁸ We describe below the two broad categories of price mechanisms used by the industry: 1) fixed and base-escalated price mechanisms; and 2) market-based price mechanisms.

For fixed price mechanisms, the price to be paid by the customer for delivered uranium products is expressly identified in the contract. It is clear that the material terms for price in long-term contracts that use fixed price mechanisms are established at the date of contract.

Base-escalated price mechanisms establish a base price that, over the length of the long-term contract, is adjusted by an escalator provision. The base price is commonly established as a fixed price.⁴⁹ A common escalator provision is one tied to inflation, *e.g.*, the U.S. Gross Domestic Product – Implicit Price Deflator published by the Bureau of Economic Analysis, and calculated on a set basis, *e.g.*, quarterly or annually.⁵⁰ The escalator provision is then applied to the base price to determine the delivery price. We preliminarily find that, while the exact price for future deliveries would not be known at the date of contract, the predictable structure of base-escalated price mechanisms means that the delivery price could be reasonably forecasted between the date of contract and date of invoice.⁵¹

Market-based price mechanisms are so-called because they rely on market price indicators, *e.g.*, those published by Ux Consulting (UxC) and TradeTech, to calculate delivery prices under long-term contracts based on a formula (or formulas) established at the date of contract. There are two common types of market-based price mechanisms. The first are market-based price mechanisms that contain floor and/or ceiling price provisions are predictably comprised of (two to) three parts: a market component, as well as a floor component and/or a ceiling component. The market component is typically a calculated average of UxC’s and TradeTech’s published market indicators, while the floor and ceiling components are often base-escalated.⁵² Parties maintain that the presence of floor and ceiling components in a long-term contract acts as a hedge against future market prices.⁵³ Parties also maintain that the actual invoice price for a sale

⁴⁸ See AHUG January 13 Rebuttal at 3.

⁴⁹ See Proprietary Memorandum at 7 for additional information.

⁵⁰ See TENEX’s July 24 IQR at 23.

⁵¹ Additionally, we note that AHUG and TENEX each consider the date of contract to be the applicable date of sale for contracts with fixed and base-escalated price mechanisms; while Nukem considers the potential price effects on the market from base-escalated long-term contracts to occur at date of contract. See AHUG January 13 Rebuttal at 3 (“...for a fixed or base price escalated contract {sic}, the date of sale should be close to the date of contract because the price is set at that date”); TENEX January 10 Rebuttal at 6 (“Contemporaneity is especially crucial for analyzing prices that result from long-term fixed price or simple base-escalated contracts for which the resultant price is determined or forecast at the time of contract.”), and Nukem’s October 25 SQR at 3-4 (“...if a long-term, base-escalated SWU contract is signed in Year 1 with deliveries starting in Year 5, and an invoice is issued by the supplier for a delivery in Year 5, the potential impact of the contract on market prices occurs in Year 1 at the time the material terms of the contract are reached...”).

⁵² See TENEX’s July 24 IQR at 23.

⁵³ See, *e.g.*, *Id.* (“For better predictability, the market related price can be hedged by “floor” and “ceiling” prices...); and Letter to Wilbur L. Ross, Jr., Secretary of Commerce, from AHUG, “Uranium from the Russian Federation (A-821-802): Comments on Supplemental Questionnaire Response of Joint Stock Company TENEX” (November 16,

involving a market-based price mechanism would not be known until closer to the date of delivery and invoice, because the market component is the central component required for determining the invoice price. Commerce provides further detail and discusses additional types of market-based price mechanisms in its Proprietary Memorandum.⁵⁴

c. Comparable Analysis of Invoice Prices

As we have established, a reasonable comparison of the prices from invoices available on the record of this administrative review must take into consideration the long-term nature of contracts and the type of price mechanism used. Ideally, Commerce would seek to compare invoice prices during the extended POR from LES against those of TENEX and TENEX-USA in a manner that accounted for the applicable date of sale, *i.e.*, date of contract, and the type of price mechanism used. For example, we would compare the delivery price under a long-term contract executed in 2010 containing a fixed or base-escalated price mechanism to a delivery price pursuant to a long-term contract with a similar duration and price mechanism, *i.e.*, one signed in 2010 and containing a fixed or base-escalated price mechanism.

