October 22, 2013

VIA INTERNET (http://www.regulations.gov)

Trade Policy Staff Committee
Office of the United States Trade Representative
600 17th Street, N.W.
Washington, DC 20508

Re: National Trade Estimate Report – Submission by USEC Inc. and United States Enrichment Corporation – DOCKET USTR–2013–0027.

Dear Sir or Madam:

USEC Inc. and United States Enrichment Corporation (collectively, "USEC") hereby request that enriched uranium imports continue to be included in the National Trade Estimate Report on Trade Barriers in the European Union ("EU"). Enriched uranium imports have been included in every National Trade Estimate Report since 2005 concerning the EU, and the trade barriers identified in those reports have not yet been eliminated by the EU.

The most recent Annual Report (released in 2013) of the EU's Euratom Supply Agency ("ESA") continues to reflect the EU's policy of protecting EU producers of enriched uranium (which is the material from which nuclear power reactor fuel is fabricated) by seeking to limit non-EU sources of supply under the guise of a "diversification policy" for procurement of nuclear materials by EU utilities.[1] Under this policy, the ESA monitors purchases by EU power utilities to encourage them to rely on supply sources within the EU and in a number of cases actually enters into contracts on

[1] Euratom Supply Agency, 2012 Annual Report, at 28 (2013) [hereinafter ESA 2012 ANNUAL REPORT], *available at* http://ec.europa.eu/euratom/ar/ar2012.pdf. In the ESA 2012 ANNUAL REPORT, ESA states, as it has in the past, that it "continues to monitor the market, especially supplies of natural and enriched uranium to the EU, in order to ensure that EU utilities have diverse sources of supply and do not become over-dependent on any single source. It does this by exercising its rights to sign contracts and by compiling comprehensive statistical reports on trends on the nuclear market." *Id*.

behalf of EU utilities.[2] Consistent with this policy, EU utilities continue to source most of their enriched uranium from the two European enrichers, AREVA (France) and Urenco (a British-German-Dutch consortium).[3]

The "diversification" policy referred to in the ESA's Annual Report is the same discriminatory EU policy that USEC detailed in its December 2004 submission (Exhibit A to this letter).[4] This policy, commonly referred to as the "Declaration of Corfu" or the "Corfu Declaration",[5] seeks, in the interest of protecting the viability of the internal EU enrichment industry, to limit EU utilities' consumption (*i.e.*, use in EU reactors) of foreign-produced enriched uranium. The purpose of this policy is to ensure that EU enrichers meet approximately 80% of EU demand for uranium enrichment, and consistent with this purpose, the ESA has stated expressly that "[o]ne key goal for long-term security of supply is to maintain the viability of the EU industry at every stage of the fuel cycle."[6] The fact that "viability" of the EU fuel industry is considered to be a "key goal" demonstrates that the ESA's focus is not simply to ensure adequate supplies of fuel to EU utilities, but also to promote the economic health of EU suppliers in competition with non-EU companies such as USEC.

In recent years, the accession of Central and Eastern European countries to the EU has resulted in Russia having a greater market share than the Declaration of Corfu would permit, because these new EU members have preexisting contracts with Russia. However, the ESA describes these as "grandfathered" contracts,[7] indicating that they

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[2] In the ESA 2012 ANNUAL REPORT, the ESA reported that 31% of the enrichment of Russian origin supplied to EU utilities is "delivered under contracts concluded by ESA" *Id*. at 26.

[3] *Id*. (Figure 8).

[4] *See* USEC's December 2004 submission, *infra* at Exhibit A, at 9-10.

[5] While the ESA never uses the phrase "Corfu Declaration" or "Declaration of Corfu" in its official publications, the ESA does not deny that it exists, nor does it deny that "[o]ne key goal for long-term security of supply is to maintain the viability of the EU industry at every stage of the fuel cycle", as noted most recently in ESA 2012 ANNUAL REPORT, *supra* note 1, at 28. *See also*, *infra* note 14-16 and accompanying text, regarding the ESA response to a recent controversy surrounding a rumored threat against a Czech plant for not following the Corfu Declaration.

[6] *Id*.

[7] ESA 2012 ANNUAL REPORT, *supra* note 1, at 26, 28. In the ESA's 2011 Annual Report (hereinafter ESA 2011 ANNUAL REPORT), the ESA notes that these "grandfathered contracts" with the Russians are an "exemption from the principle of diversification" and that the exemption only runs "until the supply contracts expire", and that "[n]ew supply contracts for these utilities are being assessed against the principles of diversification

only have a transitional status. Consistent with this status, the ESA has made clear that the current market share taken by Russian supply is temporary and that once the contracts expire, ESA expects that the current purchasers of Russian enriched uranium will be required to comply with the Corfu Declaration's "diversification" policy, which as noted above, actually is a policy to prevent increasing purchases from foreign enrichers. In its most recent annual report, for example, the ESA stated the following regarding grandfathered contracts:

> The exemption from the principle of diversification for contracts concluded before the EU accession of certain Member States will apply until the contracts expire. New supply contracts for these utilities are being assessed in the light of the diversification policy.[8]

In its most recent annual report, the ESA stated:

> ESA observes that EU utilities' dependence on foreign suppliers of enrichment services is decreasing, mainly due to the sharp drop in USEC's share of the European market.[9]

This quote sheds light on the ESA's distorted view of EU utilities' purchases of enriched uranium from foreign suppliers. The ESA treats purchases from foreign suppliers as a lack of diversification, apparently not recognizing that seeking to keep EU utilities dependent on AREVA and Urenco also promotes a lack of diversification. In the view of the ESA, the dominance of AREVA and Urenco in the EU market is the norm, and presumably a positive goal to be achieved. Obviously, this is consistent with ESA's "key goal" (cited above) of maintaining "the viability of the EU industry at every stage of the fuel cycle".

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policy", apparently meaning that in the future these utilities will be expected to buy from EU suppliers. Euratom Supply Agency, 2011 Annual Report, 32 (2012), *available at* http://ec.europa.eu/euratom/ar/ar2011.pdf. Similarly, in its 2008 Annual Report (hereinafter "ESA 2008 ANNUAL REPORT"), the ESA noted that some of the new members of the EU have existing "grandfathered" contracts with Russia that result in their relying solely on Russian fuel. ANNUAL REPORT 2008 at 10, *available at* http://ec.europa.eu/euratom/ar/ar2008.pdf. However, the ESA added, as these contracts expire, the "ESA will need to ensure a satisfactory degree of diversification at the EU level", similarly indicating that the ESA will take steps to ensure that these countries purchase fuel from EU suppliers rather than continue to rely on their traditional supplier, Russia. *Id*. at 31.

[8] ESA 2012 ANNUAL REPORT, *supra* note 1, at 30 (footnote omitted).

[9] *Id*. at 28.

