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S. HRG. 110–422

RUSSIAN SUSPENSION AGREEMENT

HEARING

BEFORE THE

COMMITTEE ON ENERGY AND NATURAL RESOURCES UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

SECOND SESSION

TO

RECEIVE TESTIMONY TO UNDERSTAND THE IMPACTS OF THE CAPABILITY OF THE UNITED STATES TO MAINTAIN A DOMESTIC ENRICHMENT CAPABILITY AS A RESULT OF THE RECENTLY INITIATED AMENDMENT BETWEEN THE UNITED STATES AND THE RUSSIAN FEDERATION ON THE AGREEMENT SUSPENDING THE ANTIDUMPING INVESTIGATION ON URANIUM FROM THE RUSSIAN FEDERATION

MARCH 5, 2008

Printed for the use of the
Committee on Energy and Natural Resources

U.S. GOVERNMENT PRINTING OFFICE

43–015 PDF WASHINGTON : 2008

For sale by the Superintendent of Documents, U.S. Government Printing Office
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RUSSIAN SUSPENSION AGREEMENT

WEDNESDAY, MARCH 5, 2008

U.S. SENATE,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, DC.

The committee met, pursuant to notice, at 3:01 p.m. in room SD–366, Dirksen Senate Office Building, Hon. Jeff Bingaman, chairman, presiding.

OPENING STATEMENT OF HON. JEFF BINGAMAN, U.S. SENATOR FROM NEW MEXICO

The CHAIRMAN. The committee will come to order.

I want to thank you all for being here. I'm informed Senator Domenici is on his way. Senator Barrasso and I will get started here.

Let me thank the witnesses for their testimony today on the February 2008 amendment to the Russian Suspension Agreement. This topic is complicated, it amends an Antidumping Suspension Agreement that has given certainty to the United States domestic enrichment market since 1992.

That agreement has also provided an incentivized framework for the highly successful program to blend down 500 metric tons of Russian weapons-grade uranium, and sell it as commercial reactor fuel.

It's my understanding that this recent amendment is a result of court determinations that the importation of enrichment is a service, rather than a good, and hence outside the purview of United States trade law, and that the United States Government and other parties are now seeking a review of that court decision in the Supreme Court.

Given the complications surrounding the issue, my purpose, at least, today, is to hear the witnesses and try to understand the various point of view that are going to be expressed.

We obviously need to be careful in rushing to judgment before we understand the full implications of this important topic. I hope other committees in the Senate with jurisdiction in areas such as United States trade law will also carefully investigate the ramifications of the amended agreement.

Again, let me thank all of you for coming, and I look forward to the hearing. Let me call on Senator Domenici for any opening statement he would like to make.

STATEMENT OF HON. PETE V. DOMENICI, U.S. SENATOR FROM NEW MEXICO

Senator DOMENICI. Thank you very much, Mr. Chairman. I apologize for being late, but I'm very glad you started, because we do have a lot of work to do this afternoon. You, like me, have been inundated with hearings today.

I'd like to make a few opening remarks, because I've been part of a history that involves itself with the matter that is before us, and I would like to be part of a good solution, as you have indicated, in the closing of your remarks.

The subject of this hearing could have a profound effect on two policy goals that I have championed for many years: the nonproliferation of nuclear weapons material, and a renaissance of commercial nuclear power.

It has been nearly 15 years since the signing of the historic HEU agreement with Russia in 1993. That agreement provides for conversion of the highly enriched uranium from thousands of nuclear weapons to low-enriched uranium for use in our civilian power reactors. It takes those weapons out of Commission, and uses the nuclear material for safe, commercial purposes.

I worked very hard to forge that agreement, wherein we purchased the HEU from the Russians about the same time we purchased a large quantity of a very, very hot material, which we are still in the process of disposing of. Just as important to me over the years has been the belief that we needed to revive the country's nuclear power industry, a crucial part of our electricity supply, which has been dormant for about 27 years.

It has been 10 years since I gave a speech at Harvard University, which I'm very proud of, which I named "A New Nuclear Paradigm." My purpose then was to highlight the tremendous benefits of nuclear power, and outline the policy initiatives that would bring about a nuclear power renaissance.

It is surely a surprise to no one here that I doggedly pursued those initiatives and others, as evidenced by many of the provisions in the landmark Energy Policy Act of 2005, which Senator Bingaman worked with me, shoulder-to-shoulder, to give to the Senate, and ultimately to the people.

Obviously, a plentiful and secure source of nuclear reactor fuel is a must for a successful re-birth of this industry. I believe it's essential that we maintain a domestic capability in uranium mining and enrichment, and I am excited about progress being made in a national enrichment facility in my home State—which is also Senator Bingaman's home State—as well as the efforts of the United States Enrichment Corporation, AREVA, and General Electric, who are all at least in some stage of planning for additional uranium enrichment capacity in the United States.

That said, I remain deeply concerned about the effects on our uranium fuel markets of the amendment to the Russian Suspension Agreement we are here to review today, and the pending trade litigation related to it.

Recent court decisions regarding aspects of our trade law could potentially undermine the HEU agreement, and our future domestic uranium enrichment capability. I, for one, certainly don't intend to let that happen. I don't know the best way to prevent it from

happening, and that's why we're having this hearing, so we can find out.

