States for the period February 1, 1997 to January 31, 1998.

**EFFECTIVE DATE:** June 10, 1999.

**FOR FURTHER INFORMATION CONTACT:** Lyman Armstrong or Frank Thomson, Office 4, Office of the AD/CVD Enforcement, Import Administration. U.S. Department of Commerce, 14th St. and Constitution Ave., NW Washington, DC 20230, telephone: (202) 482–3601, or (202) 482–4793, respectively.

**SUPPLEMENTARY INFORMATION:** Because it is not practicable to complete the final results of the this review within the initial time limit established by the Uruguay Round Agreements Act (245 days after the last day of the anniversary month), pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), the Department is extending the time limit for completion of the final results until July 7, 1999. *See* Memorandum from Bernard T. Carreau to Robert LaRussa, on file in the Central Records Unit located in room B–099 of the main Department of Commerce building (June 1, 1999).

This extension is in accordance with section 751(a)(3)(A) of the Act (19 U.S.C. 1675 (a)(3)(A).

Dated: June 4, 1999.

**Bernard T. Carreau,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 99–14780 Filed 6–9–99; 8:45 am]

**BILLING CODE 3510–DS–U**

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–821–809]**

### Postponement of Final Determination of Antidumping Duty Investigation of Hot-Rolled Flat-Rolled Carbon-Quality Steel From the Russian Federation

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of extension of time limit for final determination of antidumping duty investigation.

**SUMMARY:** The Department of Commerce (the Department) is extending the time limit for the final determination in the antidumping duty investigation of hot-rolled flat-rolled carbon-quality steel (Hot-Rolled Steel) from the Russian Federation (Russia).

**EFFECTIVE DATE:** June 10, 1999.

**FOR FURTHER INFORMATION CONTACT:** Lyn Baranowski or Rick Johnson at (202) 482–3208 or 482–3818, respectively; Office of AD/CVD Enforcement, Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230.

#### The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930 (the Act), as amended, are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, all citations to the Department's regulations are to the regulations at 19 CFR Part 351 (1998).

#### Postponement of Final Determination and Extension of Provisional Measures

On February 25, 1999, the affirmative preliminary determination was published in this proceeding (*see Notice of Preliminary Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From the Russian Federation,* 64 FR 9312). Pursuant to section 735(a)(2) of the Act, on March 4, 1999, respondent JSC Severstal (Severstal) requested that the Department extend the final determination in this case for the full sixty days permitted by statute. Severstal also requested an extension of the provisional measures (*i.e.,* suspension of liquidation) period from four to six months in accordance with the Department's regulations (19 CFR 351.210(e)(2)). Therefore, in accordance with 19 CFR 351.210(b)(2)(ii), on May 6, 1999, we partially extended this final determination until June 10, 1999 (*see Postponement of Final Determination of Antidumping Duty Investigation of Hot-Rolled Flat-Rolled Carbon-Quality Steel From the Russian Federation,* 64 FR 24329). Due to complex and contentious issues associated with this final determination, this notice serves to fully extend this final determination until no later than 135 days after the date of publication of the preliminary determination as originally requested by the respondents, *i.e.,* until July 10, 1999. Suspension of liquidation will be extended accordingly.

This notice of postponement is published pursuant to 19 CFR 351.210(g).

Dated: June 4, 1999.

**Richard W. Moreland,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 99–14781 Filed 6–9–99; 8:45 am]

**BILLING CODE 3510–DS–P**

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–834–802]**

### Final Determination of Sales at Less Than Fair Value: Uranium From the Republic of Kazakhstan

**AGENCY:** Import Administration, International Trade Administration, U.S. Department of Commerce.

**EFFECTIVE DATE:** June 10, 1999.

**FOR FURTHER INFORMATION CONTACT:** James C. Doyle, Sally C. Gannon or Juanita H. Chen, Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, N.W., Washington, DC 20230; telephone: 202–482–3793.

**SUMMARY:** After the Republic of Kazakhstan (''Kazakhstan'') terminated the suspension agreement on uranium from Kazakhstan, the U.S. Department of Commerce (''Department'') resumed its antidumping investigation on uranium from Kazakhstan. The Department determines that imports of uranium from Kazakhstan are being sold, or are likely to be sold, in the United States at less than fair value, as provided in Section 735 of the Tariff Act of 1930, as amended (1994) (''the Act'').

**SUPPLEMENTARY INFORMATION:**

#### The Applicable Statute

Unless otherwise indicated, all citations to the Act are references to the provisions effective in 1994. In addition, unless otherwise indicated, all citations to the Department's regulations are citations to the regulations at 19 CFR Part 353 (1994).

#### Case History

On November 29, 1991, the Department initiated an antidumping investigation on uranium from the Union of Soviet Socialist Republics (''Soviet Union''). *See Initiation of Antidumping Duty Investigation: Uranium from the Union of Soviet Socialist Republics,* 56 FR 63711 (December 5, 1991). On December 25, 1991, the Soviet Union dissolved and the United States subsequently recognized the twelve newly independent states (''NIS'') which emerged, one of which was the Republic of Kazakhstan. On January 16, 1992, the Department presented an antidumping duty questionnaire to the Embassy of the Russian Federation, the only NIS which had a diplomatic facility in the United States at that time, for service on Kazakhstan. On January 30, 1992, the Department sent questionnaires to the

United States Embassy in Moscow, which served copies of the questionnaire on the permanent representative to the Russian Federation of each NIS. The questionnaires were served on February 10 and 11, 1992. On March 25, 1992, the Department stated that it intended to continue its antidumping duty investigation with respect to the NIS of the former Soviet Union. *See Postponement of Preliminary Antidumping Duty Determination: Uranium from the Former Union of Soviet Socialist Republics (USSR)*, 57 FR 11064 (April 1, 1992).

On June 3, 1992, the Department issued its preliminary determination, in its antidumping duty investigation on uranium from Kazakhstan, that imports of uranium from Kazakhstan were being, or were likely to be, sold in the United States at less than fair value, as provided for in the Act. *See Preliminary Determinations of Sales at Less Than Fair Value: Uranium from Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Ukraine and Uzbekistan; and Preliminary Determinations of Sales at Not Less Than Fair Value: Uranium from Armenia, Azerbaijan, Byelarus, Georgia, Moldova and Turkmenistan*, 57 FR 23380 (June 3, 1992). On October 16, 1992, the Department amended the preliminary determination to include highly enriched uranium (''HEU'') in the scope of the investigation. *See Antidumping; Uranium from Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Ukraine, and Uzbekistan; Suspension of Investigations and Amendment of Preliminary Determinations*, 57 FR 49221 (October 30, 1992). Also on this date, the Department also signed an agreement suspending the InvestigationInvestigation investigation. *See Agreement Suspending the Antidumping Investigation on Uranium from Kazakhstan*, 57 FR 49222 (October 30, 1992) (''Suspension Agreement''). The basis for the Suspension Agreement was an agreement by Kazakhstan to restrict exports of uranium to the United States.

