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## **Fact Sheet on Russian Uranium Suspension Agreement**

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### **Present Status**

The Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation, as amended (the “Agreement”), continues to remain in force. Whereas the Agreement states that we expect to terminate it by a specified date, it stresses that any termination must be consistent with Commerce’s statute and regulations, meaning that there are legal and procedural requirements which must be fulfilled.

The Agreement was negotiated under section 734(l) of the Tariff Act of 1930, as amended, which is the provision under which suspension agreements with non-market economy countries are negotiated. In 2002, Commerce evaluated the Russian economy and determined that the Russian Federation had become a market economy country. However, the Russian Federation has never proposed that this Agreement be converted to a market economy suspension agreement, under section 734(b) or (c) of the statute. If such a proposal were to be made, Commerce would need to consider on a policy basis whether or when to negotiate a market economy agreement.

The most significant source of trade under the Agreement today is the import of Russian low-enriched uranium (LEU) derived from highly-enriched uranium (HEU) and delivered to the U.S. Executive Agent pursuant to the Agreement Between the Government of the United States of America and the Government of the Russian Federation Concerning the Disposition of Highly Enriched Uranium Extracted from Nuclear Weapons (the “HEU Agreement”).

For this reason, the Agreement has played an important role in U.S. national security policy, via the so-called “Megatons to Megawatts” program. This LEU material currently accounts for approximately 50 percent of all enriched uranium now used to fuel commercial nuclear power reactors in the United States each year. Except as provided for under the Agreement’s re-exportation provision, no

other form of Russian LEU may be imported at this time for consumption in the United States under the Agreement.

Under the frequently-used re-exportation provision of the Agreement, parties may ship material, subject to quota availability, into the United States for re-processing and re-export within either 12 or 36 months.

Other provisions of the Agreement which, at various times during its life, allowed for a price-tied quota, matched sales of separative work units (SWUs) and natural uranium, and sales under Appendix C “grandfathered” contracts and the “Bridge” contract are now inoperative.

### **Avenues for Potential Termination**

Under the statute and regulations, three main avenues for a potential termination of the Agreement exist, all of which may or may not result in the termination of the underlying antidumping duty proceeding: 1) an administrative review, requested as a basis for termination by an interested party to the proceeding; 2) a request for termination by a signatory to the Agreement; and 3) a sunset review.

#### **Request for Administrative Review**

Because October is the anniversary month of the original suspension of the investigation, an administrative review, to be used as a basis for termination, could be requested by the Russian Federation or other interested parties in the month of October, with the results being due up to 18 months later. Thus, if a review were requested in October 2004, the unextended deadline for final results would be October 2005, and the fully extended deadline would be April 2006.

In the course of such a review, Commerce would be examining whether there was compliance with the terms of the Agreement, including whether or not there were significant violations, and whether dumping would be likely to continue or recur in the absence of the Agreement. To date, no administrative review of the Agreement has been requested, and, therefore, these analyses have not been conducted.

#### **Request for Termination**

If the Agreement is terminated in response to a request by a signatory to the Agreement, the underlying antidumping duty investigation would, by law, have to resume. In continuing the suspended investigation, one key question Commerce would need to address would be how the Russian Federation’s market economy status, which was determined by Commerce during the term of the Agreement, would impact the resumed investigation. This is a question with little, if any, precedent for the Department, and many factors could come into play in this analysis, including issues related to the time period and data to be analyzed.

Commerce would then issue a final determination on whether there were sales at less than fair value. In addition, the International Trade Commission (ITC) would

issue its final determination as to whether the domestic industry was materially injured, or threatened with material injury.

If the ITC found injury or the threat of injury, an antidumping duty order would be issued. Antidumping duties would apply to any sales of the subject merchandise made by the Russian Federation into the U.S. market, including imports of LEU downblended from HEU under the HEU Agreement.

### **Sunset Review**

Commerce will initiate the next sunset review of the Agreement not later than July 2005, with preliminary results due in October 2005. The last sunset review of the Agreement was completed in August 2000 and resulted in the continuation of the Agreement.

In a sunset review, Commerce reviews whether there is a likelihood of continuation or recurrence of dumping absent the Agreement, while the ITC determines whether termination of the Agreement would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

### **Product Coverage Issues**

Commerce is aware of questions in the industry about whether fuel rods and/or assemblies containing Russian-enriched uranium product are outside the scope of the Agreement. Because this is a complicated question, it must be subject to a formal scope inquiry on the record of this proceeding. This process can take up to 270 days and allows for full notice and comment on the question. To date, however, no party has formally requested on the record that Commerce launch such an inquiry, and Commerce cannot speculate on what the outcome would be.

We continually receive inquiries about third country enrichment. The Department takes seriously its responsibility to examine any such arrangements to determine whether they undermine the intent of the suspension agreement or violate its extensive anticircumvention provisions.

### **Future Prospects**

Regarding requests for potential amendments to the current Agreement, significant legal questions would be raised as to whether a non-market-economy agreement with a signatory who has been declared to be a market economy could be amended. A suspension agreement must comport with the Department's statute and regulations. Any policy decision to enter into negotiations for amending the Agreement would involve, in this particular case, complicated and serious national security concerns. Therefore, Commerce would need to consult with other agencies, including the Department of Energy, the Department of State, and the National Security Council regarding such a proposal.