The manner in which we address these issues is another matter.

I am pleased to see that we have a wide variety of witnesses interested in the issues presented today, and I compliment the chairman and the staff for arranging it on very short notice.

I look forward to their testimony, and their suggestions as to how we can address the issues that are before us, if necessary.

With that, I thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

We have a very distinguished panel of witnesses as Senator Domenici said.

Our first panel is made up of two witnesses from the government, one from the Department of Commerce, and one from the Department of Energy.

We have David M. Spooner, who is the Assistant Secretary for Import Administration in the Department of Commerce, and we have William Tobey who is the Deputy Administrator for Defense Nuclear Nonproliferation in NNSA, in the Department of Energy.

Thank you both for being here. Why don't we proceed in that order, if that's acceptable to you. Mr. Spooner, could you take 5 or 6 minutes and give us a summary of the main points you think we need to understand about this, and then you, the same thing, Mr. Tobey.

STATEMENT OF DAVID M. SPOONER, ASSISTANT SECRETARY, IMPORT ADMINISTRATION, DEPARTMENT OF COMMERCE

Mr. SPOONER. Thank you, Mr. Chairman and Senator Domenici for the opportunity to address the committee on the Russian Uranium Suspension Agreement and related issues.

My testimony will cover four topics. First, I'll provide an overview of the recently amended uranium Suspension Agreement. Second, I'll describe the agreement's relevance to the United States-Russia agreement on highly enriched uranium, or HEU. Third, I'll outline the importance of the agreement for our domestic uranium industry. Last, I'll touch on a recent judicial finding that threatens the viability of the domestic uranium industry, as well as the integrity of this agreement.

On February 1, after lengthy negotiations between my Department and Russia, the two governments signed an agreement which will permit certain exports of commercial Russian uranium products to the United States. The agreement limits these exports to 20 percent of the United States market for enriched uranium, during the period 2014 to 2020. It also permits smaller quantities of Russian uranium products to enter the United States market in the years 2011 to 2013.

This latest agreement with Russia builds upon, or amends, a 16-year-old agreement between Commerce and Russia, that suspended an antidumping investigation on uranium. This old agreement, signed in 1992, covered all forms of uranium from natural ore, to bomb-grade highly enriched uranium, and permitted Russian uranium to enter the United States pursuant to various quota provisions.

One longstanding quota provision of the original 1992 agreement permits unlimited imports of Russian low-enriched uranium, down-blended from nuclear bombs, pursuant to a separate agreement, known as the Megatons-to-Megawatts agreement or program. This down-blended bomb material is then used in United States nuclear reactors.

Under the Megatons-to-Megawatts agreement, often called, also, the HEU agreement, Russia agreed to export LEU derived from the highly enriched uranium, or HEU, in 20,000 decommissioned nuclear weapons to the United States for use as fuel in nuclear reactors.

This key nonproliferation agreement expires at the end of 2013. Therefore, the Suspension Agreement's new quotas will begin largely after the expiration of an important United States-Russia agreement to convert Russia's nuclear weapons into nuclear fuel for the United States.

The United States Enrichment Corporation, or USEC, as the United States Executive Agent under HEU agreement, purchases low-enriched uranium down-blended from bomb material, and re-sells it to electric utilities for use as nuclear fuel.

This material currently supplies over 40 percent of the enrichment needed each year to fuel United States nuclear reactors that generate around 10 percent of United States electricity overall.

In order to preserve the Megatons-to-Megawatts agreement, it is important to ensure that Russia cannot sell unlimited quantities of low-enriched uranium in the marketplace at dumped prices. Thus, Commerce's trade remedy proceedings support the Megatons-to-Megawatts agreement by limiting the nuclear fuel that Russia can sell in the United States at dumped prices, a more lucrative proposition for Russia than down-blending bomb material.

But let's make no mistake about it. Russia's government-owned enrichment facilities do not operate on a commercial basis.

As you know, the United States is experiencing a resurgence in interest in nuclear power. This has translated into plans for expansion of nuclear power capacity, including possible new reactors in the United States in future years.

The United States has one operating uranium enricher, USEC. USEC runs a gaseous diffusion enrichment facility in Kentucky. Because this technology is outdated, and energy intensive, USEC is in the process of developing new state-of-the-art enrichment capability at its plant in Ohio. In addition, as you all are well aware, Louisiana Energy Services, or LES, owned by the European Enrichment Consortium, Urenco, is developing an enrichment facility in New Mexico, which uses Urenco's gas centrifuge technology.

Two additional companies, GE, and AREVA, have also announced plans.

In litigation challenging a separate antidumping case covering enriched uranium from France, the United States Court of International Trade, and the Court of Appeals, recently ruled that low-enriched uranium imported pursuant to Separative Work Unit, or SWU, transactions is not subject to the antidumping law. This case is often called the *Eurodif* decision.

In a SWU transaction, or contract, instead of making payment for the entire low-enriched uranium product, a United States util-

ity customer obtains its low-enriched uranium in exchange for feedstock and payment for the enrichment.

The *Eurodif* decision provides a roadmap for circumvention of the trade remedy laws. Imagine, for a moment, if you export lemons to a juice company in Canada. Is the lemonade you get back a new product? Or the squeezing service provided by the company making the lemonade?