On November 10, 1998, the Department received notice from Kazakhstan of its intent to terminate the Suspension Agreement. Section XII of the Suspension Agreement provides that Kazakhstan may terminate the Suspension Agreement at any time upon notice to the Department, and termination would be effective 60 days after such notice. Accordingly, on January 11, 1999, the Department terminated the Suspension Agreement, as requested by Kazakhstan, and resumed the iInvestigationnvestigation. *See Termination of Suspension Agreement, Resumption of Antidumping Investigation, and Termination of Administrative Review on Uranium From Kazakhstan*, 64 FR 2877 (January 19, 1999). On January 13, 1999, the Department issued a supplemental questionnaire for the original period of investigation (''POI'') to Kazakhstan. The supplemental questionnaire was issued to Kazakhstan as requests for separate rates were not submitted to the Department. On January 28, 1999, Kazakhstan requested a 60-day postponement of the date of the Department's final determination. On February 1, 1999, Kazakhstan submitted its response to Section A of the supplemental questionnaire. On February 3, 1999, Kazakhstan submitted minor corrections to its Section A response. On February 17, 1999, Kazakhstan submitted its response to Sections C and D of the supplemental questionnaire.

In reviewing Kazakhstan's response, the Department determined that Kazakhstan's response required significant additional information. Therefore, on March 5, 1999, the Department issued a second supplemental questionnaire. On March 12, 1999, the Department published a notice in the **Federal Register** postponing the final determination date to June 3, 1999 and postponing the hearing date to May 12, 1999. *See Notice of Postponement of Final Antidumping Determination: Uranium From Kazakhstan*, 64 FR 12287 (March 12, 1999). On March 17, 1999, Kazakhstan responded to the Department's second supplemental questionnaire. Kazakhstan stated that it has endeavored to the best of its ability to assemble the information, but complete data no longer exists for the POI. Kazakhstan argued that it should not be penalized for actions taken by parties, such as the Russian Federation Ministry for Atomic Energy (''MINATOM''), prior to the existence of Kazakhstan. Instead, Kazakhstan provided information from 1994, which it claimed was the earliest available data, and provided no translations for the documents previously submitted. On April 19, 1999, Kazakhstan submitted additional information to supplement its Section D response.

The Department conducted verification of the provided information. The Department conducted verification in Almaty, Kazakhstan, from May 4, 1999 through May 8, 1999. On May 5, 1999, the Department published a notice in the **Federal Register** extending the deadline for case briefs until May 17, 1999, rebuttal briefs until May 21, 1999, and extending the hearing date to May 25, 1999. *See Antidumping Investigation on Uranium from the Republic of Kazakhstan: Notice of Extension of Time for Briefs and Hearing*, 64 FR 24137 (May 5, 1999).

On May 17, 1999, the Department received case briefs from Kazakhstan and from the uranium coalition consisting of the Ad Hoc Committee of Domestic Uranium Producers (a petitioner), the Paper, Allied-Industrial-Chemical and Energy Workers International Union (the successor to petitioner Oil, Chemical, and Atomic Workers' Union), and USEC, Inc. (hereinafter collectively ''Uranium Coalition''). On May 21, 1999, the Department received rebuttal briefs from Kazakhstan and the Uranium Coalition. On May 26, 1999, the Department conducted a hearing on the issues.

**Scope of the Investigation**

The merchandise covered by this investigation constitutes one class or kind of merchandise. The merchandise covered by this investigation includes natural uranium in the form of uranium ores and concentrates; natural uranium metal and natural uranium compounds; alloys, dispersions (including cermets), ceramic products and mixtures containing natural uranium or natural uranium compounds; uranium enriched in $U^{235}$ and its compounds; alloys, dispersions (including cermets), ceramic products, and mixtures containing uranium enriched in $U^{235}$ or compounds of uranium enriched in $U^{235}$. Both low enriched uranium (''LEU'') and HEU are included within the scope of this investigation. LEU is uranium enriched in $U^{235}$ to a level of up to 20 percent, while HEU is uranium enriched in $U^{235}$ to a level of 20 percent or more. The uranium subject to this investigation is provided for under subheadings 2612.10.00.00, 2844.10.10.00, 2844.10.20.10, 2844.10.20.25, 2844.10.20.50, 2844.10.20.55, 2844.10.50.00, 2844.20.00.10, 2844.20.00.20, 2844.20.00.30, and 2844.20.00.50, of the Harmonized Tariff Schedule (''HTS''). Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of these proceedings is dispositive. HEU is also included in the scope of this investigation. ''Milling'' or ''conversion'' performed in a third country does not confer origin for purposes of this investigation. Milling consists of processing uranium ore into uranium concentrate. Conversion consists of transforming uranium concentrate into natural uranium hexafluoride ($UF^6$).

Since milling or conversion does not confer origin, uranium ore or concentrate of Kazakhstan origin that is subsequently milled and/or converted in a third country will be considered of Kazakhstan origin. The Department continues to regard enrichment of uranium as conferring origin.

**Period of the Investigation**

The POI is June 1, 1991 through November 30, 1991.

**Verification**

As provided in Section 776(b) of the Act, the Department conducted a verification of the information provided by Kazakhstan using standard verification procedures including, where possible, the examination of relevant sales and financial records and attempts to trace back to original source documentation containing relevant information, as well as the examination of 1994 documentation and other available information.

**Best Information Available**

The Department has determined, in accordance with Section 776(c) of the Act, that the use of best information available (''BIA'') is appropriate in this investigation. In deciding whether to use BIA, Section 776(c) provides that the Department may take into account whether the respondent provided a complete, accurate, and timely response to the Department's request for factual information. The Department requires a response which provides complete and accurate information on U.S. sales and factors of production in order to consider the response in its final determination. The responses which Kazakhstan submitted were severely deficient on their face: no U.S. sales data was provided, and factors of production information from the POI was so incomplete as to render the data useless for the Department's purposes. Furthermore, the Department was unable to verify the information which Kazakhstan did provide. Accordingly, the incomplete nature of Kazakhstan's responses and the failure of the data to verify requires the Department to use BIA. BIA is based on information submitted in the petition, detailed in the Department's initiation notice, and analyzed in the preliminary determination. *See* Comment 2, below.

**Fair Value Comparisons**

To determine whether sales of uranium from Kazakhstan to the United States were made at less than fair value, the Department sought to compare the United States prices to the foreign market value. *See* Comment 2, below.

**Interested Party Comments**

*Comment 1:* The Uranium Coalition argues that the Department's decision to issue a new questionnaire to Kazakhstan after termination of the Suspension Agreement, because Kazakhstan may not have had a full opportunity to respond to the original antidumping questionnaire, was inconsistent with the factual record and established legal precedent. The Uranium Coalition contends that record evidence indicates the Department gave Kazakhstan ample opportunity to respond in the preliminary segment of this Investigationinvestigation. The Uranium Coalition states that the Department exceeded the minimum requirements of delivering a public version of the petition to the Embassy for the Soviet Union in Washington, D.C., notifying Kazakhstan of the deadline for its response, providing Kazakhstan an opportunity to extend the deadline for its response, and ensuring Kazakhstan had adequate opportunity to comment on information submitted by other parties. *See* 19 C.F.R. Sections 353.12(g), 353.31(b)(2), and 353.31(c)(3). The Uranium Coalition notes that the Department delivered two copies of the petition, two copies of the questionnaire, extended the deadline for responses three times, issued a new service list, and remained in constant contact with the Deputy Trade Representative of the Trade Representation of the Russian Federation. The Uranium Coalition further notes that in the Department's cable requesting the Foreign Commercial Service deliver the questionnaire, the Department stated that its efforts in serving the questionnaires is to give each republic the opportunity to fully participate. The Uranium Coalition goes on to state that its arguments concerning the Department's efforts are supported by the findings of the court in the *Techsnabexport, Ltd.* v. *United States* proceedings (hereinafter collectively ''Tenex'' proceedings). See 795 F. Supp. 428 (Ct. Int'l Trade Ct. Int'l Trade1992) (''Tenex I''); 802 F. Supp. 469 (Ct.t. Int'lnt'l Traderade 1992) (''Tenex II''). The Uranium Coalition points out that it had been argued in the Tenex proceedings that the Department had violated the parties' procedural due process rights to notice and opportunity to participate, and the Court of International Trade (''CIT'') determined that the actions taken by the Department provided adequate process and the opportunity to participate in the Investigationinvestigation to the fullest extent, thus, the Department should not have been concerned about Kazakhstan's opportunity to respond to the questionnaire upon resumption of the Investigationinvestigation.