In short, the Corfu Declaration is intended to provide the EU enrichers, AREVA and Urenco, with a protected home market in which to make sales that support their operations and provide them with guaranteed revenues that help guarantee their viability and support the financing of expansion. Indeed, even as the Russians have penetrated the EU with "grandfathered" contracts, the two European enrichers consistently have dominated the EU market and continue to do so. [10]

AREVA has acknowledged the trade-restricting benefits of the Corfu Declaration. In its 2011 "Reference Document",[11] which is AREVA's annual report to investors, AREVA stated:

> In Europe, the Euratom Supply Agency supervises the supply of uranium and enrichment services within the framework of the Corfu Declaration, which restricts enriched uranium imports into the European Union. [12]

With respect to AREVA, in the 2011 ESA Annual Report, the ESA noted that:

> ESA estimates that EU utilities' dependence on foreign suppliers of enrichment services is temporary and related to the transition from gaseous to centrifuge technology at the AREVA enrichment plant in France."[13]

The concluding portion of the sentence in this quote refers to the fact that AREVA is deploying a centrifuge enrichment plant in France, and during a transition period, it has not been producing as much enriched uranium as previously. What is interesting about this quote is that it indicates that the ESA expects that as soon as the transition is complete. AREVA will recover lost market share and the share of "foreign suppliers" (rather than the share of the other EU enricher, Urenco) will fall, thereby reducing EU "dependence". This view is consistent with the ESA policy of favoring domestic EU

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[10] *Id*. at 26 (Figure 8).

[11] Hereinafter AREVA REFERENCE DOCUMENT 2011. The english version is available at http://www.areva.com/finance/liblocal/docs/doc-ref-2011/DDR%202011%20AREVA_uk.pdf.

[12] *Id*. at 90 (emphasis added).

[13] ANNUAL REPORT 2011, *supra* note 7, at 29 (footnote omitted;). Urenco also has acknowledged the existence of the policy as a benefit to its position as a long-term supplier. *See* Presentation, "Fixed Income Investor Update, London, Paris, Frankfurt, Munich January 2010", at 10 available at http://www.urenco.com/Uploads/ResultsMedia/Investor%20update%202010FINAL.pdf.

suppliers, even though the Russian supplier, Tenex, supplies enriched uranium produced using centrifuge technology (meaning that the new French plant will not have any technological advantage over the Russian supplier) and the U.S. supplier, USEC, is working towards transitioning to a more advanced version of the centrifuge technology (as well as purchasing enriched uranium produced by the Russians using centrifuges). Thus, regardless of the technologies employed by EU suppliers and foreign suppliers, the natural state of affairs for the ESA is that the EU suppliers should dominate, with the only exceptions to that dominance being due to temporary situations such as the grandfathering of contracts held by utilities prior to accession to the EU or the transition of EU producers to a new technology.

Promoting full and open competition is not the norm in the EU under the Corfu Declaration. For example, in 2012, it was reported that the Czech Republic utility, CEZ, might have to cease operating certain reactors because they were being supplied with Russian low enriched uranium in amounts that would violate the Corfu Declaration. [14] The ESA denied the story,[15] but in so doing confirmed that there are "legal avenues through the European Commission to enforce quotas. For example, the ESA could impose penalties or sanctions on misbehaving plants."[16] The ESA characterized the Corfu Declaration as a "guideline", but one in which the ESA has a "right to intervene."[17] Whether or not the story about a threat to the Czech reactors was true, the statements made by the ESA in response to the story underlined how significant the powers of the

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[14] For example, Radio Praha published the following report in March 2012:

> The Dukovany power plant in Moravia which recently came under fire for the type of fuel used, will remain in operation, EURATOM agency officials confirmed on Wednesday. The Czech Republic had come under pressure from some EU member states to close down the power station because it was operating on fuel made of uranium enriched outside of the EU, namely in Russia. This runs against a European agreement signed in Corfu in 1994. EURATOM said Wednesday that although it was looking into the matter of other potential suppliers the plant was in no danger of being closed down and if no alternate supplier is found then the matter would be closed. CEZ argues that the contract on fuel deliveries with the Russian supplier Tvel was closed before the country's admission to the EU and accepted by the EU authorities.
>
> Radio Praha, *Dukovany power plant to remain in operation*, March 10, 2012, http://www.radio.cz/en/section/news/news-2012-10-03.

[15] *See* "Officials deny rumors of Dukovany closure: EU's nuclear supply chief blasts false reports published in the Czech media" http://www.praguepost.com/business/14495-officials-deny-rumors-of-dukovany-closure.html.

[16] *Id.*

[17] *Id.*

ESA are in shaping fuel procurement policies to prevent "dependence" on foreign suppliers.

While USEC is the largest supplier of enriched uranium to the U.S. market (which is the largest market for nuclear fuel in the world) and vigorously competes with EU suppliers in that market as well as in markets in Asia, it only has a small, and declining, share of the EU market.[18] USEC nonetheless seeks to sell in the EU, supplying both enriched uranium produced in the United States and enriched uranium sourced from Russia. USEC is deeply concerned about the impact of the EU policy on the EU market, particularly as the EU has expanded to include new countries to which USEC supplied enriched uranium in the past. USEC intends to continue to seek opportunities for increased sales in the EU notwithstanding the Corfu Declaration, and in particular, to at least maintain its existing share of the EU market so that it will be available as an outlet for the supply of enriched uranium produced at the new centrifuge plant that USEC is seeking to deploy in the United States. Given USEC's objectives in the EU and also the reduction in worldwide demand for fuel as a result of the temporary and permanent shutdown of reactors (as well as the cancellation and delay of projects to build new reactors) after the Fukushima disaster in 2011 as well as the challenges USEC must address in securing sales from customers worldwide for its planned American Centrifuge Plant in Piketon, Ohio in the face of declining market prices, USEC can ill-afford to have access to the EU limited by a non-transparent policy of ensuring market domination by the two EU enrichers.

In the past, the ESA implemented the Corfu Declaration principally through the exercise of its power to conclude contracts for the supply of all types of nuclear materials to the EU, which in practice meant that a contract for the purchase of nuclear materials required the countersignature of the ESA. European court decisions clarified that, while the ESA's power to approve contracts applies to purchases of uranium and other fuel,[19] the ESA's power does not extend to contracts for transformation (i.e., processing) of nuclear materials (for example, the enrichment of natural uranium). Nonetheless, the ESA continues to pursue the policies behind the Declaration of Corfu with respect to these transformation contracts, through the ESA's central role in monitoring the EU market and a requirement that all such contracts be reported to the ESA. Indeed, the scope of the ESA's powers is quite broad, and even where the powers are characterized as "monitoring", it is clear that the ESA's activities are intended to bring all utilities into alignment on a common policy for procurement of fuel that supports the economic viability of European nuclear suppliers. In its most recent annual report, for example, the ESA describes a highly intrusive policy of scrutinizing utility purchases in order to press

[18] As noted above, the ESA's most recent Annual Report points to a "sharp drop in USEC's share of the European market". ESA 2012 ANNUAL REPORT, *supra* note 1, at 28.