The production of all merchandise involves processing, that could be contracted for separately as a service in the same manner as SWU contracts.

Furthermore, if *Eurodif* stands, the Russians will be free to sell unlimited enriched uranium in the United States, notwithstanding the recent quota agreement. Dumped Russian low-enriched uranium will threaten USEC's ability to resell some, or all, of the material down-blended from bombs it has committed to purchase, which will—in turn—threaten USEC's ability to continue to purchase this material from Russia, and act as the United States Executive Agent.

Thus, by compromising the Suspension Agreement, *Eurodif* also compromises the Megatons-to-Megawatts agreement, which is a vital component of the United States' nonproliferation strategy.

In addition, *Eurodif* threatens the economic viability of the United States flag producer of enriched uranium, USEC. Because USEC is the only United States producer of enriched uranium not subject to peaceful use limitations, only USEC can supply the enriched uranium necessary for two TVA—Tennessee Valley Authority—reactors that produce tritium for United States nuclear weapons. By threatening the viability of USEC, *Eurodif* threatens the maintenance of the United States nuclear arsenal.

Furthermore, the United States cannot be dependent on imports of uranium from Russia to produce electricity. It is not clear that Europe, European, or other newly developed United States sources of enrichment will be available to replace what USEC plans to produce after 2013.

Therefore, Commerce—in close coordination with other agencies—supports a simple legislative fix to address the adverse impact of the *Eurodif* ruling. In late 2007, Senator McConnell, Senator Bunning, and Representative Whitfield introduced legislation to address *Eurodif*. Last December, the Departments of Commerce, State, Energy and Defense, sent the bill's sponsor a letter of support, highlighting the national security and energy implications of the legislation.

As you may also be aware, Mr. Chairman, the government is seeking Supreme Court review of the *Eurodif* decision. In addition to the Solicitor General, the petition asking the court to hear the appeal was signed by various other interested Executive agencies. The court should decide whether to hear the appeal this Spring.

Successful Supreme Court review, of course, is not assured, and the case will take some time, which is why a legislative fix is important.

Thank you for the opportunity to appear before you today, sorry I ran a little over, and I'm happy to answer any questions.

[The prepared statement of Mr. Spooner follows:]

PREPARED STATEMENT OF DAVID M. SPOONER, ASSISTANT SECRETARY, IMPORT ADMINISTRATION, DEPARTMENT OF COMMERCE

Chairman Bingaman, Ranking Member Domenici, Members of the Committee, I am pleased to appear before you today to address the recently-amended Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation ("Suspension Agreement") and important related issues.

First, I will give an overview of the history of the recently-amended "Suspension Agreement." Next, I will describe the "Suspension Agreement's" relevance and relation with the United States-Russia agreement on highly-enriched uranium, or "HEU." Then, I will outline the importance of the Suspension Agreement for the domestic uranium industry. I will finish by touching on a recent judicial ruling that has tremendous effect on the integrity of this Suspension Agreement and the potential to threaten the viability of the domestic uranium industry as a whole.

AD Suspension Agreement on Uranium from Russia

The antidumping duty ("AD") law provides a remedy against imported "merchandise [that] is being . . . sold in the United States" for less than its fair value (i.e., "dumped"), and is a cause of material injury to a U.S. domestic industry. (See Section 731 of the Tariff Act of 1930, 19 U.S.C. §1673.) Merchandise is sold at less than "fair value" when the price of the imported merchandise sold in the United States is less than the price of comparable merchandise sold in the producer's home market or less than the cost of producing that merchandise. The difference is called the dumping margin. The AD law is designed to remedy the injury to U.S. industry from dumped imports by imposing an additional duty on dumped imports, equal to the amount of the dumping margin.

In 1991, the U.S. uranium miners and the union representing U.S. uranium enrichment and conversion workers filed an AD petition at the Department of Commerce against uranium imported from the former Soviet Union. Commerce initiated an investigation and preliminarily determined that there were dumping margins of 115 percent and the International Trade Commission determined that there was a reasonable indication that the U.S. uranium industry was materially injured or threatened with material injury. No AD order was ever issued, because, in October 1992, Commerce and the Russian Federation signed the "Suspension Agreement". The Suspension Agreement covered all forms of uranium, from natural uranium ore to bomb-grade, highly-enriched uranium ("HEU"), and permitted Russian uranium to enter the United States pursuant to five different quota provisions, one of which was later replaced by amendment in 1994. In recent years, two of the Suspension Agreement's quota provisions have remained operational, permitting the following: 1) unlimited imports of Russian low-enriched uranium ("LEU") derived from weapons-grade HEU, under a separate agreement known as the "HEU Agreement," for use as nuclear fuel in U.S. nuclear power reactors, and 2) imports of Russian uranium products for reprocessing and re-exportation from the United States within 12 or 36 months.