Realistically, however, we find we are unable to fully account for both contract duration and the type of contract price mechanism in our analysis. The record of the administrative review contains enough information on the types of price mechanisms used in long-term contracts to be able to distinguish and group invoice prices by type of price mechanism. However, there is insufficient information on the record regarding date of sale for LES.⁵⁵ The applicable date of sale is necessary for Commerce to compare invoice prices in a meaningful way, *i.e.*, by accounting for date of sale along with type of price mechanism. Consequently, Commerce is unable to substantiate or refute LES's allegations that a comparison of invoice prices provides evidence of undercutting during the extended POR.

2. Comparison of Contracts

In this administrative review, LES contends that contracts executed during the extended POR demonstrate that price undercutting has occurred.⁵⁶ As Commerce established in detail above, a reasonable analysis of contract sales prices must take into account disparities in contract duration and type of price mechanism. As the material terms of price and quantity in long-term contracts executed during the POR were established during the POR, we find LES's contemporaneous comparison to be appropriate, though we further sought to compare only contracts containing similar types of price mechanisms. Commerce has reviewed the available contracts and contract amendments on the record executed between TENEX, TENEX-USA, and LES and their

2018) (AHUG 2016-2017 NFI re TENEX) at 3, provided on the administrative review in AHUG's August 30, 2019 Submission ("...market related pricing terms tend to have floor and/or ceiling prices, which provide both utilities and suppliers with price certainty.").

⁵⁴ See Proprietary Memorandum at 7-8.

⁵⁵ *Id.* at 8-9 provides additional explanation.

⁵⁶ See LES Pre-Preliminary Comments at 7 ("Pricing terms in contracts formed during the {extended POR} provide further evidence of undercutting by Russian uranium products.").

respective U.S. utility customers during the extended POR.⁵⁷ The complete discussion of Commerce’s analysis of comparable contracts is available in the Proprietary Memorandum.⁵⁸ Based on its analysis of information on the record, Commerce preliminarily finds evidence of price undercutting during the POR.

3. Comparison of Offers

LES alleges that a comparison of offers made during the extended POR provides evidence that the company “has lost both sales and revenue at the hands of imported Russian uranium.”⁵⁹ To this end, LES has submitted its offers made during the extended POR that were not accepted by U.S. utility customers on the record of the administrative review.⁶⁰ LES then compares its offer prices to those comparable offer prices from respondents, including Centrus.⁶¹ The complete discussion of Commerce’s analysis of comparable offers made during the extended POR is available in the Proprietary Memorandum.⁶² Based on our review of the available information regarding offers, we preliminarily find evidence of price undercutting during the extended POR.

While the information regarding invoices, contracts, and offers submitted on the record by LES is incomplete, it nevertheless affords a window into the pricing behavior of LES in comparison to that of TENEX and TENEX-USA. Though Commerce was prevented from undertaking a comparison of invoices issued during the extended POR, that we found evidence of price undercutting regarding sales of SWU in each of our comparisons of contracts and offers is indicative of a pattern of adverse pricing behavior. Therefore, we preliminarily find that the Agreement is failing to prevent price undercutting.

4. Additional Allegations Made by LES

Of the two additional allegations made by LES that the Agreement failed to prevent price suppression or undercutting during the extended POR, we address the first of these in our Proprietary Memorandum.⁶³ In sum, we preliminarily find this first allegation made by LES to have merit, and therefore preliminarily find that the Agreement is failing to prevent, and will continue to fail to prevent, price suppression or undercutting. We discuss the second of LES’s allegations, that a comparison of respondents’ invoice prices to the prevailing market prices at

⁵⁷ See TENEX’s July 24 IQR at 28-31 and Exhibit TX-05; TENEX’s December 20 SQR at 19-20 and Exhibit Supp. TX-04; TENEX-USA’s October 2, 2019 Supplemental Questionnaire Response (TENEX-USA’s October 2 SQR) at 6-8 and Exhibit Supp. TU-04; and LES November 18 Submission at Exhibit 5. For reasons explained in the Proprietary Memorandum, Commerce has limited its review of TENEX’s and TENEX-USA’s contracts and contract amendments to those executed during the POR, *i.e.*, October 1, 2017 through September 30, 2018. See Proprietary Memorandum at n. 38.