[19] As noted, *supra* note 2, ESA has concluded a substantial amount of contracts for enriched uranium on behalf of EU utilities.

utilities, either directly through the ESA right of co-signature on contracts for the purchase of nuclear materials, or indirectly through review and acknowledgement of other utility purchases, to conform to a policy that supports the viability of the EU nuclear industry, including EU suppliers of enriched uranium:

> In this context, it [ESA] focuses on enhancing the security of supply to users located in the European Union and shares responsibility for the viability of the EU nuclear industry. In particular, it recommends that European Atomic Energy Community utilities operating nuclear power plants maintain stocks of nuclear materials, cover their requirements by entering into long-term contracts and diversify their sources of supply.
>
> ESA's mandate is, therefore, to exercise its powers and, as required by its statutes, to monitor the market to make sure that the activities of individual users reflect the values set out above.
>
> The Euratom Treaty requires ESA to be a party to supply contracts for nuclear material whenever one of the contracting parties is an EU utility, an operator of a research reactor in the EU, or a producer/intermediary selling nuclear material (imports into or exports from the EU, plus intra-Community transfers). When exercising its rights of co-signature ESA implements the EU supply policy for nuclear materials. ESA also has a right of option to purchase, with the right of first refusal over nuclear materials produced in the Member States.
>
> Under the Euratom Treaty, ESA also monitors transactions involving services in the nuclear fuel cycle (conversion, enrichment and fuel fabrication). Operators are required to submit notifications giving details of their commitments. ESA verifies and acknowledges these notifications.
> …
>
> ESA processed some 270 transactions, including contracts, amendments and notifications of the front-end activities, in 2012. In this way, the Agency ensured the security of supply of nuclear materials."[20]

[20] ESA 2012 ANNUAL REPORT, *supra* note 1, at 10-11 (emphasis added). See also, ESA 2011 ANNUAL REPORT, *supra* note 7, at 11-12 (substantially identical language). As the quoted language indicates, among the "values" that the ESA intends to ensure that individual users (*i.e.*, purchasers) reflect as a result of this extensive program of transaction processing, is "responsibility for the viability of the EU nuclear industry". In short, the ESA intends to "make sure" that purchasers follow the shared value of

Even where the ESA does not have a specific right to approve or reject a contract, the ESA's "acknowledgement" process still provides for substantial ESA involvement with utility purchasing decisions such that the ESA can, where necessary, intervene to ensure the utility purchases support the ESA's policy. Indeed, according to the ESA 2008 ANNUAL REPORT:

> "ESA monitors transactions involving services in the nuclear fuel cycle. Operators are required to submit notifications giving details of their commitments. ESA verifies whether these transactions are indeed limited to provision of services (enrichment, conversion and fuel fabrication), i.e. do not involve supply of nuclear materials. If so, ESA acknowledges the transaction; otherwise, it arranges for co-signature of the corresponding contract."[21]

The ESA 2008 ANNUAL REPORT also reported:

> "ESA co-signs each supply contract (for nuclear materials) and acknowledges each transformation contract (for nuclear fuel

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supporting domestic EU producers of nuclear fuel, including enriched uranium, in preference to foreign suppliers, such as USEC.

Perhaps due to the scrutiny that the ESA's practices has drawn under past National Trade Estimates, the Annual Reports issued by the ESA have become increasingly opaque about how the ESA is implementing its protectionist policies. The following excerpt from the 2009 Annual Report (hereinafter "ESA 2009 ANNUAL REPORT") is an example:

> "Finally, as the nuclear market is becoming increasingly complex, guaranteeing security of supply for the Union calls, more than ever, for monitoring and observing market trends. The development of a nuclear market observatory to assist nuclear players in the Community by providing expertise, information and advice on any subject related to nuclear materials and the nuclear services market is now one of the new priorities of the Agency."

ESA 2009 ANNUAL REPORT at 5, *available at* http://ec.europa.eu/euratom/ar/ar2009.pdf. It is not clear from this excerpt exactly what types of "expertise, information and advice" the ESA will provide through its "observatory", but as the portion of the 2012 Annual Report quoted in the text accompanying this footnote (similar language also was included in the 2009, 2010 and 2011 Annual Reports) suggests, the ESA is using its market monitoring and assistance role to promote domestic suppliers, consistent with the Declaration of Corfu.

[21] 2008 ESA ANNUAL REPORT, *supra* note 7, at 11.

> services), allowing it to monitor them and, if necessary, intervene in order to uphold the diversification principle."[22]

Request for Inclusion of Declaration of Corfu in National Trade Estimate

Given that the ESA's discriminatory policy concerning imports of enriched uranium has not changed since we filed our December 2004 submission, we request that this policy continue to be included in the National Trade Estimate Report ("NTE"). The ESA will only change its policy in response to diplomatic pressure from the United States and others who are adversely affected by the Declaration of Corfu. Listing the Declaration of Corfu in the NTE will help support diplomatic pressure.

As noted above, attached in support of this request is USEC's submission from December 2004, which outlines our argument about the trade barriers to enriched uranium implemented by the ESA (attached as Exhibit A).

Need for U.S. Government Action

It is our understanding that the European Commission continues to claim that the Declaration of Corfu is confidential. Our research shows, however, that the existence of this trade barrier is freely acknowledged and understood by our largest European competitor, the French government-owned company, AREVA. As noted above, AREVA admits the existence and benefits of the Corfu Declaration.[23]

As this statement clearly shows, USEC's European competitors are not only aware of the protection that the EU affords them under the Declaration of Corfu, but also

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[22] *Id*. at 31 (emphasis added). In February 2008, the European Council adopted a new statute for the ESA. In this new statute, the Council expressly provided for the ESA's role in supervising the nuclear fuel market and "identifying trends that could affect security of the European Union's supply of nuclear material and services." Council Decision of 12 February 2008 establishing Statutes for the Euratom Supply Agency, 41 O.J. L15 (Feb. 15, 2008) available at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:041:0015:0020:EN:PDF. At the time, the ESA indicated that this change to its statutes had "enhanced" the ESA's profile, and the ESA reported that it carried out "industry-wide consultations on the rules for implementing its exclusive right to conclude supply contracts and its market monitoring activities." 2008 ESA ANNUAL REPORT, *supra* note 7, at 11 (emphasis added). Further, the ESA described the enrichment market as "particularly sensitive from a European perspective", *id*. at 12, and acknowledged that "[g]uaranteeing the security of nuclear fuel supply … remains the core objective of ESA". *Id*. at 31 (emphasis added).

[23] AREVA REFERENCE DOCUMENT 2011, *supra* note 11. Similar statements were made in AREVA's 2012, 2010, 2009, 2008 and 2007 Reference Documents.

admit that it exists. Yet, the EU will not provide either a copy of the Declaration of Corfu or details of its operation.

Accordingly, in addition to requesting that this trade barrier continued to be listed in the NTE, USEC urges the U.S. Trade Representative to press for a fuller disclosure of the Declaration of Corfu so that it can be better understood by the United States and other affected non-EU governments and constructively addressed in bilateral and multilateral negotiations.