On February 1, 2008, after lengthy negotiations between Commerce and Russia's then Federal Atomic Energy Agency (Rosatom), which is now a State Corporation, the two governments signed an amendment to the Suspension Agreement which will permit certain exports of Russian uranium products to the United States under a new quota system. The amended Suspension Agreement will prevent Russian exports of LEU through normal commercial channels through 2010. From 2011 through 2013 (when the HEU Agreement terminates), very small quantities of Russian LEU will be permitted to enter the United States. From 2014 through 2020, Russia will be limited to approximately 20 percent of the U.S. market for enriched uranium. The amendment is intended to promote a stable uranium market in the United States, which will encourage investment in new enrichment facilities. However, because of the *Eurodif* decision discussed below, which held that material sold under SWU contracts is not covered under the AD law, the new amendment does not now limit sales by Russia to U.S. customers of material sold under such contracts.

The HEU Agreement with Russia

In 1993, the United States and Russia signed 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 ("HEU Agreement"). This so-called "megatons to megawatts" agreement, expiring at the end of 2013, permitted the Russians to export to the United States substantial quantities of LEU derived from the HEU in decommissioned nuclear weapons. To date, under this agreement, about 325 metric tons of HEU (the material equivalent to approximately 13,000 nuclear weapons) have been converted

into LEU and exported to the United States. A further 175 metric tons from about 7,000 nuclear weapons will be processed and exported to the United States by 2013. This will result in the elimination of the equivalent of 20,000 Russian nuclear weapons over the agreement's life. The United States Enrichment Corporation ("USEC"), the U.S. Executive Agent under the HEU Agreement to the implementing commercial contract supporting the Government-to-Government HEU Agreement, is obligated to purchase the enrichment component of the 30 metric tons of this LEU from Russia each year through 2013. USEC re-sells this LEU to U.S. utilities and returns natural uranium equivalent to the LEU back to Rosatom. The LEU down-blended from HEU currently supplies over 40 percent of the enrichment needed to fuel U.S. nuclear reactors each year that generate about 10 percent of U.S. electricity overall.

Because the Suspension Agreement permits unlimited imports of the LEU downblended from HEU under the HEU Agreement, the two agreements are inter-related and have facilitated stability in the U.S. uranium market for more than a decade. Given the difficulties of downblending HEU, Russian profits on U.S. sales of such LEU under the HEU Agreement are lower than the profits Russia could earn by making commercial sales of LEU produced from natural uranium. Thus, Russia has an incentive to prefer commercial sales in the U.S. market to sales through USEC under the HEU Agreement. Competition from Russian commercial sales would reduce USEC's sales and profits under the HEU Agreement, which, in turn, would threaten USEC's ability to continue to purchase Russian LEU under that agreement. In order to preserve the HEU Agreement, it is important to ensure that Russia cannot make unlimited commercial sales of LEU in the U.S. marketplace at dumped prices. Therefore, the amended Suspension Agreement supports the HEU Agreement by severely limiting the quantities of LEU that Russia can sell in the United States through normal commercial channels until 2014.

State of the U.S. Industry

As you know, the United States is currently experiencing a resurgence in interest in nuclear power, popularly referred to as the "nuclear renaissance." This has translated into plans for expansion of nuclear power capacity, including possible construction of new reactors in the United States in the near future. In addition, with demand increasing for all uranium products, prices have risen to record high levels in the past year.

The United States currently has one operating uranium enricher, USEC. USEC operates a gaseous diffusion enrichment facility in Paducah, Kentucky. Because this technology is outdated and energy-intensive, USEC is in the process of developing new state-of-the-art enrichment capability, its American Centrifuge Plant in Piketon, Ohio. In addition, Louisiana Energy Services, L.P. ("LES") owned by the European enrichment consortium, URENCO, is developing a U.S. enrichment facility in New Mexico which will use Urenco's gas centrifuge technology. Two additional companies, General Electric and AREVA S.A., have also announced plans to develop future enrichment capability in the United States.

SWU Contracts

When U.S. utilities purchase LEU abroad, they follow one of two procedures. Sometimes, they simply purchase the finished LEU from a foreign enricher. More commonly, however, they follow a somewhat more complex procedure. The U.S. utility purchases natural uranium "feedstock" and arranges for it to be delivered to a foreign enricher. The foreign enricher then delivers to the U.S. utility uranium enriched from its own feedstock inventory. The U.S. utility compensates the foreign enricher by giving the foreign enricher title to the feedstock that the utility arranged to be delivered to the foreign utility, and by paying for the value of the enrichment. This arrangement is referred to as a separative work unit ("SWU") contract, because the value of the enrichment is measured in SWUs (defined as the standard measure of enrichment processing). The value of the feedstock used to produce the exported LEU is offset by the value of the feedstock supplied to the foreign enricher by the U.S. utility.

Commerce's AD and CVD Investigations of LEU from France

In 2001, Commerce issued an AD order on LEU from France and countervailing duty ("CVD") orders on LEU from France, Germany, the United Kingdom and the Netherlands. In its AD determination, Commerce found that LEU imported pursuant to SWU transactions was subject to the AD law because, through such transactions, U.S. utilities obtained ownership of imported LEU for less than fair value. The impact of this imported LEU on the U.S. domestic industry was no different from that of LEU imported through conventional transactions. Commerce rejected the argument advanced by *Eurodif* (the French respondent in the investigation) that uranium enrichment was a service, so that the LEU resulting from that service was

not subject to the law. Commerce did not consider uranium enrichment to be a true service (like banking, insurance, or medicine), but a manufacturing process that transformed one tangible good (uranium feedstock) into another tangible good (LEU). Commerce determined that the merchandise resulting from such a manufacturing process should be subject to the AD law, in the same manner as identical merchandise purchased through more conventional arrangements. (See Commerce's Final Determination, 66 Fed. Reg. at 65879.)