⁵⁸ See Proprietary Memorandum at 9-10.

⁵⁹ See LES November 18 Submission at 7.

⁶⁰ *Id.* at Exhibit 6.

⁶¹ Commerce has declined to include Centrus in its comparison of offer prices on the record of the administrative review. Information from Centrus provides that its sales and contracts with U.S. utility customers are concluded as “open origin” contracts and therefore not limited to its resales of Russian LEU purchased from TENEX. See Centrus’s July 24 IQR at 4 and 17.

⁶² See Proprietary Memorandum at 10-11.

⁶³ *Id.* at 11-18.

the time the respective contracts were executed shows evidence of price suppression or undercutting, below.

LES alleges that a “comparison of Respondents’ prices with prevailing market prices confirms price suppression and undercutting” during the extended POR.⁶⁴ Specifically, LES argues that “Commerce should compare the market price at the date of contract formation to the actual price paid, as the date of contracting was the date on which the material terms of the sale were established.”⁶⁵

Commerce disagrees with LES’s suggestion that Commerce use a comparison of market prices at date of contract to invoice prices at the date of delivery in its price suppression or undercutting analysis. We have established that any analysis of price effects from sales of uranium products must take into consideration the nature of contracting in the industry. Such nature includes the prevalence of long-term contracts and the use of varied price mechanisms. Commerce has also established that the material terms of quantity and price in long-term contracts for the sale of uranium products are determined at the date of contract and that the type of price mechanism used in long-term contracts is another significant factor for which to account in a reasonable analysis of sale prices. Therefore, a reasonable analysis of invoice prices during the extended POR would be a comparison of invoice prices grouped by similar dates of contract and similar types of price mechanisms. As we discuss below, Commerce finds merit in making certain comparisons to prevailing market prices, but Commerce does not agree with LES’s suggestion.

Regarding comparisons to prevailing market prices, Commerce finds that a comparison of prevailing market prices at the date of contract to *fixed or base-escalated price mechanisms* contained in long-term contracts could be useful. This is because contracting parties include consideration of published market price indicators when forming and accepting offers and bids for sales of uranium products.⁶⁶ In turn, published market price indicators are informed by offer, bid, and transaction prices occurring at the time such benchmarks are formulated, *i.e.*, at the date offers are formulated, contracts are executed, and prices reported to price publications.⁶⁷ Therefore, a comparison of market price indicators to, for example, long-term contracts containing fixed or base-escalated price mechanisms could be informative of pricing behavior at

⁶⁴ See LES Pre-Preliminary Comments at 8.

⁶⁵ *Id.*; see also Proprietary Memorandum at 18 for additional information.

⁶⁶ See, e.g., ITC May 2000 Review at II-38 (“Producers, importers, and purchasers. indicated that long-term contract prices, both market-related and fixed (the latter with or without a price escalator), and spot purchase prices are typically negotiated and based on a number of factors, including consideration of various published spot prices at the time of negotiation.”); TENEX’s July 24 IQR at 23 (“TENEX’s pricing policy for all three components (U3O8, conversion and enrichment) is based on customer requirements and the market indicators published by the acknowledged consulting companies such as UxC and TradeTech.”); Letter to Wilbur L. Ross, Secretary of Commerce from AHUG, “Uranium from the Russian Federation (A-821-802): Factual Information to Clarify Supplemental Questionnaire Response of ROSATOM” (October 29, 2018) (AHUG 2016-2017 NFI re Rosatom) at 12, provided on the administrative record in AHUG’s August 30, 2019 Submission (“Contract pricing is generally informed by the prevailing market prices at the time of negotiations.”); and Nukem’s October 25 SQR at 2 (“Accordingly, market price indicators both guide and reflect current activity in the spot and term markets: they are initially used to guide transaction prices...”).

⁶⁷ See Nukem’s October 25 SQR at 2 (“Indeed, for both spot and long-term sales, market participants report prices to UxC and TradeTech at the time of offer and/or acceptance... In short, the uranium and SWU markets are offer-driven markets: the price is set based on offers or transactions that would be concluded in the market at the time.”).

the date of contract. Commerce also finds it a reasonable analysis to compare invoice prices related to a market-based price mechanism to market price indicators at the time of delivery. Such a comparison could be informative as to the degree to which an invoice price related to a market-based price mechanism reflects prevailing market prices.