The Uranium Coalition notes that the Department's preliminary determination was based on BIA because Kazakhstan did not supply any requested information. The Uranium Coalition argues that the Department has consistently refused to accept new information submitted to remedy deficiencies that led to a BIA preliminary determination, citing *Certain Fresh Cut Flowers from Columbia; Final Results of Antidumping Duty Administrative Reviews*, 61 FR 42833, 42855 (August 19, 1995); and *Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Italy*, 58 FR 37152, 37153 (July 9, 1993). The Uranium Coalition also argues that 19 U.S.C. Section 1673c(i)(1)(B) directs the Department to treat the date on which the Suspension Agreement is terminated as the day on which the preliminary determination is issued. The Uranium Coalition argues that allowing submission of information after the preliminary determination will lead to abuse of the statutory provision for suspension agreements, in that initially non-cooperative parties could be afforded an additional opportunity to provide the required information, perhaps years later.

Finally, the Uranium Coalition argues that due process is compromised by the collection of new information after the preliminary determination, as the Department is left insufficient time to properly analyze the information, conduct verification, and interested parties are left insufficient time to review and comment on the information. The Uranium Coalition notes that due process concerns are particularly serious if the Department issues a final determination based on a data set different from that used in the preliminary determination.

Kazakhstan argues that the Department's decision to provide Kazakhstan an opportunity to submit information in the resumed Investigationinvestigation was correct and proper. Kazakhstan notes that the Department ''may request any person to submit factual information at any time during a proceeding.'' 19 CFR. Section 353.31(b)(1). Kazakhstan agrees that the Department made a valiant effort to serve the initial questionnaire, but argues that it was unable, not unwilling, to respond to the questionnaire. Kazakhstan argues that at the time of the initial questionnaire, Kazakhstan was

undergoing its creation and restructuring, including establishing a system to oversee uranium production in its territory. Kazakhstan notes that the National Joint-Stock Company of Atomic Energy and Industry (''KATEP'') was not created until after the questionnaires were served on the NIS. Kazakhstan notes that its willingness to respond is demonstrated by its full cooperation with the Department during the seven years of the suspension agreement. Kazakhstan argues that this indicates that it would have provided the information requested by the Department in the original Investigationinvestigation had it been in a position to do so at the time.

Kazakhstan disagrees with the Uranium Coalition's claim that the Department is creating bad precedent in suspension agreements by allowing Kazakhstan the opportunity to submit sales and factor information in the resumed investigation. Kazakhstan argues that because the circumstances in this investigation are exceptional, the only ''precedent'' established is that the Department has the discretion, under extreme circumstances and in the interest of fairness, to determine whether it is appropriate to provide an opportunity to submit information in a resumed investigation. Kazakhstan notes that the Department's decision to provide such an opportunity is in accordance with the Tenex proceedings, where the CIT stated that if presented with the question, it would ''decide in conjunction with review of the final determination whether the opportunity given [to provide republic-specific data] was statutorily sufficient.'' *See* 802 F. Supp. at 473

Kazakhstan also disagrees with the Uranium Coalition's claim that the domestic interested parties may not have had an adequate opportunity to review and comment on the information submitted in the resumed investigation. Kazakhstan notes that the Uranium Coalition had over three months to examine Kazakhstan's sales and factor information, none of which has materially changed since the date of initial filing. Accordingly, Kazakhstan argues that the Uranium Coalition cannot contend it had no opportunity to comment on the submitted information. Kazakhstan further notes that the Uranium Coalition has never offered material comments or submitted any sales or factor information specific to Kazakhstan during any point in the investigation.

In light of the circumstances, Kazakhstan argues that the Department appropriately provided Kazakhstan the opportunity to submit information in the resumed investigation. Kazakhstan argues that the supplemental questionnaires were all the more appropriate considering there was no republic-specific information on the record which would allow the Department to make a proper analysis of dumping in the resumed investigation.

*Department's Position*: The Department recognizes that the court in the Tenex proceedings determined that the actions taken by the Department provided adequate opportunity to participate in the investigation to the fullest extent. In discussing notice and opportunity to be heard and participate in the investigation, the CIT stated that the ''petition gave notice of intent to reach exports from the republics as well as the USSR, and the proceedings have been sufficiently delayed so that the plaintiffs have had adequate notice and opportunity to participate.'' *Tenex I* at 437. The Court further stated that ''although unionwide data was used at the outset, presumably the republics have been given the opportunity to provide republic-specific data. If presented with the question, the court will decide in conjunction with review of the final determination whether the opportunity given was statutorily sufficient.'' *Tenex II* at 473.

Given the unique circumstances of this case and the lapse of time since the original questionnaires were presented, Kazakhstan may have gained access to the data the Department originally requested. The Department determined that it was appropriate to give such additional opportunity to Kazakhstan to provide the originally-requested information at this time. The CIT noted that the ''[due process] test is one of fundamental fairness in light of the total circumstances.'' *Tenex I* at 436. Therefore, while the Department fulfilled its due process obligation given the circumstances at the beginning of this proceeding, the circumstances have changed, calling for a more accommodating opportunity to respond to the original questionnaire.

In essence, the Uranium Coalition argues that the Department gave Kazakhstan too much due process; yet fails to indicate a maximum limit on due process measures. The Department took such measures in light of the unique circumstances of this investigation. At the time of the preliminary investigation and issuance of the original questionnaire, the Soviet Union had just collapsed and the resulting NIS, including Kazakhstan, were struggling to establish themselves. Taking this into consideration, along with the fact that eight years have elapsed since initiation of the investigation, the Department considers it reasonable to have afforded Kazakhstan an additional opportunity to fully participate in the investigation.