In its CVD determination, Commerce found that the French Government's purchase of LEU from *Eurodif* for more-than-adequate remuneration constituted a subsidy to *Eurodif*, notwithstanding that the applicable provision in the CVD law (Section 771(5)(E)(iv) of the Tariff Act of 1930, 19 U.S.C. 1677(5)(E)(iv)) treats as a subsidy only the purchase of goods by a foreign government for more-than-adequate remuneration and the French Government purchased the LEU through a SWU contract.

The Eurodif Decisions

In the AD case, the U.S. Court of International Trade ("CIT") ruled, and the U.S. Court of Appeals for the Federal Circuit ("Federal Circuit") agreed, that LEU produced abroad and imported into the United States was exempt from the AD law if it was imported pursuant to a SWU contract. The Federal Circuit interpreted the statutory requirement that "merchandise is being . . . sold in the United States" to require a transfer of ownership of the LEU, as LEU, from the foreign producer to the U.S. utilities. Because the SWU contracts created the legal fiction that the U.S. utilities owned the uranium while *Eurodif* performed the "service" of transforming it into LEU, the Federal Circuit found that there was, in fact, no transfer of ownership of the LEU, as such, from *Eurodif* to the U.S. utilities, but only a transfer of the "service" of enrichment. Hence, no sale of merchandise occurred and the AD law did not apply. *Eurodif* v. United States, 411 F.3d 1355, 1364 (Fed. Cir. 2005) and *Eurodif* S.A., et al. v. United States, 423 F.3d 1275 (Fed. Cir. 2005) (collectively "*Eurodif*").

The Federal Circuit's decision is in error. First, *Eurodif* did transfer title to finished LEU to the U.S. utilities. What the U.S. utilities owned was the feedstock that they had delivered to *Eurodif*. *Eurodif* did not enrich this feedstock, but feedstock from its own inventory. When *Eurodif* produced that LEU by enriching the feedstock, *Eurodif* owned that LEU. This would be true regardless of which feedstock was used because enrichment is a substantial transformation. Thus, if the utilities had not paid *Eurodif* for the enrichment, they would not have been able to demand that *Eurodif* return of "their" LEU—they would have been entitled only to the return of their feedstock. Second, the U.S. utilities did not start out with title to LEU. They acquired ownership of LEU from *Eurodif*. The Federal Circuit acknowledged that the U.S. utilities received "title in the LEU for which [they] contracted," as a result of the SWU contracts, but never identified the source. Thus, in substance, the SWU transactions were sales of LEU from *Eurodif* to U.S. utilities, for feedstock and cash. The fiction agreed between the U.S. utilities and *Eurodif*, that *Eurodif* simply "serviced" uranium owned at all times by the U.S. utilities, is just that—a fiction.

In any event, even assuming arguendo that the enricher never acquires title to the LEU, the Federal Circuit's decision is still wrong. The Federal Circuit reasoned that, even though the operation of the SWU contracts makes clear that title to the LEU passes to the utility upon delivery of the LEU (and not before), no "sale" of LEU occurs because the parties' contracts evidence no intent to vest ownership in the enricher, and title therefore does not pass from the enricher to the utility. But there is no basis in the AD law for the Federal Circuit's mandate that title must vest in the manufacturer in order for there to be a "sale" of "foreign merchandise" within the meaning of the AD law. The question is not whether a particular person has "sold" foreign merchandise; rather, the AD law asks only whether foreign merchandise "is being sold," without regard to the identity of the specific parties or entities from which title is passing. 19 U.S.C. 1673(1). It is undisputed that, under the contracts at issue, a utility provides raw materials and monetary consideration to the enricher and, in exchange, receives delivery of and title to finished LEU that is not traceable to the particular lots of uranium feedstock supplied by the utility. The utility has thus received title to LEU that it did not previously own in exchange for the payment of consideration. Regardless of the identity of the seller, there is no question that what has occurred is a sale.

The Federal Circuit disregarded the result of the transactions and instead focused on the intent of the parties, which was to regard the uranium as owned by the U.S. utilities at all times. This reliance on the intent of the parties was misplaced. The intent of the parties to a contract is logically paramount in settling a dispute be-

tween those parties as to their respective rights and obligations under that contract. Relying on the intent of the parties to a contract to determine whether a Federal regulatory scheme applies to that contract however, inevitably will frustrate that regulatory scheme. The parties, quite naturally, will draft the contract to ensure that the regulatory scheme does not apply. For this reason, it is the intent of Congress, as reasonably construed by Commerce (the agency entrusted by Congress to administer the statute), that must determine whether the AD law applies to merchandise imported pursuant to SWU contracts.