However, it is not reasonable, as LES suggests, to compare prevailing market prices at a contract date of sale to an invoice price at the date of delivery which may be years into the future. Market price indicators are a reflection of pricing activity at the date of contract. Delivery prices for deliveries made under a long-term contract containing a market-based price mechanism are a reflection of prevailing market prices at the time of delivery, which are in turn a reflection of *new* contracts being entered into at that same time. Moreover, the ITC has recognized that certain comparisons to market price indicators are inapt. The ITC noted: “{i}t is likely that market-related long-term contract prices are affected by spot prices at the time of delivery and to a lesser extent by the spot prices at the time the contract was negotiated. Fixed price contracts may also be affected by spot prices at the time of contract negotiations, but not spot prices at the time of delivery.”⁶⁸ Therefore, we do not find merit in LES’s suggestion to compare prevailing market prices at the date of contract to invoice prices issued during the extended POR.

C. Public Interest

In its comments throughout the record of the review, LES argues that the Agreement is not in the public interest.⁶⁹ LES contends that the expiration and termination of the Agreement and the underlying investigation, pursuant to the termination clause, is against the public interest because it would result in increased dependence on uranium imports from a Russian state-owned enterprise.⁷⁰ In the course of this review, it has become clear that the termination clause has created or induced circumstances that have undermined the public interest. Accordingly, we preliminarily determine that the Agreement is no longer in the public interest unless the termination clause is removed or amended.

1. Overreliance on Imports of Russian Uranium Products

The Nuclear Fuel Working Group Report states that overreliance on imported uranium products has undermined U.S. energy security and has impacted U.S. fuel supply capabilities.⁷¹ When foreign, state-owned entities like Rosatom control significant amounts of the fuel for U.S. energy

⁶⁸ See ITC May 2000 Review at II-38.

⁶⁹ See, e.g., LES Pre-Preliminary Comments at 10.

⁷⁰ *Id.* at 11.

⁷¹ See U.S. Department of Energy, “Restoring America’s Competitive Nuclear Energy Advantage: A strategy to assure U.S. national security” (April 23, 2020) (Nuclear Fuel Working Group Report) at 15, provided on the administrative record at Memorandum to the File, “Release of Nuclear Fuel Working Group Report” (April 23, 2020) (“Establishing this {natural uranium} reserve is a critical step needed to address the overreliance on imported uranium product that has undermined U.S. energy security and impacted U.S. fuel supply capabilities.”).

generation, supply disruption risk increases in likelihood and potential severity.⁷² Additionally, overreliance can be difficult and costly to reverse.⁷³

Furthermore, as discussed above, the U.S. uranium industry generally relies on long-term contracting. In an industry with long-term horizons, like the nuclear energy industry, market signals and forecasts become increasingly important. Business decisions made in the past can have profound impacts on the current uranium market and the uranium market years into the future. After review of the record, it is apparent that the termination clause has signaled a more open market for imports of Russian uranium products post-2020, which has resulted in a concerning level of reliance on Russian imports.

The U.S. market has long been an attractive target for Russian overcapacity of uranium enrichment.⁷⁴ Russian overcapacity has been described as “massive.”⁷⁵ Rosatom possesses not only substantial excess capacity (allowing for re-enrichment of tails to “produce” more natural uranium), but also significant inventory levels.⁷⁶ Furthermore, Rosatom lacks a substantial outlet for its overcapacity outside of the U.S. market. Trade barriers to Russian imports make Europe a difficult market and demand is diminished in the Japanese market (following reactor closures after the reactor meltdown in Fukushima in March 2011).⁷⁷ In fact, Rosatom has explicitly acknowledged its intentions to continue expanding further into the U.S. market.⁷⁸

Signaling a more open market, the termination clause has invited further reliance on Russian imports. Public data demonstrate that contracted U.S. customer purchases of uranium from foreign suppliers increased for some delivery years post-2020 compared to delivery years 2019-2020.⁷⁹ Russia has long been the single largest, or among the largest, provider of enrichment (by

⁷² See *International Policy Digest*, “Rosatom as a Tactic in Russia’s Foreign Policy” at 4 (July 19, 2018), provided on the administrative review record in LES’s August 29, 2019 Submission at Attachment 7, Exhibit RTX 22; see also Nuclear Fuel Working Group Report at 19 (“Some countries, such as Russia, leverage their position to coerce nations that have become exclusively dependent upon their uranium and fuel services.”).