*Comment 2:* The Uranium Coalition argues that the Department should use BIA and apply the 177.87 percent margin calculated for natural uranium in the preliminary determination. The Uranium Coalition notes that Section 776(c) of the Act mandates the Department to use BIA ''whenever a party * * * refuses or is unable to produce information requested in a timely manner and in the form required, or otherwise significantly impedes an investigation * * *'' *See also* 19 U.S.C. Section1677e(c). The Uranium Coalition argues that application of BIA furthers the purpose of encouraging full disclosure by respondents, so that the Department can compute margins as accurately as possible. The Uranium Coalition argues that the Department must apply BIA even when a respondent's inability to provide requested information is due to circumstances outside the respondent's control. *See Final Determination of Sales at Less Than Fair Value; Sweaters Wholly or in Chief Weight of Man-Made Fiber From Taiwan,* 55 F.R. 34585 (August 23, 1990) (documents destroyed by fire); *NSK Ltd.* v. *United States,* 794 F. Supp. 1156, 1160 (Ct. Int'l Trade 1992) (corporate policy to destroy data after five years). The Uranium Coalition argues that the CIT has rejected a ''best efforts'' exception to the application of BIA. *See Tai Yang Metal Industrial Co., Ltd.* v. *United States,* 712 F. Supp. 973, 977–78 (Ct. Int'l Trade 1989); *Uddeholm Corp.* v. *United States,* 676 F. Supp. 1234, 1237 (Ct. Int'l Trade 1987). The Uranium Coalition further argues that Kazakhstan's inability to obtain information from third parties [1] is no exception to the requirement of a BIA determination. The Uranium Coalition argues that the Department has consistently applied BIA when information held by a third party has not been submitted. *See Fresh and Chilled Atlantic Salmon from Norway; Final Results from Antidumping Duty Administrative Review,* 58 FR 37912, 37915 (July 14, 1993); *see also Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China; Final Results of Antidumping Duty Administrative Reviews,* 61 FR 65527, 65538 (December 13, 1996). The Uranium Coalition also notes that the

[1] The Uranium Coalition notes that it is uncertain from the evidence whether Kazakhstan expended sufficient effort in obtaining information from third parties.

Department has determined that the fact that a third party might have incentive not to provide information is no exception to the application of BIA. *See Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan,* 64 FR 24329, 24368 (May 6, 1999)[2].

The Uranium Coalition argues that the Department should apply total, not partial, BIA in calculating the final margin. The Uranium Coalition first argues that the Department should have proceeded to a final determination based on BIA due to Kazakhstan's failure to answer the original questionnaire. Disagreeing with the Department's decision to issue a supplemental questionnaire instead, the Uranium Coalition argues that, nevertheless, the Department should apply total BIA in its final determination as Kazakhstan's subsequent response is inadequate, untimely and not verifiable. The Uranium Coalition points to numerous deficiencies in Kazakhstan's response, including: (1) No U.S. sales information provided for its Section C response, which is necessary to calculate prices; (2) information based on 1994 and 1998 data, instead of 1991 data; (3) factors of production reported only for the in situ leaching production processes, despite the use of other processes during both 1991 and 1994; (4) incomplete factors of production data provided; (5) no financial or government documents provided; (6) no quantity and value of sales data provided for its Section A response; and (7) no supporting documentation for Section D provided, as requested by the Department. The Uranium Coalition argues that Kazakhstan should not be allowed to benefit from submitting self-selected information. While 1991 information may no longer be available, the Uranium Coalition argues that regardless of the passage of time, change in personnel, and destruction of relevant records, the Department should base its final determination on BIA. *See Koyo Seiko Co. Ltd.* v. *United States,* 796 F. Supp. 517, 525 (Ct. Int'l Trade 1992) (applying BIA where respondent was unable to provide 1974 information in 1986). The Uranium Coalition argues that not only is the Department unable to calculate foreign market value without factors of production data, overall, the submitted data is insufficient for the Department to calculate a margin.

As Kazakhstan is the sole respondent and a non-market economy, the Uranium Coalition argues the only rate the Department should use is the rate from the preliminary determination. The rate established in the preliminary determination was based upon the petition and information submitted by Petitioners and two parties from which the Department solicited information. *See Preliminary Determination of Sales at Less Than Fair Value: Uranium from Kazakhstan, et al.* 57 FR at 23382.

The Uranium Coalition argues that Kazakhstan has not cooperated with the investigation from the start, beginning with its failure to respond to the original questionnaire. The Uranium Coalition notes that while Kazakhstan had 60 days to prepare for the resumed investigation after providing notice of its intent to terminate the Suspension Agreement, it nevertheless provided no information. Furthermore, the Uranium Coalition notes that the data untimely provided by Kazakhstan during verification could have been reviewed prior to the date its questionnaire responses were due. The Uranium Coalition argues that this demonstrates Kazakhstan's failure to cooperate; the Department should consider Kazakhstan's lack of cooperation in its final determination and apply the rate established in the preliminary determination.

While Kazakhstan disagrees with the continuation of the investigation, it argues that if the investigation is not terminated, the Department should use 1994 factor information in its final determination. Kazakhstan argues that it cooperated to the best of its ability, again noting that the original respondent named in the petition, the Soviet Union, no longer exists. Kazakhstan states that several third parties control the POI data on sales and production for the area in the Soviet Union now known as Kazakhstan. Kazakhstan notes that it attempted to obtain data from these third parties. Within MINATOM, Kazakhstan states that it contacted and requested information from the First Department, Atomredmetzoloto, which oversaw mining and milling in the Soviet Union during the POI, and Techsnabexport, which oversaw all uranium sales from the Soviet Union during the POI. Kazakhstan states that it received no information from these requests. Kazakhstan also states that while the regional departments that reported to Atomredmetzoloto (Uzhpolymetal, Vostokredmet, Tselliny and Prikaspiysky (a.k.a. Kaskor)) are possible sources of POI sales and production information, it is unclear what records they created and retained in the ordinary course of business as each followed different standards then. Furthermore, Kazakhstan notes that none of these records are under its control; Uzhpolymetal is in Kyrgyzstan and Vostokredmet is located in Tajikistan. As for Tselliny and Kaskor, Kazakhstan states that it explained during verification that neither regional department was under the direct control of KATEP or of Kazatomprom. Finally, Kazakhstan notes that because many of the third parties now compete with Kazakhstan in the uranium market, they have an incentive not to respond to requests for information.

Kazakhstan also argues that after the dissolution of the Soviet Union on December 25, 1991, there was no formal centralized management of uranium activities in Kazakhstan until the establishment of KATEP on February 12, 1992. Kazakhstan notes that while KATEP was created to take sole responsibility for all sales of subject merchandise from Kazakhstan, KATEP did not have full day-to-day management responsibility over all uranium production in Kazakhstan. Kazakhstan asserts that Kazatomprom, created on July 12, 1997, was the first entity with sole responsibility for the mining and marketing of uranium from Kazakhstan. Kazakhstan argues that the lack of formal oversight contributed to the incomplete nature of the 1991 and 1994 records.

Kazakhstan argues that the passage of time is another constraint on the availability of information. Kazakhstan notes that the individuals who recorded information during the POI are not the same individuals who helped prepare the questionnaire responses. Without the personal recollection of these individuals, Kazakhstan argues that reconstruction of the archived files was difficult. Kazakhstan also argues that because the POI is eight years ago, much of the 1991 (as well as the 1994) information has been destroyed in the ordinary course of business pursuant to document destruction policies, referencing the certificate of destruction produced during verification as examples of the policies. *See* May 13, 1999 Verification Report (''Verification Report''), at 13 and 26. Kazakhstan was also hindered in its efforts to locate data as much of the information on uranium was, and still is, considered state secrets. Kazakhstan states that knowledge on the material was limited and circulation of information was restricted. Only a limited number of

[2] The Uranium Coalition states that while that determination was made under the current antidumping statute, the principle of making an adverse inference when information is not provided applies to the pre-URAA use of BIA. *See Rhone Poulenc* v. *United States,* 899 F.2d 1185, 1190–91 (Fed. Cir. 1990).

documents on uranium were made and circulated among a small circle of officials. Accordingly, Kazakhstan argues that this made locating complete sets of documents difficult.