As USEC noted in our submissions to USTR in 2010, 2011 and 2012, the existence and impact of the Declaration of Corfu also is widely acknowledged. For example, a report issued by the U.K. Government's Sustainable Development Commission[24] notes that:

> "Whereas primary uranium production in the EU is very small in global terms, the Union's enrichment services are nearly self-sufficient (80%). The enrichment market is subject to considerable intervention by the Euratom Supply Agency and the European Commission."
>
> "In a review of the proposed merger between European firm Areva (France) and Urenco (Netherlands, UK, Germany), the Commission found that the two firms already had a combined share in the EU market of 70%-90% and that Tenex – a Russian firm – could not apply serious competitive pressure since 'It is generally agreed by the parties, third parties and Euratom Supply Agency that the Corfu Declaration restricts the supply of Russian material to a share of 20% of the Community market.' While the Commission does not support a further concentration of the market through merger, it does not suggest that the (de facto) quota is inappropriate."[25]

This report notes that the U.S. government has raised questions about the Declaration of Corfu, but adds that "discussions are not excessively strained." It is troubling to find that the authors of the report conclude that:

> "Despite such attempts to gain improved market access, it is clear that the level of market intervention is widely accepted. The

[24] "Paper 8: Uranium Resource Availability" (report prepared by Future Energy Solutions for Sustainable Development Commission), March 2006, *available at* http://www.sd-commission.org.uk/publications.php?id=343.

[25] *Id.* at 59-60.

> limited strength of language in the extract above is indicative; the US does not explicitly question the EU's right to impose quotas, asking only that the policy guiding intervention is made public. This is in contrast to the very strong language used by the US when discussing the non-proliferation aspects of trade…."[26]

We believe the report's authors have drawn the wrong conclusion. The United States' requests for disclosures about the Declaration of Corfu are entirely appropriate, and a necessary predicate to any discussion of whether they meet applicable trade obligations. We urge the U.S. government to continue to seek more information about the Declaration of Corfu from the European Commission and to seek to eliminate the policy's impact on competition for the supply of nuclear fuel in the EU.[27]

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[26] *Id.* at 60.

[27] Certainly, the Russians do not hesitate to press for publication of the Corfu Declaration. As one observer stated during a debate in Brussels, Belgium in 2009 on the future of nuclear power:

> "We should remember that the Corfu Declaration was first discussed at a summit on the island of Corfu in 1994. At the time, Russia was a very different country to what it is today. In the ensuing months, the European authorities unilaterally drew up the Corfu Declaration, which mainly targeted the Russians but was then extended to include all foreign suppliers. This declaration imposed a 20% quota on the import of non-European enriched uranium into Europe. But Russia is very different today, and this 20% quota is completely obsolete in both historical and practical terms, as Russia now accounts for over 45% of total uranium supplies to Europe. I would however like to put a couple of questions to the two representatives of the institutions: why is there no free access to the Corfu Declaration? Why hasn't it been officially published? We are talking about a document that potentially defines the rules of the game, and to which the players involved do not have access. <u>The Russians bring up this question with the national and European authorities at every chance they get</u>. If the market is free, it is important to know the terms."

Comments of Emmanuel Gout, StratinvestRu, at "Nuclear power and international cooperation: the role of the European Union in the worldwide nuclear revival", Lunch Debate No. 3, March 18, 2009 available at http://www.confrontations.org/images/confrontations/IMG/pdf/2009-03-18_CR_DD_Avenir_nucleaire_n3_English-2.pdf (emphasis added). For a further expression of Russian frustration with the EU policy *see* "14 Years to Keep the Promise", Atom.info.ru, July 10, 2008 ("Americans prefer quoting Russian uranium openly;

This submission is being made in response to the "Request for Public Comments To Compile the National Trade Estimate Report on Foreign Trade Barriers" published in the *Federal Register* on August 19, 2013 (78 Fed. Reg. 50481). Attachments to our original request (which were in .PDF format) have been omitted but could be provided upon request.

Thank you for your attention to this matter. If you need further information, please contact me at (301)564-3325.

Respectfully submitted,

James A. Schoettler, Jr.
Assistant General Counsel
USEC Inc.

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expression of Russian frustration with the EU policy *see* "14 Years to Keep the Promise", Atom.info.ru, July 10, 2008 ("Americans prefer quoting Russian uranium openly; Europeans at the same time prefer secret declarations. Agreement on the dumping investigation suspension between Russia and United States is already thoroughly scrutinized; the fact of existing of the same agreement in Europe - already mentioned Corfu declaration - was called in question and even denied."), *available at* http://www.atominfo.ru/en/news/e0262.htm.

Exhibit A

December 21, 2004

VIA ELECTRONIC MAIL

NTE Comments
U.S. Department of Commerce
USA Trade Center Room
14th and Constitution Avenue, NW
Ronald Reagan Building
Washington, DC 20230

Re: Annual National Trade Estimate Report on Foreign Trade Barriers

Dear Sir or Madam:

On behalf of USEC Inc. and United States Enrichment Corporation, we hereby submit a Request for the Inclusion of Enriched Uranium in the National Trade Estimate Report on Trade Barriers in the European Union. This submission is being made in response to the Request for Public Comment With Respect to the Annual National Trade Estimate Report on Foreign Trade Barriers published in the Federal Register on November 24, 2004 (69 Fed. Reg. 68437).

Thank you for your attention to this matter.

Respectfully submitted,

Robert E. Lighthizer
John J. Mangan
Jeffrey D. Gerrish

On behalf of USEC Inc. and United States Enrichment Corporation

BEFORE THE
OFFICE OF THE UNITED STATES
TRADE REPRESENTATIVE

REQUEST FOR THE INCLUSION OF ENRICHED URANIUM IN THE NATIONAL TRADE ESTIMATE REPORT ON FOREIGN TRADE BARRIERS IN THE EUROPEAN UNION

December 21, 2004

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On Behalf of USEC Inc. and
United States Enrichment Corporation

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23 TradeTech, Nuclear Market Review, Dec. 17, 2004

REQUEST FOR THE INCLUSION OF ENRICHED URANIUM IN THE NATIONAL TRADE ESTIMATE REPORT ON FOREIGN TRADE BARRIERS IN THE EUROPEAN UNION

This submission is made on behalf of the sole U.S. supplier of commercial enriched uranium, USEC Inc., and its subsidiary, United States Enrichment Corporation (collectively "USEC"). It contains evidence supporting the inclusion of trade barriers imposed by the European Union (the "EU") on enriched uranium in the 2005 *National Trade Estimate Report on Foreign Trade Barriers*.

I. INTRODUCTION

Since 1994, the EU has been enforcing quantitative restrictions against imports of enriched uranium pursuant to the secretly adopted Declaration of Corfu. The terms of the Corfu Declaration, which has not been published to this day, reportedly stipulate that 80% of the EU market for enriched uranium shall be reserved for European suppliers. This quota has been enforced by the EU through the operation of the Euratom Supply Agency (the "ESA"), an EU administrative body that has the exclusive authority to conclude (and reject) supply contracts for nuclear fuel that is to be provided to utilities in Europe.