⁷³ Cf. World Nuclear News, “EU funds diversification of Russian reactor fuel supply” at 1 (June 29, 2015) provided on the administrative review record in LES’s August 29, 2019 Submission at Attachment 7, Exhibit RTX 27; see generally Nuclear Fuel Working Group Report.

⁷⁴ See U.S. International Trade Commission, “Uranium from Russia, Investigation No. 731-TA-539-C (Fourth Review), Publication 4727” at 21 (September 2017) (ITC Fourth Review Report) (“The U.S. market remains a relatively attractive export destination for the Russian uranium industry, in part because of barriers to entry and/or declining demand in other export markets.”).

⁷⁵ See ITC Fourth Review Report at I-39. For a more complete discussion, please see the Proprietary Memorandum.

⁷⁶ See ITC Fourth Review Report at I-39. During the POR, average inventory levels were 818.3 tU. See Rosatom’s July 24, 2019 Initial Questionnaire Response (Rosatom’s July 24 IQR) at 9.

⁷⁷ See ITC Fourth Review Report at I-40 – I-41; see also Rosatom’s July 24 IQR at 13-14.

⁷⁸ See Rosatom’s July 24 IQR at 22 (“Russian producers have acknowledged their desire to increase exports to the United States. For example, after TENEX signed a contract with several U.S. utilities, the head of ROSATOM stated that the deal was ‘only the beginning’ of the Russian industry’s efforts to enter into LEU contracts with U.S. utilities.”).

⁷⁹ See U.S. Energy Information Administration, “2018 Uranium Marketing Annual Report” at Table 10 (May 2019) (EIA 2018 Report) provided in Letter to Wilbur L. Ross, Jr., Secretary of Commerce, from LES “Uranium from the Russian Federation: Factual Information to Rebut, Clarify, and Correct Factual Information Submitted by Centrus and TENEX” (December 11, 2019) (LES December 11 Rebuttal NFI) at Exhibit 8 of Exhibit 1.

country of origin) to U.S. purchasers.⁸⁰ As discussed above (in section on “Conclusions on Post-2020 Market Share”), other record evidence demonstrates that reliance on imports of Russian uranium products is at a concerning level post-2020; the business proprietary details of this analysis is contained in the Proprietary Memorandum.⁸¹

The nature of markets for uranium products, which generally operate on the basis of long-term contracts, combined with the market signals provided by the termination clause, have caused a concerning level of reliance on Russian imports of uranium products. Absent the termination clause, at a minimum, there would be higher business risk to entering into long-term contracts that further increase reliance on Russian imports. The detrimental effects of the termination clause have become clearer as unfilled requirements have become filled in recent years. For the reasons explained above, we preliminarily determine that the termination clause has led to an overreliance on imports of Russian uranium products that has rendered the Agreement to be not in accordance with the public interest.

2. Competitiveness of U.S. Industry

Another crucial aspect of the public interest is the competitiveness of the domestic industry. A competitive domestic industry benefits the public throughout the United States through increased employment and investment opportunities.⁸² Among the most basic needs for the U.S. domestic industry is the capability to compete in the U.S. market. For example, the Nuclear Fuel Working Group Report states that “the United States must find long-term solutions to increase the competitiveness of the entire front-end of the nuclear fuel cycle” and cautions against allowing Russian imports to “forc{e} all enrichment services out of the United States, further decimating the front-end of the nuclear fuel cycle.”⁸³ Additionally, one of the goals outlined in the Nuclear Fuel Working Group Report is to empower U.S. export competitiveness to be able to challenge foreign competitors.⁸⁴ The Report emphasizes that “{t}he competitiveness of the U.S. nuclear industry in the global market is critical for more than the health of the industry and the economic opportunities it presents.”⁸⁵ It is difficult or impossible to meet this objective with a “fragile” U.S. industry and some segments “facing imminent collapse.”⁸⁶ A competitive domestic industry may also be better positioned to research and develop technology to lead the nuclear industry into the future.⁸⁷ It is therefore critical for the Agreement to support the competitiveness of the domestic industry in order to meet the statutory requirement that the Agreement be in the public interest.