Kazakhstan argues that its efforts in light of the unusual and difficult situation indicates it cooperated to the best of its ability and, thus, the Department should use the 1994 factors information submitted by Kazakhstan in the final determination. Kazakhstan argues that the 1994 information it produced, despite the described obstacles, is as complete as possible, as well as verifiable. Kazakhstan states that it submitted 1994 factors information for four of the seven facilities operating during the POI. Kazakhstan argues that the Department has complete information on the total uranium output at these four facilities, and the inputs needed to produce one kilogram of uranium at each of those facilities. Kazakhstan argues that the main source documents provided for 1994, the technical reports, tied to other information available for 1994, such as the unit reports, monthly cost of production reports and the annual report filed with government authorities. Kazakhstan concedes that the Department was generally unable to trace the 1994 technical reports to a level of detail lower than the unit reports but argues that this was because more detailed information did not exist, and was not because of any inconsistency in the information.

Kazakhstan argues that the 1994 factors information is as representative of uranium production during the POI as any other source. Kazakhstan also argues that the 1994 factors information accurately represents possible uranium production today. Accordingly, Kazakhstan argues that an antidumping duty based on the provided 1994 factors information would be superior to one based on other sources. In comparing the 1994 information with the limited information available for 1991, Kazakhstan claims that similar inputs were consumed at similar levels and facility production levels were comparable. In fact, Kazakhstan suggests that 1994 data may be preferred over 1991 data as Kazakhstan controlled the 1994 facilities, whereas MINATOM controlled the 1991 facilities. Furthermore, Kazakhstan argues that the 1994 factors are based on actual production information in Kazakhstan at the same facilities operating in 1991, whereas the factors submitted by petitioners and used in the preliminary determination were estimates for Canadian facilities, where actual source documents were not used.

Kazakhstan notes that the Department has substantial discretion in selecting the source of BIA to use in its calculations. *See Magnesium Corp.* v. *United States,* 938 F. Supp. 885, 902 (Ct. Int'l Trade 1996). Kazakhstan asserts that the Uranium Coalition incorrectly contends that the Department must use information submitted in the petition as BIA. Kazakhstan notes that the Department may consider any and all information on the record in selecting BIA and argues that the final determination should be based on republic-specific data. Accordingly, Kazakhstan argues that the data it has submitted is far superior to the information submitted by the petitioners.

*Department's Position:* The Department continues to apply the overall rate of 115.82 percent as the BIA rate for the final determination. The Department notes that at verification none of the information provided, timely or otherwise, could be traced to annual report information at verification. Further, the Department was unable to check original well-site and factory information to tie to the few technical reports available for review. As a result, the record data can only be considered fragmentary. Without any verifiable data, the Department must resort to the rate established at preliminary determination. Additionally, while Kazakhstan asserts that it should not be held responsible for the failure of Tenex to provide data regarding U.S. shipments of subject merchandise during the POI, the Department notes that precedent to the contrary exists. Even where another party controls the information, the Department may rely on BIA if the information is not provided by the respondent. *See Helmerich & Payne, Inc.* v. *United States,* 24 F. Supp. 2d 304, n. 6 (Ct. Int'l Trade 1998).

The Department's practice is to base BIA on a simple average of the margins based on petition data, as opposed to the highest margin based on petition data, when the Department determines that the respondent has attempted to cooperate with the Department's Investigationinvestigation. In this instance, the Department calculated a natural and enriched uranium rate, modifying the original petition rates. Therefore, the Department considers it appropriate to apply the average rate of 115.82%. See e.g., Preliminary Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe from Taiwan, 57 FR 17892 (April 28, 1992). The Department believes that Kazakhstan attempted to cooperate in this proceeding because, while the response lacks sufficient data to use in the calculation of a dumping margin, it nevertheless contains sufficient data for the Department to conclude that a serious and sustained effort was undertaken by Kazakhstan to provide data responsive to the Department's questionnaires for the POI. Therefore, the Department is basing the final margin on an average of the margins for uranium concentrate and enriched uranium derived from the petition. In this instance, the petition included margins for natural and enriched uranium, which the Department adjusted for purposes of the preliminary determination *See Preliminary Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe from Taiwan,* 57 FR 17892 (April 28, 1992). The average of those rates, as adjusted, is 115.82 percent.

*Comment 3:* The Uranium Coalition asserts that the Department has the authority to clarify the scope of this Investigationinvestigation to include Kazakhstan origin natural uranium enriched in third countries in order to prevent the potential circumvention of any future antidumping duty order. The Uranium Coalition further asserts that such a clarification would be in accordance with the Department's substantial transformation analysis, the intent of the petition, and the purpose of the antidumping law. Regarding their circumvention concerns, the Uranium Coalition cites the potential cost savings for utilities purchasing Kazakhstan origin uranium at the unrestricted market price and claim that contracts permitting the foreign enrichment of Kazakhstan origin uranium are already in place. The Uranium Coalition notes that the Department's need to address potential circumvention in its substantial transformation analyses may result in a determination which differs from that of the United States Customs Service (''U.S. Customs'') and that, in this case, the elements of the Department's substantial transformation analysis require a determination that third-country enrichment does not change the country of origin of Kazakhstan uranium.

The Uranium Coalition asserts that, while the petition's scope did not specifically include uranium enriched in third countries, its intent was clearly to cover all forms of uranium products and to prevent circumvention. The Uranium Coalition argues that there was no reasonable basis in 1991 to foresee the increasing use of foreign enrichment by U.S. utilities and that the Suspension Agreement was subsequently modified to cover these third-country enrichment transactions. Finally, the Uranium

Coalition notes that the Department must clarify the scope of this Investigationinvestigation in order to achieve the antidumping law's purpose of remedying the negative impact on a U.S. industry of unfairly traded imports. The Uranium Coalition argues that, when the unfairly-priced Kazakhstan uranium is enriched abroad rather than in the United States, the injurious effect on the mining sector of the U.S. industry is not altered and that the adverse effects are in fact exacerbated because the enrichment sector of the U.S. industry is damaged.

Kazakhstan contends that the Uranium Coalition's request represents an untimely attempt to improperly expand the scope of the investigation and any resulting antidumping duty order to cover uranium produced in countries not subject to this Investigationinvestigation. Kazakhstan argues that all of the factors normally considered by the Department in its substantial transformation analysis confirm that enrichment does substantially transform and confer a new country of origin on enriched uranium. Thus, Kazakhstan asserts the Department does not have the authority to expand the scope of this proceeding. Kazakhstan further asserts that including uranium enriched, and therefore produced, in third countries in the scope of this case would violate the World Trade Organization's Agreement on Rules of Origin as well as ''circumvent'' the standards for circumvention established in the U.S. statute.

*Department's Position:* The Department agrees with Kazakhstan, in part. As an initial matter, there is no evidence on the record to indicate that there were any entries into the United States during the POI of Kazakhstan uranium enriched in a third country. In fact, the Uranium Coalition notes in its brief that the practice about which they are concerned evolved after the POI. The Uranium Coalition's concern clearly centers on current and future contracts involving third-country enrichment and, therefore, is unrelated to the calculation of a dumping margin on uranium from Kazakhstan during the POI. Thus, the Department need not decide in this final determination whether uranium from Kazakhstan enriched in a third country was sold at less than fair value during the POI.

With respect to the third-country enrichment issue, its importance and complexity is illustrated by the extensive argument contained in the Uranium Coalition's and Kazakhstan's briefs and in the time devoted to this issue at the hearing. However, Kazakhstan argues that the Uranium Coalition raised the third-country enrichment issue so late in the proceeding that its due process rights were prejudiced. The Department finds that neither the Department nor Kazakhstan could effectively examine the issue prior to issuance of the final determination. A review of the case schedule on and after the date of the Uranium Coalition's filing illustrates the point. The Uranium Coalition's submission was filed on April 26, 1999, one week prior to the beginning of verification. The Department conducted verification in Kazakhstan during the week of May 4, 1999 through May 8, 1999, and issued a verification report on May 13, 1999. Parties filed case briefs on May 17, 1999, and rebuttal briefs on May 21, 1999. The hearing was held on May 26, 1999, just eight days before the date of the final determination. This schedule simply did not permit the Department sufficient time to issue supplemental questionnaires, pose questions to the Uranium Coalition or engage in the other activities necessary to properly evaluate the law, arguments, and facts surrounding this issue. Additionally, the Uranium Coalition's filing on this issue was made in the context of an investigation resumed after an almost eight-year hiatus, during which the Government of Kazakhstan began rationalizing its uranium production. Furthermore, during the initial investigation, the respondent country became independent, further complicating the link between the initial 1991–92 phase of the investigation, the 1999 resumed investigation, and the third-country enrichment issue.

As a result of the above considerations, and to provide sufficient opportunity for full analysis of the law, argument and facts regarding this issue, the Department will initiate a scope inquiry on Kazakhstan uranium enriched in a third country simultaneously with the issuance of any antidumping order in this proceeding.

*Comment 4:* The Uranium Coalition contends that the Department should include uranium imported under a U.S. Customs temporary import bond (''TIB'') within the scope of this Investigationinvestigation in order to prevent certain ''swap'' transactions which may otherwise be used to circumvent a future antidumping duty order. The Uranium Coalition argues that, in this case, the Department has clear evidence, based on the past conduct of importers and domestic parties during the administration of the Suspension Agreement, that temporarily-imported merchandise can be, and has been, used to introduce dumped merchandise into U.S. commerce. The Uranium Coalition asserts that the Department has the authority to inform U.S. Customs that, due to the fungibility of the product and the nature of commercial activities in this particular industry, all Kazakhstan uranium entries, including TIB entries, must be subject to antidumping duty assessment to prevent circumvention of an order.

Alternatively, the Uranium Coalition urges the Department, at a minimum, to direct U.S. Customs to consider any entry of Kazakhstan uranium as a consumption entry subject to the antidumping order unless the TIB ''statement of use'' accompanying the TIB application under 19 CFR 10.31 includes a statement that the uranium to be imported under TIB will not be, and has not been, used as part of any swap, loan, or exchange transaction.

Kazakhstan argues that the Uranium Coalition's request to include Kazakhstan uranium entered under TIB in the scope of this proceeding is both untimely and improper and should be rejected by the Department. Kazakhstan notes that this issue was first raised in the Uranium Coalition's case brief, disallowing the Department the opportunity to make use of proper notice and comment procedures before departing from a prior practice with such broad implications. Furthermore, Kazakhstan notes the Uranium Coalition's concession that the Department has previously held, and the CIT upheld, that antidumping duty orders do not apply to merchandise entered under TIB.

*Department's Position:* The Department agrees with Kazakhstan. As noted by the Uranium Coalition, the Department has previously rejected a request to apply antidumping duties to merchandise imported under TIB procedures. *See Remand Determination: Titanium Metals Corp.* v. *United States*, Court No. 94–04–00236 (Apr. 17, 1995). The CIT then upheld this decision. See *Titanium Metals Corp.* v. *United States*, 901 F. Supp. 362 (Ct. Int'l Trade 1995). While the Department recognizes the Uranium Coalition's concerns regarding the atypical characteristics of uranium and the uranium industry, the Department reaffirms its prior finding that merchandise entered pursuant to TIB is not entered for consumption. As a result, antidumping duties cannot apply to TIB entries. In addition, the Department has no legal authority to instruct U.S. Customs to require an additional certification for such Kazakhstan TIB entries, as alternatively requested by the Uranium Coalition.

*Comment 5:* Kazakhstan notes that the respondent named in the original antidumping petition, the Soviet Union, was dissolved less than one month after initiation of the Investigationinvestigation and no longer exists. Kazakhstan stresses that while the courts sustained the determination to continue the Investigationinvestigation despite the dissolution of the Soviet Union, the final determination of the Investigationinvestigation must be based on facts involving Kazakhstan, not the Soviet Union. Kazakhstan argues that the distinction between Kazakhstan and the Soviet Union is critical to the Department's analyses of: (1) Whether the petition was filed on behalf of the domestic industry against Kazakhstan in particular; (2) whether there were sales of subject merchandise from Kazakhstan to the United States during the POI; and (3) the selection of surrogate values for Kazakhstan.

According to the Uranium Coalition, the fact that Kazakhstan is no longer a part of the Soviet Union does not change the Department's obligation to conduct an antidumping investigation of uranium produced during the POI in the territory which is now Kazakhstan. The Uranium Coalition argues that the Department reasonably construed the antidumping statute as authorizing continuation of this Investigationinvestigation, despite the fact that the petition leading to this Investigationinvestigation was filed against subject merchandise from the Soviet Union.

According to the Uranium Coalition, Section 731 of the Act instructs the Department to impose antidumping duties whenever foreign merchandise is sold at less than fair value in the United States, where the International Trade Commission determines that such imported merchandise causes injury to a domestic industry. The Uranium Coalition further argues that this statutory provision contains no requirement that the Department take changes in the political landscape of a foreign territory into account when determining whether the imposition of antidumping duties is warranted. According to the Uranium Coalition, it is the foreign merchandise—not the particular political configuration of the territory in which the merchandise originated—which is the critical aspect of the antidumping analysis. Thus, the Uranium Coalition concludes, changes in the geopolitical territory of the former Soviet Union are not relevant for purposes of determining whether uranium produced in any region of the former Soviet Union was traded unfairly in the United States.

In support of its conclusion, the Uranium Coalition cites to Tenex II. *See* 802 F. Supp. 469. According to the Uranium Coalition, the CIT held that the Department had full legal authority to continue its uranium investigation against the former Soviet republics, notwithstanding dissolution of the Soviet Union, because the antidumping statute did not require the Department to take into account changes in political structures in the course of its investigation. Further, according to the Uranium Coalition, since the Tenex proceedings, this rationale has been applied consistently by the Department. *See Transfer of the Antidumping Order on Solid Urea from the Union of Soviet Socialist Republics to the Commonwealth of Independent States and the Baltic States and Opportunity to Comment,* 57 Fed. Reg. 28828 (Jun. 29, 1992); *Application of U.S. Antidumping and Countervailing Duty Laws to Hong Kong,* 62 Fed. Reg. 42965 (Aug. 11, 1997); *Solid Urea from the German Democratic Republic,* 63 Fed. Reg. 7122, 7122–23 (Feb. 12, 1998); *Certain Cut-to-Length Carbon-Quality Steel Plate from the Former Yugoslav Republic of Macedonia,* 64 Fed. Reg. 12993 (Mar. 16, 1999).

*Department's Position:* The Department agrees with Kazakhstan, in part. The Department agrees that Kazakhstan is a different entity from the Soviet Union. In recognition of that fact, the Department attempted to collect and verify separate Kazakhstan-specific information. However, Kazakhstan failed to provide sufficient verifiable data which the Department could use in its analysis. As a result, the Department must use BIA, for the reasons discussed in Comment 2, above. The Department notes that the continuation of this investigation against Kazakhstan was challenged at the CIT, where the Department's decision to continue was upheld. *See* Tenex proceedings.

*Comment 6:* Kazakhstan argues that the investigation should be terminated as the Uranium Coalition does not have the support of the domestic industry and, thus, lacks standing to represent the industry in the resumed investigation. Kazakhstan claims that two of the original petitioners, Power Resources, Inc. (''PRI'') and Cogema, Inc. (''Cogema''), currently account for over half the production of uranium in the United States. Kazakhstan states that PRI expressed its opposition to the investigation in an April 15, 1999 letter and Cogema expressed its opposition in a May 5, 1999 letter. Kazakhstan argues that their opposition indicates that the investigation is not ''on behalf of'' the domestic uranium industry.

Kazakhstan argues that the Department has the power to rescind its decision to initiate an antidumping investigation where it is discovered that the petition is not being maintained on behalf of the industry. *See Gilmore Steel Corp.* versus *United States,* 585 F. Supp. 670, 674 (Ct. Int'l Trade 1984). Kazakhstan argues that when members of the domestic industry provide grounds to doubt a petitioner's standing, the Department should evaluate whether those parties which oppose the investigation represent a majority of the domestic industry, to determine whether the petition is properly filed on behalf of the domestic industry. *See Suramerica de Aleaciones Laminadas, C.A.* v. *United States,* 966 F.2d 660, 662–63 (Fed. Cir. 1992). Kazakhstan claims that PRI and Cogema account for a majority of the domestic industry and, since this majority of the domestic industry opposes the investigation, Kazakhstan argues that the Department should terminate the investigation immediately.[3]

The Uranium Coalition also states that the letters from PRI and Cogema were not properly filed, are therefore not on the record of this investigation and thus cannot be considered by the Department. Moreover, even if the letters had been properly placed on the record, the Uranium Coalition continues, Cogema and PRI are parties that are related to the producer through their joint ventures in Kazakhstan. Hence, neither PRI nor Cogema would be considered part of the domestic industry.

*Department's Position:* The Department agrees with the Uranium Coalition. The Department notes that the letters submitted by PRI and Cogema, as domestic uranium producers opposed to the investigation, were improperly submitted and cannot be considered. First, the letter from PRI, to which Kazakhstan refers, does not appear on the record for this investigation. Second, the courtesy copies of the PRI and Cogema letters provided separately to Department analysts show no certificate of service, and thus it appears that the parties were never properly served the letters. Pursuant to 19 CFR 353.31(g)(2), the Department ''will not accept any document that is not accompanied by a certificate of service listing the parties served, the type of document served,

[3] As an alternative, Kazakhstan suggest that the Department survey all uranium producers in the United States to determine the producers' stance on the investigation.

and, for each, indicating the date and method of service.'' Third, neither letter contains a certification as to the contents of the letter, as required under 19 CFR 353.31(i).[4]

The PRI and Cogema letters were also untimely submitted. Pursuant to 19 CFR 353.31(c)(2), the Department ''will not consider any allegation in an investigation that the petitioner lacks standing unless the allegation is submitted, together with supporting factual information, not later than 10 days before the scheduled date for the Secretary's preliminary determination.'' The Department notes that while Pathfinder Mines Corporation (''Pathfinder''), a Cogema subsidiary, properly submitted a letter to the record in furtherance of Cogema's opposition, Pathfinder's letter was dated May 17, 1999, which is clearly past the regulatory deadline.

Finally, even if PRI and Cogema had properly expressed their opposition to this investigation, publicly available information indicates that PRI, a wholly owned subsidiary of Cameco, and Cogema, a foreign-owned producer, have certain joint ventures with Kazakhstan that mandate the Department to disregard their opposition to the investigation. *See* the Uranium Coalition's rebuttal brief, at Exhibit 3 (''The Reconstruction of the Uranium Industry in Kazakhstan''). Section 771(4)(A) defines the term industry to mean ''the domestic producers as a whole of a like product.'' Section 771(4)(B) provides that ''when some producers are related to the exporters * * * of the allegedly * * * dumped merchandise, the term ''industry'' may be applied in appropriate circumstances by excluding such producers from those included in that industry.'' As both PRI and Cogema have business relations with the foreign producer in this investigation, the Department is disregarding their positions for purposes of standing. For these aforementioned reasons, even if the objections had been properly and timely filed, the Department would continue this investigation.

*Comment 7:* Kazakhstan argues that it made no sales of subject merchandise to the United States during the POI as it did not exist during the POI. Kazakhstan argues that as part of the Soviet Union, the region's economy was under the guidance and control of Soviet authorities and companies existing in the region had no independent production or sales activities. Kazakhstan argues that during the POI, Tenex had sole authority for making sales of uranium produced in the Soviet Union, noting that Tenex is a wholly-owned and controlled subsidiary of MINATOM. Kazakhstan further notes that, pursuant to contracts between Tenex and the uranium producers for the region during the POI, the manner in which the uranium producers were compensated for uranium provided to Tenex reveal that the uranium producers had no control over sales. Accordingly, Kazakhstan states that even if there was any evidence of sales from Kazakhstan to the United States during the POI, and Kazakhstan asserts there is no such evidence, under the circumstances it is not reasonable to conclude that Kazakhstan or its uranium producers bore any responsibility for those sales.

Kazakhstan insists that ''where parties in the territory that is now the Republic of Kazakhstan were not even responsible for the sales of their merchandise at the time, proving the negative is virtually impossible.'' *See* Kazakhstan's Rebuttal Brief, at 17. Kazakhstan states that the Uranium Coalition has not disputed that no sales of subject merchandise produced in Kazakhstan were made to the United States during the POI. Kazakhstan argues that without sales, the Department has previously held that ''there are no United States prices with which to compare foreign market value, and, thus, no dumping margins.'' *See Final Determination of No Sales at Less Than Fair Value: Ferrosilicon from Argentina,* 58 FR 27534, 27535 (May 10, 1993). Kazakhstan argues that this conclusion flows directly from the definition of U.S. price. *See* 19 CFR 353.41(a). Kazakhstan argues there is no evidence of any sales, thus, the Department has no reasonable basis to conclude that there were any dumping margins and the investigation should be terminated.

The Uranium Coalition argues that Kazakhstan's assertion, that it made no sales of subject merchandise to the United States during the POI, is based on the incorrect assumption that the investigation covers material sold by Kazakhstan or by a ''Kazakh entity.'' The Uranium Coalition argues that Kazakhstan should properly be considering material from Kazakhstan that is sold in the United States, and not considering the party that controlled production or sold the uranium, noting that the Department's instructions to U.S. Customs was ''for all manufacturers, producers, and exporters of uranium from Kazakhstan.'' The Uranium Coalition notes that the burden of proof is on Kazakhstan to produce evidence that there were no sales of subject merchandise to the United States during the POI. *See Electrolytic Manganese Dioxide from Ireland; Final Determination of No Sales at Less Than Fair Value,* 54 FR 8776 (March 2, 1989); *see also, Final Determination of No Sales at Less Than Fair Value: Ferrosilicon from Argentina,* 58 FR 27534, 27535 (May 10, 1993). The Uranium Coalition argues that Kazakhstan has failed to meet its burden by failing to provide verified evidence, noting that the Department's verification report states that Kazakhstan did not provide any evidence that could have resolved whether there were any shipments to the United States during the POI. Furthermore, the Uranium Coalition contends that it is highly likely that there were sales of uranium from Kazakhstan to the United States during the POI as the region now known as Kazakhstan accounted for 50 percent of all uranium production by the former Soviet republics in 1991. *See* the Uranium Coalition's Rebuttal Brief at 32.

*Department's Position:* The Department agrees with the Uranium Coalition. The issue of continuing this proceeding with respect to the individual Republic was previously settled in court. *See* Tenex proceedings. Thus, the claim that Kazakhstan itself did not make any sales of uranium to the U.S. during the POI is irrelevant to this investigation. As the Uranium Coalition points out, Kazakhstan accounted for 50 percent of all uranium production of the Soviet Union. Furthermore, at verification, the Department found that Tenex and the Tselliny combinat had signed a commission agreement in 1990. *See* Verification Report at 3. This commission contract supports the contention that a regular channel of trade of natural uranium from Kazakhstan through Tenex to foreign locations had been established. The Department noted at verification that Kazakhstan's responses ''included shipping documents indicating that uranium produced in Kazakhstan may have been shipped to the United States by Tenex both before and during the POI.'' *See* Verification Report at 10–11. At verification, given this evidence, the Department attempted to confirm whether there were sales of subject merchandise to the United States during

[4] The Department notes that even had the letters been certified, the contents fail to substantiate Kazakhstan's claim that PRI and Cogema represent a majority of the domestic uranium industry by providing the evidence stipulated in the Department's regulations. Accordingly, the Department cannot assume that PRI and Cogema represent a majority of the domestic uranium industry.

the POI. While the Department requested additional data from Kazakhstan regarding U.S. sales, Kazakhstan failed to provide any data to clarify the existing evidence. Similarly, when the Department attempted to follow up on the Tenex-Tselliny combinat contract, Kazakhstan did not provide any supporting documentation, such as receipts or other documentation indicating payments received from Tenex pursuant to the contract. As a result, the Department was unable to examine key source data which could have supported Kazakhstan's claim of no shipments to the United States of subject merchandise during the POI. Evidence on the record indicates that uranium from what is now known as Kazakhstan was most likely shipped to the United States during the POI. Kazakhstan was unable to provide information countering this evidence. Accordingly, the Department must conclude as BIA that there were sales of subject merchandise to the United States during the POI and Kazakhstan did not provide data on those sales.

*Comment 8:* Kazakhstan argues that the Department should use South Africa as the primary surrogate country. Kazakhstan argues that its surrogate value submission to the record, dated April 28, 1999, demonstrates that South Africa satisfies the statutory criteria for selection as the primary surrogate country, pursuant to Section 773(c)(4) of the Act. Kazakhstan argues that the Department is permitted to select a different surrogate country in the final determination than selected in the preliminary determination, citing *Tehnoimportexport* v. *United States,* 766 F. Supp. 1169, 1175 (Ct. Int'l Trade 1991); and *Kerr McGee Chemical Corp.* v. *United States,* 985 F. Supp. 1166, 1180 (Ct. Int'l Trade 1997). Kazakhstan argues that in the preliminary determination, the Department used a single surrogate based on Soviet Union economic data because, lacking accurate or detailed information, the Department mistakenly assumed that the level of economic development of the former Soviet Union republics was essentially the same. However, Kazakhstan argues there is now enough information available to show the former republics' different levels of economic development, thus, the Department should not make the same assumption at the final determination. Kazakhstan argues that the Department has generally preferred using publicly available pricing information as the source of surrogate values as opposed to using proprietary information. Kazakhstan asserts that the only publicly available information on the record to value virtually every input used to produce subject merchandise is from South Africa. Accordingly, Kazakhstan argues that the Department should select South Africa as the primary surrogate country in the interest of calculating a fair and accurate margin in the final determination. Finally, Kazakhstan argues that the Department should not add freight charges to the valuation of any input for which freight-inclusive import values are used as surrogate values.

The Uranium Coalition rebuts Kazakhstan's contention that South Africa should be the primary surrogate country by stating that the Department does not change surrogate countries after the preliminary determination unless it finds compelling reasons to do so. The Uranium Coalition argues that, to date, Kazakhstan has not provided such information. Further, the Uranium Coalition cites to the *Addendum to Memorandum Regarding Choice of Surrogate Countries, Antidumping Investigation of Uranium from the Former Soviet Union* (March 24, 1992), where the Department determined that the most appropriate course of action was to use the surrogate countries decided upon for the Soviet Union, for the NIS. The Uranium Coalition also contends that Kazakhstan's premise that the Department did not perform a surrogate country analysis is incorrect. Furthermore, the Uranium Coalition states that Kazakhstan's assertion that because Kazakhstan is not the Soviet Union that the Department's prior analysis is incorrect. Finally, the Uranium Coalition argues that the information on the record for South Africa is incomplete and unreliable in many respects.

*Department's Position:* As the Department is relying on BIA for its calculation of the antidumping duty margin in this proceeding, this issue is moot. *See* Comment 2.

## Suspension of Liquidation

In accordance with Section 735(d) of the Act, the Department is instructing U.S. Customs to continue suspending liquidation of all unliquidated entries of uranium from Kazakhstan, as defined in the Scope of the Investigation section of this notice, that are entered or withdrawn from warehouse for consumption on or after January 11, 1999 (the effective date of the termination of the Suspension Agreement). U.S. Customs shall continue to require a cash deposit or bond equal to 115.82 percent *ad valorem*, the estimated weighted-average amount by which the foreign market value of the subject merchandise exceeds the United States price, for all manufacturers, producers and exporters of uranium from Kazakhstan. These suspension of liquidation instructions will remain in effect until further notice.

## International Trade Commission Notification

In accordance with Section 735(b)(2) of the Act, the Department has notified the International Trade Commission (''ITC'') of its final determination. The ITC will determine whether these imports are materially injuring, or threaten material injury to, the United States uranium industry. The ITC shall make this determination before the latter of: (1) 120 days after the effective date of the preliminary determination; or (2) 45 days after publication of the Department's final determination. If the ITC determines that such injury does not exist with respect to uranium, this proceeding will be terminated and all securities will be refunded or canceled. If the ITC determines that such injury exists with respect to uranium, the Department will issue an antidumping duty order directing U.S. Customs officials to assess antidumping duties on all imports of uranium from Kazakhstan for the period discussed above in the Suspension of Liquidation section of this notice.

This determination is issued and published in accordance with Section 735(d) of the Act (19 U.S.C. 1673(d)) and 19 C.F.R. 353.20(a)(4).

Dated: June 3, 1999.

**Richard W. Moreland,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 99–14782 Filed 6–9–99; 8:45 am]

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

**[Docket No. 990416102–9102–01]**

**RIN 0648–ZA64**

## Notice and Request for Proposals

**AGENCY:** National Weather Service (NWS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

**ACTION:** Request for proposals.

**SUMMARY:** The Collaborative Science, Technology, and Applied Research (CSTAR) Program represents an NOAA/NWS effort to create a cost-effective continuum from basic and applied research to operations through