The Federal Circuit reached this erroneous result because it approached the issue, not from the perspective of the AD law, but from the perspective of one of its recent decisions—Florida Power & Light v. United States, 307 F.3d 1364 (Fed. Cir. 2002). In that case, the Department of Energy prevailed in asserting that, under a contract between the Department of Energy and Florida Power and Light, as governed by the Contract Disputes Act, SWU contracts constituted transactions for the provision of services. In *Eurodif*, without accounting for the fact that the application of the AD law and the interpretation of a contract under the Contract Disputes Act presented completely different issues, the Federal Circuit adopted its conclusion from Florida Power and Light, explaining only that Congress had not given specific guidance that the same result should not be reached in both contexts. Of course, the likelihood that Congress anticipated the Florida Power & Light dispute in drafting the AD law approaches zero. Congress did not decline to distinguish the two issues; it simply never considered the question. Consequently, the Federal Circuit had no basis for assuming that the holding of Florida Power and Light permitted it to overturn Commerce's reasonable construction of the AD law.

In the CVD case, the Federal Circuit applied the "service" rationale of its dumping decision to conclude that there was no countervailable subsidy, because the French Government's purchase of LEU through a SWU contract for less than adequate remuneration constituted the purchase of a service not covered by the applicable provision of the CVD law and, thus, not even potentially a countervailable subsidy.

The U.S. Government filed a petition for a writ of certiorari with the Supreme Court in February, asking it to review the Federal Circuit's decision in the AD case. The Supreme Court should decide whether to hear the appeal this spring. If the appeal is accepted and the U.S. Government prevails, the decision likely will also have the effect of reversing the CVD decision.

Implications of Eurodif for the AD law

The immediate implication of *Eurodif* is that, in order to know whether LEU imported into the United States constitutes a good or a service, Customs will have to refer the contract pursuant to which the LEU is imported to Commerce for analysis. If the importer purchased the LEU pursuant to a conventional sales transaction, Commerce will determine that the LEU is a good subject to the AD law. If, however, Commerce determines that the sale was broken into separate sales of natural uranium and processing by means of a bona-fide SWU contract, Commerce will determine that the imported LEU is not subject to the AD law. In that case, the natural uranium component of the LEU also would escape scrutiny under the AD law.

Eurodif holds that the parties to an import transaction can bypass the AD law by having the U.S. purchaser supply raw materials to the foreign producer and pay that producer for what is described in their contract as the "service" of transforming raw materials into the merchandise to be imported. Consequently, *Eurodif* effectively provides a road map for circumvention of the AD law. The production of virtually all merchandise involves processing that could be contracted for separately, as a service, in the same manner as SWU contracts. For example, steel could be obtained by supplying iron ore for "smelting and rolling services"; lumber could be obtained by supplying trees for "harvesting and milling services"; and semiconductors could be obtained by supplying sand for "processing services." Thus, *Eurodif* potentially threatens the viability of the entire AD law.

Implications of Eurodif for the CVD law

The implications of *Eurodif* for the CVD law are not as serious as they are for the AD law, because the CVD law applies to imported goods even if they are not sold, as such, in the U.S. market. All that is necessary for the CVD law to apply is for a subsidy to have been provided with respect to the production or exportation of a good imported into the United States. Thus, the CVD law would apply to subsidized imports of LEU, even if they were imported pursuant to SWU contracts. Nevertheless, foreign governments would be free to purchase LEU from their uranium enrichers for more than adequate remuneration without incurring any exposure under the CVD law, provided they structured the purchase as a SWU contract.

If this rule were extended beyond uranium, it could constitute a significant loophole in the CVD law.

National Security Implications of Eurodif

If *Eurodif* stands, the Russians will be free to make unlimited commercial sales of LEU in the U.S. market pursuant to SWU contracts, notwithstanding the continued existence of the Suspension Agreement. Given that Russia has enough enrichment capacity to supply its own domestic market and the entire U.S. market with LEU for the foreseeable future, these sales are potentially enormous. Thus, competition from Russian commercial LEU which is produced at a lower cost is likely to limit substantially USEC's ability to resell the down-blended LEU it is committed to purchase under the HEU Agreement. This will threaten USEC's ability to continue to make those purchases. In sum, by compromising the AD Agreement, *Eurodif* also compromises the HEU Agreement, which is a vital component of our non-proliferation strategy.

Eurodif also threatens the economic viability of the only U.S. flag producer of enriched uranium—USEC. Because USEC is the only U.S. producer of enriched uranium not subject to "peaceful use" limitations, only USEC can supply the enriched uranium necessary for use in the Tennessee Valley Authority reactors that produce tritium for U.S. nuclear weapons. As noted above, the Paducah facility operated by USEC enriches uranium through gaseous diffusion, which consumes vast amounts of electricity and, at current prices, is commercially obsolete. USEC is planning to replace the Paducah facility with a new centrifuge facility in Piketon, Ohio, for which it will need to raise billions of dollars in new capital on commercial markets. It will be very difficult for USEC to raise this capital if it does not appear that the U.S. market for enriched uranium will be reasonably stable and profitable for the next 10 to 15 years. Thus, by threatening the viability of USEC, *Eurodif* also threatens the maintenance of the U.S. nuclear arsenal.

Energy Security Implications of Eurodif

By threatening to drive USEC out of business, *Eurodif* also could leave the United States excessively dependent on imports of LEU from Russia to produce electricity. Should Russia be permitted to sell significant quantities of LEU above the agreed limit in the Suspension Agreement Amendment, U.S. enrichment capacity currently under construction or planned might not be completed. As a result, existing U.S. enrichment capacity combined with imports from Europe would be insufficient to replace what USEC plans to produce after 2013 with its new centrifuge facility in Piketon, Ohio. This would increase U.S. dependence on Russian LEU.