⁸⁰ *Id.* at Table 16.

⁸¹ *See* Proprietary Memorandum at 1-4.

⁸² *Cf.* DOE Analysis at 41-42 (a weak domestic industry has resulted in decreasing employment).

⁸³ *See* Nuclear Fuel Working Group Report at 17, 19-20.

⁸⁴ *Id.* at 14.

⁸⁵ *Id.* at 24.

⁸⁶ *Id.* at 9.

⁸⁷ *Id.* at 21 (“The United States still has the brightest minds and greatest nuclear science capabilities, and an industry-led resurgence is occurring. However, civil nuclear reactor vendors from the United States have competed poorly in recent decades in the global new build market.”).

Currently, the domestic industry is in a weakened state. The Nuclear Fuel Working Group Report states that “{a}ll sectors of the U.S. nuclear fuel cycle are fragile, with mining and conversion the most vulnerable facing imminent collapse.”⁸⁸ Production from U.S. uranium mines hit a particularly low point in 2017.⁸⁹ Production of natural uranium has decreased consistently, spot prices have tumbled, and employment in the industry has fallen.⁹⁰ The U.S. conversion industry has suffered shutdowns, reductions in capacity, and workforce reductions.⁹¹ U.S. enricher LES cancelled a planned expansion of capacity because of market conditions.⁹² Export markets are largely closed to U.S. nuclear companies, foreclosing alternate export-focused business strategies.⁹³ In short, the competitiveness of all segments of the U.S. nuclear energy industry is currently damaged and weakened.

The current state of the domestic nuclear industry is particularly stark in contrast to competition from the Russian nuclear industry. As noted earlier, Russia has long been the single largest, or among the largest, provider of enrichment (by country of origin) to U.S. purchasers.⁹⁴ As a state owned entity, Rosatom does not necessarily need to operate under market forces or generate a profit.⁹⁵ Rosatom has openly admitted that it has “become necessary to reduce the cost of production in order to survive amid tough international competition.”⁹⁶ Rosatom is committed to a strategy of continuing to grow its market share and further reduce its cost of production.⁹⁷ The U.S. industry is at an inherent competitive disadvantage compared to state-owned entities like Rosatom because the U.S. industry operates according to market forces. The Nuclear Fuel Working Group Report states that the U.S. industry faces “fragile economic realities due to the predatory practices of foreign state-owned conglomerates.”⁹⁸

A number of factors have contributed to the recent challenges in the U.S. nuclear energy market. The Fukushima nuclear accident in 2011 created an environment which allowed certain structural issues in the global uranium market to further exacerbate the precipitous fall in global demand and prices. Primarily, the Fukushima accident created uncertainties in the market and reduced demand as certain reactors shuttered shortly afterward.⁹⁹ Enrichers with excess capacity, like Rosatom,¹⁰⁰ worsened the market situation by creating secondary supplies of

⁸⁸ *Id.* at 9.

⁸⁹ See World Nuclear Association, “World Uranium Mining Production” at 1 (July 2018) provided on the administrative review record in LES’s August 29, 2019 Submission at Attachment 5, Exhibit RR 39.

⁹⁰ See DOE Analysis at 39 – 40.

⁹¹ *Id.* at 61.

⁹² *Id.* at 72.

⁹³ See Nuclear Fuel Working Group Report at 25 (“In the global export market, U.S. nuclear companies have largely been precluded from selling products or services to reactors of foreign origin.”).

⁹⁴ *Id.* at Table 16.

⁹⁵ See Rosatom’s October 18, 2019 Supplemental Questionnaire Response (Rosatom’s October 18 SQR) at 1.

⁹⁶ See Rosatom, “Public Interactive Annual Report 2016: Interview on Strategic Management” at 1 (2016) provided on the administrative review record in LES’s August 29, 2019 Submission at Attachment 5, Exhibit RR 10.

⁹⁷ See Rosatom, “Public Interactive Annual Report 2016: Long-Term Strategic Goals” at 1 (2016) provided on the administrative review record in LES’s August 29, 2019 Submission at Attachment 5, Exhibit RR 11.

⁹⁸ See Nuclear Fuel Working Group Report at 14.