The EU's quantitative restrictions on imports of enriched uranium were formulated and have been enforced in a concerted effort to protect the two EU suppliers of enriched uranium, the Urenco Group ("Urenco") and AREVA and its subsidiary, Eurodif, S.A. (collectively "Eurodif/AREVA"). At the same time, Urenco and Eurodif/AREVA have continued to enjoy significant market access for their products in the United States. Thus, these two suppliers have been able to enjoy the substantial fruits of the U.S. enriched uranium market while benefiting enormously from a protected home market in the EU.

The EU, through the ESA, has for a number of years publicly acknowledged that it maintains quantitative restrictions on imports of enriched uranium from Russia and the other Newly Independent States of the former Soviet Union (collectively the "NIS"). However, evidence has recently emerged that, under the terms of the Declaration of Corfu, these restrictions actually apply to <u>all</u> imports of enriched uranium, including enriched uranium produced in the United States. Because the Declaration of Corfu remains shrouded in secrecy, it is not possible to describe the precise terms of the Declaration with certitude. However, whether the Corfu Declaration applies globally or is limited to the restrictions publicly acknowledged by the ESA, USEC is directly or indirectly injured by such restrictions. Moreover, such restrictions violate several provisions of the General Agreement on Tariffs and Trade 1994 (the "GATT 1994").

II. DISCUSSION

A. The EU's Quantitative Restrictions on Imports of Enriched Uranium

On June 24, 1994, on the Greek island of Corfu, the European Commission and the EU Council of Ministers secretly adopted the Declaration of Corfu.[28] While the text of the Corfu Declaration has not been disclosed, it has been reported that the Declaration imposes quantitative restrictions on imports of natural and enriched uranium. With respect to enriched uranium, the Declaration reportedly provides that the market share for the two European uranium enrichers, Urenco and Eurodif/AREVA, should be maintained at around 80% of the EU market, thereby restricting imports to 20% of the market.[29]

The Declaration of Corfu was secretly adopted and has never been published. In fact, its very existence remained secret until late 2001. In late 2001 and November 2002, the EU Directorate General for Research and the European Commission issued reports identifying, for the first time, the quotas imposed on imports of natural and enriched uranium pursuant to the Corfu Declaration.[30] In particular, in its November 2002 report, the European Commission expressly stated that

> [T]he Council and the Commission adopted a joint declaration (Declaration of Corfu) stipulating that the share for European uranium enrichers should be maintained at around 80% of the European market. The principle of setting a limit was also confirmed for natural uranium.[31]

Thus, these official EU documents confirmed that the EU had imposed secret, yet binding, quotas on imports of natural and enriched uranium under the Corfu Declaration.

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28 See Communication from the Commission to the Council and the European Parliament on Nuclear Safety in the European Union, Nov. 6, 2002 ("Communication from the Commission on Nuclear Safety in the European Union"), at 5, attached as Exhibit 1; European Parliament, Directorate General for Research, "Working Paper – The European Parliament and the Euratom Treaty: past, present and future," Dec. 2001 ("Working Paper"), at 98, attached as Exhibit 2.

29 See id. For natural uranium, the Corfu Declaration reportedly requires that imports be limited to approximately 25% of the EU market. See id.

30 See id.

31 Communication from the Commission on Nuclear Safety in the European Union at 5 (emphasis added), attached as Exhibit 1. The European Commission's report specifically observed that "[t]he Declaration of Corfu has not been published." Id.

Since 1994, the Declaration of Corfu has served as the legal basis for the EU's import restrictions on enriched uranium.[32] In turn, the ESA has served as the mechanism for enforcing these import restrictions. The ESA was established by the Treaty Establishing the European Atomic Energy Community, as amended (the "Euratom Treaty"), with the primary objective of ensuring, through the operation of a common supply policy, that all end users in the EU receive a "regular and equitable" supply of natural and enriched uranium. The Euratom Treaty endowed the ESA with, among other powers, the "exclusive right to conclude contracts relating to the supply of ores, source materials and special fissile materials coming from inside the Community or from outside."[33] This right applies to all supply contracts, including those relating to enriched uranium.[34] The ESA operates under the supervision of the European Commission, which has veto power over all of its decisions.[35]

The ESA uses its exclusive right to conclude contracts to enforce the EU's import restrictions on natural and enriched uranium. As the European Commission stated in 1997, "[t]he Commission and the Euratom Supply Agency are applying a policy of diversification of sources of supply, implemented in a flexible way by the exercise of the Agency's right to conclude contracts and aiming at avoiding overdependence on any single source of supply."[36] The quotas are applied by the ESA on a case-by-case basis by deciding for each proposed contract for the supply of natural or enriched uranium whether to conclude the contract, impose a condition on the contract, or refuse to allow conclusion of the contract.

ESA's right to refuse to conclude contracts and impose conditions on such contracts in order to implement the EU's import restrictions on natural and enriched

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32 It should be noted that even before the Declaration of Corfu, the EU strongly urged utilities to purchase enriched uranium from the European enrichers. However, the Declaration of Corfu appears to be the first instance in which the EU explicitly allocated a specific percentage of the EU market to the European enrichers.

33 Treaty Establishing the European Atomic Energy Community, as amended ("Euratom Treaty"), Chapter 6, Art. 52, attached as Exhibit 3.

34 Id., at Chapter 6, Section 3, Art. 64.

35 Id., at Chapter 6, Section 1, Art. 53.

36 Communication from the Commission on the Nuclear Industries in the European Union, Sept. 25, 1997 ("Communication from the Commission on the Nuclear Industries"), at 26, attached as Exhibit 4. Although referred to euphemistically as a policy of "diversification of sources of supply," the EU's policy with respect to imports of natural and enriched uranium is actually designed to increase dependence on EU sources of supply and to discriminate against foreign suppliers like USEC.

uranium was specifically upheld by the European Court of Justice in its decision in Kernkraftwerk Lippe-Ems v. Commission.[37] In that case, the Court of First Instance upheld the ESA's rejection of a contract for natural uranium, finding that the ESA

> may lawfully bar imports of nuclear materials if those imports are liable to jeopardise the achievement of the aims of the [Euratom] Treaty, in particular by their effect on sources of supply. . . . To put it differently, in order to ensure geographical diversification of external sources of supply, the Agency has a discretion – exercising its exclusive right to conclude contracts for the supply of ores and other nuclear fuels so as to ensure reliability of supplies in accordance with the principle of equal access to resources, in conformity with the task conferred on it by the Treaty – to bar certain imports of uranium which would reduce such diversification.[38]

In turn, the European Court of Justice upheld the decision of the Court of First Instance in its entirety and, therefore, upheld the ESA's actions in enforcing the EU's import restrictions.[39]

Because the Corfu Declaration remains unpublished, it is impossible to determine the precise scope of the quantitative restrictions mandated by the Declaration. Publicly, the ESA has only acknowledged imposing restrictions on enriched uranium from the NIS. However, the information available to USEC, as well as the disparity between USEC's experience in the EU market when compared with its experience in other world markets, indicates that the import restrictions apply to all enriched uranium sold by USEC. Indeed, as noted above, the European Commission's November 2002 report stated that the Corfu Declaration stipulates that "the share for European uranium enrichers should be maintained at around 80% of the European market."[40] In other words, the Corfu Declaration reserves an 80% market share for Urenco and Eurodif/AREVA, thereby necessarily restricting imports from all sources to a 20% share.