Efforts to Close the Eurodif Loophole

For all of the reasons discussed above, the Administration believes it is crucial that the loophole opened by the *Eurodif* decisions be closed in order to ensure that the Suspension Agreement and the HEU Agreement continue to work in concert. The Administration supports a simple legislative fix to address the adverse impact of the *Eurodif* ruling. In late December 2007, Senate Minority Leader McConnell, Senator Bunning and Representative Whitfield introduced legislation to address *Eurodif*. On December 21, 2007, the interagency group forwarded to the bill's sponsors a letter of support signed by the Departments of Commerce, State, Energy and Defense. We look forward to working with this Committee, and the Congress as a whole, to resolve the issues *Eurodif* has created.

As noted previously, Commerce is also seeking Supreme Court review of the *Eurodif* decisions. The U.S. Government has filed a petition for a writ of certiorari with the Supreme Court, asking it to review the Federal Circuit's decision. The Court should decide whether to hear the appeal this spring.

Thank you for the opportunity to appear before you today. I am pleased to answer any questions you may have.

The CHAIRMAN. No, thank you very much for that very good testimony.

Mr. Tobey, why don't you go right ahead.

STATEMENT OF WILLIAM H. TOBEY, DEPUTY ADMINISTRATOR FOR DEFENSE NUCLEAR NONPROLIFERATION, NATIONAL NUCLEAR SECURITY ADMINISTRATION, DEPARTMENT OF ENERGY

Mr. TOBEY. Thank you, Chairman Bingaman, Ranking Member Domenici, and Senator Craig. I appreciate the opportunity to be

here to discuss the nonproliferation aspects of the Suspension Agreement.

My remarks concern the relationship between the Suspension Agreement, and the Department of Energy's broader strategy to reduce and eliminate highly enriched uranium. Denying countries of concern, and terrorists' access to weapons-usable materials, is a cornerstone of United States nonproliferation strategy.

To this end, perhaps the most successful nonproliferation program ever conceived is the United States-Russia HEU Purchase Agreement, which—when fully implemented, in 2013, will have eliminated some 500 metric tons of HEU, material that according to Russian officials, accounted for roughly 40 percent of the total of the Soviet nuclear stockpile.

The HEU Agreement is a government-to-government arrangement, implemented by commercial contract and monitored by a bilateral transparency program that my office oversees. We have a great interest in ensuring its uninterrupted continuation, until its termination in 2013.

As you know, about 10 percent of all electricity produced in the United States is powered by uranium, once in Soviet or Russian nuclear weapons that were likely targeted at the United States or its allies. Roughly 325 metric tons of HEU have been eliminated, to date, under this agreement. The Suspension Agreement has been critical in this regard. It has set the legal foundation for executive control of uranium imports from Russia, facilitating entry of low-enriched uranium, down-blended from Russian-weapons origin HEU, while excluding commercial, non-weapons origin, LEU.

We recognize that imports of Russian commercial LEU would compete directly with, and could therefore undermine the viability of the HEU Purchase Agreement. For this reason, the September 2007 *Eurodif* ruling by the Court of Appeals is a cause for serious concern. Absent a change in the court's ruling, or legislative relief, Russia could gain unrestricted access to the United States nuclear fuel market.

Unfettered access to the United States market before the HEU Agreement is completed, could allow Russia to sell commercial LEU ahead of down-blended HEU from weapons. It has been our preference, therefore, to exclude Russian commercial LEU from the United States market until after 2013, when the HEU Agreement expires.

Another drawback of the Court's *Eurodif* ruling is that it may also preclude future HEU down-blending agreements with Russia. Both the United States and Russia have implemented major nuclear reductions in the period since 1993, when the HEU Purchase Agreement entered into force.

It is reasonable to expect, then, that Russia has additional excess HEU, especially as the Moscow Treaty Reductions are carried forward, and it is in our nonproliferation interest that all excess HEU be declared, and disposed of, in ways that are transparent to us and the international community.

While we are committed to facilitating Russia's transition into the United States nuclear market as a commercial partner, we believe it should be accomplished in ways that advance our national security, nonproliferation and energy interests. A reasonable means

for doing so would be to continue Executive control over nuclear imports until such time that we conclude the Suspension Agreement. This would protect the gains realized in the existing HEU Agreement, and any future agreement——

Senator DOMENICI. Mr. Chairman.

Mr. TOBEY [continuing]. Providing for——

Senator DOMENICI. Mr. Chairman.

The CHAIRMAN. Yes.

Senator DOMENICI. Could I ask—would you go back and repeat about a minute of your testimony there?

Mr. TOBEY. Certainly, sir.

Senator DOMENICI. Half a minute. That's enough.

Mr. TOBEY. Sure.

Another drawback of the Court's *Eurodif* ruling—is that an appropriate place?

Senator DOMENICI. Yes, sir.

Mr. TOBEY. Is that it may also preclude future HEU down-blending agreements with Russia. Both the United States and Russia have implemented major nuclear reductions in the period since 1993, when the HEU Purchase Agreement entered into force.