⁹⁹ See ITC Fourth Review Report at 16, 21.

¹⁰⁰ *Id.* at I-39; see also Proprietary Memorandum at 18-20 (wherein we discuss additional record evidence concerning Rosatom’s excess capacity).

natural uranium through underfeeding and re-enrichment of tails.¹⁰¹ Lastly, state-owned entities, like Rosatom, whose business practices are not necessarily restricted by market principles, dominate the global market.¹⁰² Such entities have limited incentive to sell uranium products at market prices or to otherwise adjust their behavior in accordance with market principles.

As noted earlier, the U.S. nuclear energy market and the U.S. domestic industry are in a precarious and weakened state. These circumstances arose under the Agreement's current export limits for Russian material. The prospect of additional cheap and abundant Russian imports available to compete in the U.S. market would further damage the already beleaguered U.S. industry. The termination clause has exacerbated these circumstances in the U.S. market and has rendered the Agreement to be not in the public interest.

3. Conclusions Regarding Termination Provision

The termination clause has signaled a free market post-2020 and has thus allowed the prospect of additional cheap and abundant Russian uranium products to overhang the market and impact pricing. Because of the long-term nature of the uranium market, contracts can be negotiated well in advance of the delivery date of the material. In other words, because of the termination clause, prior to 2021 the U.S. industry has been forced to compete with and negotiate against a new supply of low-priced and plentiful Russian material available with delivery dates post-2020. This material overhanging the market has prevented the domestic industry from becoming more competitive – there is no room for the domestic industry to recover when it faces increasing fierce competition from cheap and abundant Russian uranium products.

The termination clause undermines the trade remedy which, according to the terms of the termination clause, was supposed to be effective through 2020. The termination clause essentially has caused the market to behave as if the export limits do not apply to contracts with post-2020 deliveries that were negotiated while the Agreement has been in place, including during the POR. Such circumstances facilitate lost sales, lost market share, and poorer investment prospects for the U.S. domestic industry. Prospects for the U.S. industry to recover are thwarted by the termination clause. For these reasons, we preliminarily determine that the Agreement is not in the public interest unless the termination clause is removed or amended.

III. RECOMMENDATION

We recommend continuing to preliminarily find that TENEX and Centrus (in that Centrus is subject to individual examination in this review) are in compliance with the terms of the Agreement and the SAI during the POR. In addition, we recommend preliminarily finding that the Agreement is failing to prevent price suppression or undercutting of domestic price levels by imports of Russian uranium products, and absent a reversal of the pending termination of the

¹⁰¹ See World Nuclear Association, "Uranium Enrichment" at 5-6 (October 2018) ("With reduced demand for enriched uranium following the Fukushima accident, enrichment plants have continued running, since it is costly to shut down and re-start centrifuges. The surplus SWU output can be sold, or the plants can be underfed so that the enricher ends up with excess uranium for sale, or with enriched product for its own inventory and later sale. The inertia of the enrichment process thus exacerbates over-supply in the uranium market and depresses SWU prices") provided on the administrative review record in PRI and CBR's August 29, 2019 Submission at Exhibit 7.

¹⁰² See Nuclear Fuel Working Group Report at 17.

Agreement and underlying antidumping duty investigation, it will continue to fail to prevent price suppression or undercutting and will no longer be in the public interest. The above-identified deficiency in the structure of the Agreement may be addressed, or alternately rendered moot, by an amendment to the Agreement. If these findings remain unchanged for the final results of this review, and the signatories are unable to agree upon an amendment to the Agreement that resolves the deficiency, Commerce will be required to terminate the Agreement and resume the underlying, suspended investigation.

As indicated in our *Preliminary Results*, Commerce intended to establish the schedule for comments from interested parties with the release of its post-preliminary analysis. As such, pursuant to 19 CFR 351.309(c)(1)(ii), interested parties may submit case briefs on Commerce's *Preliminary Results* and post-preliminary analysis no later than 5:00 p.m. ET on July 10, 2020. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 5:00 p.m. ET on July 17, 2020 in accordance with 19 CFR 351.309(d). Commerce will not be in a position to grant extensions to these deadlines.

We recommend that you approve the positions presented above.

 X
Agree

Disagree

6/17/2020

X 

Signed by: JEFFREY KESSLER
Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance