

DEPARTMENT OF COMMERCE**International Trade Administration**

[(C-428-829); (C-421-809); (C-412-821)]

Notice of Amended Final Determinations and Notice of Countervailing Duty Orders: Low Enriched Uranium From Germany, the Netherlands and the United Kingdom

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

ACTION: Notice of amended final determinations and notice of countervailing duty orders: Low enriched uranium from Germany, the Netherlands and the United Kingdom.

EFFECTIVE DATE: February 13, 2002.

FOR FURTHER INFORMATION CONTACT: Robert Copyak (Germany) at 202-482-2209, Stephanie Moore (the Netherlands) at 202-482-3692, and Eric B. Greynolds (United Kingdom) at 202-482-6071, Office of AD/CVD Enforcement VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act effective January 1, 1995 (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations codified at 19 CFR part 351 (2000).

Scope of Orders

For purposes of these orders, the product covered is all low enriched uranium (LEU). LEU is enriched uranium hexafluoride (UF₆) with a U²³⁵ product assay of less than 20 percent that has not been converted into another chemical form, such as UO₂, or fabricated into nuclear fuel assemblies, regardless of the means by which the LEU is produced (including LEU produced through the down-blending of highly enriched uranium).

Certain merchandise is outside the scope of these orders. Specifically, these orders do not cover enriched uranium hexafluoride with a U²³⁵ assay of 20 percent or greater, also known as highly enriched uranium. In addition, fabricated LEU is not covered by the scope of these orders. For purposes of these orders, fabricated uranium is defined as enriched uranium dioxide

(UO₂), whether or not contained in nuclear fuel rods or assemblies. Natural uranium concentrates (U₃O₈) with a U²³⁵ concentration of no greater than 0.711 percent and natural uranium concentrates converted into uranium hexafluoride with a U²³⁵ concentration of no greater than 0.711 percent are not covered by the scope of these orders.

Also excluded from these orders is LEU owned by a foreign utility end-user and imported into the United States by or for such end-user solely for purposes of conversion by a U.S. fabricator into uranium dioxide (UO₂) and/or fabrication into fuel assemblies so long as the uranium dioxide and/or fuel assemblies deemed to incorporate such imported LEU (i) remain in the possession and control of the U.S. fabricator, the foreign end-user, or their designed transporter(s) while in U.S. customs territory, and (ii) are re-exported within eighteen (18) months of entry of the LEU for consumption by the end-user in a nuclear reactor outside the United States. Such entries must be accompanied by the certifications of the importer and end user.

The merchandise subject to these orders is classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 2844.20.0020. Subject merchandise may also enter under 2844.20.0030, 2844.20.0050, and 2844.40.00. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Amended Final Determinations

On December 26, 2001, petitioners (United States Enrichment Corporation, Inc. and its wholly-owned subsidiary, United States Enrichment Corporation, collectively USEC, and the Paper Allied-Industrial Chemical and Energy Workers International Union, AFL-CIO, CLC, Local 5-550 and Local 5-689, collectively PACE) and respondents (Urenco Ltd., Urenco (Capenhurst) Ltd., Urenco Nederland BV, and Urenco Deutschland GmbH, collectively Urenco) alleged ministerial errors in the calculations of the *Final Affirmative Countervailing Duty Determinations: Low Enriched Uranium from Germany, the Netherlands, and the United Kingdom*, 66 FR 65903 (December 21, 2001) (*Final Determinations*). On December 28, 2001, USEC and Urenco submitted comments regarding the allegations.

Urenco alleged that the Department miscalculated the *ad valorem* rate by using as the denominator a significantly understated value of material that entered U.S. Customs during the period

of investigation (POI) and, therefore, overstated the benefit attributable to Urenco. USEC disagreed and argued that this was not a ministerial error but a well-founded decision.

We disagree with Urenco. We used the actual entered value for sales that entered U.S. Customs during the POI. Therefore, we properly calculated the *ad valorem* rate.

Urenco also alleged that with respect to the Regional Investment Program (IPR) benefit provided to Ultra Centrifuge Nederland N.V. (UNC) by the Government of the Netherlands (GON), the Department should have used, for purposes of the 0.5 percent test, the value of sales in 1985 for all of the Urenco Group companies, not just the value of UCN's sales in 1985. Petitioners disagreed and contended that the Department properly conducted the test.

We agree with Urenco and have conducted the 0.5 percent test using the combined sales of the Urenco Group's predecessors. As a result, the subsidy from the IPR is less than 0.5 percent of the combined sales and, in accordance with 19 CFR 351.524(b)(2), is allocable to the year of receipt (1985). As a result of this revision, the net subsidy for this program decreased from 0.03 percent *ad valorem* to 0.00 percent *ad valorem*.