Moreover, the European Commission recently appeared to acknowledge the global nature of the trade barriers imposed by the EU on imports of enriched uranium. In a June 22, 2004 press release announcing the initiation of its investigation into the possible anti-competitive effects of a joint venture between AREVA and Urenco in Europe, the Commission stated its concern regarding "the creation of a structural link between Areva and Urenco, which together control 80% of enriched uranium in the EU"

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37 See Kernkraftwerk Lippe-Ems v. Commission, Judgment of the Court, Case C-161/97 (1999), attached as Exhibit 5.

38 Id. at para. 37.

39 See id. at para. 149.

40 Communication from the Commission on Nuclear Safety in the European Union at 5, attached as Exhibit 1.

and specifically noted that "there are trade barriers in this market which limit competition from non-EU companies."[41] At a minimum, this statement by the European Commission strongly suggests that the EU's trade barriers (i.e., import restrictions) on enriched uranium apply to all non-EU companies.

B. The Impact of the EU's Quantitative Restrictions on U.S. Exports of Enriched Uranium

The EU's import restrictions on enriched uranium have a significant adverse impact on USEC, the sole U.S. producer of commercial enriched uranium. The restrictions deny USEC an opportunity to compete for business in the EU on the same basis that it competes with EU enrichers in the United States and other markets and enable the EU enrichers to benefit from a protected home market.

Not surprisingly, according to the EU itself, USEC was only able to garner 2% of the EU enriched uranium market in 2003.[42] By contrast, USEC has a much larger market share in the United States and Asia, where USEC is allowed to compete without restriction against the EU enrichers. Moreover, USEC has been successful in supplying enriched uranium to European markets that are not or previously were not part of the EU, including Switzerland, Slovenia, and the Czech Republic. With respect to Slovenia and the Czech Republic, which became members of the EU in May 2004, USEC has had and, at least thus far, continues to have significant contracts with utilities in both countries. The effects of the EU's discriminatory policies are vividly demonstrated by comparing the substantial sales that USEC makes in the Czech Republic and Slovenia, where it has been allowed to compete on a relatively level playing field against enrichers from the EU, to its meager EU sales and market share.

USEC estimates that, at current long-term market prices, the value of the separative work unit component of low enriched uranium to be consumed by EU utilities

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41 "Commission Extends Probe Areva/Urenco Venture," European Commission Press Release (June 22, 2004) (emphasis added), attached as Exhibit 6.

42 See Euratom Supply Agency 2003 Annual Report at 30, attached as Exhibit 7. USEC does not publish figures for its market share in Europe and other foreign market segments. However, in a speech given by its President and Chief Executive Officer in 2003, USEC estimated that it served "about 5% of the European market," in contrast to 60% of the North American market and about 50% of the Asian market. "The Isaiah Project: How New Nuclear Power Plants Can Eliminate More Nuclear Warheads," Oct. 13, 2003, available at http://www.usec.com/v2001_02/content/News/speeches/TimbersRemarksNEI-10-13-03.pdf (last visited Dec. 21, 2004), attached as Exhibit 8. In its most recent annual report, USEC estimated that in 2003, it had 56% of the market in North America and 30% of the world market, as measured by the separative work unit component of enriched uranium supplied to utilities. See USEC 2003 Annual Report at 20, attached as Exhibit 9.

in the period 2005-2010 will exceed $8 billion.[43] However, because access to the EU market by USEC and other foreign suppliers of enriched uranium has been severely restricted as a result of the EU's protectionist actions, there simply is no basis even to estimate the increase in exports by USEC that would result from the removal of the quantitative restrictions imposed by the EU. However, given the size of the EU market, it is clear that even a modest increase in USEC's market share would result in a substantial increase in sales revenue. Further, because USEC's share of the overall world market is much higher (i.e., approximately 30% in 2003), one would expect that it would be able to secure more than a modest increase in EU sales if it were able to compete on a level playing field in the EU.

The threat posed by EU protectionism is much clearer with respect to the Czech Republic and Slovenia. Were the EU to extend its quantitative restrictions to these new members of the EU, it could significantly limit USEC's ability to continue to supply its well-established customers in those countries. The danger is particularly acute because the utilities in both countries have significant future requirements for which contracts have yet to be awarded. Because nuclear utilities generally procure enriched uranium under long-term contracts, once a supplier loses a contract with a utility, it may be years before the supplier will again have an opportunity to compete for the utility's business. In a world market with relatively flat demand and intense competition from EU suppliers in non-EU markets, such as North America and Asia, USEC submits that it is fundamentally unfair to have artificial restrictions placed on its ability to compete with EU suppliers for long-term contracts in the EU market.

C. Violations of the GATT 1994

In addition to adversely affecting USEC, the import restrictions imposed by the EU on enriched uranium violate several provisions of the GATT 1994. On this basis as well, the restrictions should be included in the *National Trade Estimate Report on Foreign Trade Barriers* for 2005.

The first, and most obvious, provision of the GATT 1994 violated by such restrictions is Article XI:1. Article XI:1 prohibits all measures instituted or maintained by a World Trade Organization Member restricting the importation of products other than measures that take the form of duties, taxes, or other charges.[44] The EU's quantitative restrictions on imports of enriched uranium clearly violate Article XI:1 of the GATT

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[43] According to World Nuclear Association forecasts, EU enrichment requirements for the period 2005-2010 have been estimated to be approximately 82 million separative work units (i.e., "SWU"), which at current long-term prices of $107 per SWU amounts to around $8.8 billion. See "The Global Nuclear Fuel Market: Supply and Demand 2003-2025," The World Nuclear Association Market Report, 2003, Table III.1., attached as Exhibit 10; TradeTech, Nuclear Market Review, Dec. 17, 2004, at 1, attached as Exhibit 23.

[44] GATT 1994, art. XI:1.

1994. Moreover, the actions of the ESA in approving and disapproving contracts for the sale of enriched uranium in order to implement and enforce the EU's quantitative restrictions also constitute blatant violations of Article XI:1.

The quantitative restrictions imposed by the EU also violate Article III:4 of the GATT 1994. Specifically, the restrictions themselves and the ESA's actions in implementing and enforcing the restrictions treat imported enriched uranium less favorably than like domestic enriched uranium in violation of the "national treatment" provisions of Article III:4.[45]

Furthermore, the EU's actions violate Article X:2 of the GATT 1994. Article X:2 provides that "[n]o measure of general application taken by any contracting party . . . imposing a new or more burdensome requirement, restriction or prohibition on imports . . . shall be enforced before such measure has been officially published."[46] By the EU's own admission, the Corfu Declaration has never been published, either officially or otherwise.[47] Thus, the EU has been enforcing the import restrictions imposed by the Corfu Declaration before that measure has been officially published, in clear violation of Article X:2.

Finally, the EU's actions constitute a violation of Article XXIII of the GATT 1994. The EU's adoption of its quota on imports of enriched uranium under the Corfu Declaration has caused and continues to cause a nullification or impairment of benefits accruing to the United States. Through the GATT 1994, the United States negotiated the benefit of having no quantitative restrictions imposed on imports of its products. The EU's adoption of its quota on imports of enriched uranium nullifies or impairs this benefit in violation of Article XXIII of the GATT 1994.

D. The Scope of the EU's Quantitative Restrictions

As noted above, because the Corfu Declaration has never been published, it is not possible to determine the precise scope of the quantitative restrictions imposed by the Declaration. While the ESA has only publicly acknowledged imposing restrictions on enriched uranium from the NIS, the market share data and other evidence discussed above indicate that the restrictions apply globally to all imported enriched uranium. But even assuming, *arguendo*, that the EU's import restrictions are directed at the NIS, the restrictions still adversely impact USEC. Specifically, such restrictions prevent USEC from being able to fulfill EU contracts with enriched uranium acquired from Russia under the "Megatons to Megawatts" program and limit USEC's freedom to offer potential EU customers the same "open origin" contracts that it offers to its U.S. customers. This type

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45 Id. art. III:4.

46 Id. art. X:2.

47 See Communication from the Commission on Nuclear Safety in the European Union at 5, attached as Exhibit 1.

of limitation places an unfair burden on USEC's ability to implement the critically important Megatons to Megawatts program.

USEC is the U.S. government's executive agent for the Megatons to Megawatts program, a 20-year, $12 billion, commercially funded nuclear nonproliferation initiative of the U.S. and Russian governments. This unique program implements the so-called "HEU Agreement" between the governments of the United States and Russia.[48]

Under the HEU Agreement and the Megatons to Megawatts program, weapons-grade highly enriched uranium ("HEU") from Russian nuclear warheads is diluted or blended-down through a multi-step process in Russia until it becomes low enriched uranium ("LEU") that is suitable for use as fuel in commercial nuclear power reactors.[49] The LEU is then shipped to USEC's facilities in the United States. At USEC's facilities, the LEU is tested to ensure that it meets appropriate commercial and customer specifications. If necessary, the enrichment level of the LEU may also be adjusted to meet customers' needs. The LEU is then shipped by USEC to fabricators, which fabricate it into fuel assemblies for USEC's utility customers.[50] There is no difference in the functions or uses of enriched uranium produced by enriching natural uranium and that produced by blending-down HEU. In fact, the enriched uranium produced using the two processes is interchangeable and identical for use by utilities.

After receiving LEU from Russia under this program, USEC pays its Russian counterpart, Techsnabexport ("TENEX"), for the enrichment component of the LEU and transfers to TENEX a quantity of natural uranium equal to the natural uranium component of the LEU.[51] In 1999, Russia entered into an agreement with three Western companies – Cameco (a Canadian mining concern), COGEMA (another AREVA subsidiary), and RWE Nukem ("Nukem") (an affiliate of Urenco) – pursuant to which the

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48 See "About the Program – U.S.-Russian Megatons to Megawatts Program," USEC Website, available at http://www.usec.com/v2001_02/HTML/ megatons_howitworks.asp (last visited Dec. 6, 2004) ("About the Program"), attached as Exhibit 11; "Fact Sheet – U.S.-Russian Megatons to Megawatts Program," USEC Website, available at http://www.usec.com/v2001_02/ HTML/megatons_fact.asp (last visited Dec. 6, 2004) ("Fact Sheet"), attached as Exhibit 12.

49 See "Missiles to Fuel: Step-by-Step," USEC Website, available at http://www.usec.com/v2001_02/ HTML/ megatons_stepbystep.asp (last visited Dec. 6, 2004), attached as Exhibit 13.

50 Id.

51 "Fact Sheet," attached as Exhibit 12.

natural uranium transferred by USEC to TENEX is purchased by the companies for resale in the market.[52]

Currently, enriched uranium produced by blending down HEU accounts for approximately half of USEC's sales. More than 100 American nuclear power reactors – virtually the entire U.S. fleet – have participated in the program by using Megatons to Megawatts fuel. Indeed, about one in 10 American homes, businesses, schools, and hospitals currently receives electricity generated from such fuel.[53]

Moreover, since 1994, the Megatons to Megawatts program has significantly enhanced U.S. national security by steadily reducing stockpiles of nuclear bomb-grade materials and providing funds to support the transition of the Russian weapons complex to peaceful activities while creating a clean, valuable resource – nuclear fuel. As of September 30, 2004, 225.7 metric tons of weapons-grade HEU, which is the equivalent of 9,026 nuclear warheads, had been converted into 6,648.3 metric tons of LEU.[54] This program's contribution to U.S. national security and, indeed, world security has never been more essential. The program eliminates dangerous nuclear materials, preventing them from getting into the hands of terrorists or rogue governments.

Despite the vital importance of the Megatons to Megawatts program, the EU has specifically targeted its import restrictions on the enriched uranium produced under that program so as to block it from being sold in the EU. In fact, at least as early as 1993 (i.e., even before the issuance of the Declaration of Corfu) and continuing thereafter, the EU expressed serious concerns regarding the impact that the HEU Agreement could have on its enrichers.[55] As the European Commission stated in a report issued in 1997,

> nuclear material from dismantled weapons has the potential of aggravating the problems of market instability for natural uranium and overcapacity for enrichment. The Commission and the Euratom Supply Agency are applying a policy of diversification of sources of supply, implemented in a

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52 See id.; "The US-Russia HEU Agreement," World Nuclear Association Website, available at htttp://www.world-nuclear.org/trade_issues/tbriefings/heu/ (last visited Dec. 6, 2004) ("The U.S.-Russia HEU Agreement"), attached as Exhibit 14; Euratom Supply Agency 2002 Annual Report at 18-19, attached as Exhibit 15.

53 "About the Program," attached as Exhibit 11.

54 "Progress Report – U.S.-Russian Megatons to Megawatts Program (As of September 30, 2004)," USEC Website, available at http://www.usec.com/ v2001_02/HTML/megatons_ status.asp (last visited Dec. 6, 2004), attached as Exhibit 16.

55 See Euratom Supply Agency 1996 Annual Report at 11, attached as Exhibit 17; Euratom Supply Agency 1995 Annual Report at 11, attached as Exhibit 18; Euratom Supply Agency 1993 Annual Report at 3, attached as Exhibit 19.

> flexible way by the exercise of the Agency's right to conclude contracts and aiming at avoiding overdependence on any single source of supply.[56]

While stated in terms of a concern about "overdependence," the European Commission's reference to "market instability" and "overcapacity for enrichment" clearly indicates that its real concern was with the adverse impact of the blended-down enriched uranium on EU suppliers. Indeed, for EU consumers, the availability of a new source of supply should have been viewed as a positive development.