USEC alleged that the entered value of the Urenco Group sales must be adjusted downward to exclude the value of any ancillary enrichment activities (e.g., the value of cylinders for the transport of enriched uranium, etc.). USEC claimed that the Department determined to exclude the value of ancillary enrichment activities from the sales denominator and argued that the disclosure materials are not clear as to whether this exclusion was properly made. Urenco contended that USEC's allegation failed to satisfy the requirements set forth in 19 CFR 351.224(d), in that USEC failed to refer to record evidence indicating the value of ancillary enrichment activities that should allegedly be excluded from the Customs data.

We disagree with USEC's contention and note that we determined that the Customs data, as reported in Exhibit 14 of UCL's Verification Report, did not contain any ancillary enrichment sales values.

These issues are addressed in further detail in the January 18, 2002 memorandum to Bernard Carreau, Deputy Assistant Secretary, AD/CVD Enforcement II, Import Administration, from Melissa G. Skinner, Director, Office of AD/CVD Enforcement VI. The public version of this memorandum is on file in Room B-099 in the Central

Records Unit (CRU) of the Main Commerce Building.

As a result of our corrections, the estimated net countervailable subsidy rates attributable to Urenco in each of the countries decreased from 2.26 percent *ad valorem* to 2.23 percent *ad valorem*. Due to the revisions of the net subsidy rates for each of the Urenco companies, the all others rates for each of the countries has also changed. The all others net countervailable subsidy decreased from 2.26 percent *ad valorem* to 2.23 percent *ad valorem*.

Countervailing Duty Orders

In accordance with section 705(d) of the Act, on December 21, 2001, the Department published its final determinations in the countervailing duty investigations of low enriched uranium from Germany, the Netherlands, and the United Kingdom (66 FR 65903). On February 4, 2002, the International Trade Commission (ITC) notified the Department of its final determinations, pursuant to section 705(b)(1)(A)(i) of the Act, that an industry in the United States suffered material injury as a result of subsidized imports of low enriched uranium from

Germany, the Netherlands, and the United Kingdom.

Therefore, countervailing duties will be assessed on all unliquidated entries of low enriched uranium from Germany, the Netherlands, and the United Kingdom entered, or withdrawn from warehouse, for consumption on or after May 14, 2001, the date on which the Department published its preliminary affirmative countervailing duty determinations in the **Federal Register** (66 FR 24329), and before September 11, 2001, the date the Department instructed the U.S. Customs Service to discontinue the suspensions of liquidation in accordance with section 703(d) of the Act, and on all entries and withdrawals of subject merchandise made on or after the date of publication of these countervailing duty orders in the **Federal Register**. Section 703(d) states that the suspension of liquidation pursuant to a preliminary determination may not remain in effect for more than four months. Therefore, entries of low enriched uranium made on or after September 11, 2001, and prior to the date of publication of these orders in the **Federal Register** are not liable for the assessment of countervailing duties due

to the Department's discontinuation, effective September 11, 2001, of the suspensions of liquidation.

In accordance with section 706 of the Act, the Department will direct U.S. Customs officers to reinstitute the suspension of liquidation for low enriched uranium from Germany, the Netherlands, and the United Kingdom effective the date of publication of this notice in the **Federal Register** and to assess, upon further advice by the Department pursuant to section 706(a)(1) of the Act, countervailing duties for each entry of the subject merchandise in an amount based on the net countervailable subsidy rates for the subject merchandise.

On or after the date of publication of this notice in the **Federal Register**, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the rates noted below. The All Others rates apply to all producers and exporters of low enriched uranium from Germany, the Netherlands, and the United Kingdom not specifically listed below. The cash deposit rates are as follows:

Producer/exporter	Cash deposit rate
Germany:	
Urenco Group Limited	2.23 percent <i>ad valorem</i> .
All Others Rate	2.23 percent <i>ad valorem</i> .
The Netherlands:	
Urenco Group Limited	2.23 percent <i>ad valorem</i> .
All Others Rate	2.23 percent <i>ad valorem</i> .
The United Kingdom:	
Urenco Group Limited	2.23 percent <i>ad valorem</i> .
All Others Rate	2.23 percent <i>ad valorem</i> .

This notice constitutes the countervailing duty orders with respect to low enriched uranium from Germany, the Netherlands, and the United Kingdom, pursuant to section 706(a) of the Act. Interested parties may contact the CRU, for copies of an updated list of countervailing duty orders currently in effect.

These countervailing duty orders and amended final determinations are issued and published in accordance with sections 706(a) and 705 of the Act and 19 CFR 351.211 and 351.224.

Dated: February 6, 2002.

Bernard T. Carreau,

Acting Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

[C-427-819]

Notice of Amended Final Determination and Notice of Countervailing Duty Order: Low Enriched Uranium From France

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

ACTION: Notice of amended final determination and notice of countervailing duty order: Low enriched uranium from France.

EFFECTIVE DATE: February 13, 2002.

FOR FURTHER INFORMATION CONTACT: Michael Grossman at (202) 482-3146 or Richard Herring at (202) 482-4149, Office of AD/CVD Enforcement VI, Group II, Import Administration,

International Trade Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

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