Thus, while it is not possible to ascertain the precise scope of the EU's import restrictions under the Corfu Declaration, it is absolutely clear that the EU has made USEC's sales of blended-down enriched uranium subject to those restrictions. The ESA stated as early as 1995, the year of the first delivery under the HEU Agreement, that "supplies of nuclear material derived from Russian ex-military HEU and marketed in the EU via USEC will be subject to the same policy considerations as supplies coming directly from the CIS."[57] This was reiterated by the ESA in 1999 when it stated that "[i]t is recalled that the enrichment component of the HEU blended product is deemed to be Russian and hence subject to the limitations" imposed under the EU's policy of "diversification of supply."[58] In other words, sales of blended-down enriched uranium by USEC under the HEU Agreement have been and continue to be expressly subject to the EU's quantitative restrictions on imports of enriched uranium.

Notably, while the ESA applies the EU's quantitative restrictions to sales of blended-down enriched uranium made by USEC under the HEU Agreement, it does not currently apply such restrictions to the natural uranium component (i.e., the "HEU feed") that is transferred by USEC to TENEX under that Agreement. Indeed, as the ESA acknowledged in its 1999 Annual Report, "EU users may acquire freely HEU feed, through new contracts or existing open origin contracts, without affecting their normal NIS proportionate share."[59] What makes this even more striking is the fact that prior to 1999, the ESA did apply the EU's import restrictions to the HEU feed sold under the HEU Agreement.[60] This 180-degree change in policy occurred in 1999 – only after COGEMA, a subsidiary of AREVA, and Nukem, an affiliate of Urenco, entered into an

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56 Communication from the Commission on the Nuclear Industries at 26, attached as Exhibit 4.

57 Euratom Supply Agency 1995 Annual Report at 11, attached as Exhibit 18.

58 Euratom Supply Agency 1999 Annual Report at 9, attached as Exhibit 20.

59 Id.

60 Euratom Supply Agency 1997 Annual Report at 11, attached as Exhibit 21; Euratom Supply Agency 1996 Annual Report at 11, attached as Exhibit 17.

agreement to purchase the HEU feed from TENEX for resale in the market.[61] In other words, the EU's inconsistent application of its import restrictions has operated to protect and benefit EU producers at the expense of producers from outside the EU, particularly USEC.

But even beyond the EU's treatment of USEC's sales of blended-down enriched uranium under the HEU Agreement, perhaps the most blatant example of the discriminatory nature of the EU's policy with respect to enriched uranium are the restrictions that it has imposed on imports of enriched uranium produced using "tails material" that is re-enriched in Russia. The uranium enrichment process produces a byproduct known as "tails material" or "tails." Tails consist of uranium with a lower concentration of the U-235 isotope as a result of going through the enrichment process. Tails are also known as depleted uranium.[62] Tails may be re-enriched so as to have the qualities and capabilities of natural uranium. In other words, a uranium enricher may use re-enriched tails as feed material in the uranium enrichment process to produce LEU.

The ESA has stated that "[t]ails re-enriched in Russia are assimilated to Russian natural uranium, if sold as imported, but may be acquired by EU utilities without being subject to any limitations if they are further enriched in the Community."[63] Thus, if the re-enriched tails are used to produce enriched uranium in the EU, they can be imported without being subject to the EU's restrictions on natural uranium. In contrast, if they are used to produce enriched uranium outside of the EU, including in the United States, they are subject to such restrictions. Accordingly, in this respect as well, even if the EU's import restrictions are directed at the NIS, the EU is applying those restrictions so as to protect and benefit the European enrichers against their competitors outside the EU, including USEC.[64]

In sum, whether they apply globally or are directed at the NIS, the EU's quantitative restrictions on imports of natural and enriched uranium are designed to discriminate against foreign suppliers of such materials and thereby protect and benefit

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61 See "The US-Russia HEU Agreement," attached as Exhibit 14; Euratom Supply Agency 2002 Annual Report at 18-19, attached as Exhibit 15.

62 "Glossary of Industry Terminology," USEC Website, available at http://www.usec.com/v2001_02/CONTENT/Aboutusec/ar99-trm.pdf (last visited Dec. 6, 2004), attached as Exhibit 22.

63 Euratom Supply Agency 1999 Annual Report at 9 (emphasis added), attached as Exhibit 20.

64 While USEC currently does not produce enriched uranium with re-enriched tails, it could do so. However, the EU's import restrictions prevent USEC from offering EU customers enriched uranium produced using tails material that is re-enriched in Russia.

EU suppliers. Indeed, the EU's objective in applying its import restrictions is aptly stated in the ESA's most recent annual report. In that annual report, the ESA stated that it

> continues to monitor the market through its contractual role and its close relations with the industry in order to ensure that EU utilities have diversified sources of supply and do not become overdependent on any single source. Maintaining the viability of the EU industry at all stages of the fuel cycle remains an important goal for long-term security of supply.[65]

Thus, the EU's real goal is to maintain the viability of its nuclear fuel industry at the expense of USEC and other non-EU producers.

In this regard, even if the EU's quantitative restrictions are directed at the NIS, they are still inconsistent with the EU's obligations under the GATT 1994. Specifically, the EU's policy of counting Russian re-enriched tails against its quota unless the re-enriched tails are used to produce enriched uranium in the EU violates the prohibition against quantitative restrictions in Article XI:1 of the GATT 1994. It also constitutes a violation of the "national treatment" provisions of Article III:4 of the GATT 1994.

Furthermore, the EU's policies clearly violate Article X:3(a) of the GATT 1994. Article X:3(a) provides that "[e]ach contracting party shall administer in a uniform, impartial and reasonable manner all its laws, regulations, decisions and rulings" pertaining to, among other things, restrictions or prohibitions on imports.[66] The EU certainly has failed to administer its import restrictions in a uniform, impartial, and reasonable manner with respect to tails that are re-enriched in Russia. Indeed, the EU has plainly violated this requirement by applying its import restrictions to re-enriched tails if they are used to produce enriched uranium outside of the EU, but not if they are used to produce enriched uranium in the EU. Likewise, the EU has violated this requirement by applying its quantitative restrictions to the blended-down enriched uranium sold by USEC under the HEU Agreement, but not to the natural uranium transferred to Russia under that Agreement. There is no reason to make the distinctions made by the EU other than to protect the European enrichers against their competitors outside of the EU, including USEC. Clearly, this inconsistency in treatment inures to the substantial benefit of the European enrichers and violates Article X:3(a) of the GATT 1994.

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[65] Euratom Supply Agency 2003 Annual Report at 23 (emphasis added), attached as Exhibit 7.

[66] GATT 1994, art. X:3(a).

III. CONCLUSION

For the reasons set forth above, USEC respectfully requests that the U.S. Trade Representative include the above-described trade barriers imposed by the EU on enriched uranium in the *National Trade Estimate Report on Foreign Trade Barriers* for 2005.

Respectfully submitted,

Robert E. Lighthizer
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On Behalf of USEC Inc. and
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