It is reasonable to expect, then, that Russia has additional excess HEU, especially as the Moscow Treaty Reductions are carried forward, and it is in our nonproliferation interest that all excess HEU be declared and disposed of in ways that are transparent to us, and to the international community.

While we are committed to facilitating Russia's transition into the U.S. market as a commercial partner, we believe it should be accomplished in ways that advance our national security, nonproliferation, and energy interests.

A reasonable means for doing so would be to continue Executive control over nuclear imports, until such time that we conclude the Suspension Agreement—complete the Suspension Agreement. This would protect the gains realized in the existing HEU Agreement, and any future agreement providing for transparent disposition of additional excess Russian HEU.

I don't want to leave the committee with the impression that negotiation of a new HEU Agreement covering materials in excess of the original 500 metric tons would be straightforward or simple. Russia would have to show an interest in pursuing such an agreement, something it has not done in the recent past.

Discussions held in 2002 foundered over questions relating to cost, domestic uranium impacts, and other provisions, with no progress made since that time. While we can't predict whether Russia will be persuaded to enter into a future HEU Agreement, we can certainly foresee no progress in the absence of incentives, incentives that the *Eurodif* decision effectively undercuts.

It is important that Congress ensure that we have the tools needed to pursue such an agreement with Russia. We believe the disposing of additional HEU from military stocks would serve a number of important goals. It would eliminate weapons-usable materials sought by proliferants and terrorists, reinforcing our material protection and consolidation efforts. It would complement strategic nuclear warhead reductions required under the U.S./Russian Moscow treaty, it would complement our efforts to pursue the global

fissile material cutoff treaty, and it would demonstrate our shared commitment to promote nonproliferation treaty's Article 6 nuclear disarmament goals. Demonstrating a continued commitment to make progress on Article 6 strengthens our ability to improve other parts of the treaty, including compliance by non-nuclear weapons states, and verification that civilian nuclear programs are not used as cover to pursue nuclear weapons.

I've had the opportunity to travel recently with NNSA Administrator Tom D'Agostino, to the United Nations, to the International Atomic Energy Agency, and to the Conference on disarmament, where we highlighted the significant, concrete steps taken by the United States in support of Article VI of the Nonproliferation Treaty.

Part of this dialog is focused on related nonproliferation achievements and partnerships with Russia, including the HEU Purchase Agreement. It is clear from these discussions that continued and transparent reductions of nuclear material removed from weapon stocks are regarded as a high priority and helped to improve international confidence in the treaty.

Allow me to address one additional issue having to do with our nuclear weapons program. To meet long-term treaty and production needs, the United States must have a domestically owned source of nuclear fuel, which would be unburdened by the peaceful use assurances typically required of foreign-owned suppliers.

This, in turn, requires that the United States have a domestic enrichment supplier, capable of providing un-obligated fuel for some time. Only one such U.S.-owned supplier exists—the United States Enrichment Corporation, which is also the Executive Agent for the HEU Purchase Agreement.

Over the near term, retaining executive control on LEU imports. Regardless of the type of contract under which the material enters the U.S. market, may therefore effect, materially, our long-term access to un-obligated fuel for treaty and production.

To conclude, if we are to ensure that the current agreement is successfully completed, it will be necessary to overcome the effects of the *Eurodif* ruling.

I also remain hopeful that we can continue the transparent disposition of excess Russian HEU, beyond the expiration of the current agreement, and reestablish the circumstances that allowed us to grasp the opportunities presented in 1993.

Thank you very much, and I look forward to your questions.

[The prepared statement of Mr. Tobey follows:]

PREPARED STATEMENT OF WILLIAM H. TOBEY, DEPUTY ADMINISTRATOR FOR DEFENSE NUCLEAR NONPROLIFERATION, NATIONAL NUCLEAR SECURITY ADMINISTRATION, DEPARTMENT OF ENERGY

Chairman Bingaman, Ranking Member Domenici and members of the Committee, thank you for the opportunity to appear before you today to discuss the nonproliferation aspects and impacts of the *Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation* (Suspension Agreement), signed October 16, 1992. My remarks center on the relationship of the Suspension Agreement to the Department's broader strategy to reduce and eliminate highly enriched uranium (HEU).

Denying countries of concern and terrorists access to weapons-usable materials is a cornerstone of U.S. nonproliferation strategy. To this end, perhaps the most successful nonproliferation threat reduction program ever conceived is the U.S.-Russia

HEU Purchase Agreement, which when fully implemented in 2013 will have eliminated 500 metric tons of HEU—material that, according to Russian officials, accounted for roughly 40 percent of the total Soviet nuclear stockpile.

The HEU Agreement is a Government-to-Government arrangement implemented by a commercial contract and monitored by a bilateral transparency program that my office oversees. We have a great interest in ensuring its uninterrupted continuation until its termination in 2013. As most of you know, about ten percent of all electricity produced in the United States is powered by uranium once in Soviet or Russian nuclear weapons that were likely targeted at the United States or its allies. Roughly 320 metric tons of HEU have been eliminated to date under this Agreement.

The Suspension Agreement has been critical in this regard. It has set the legal foundation for Executive control of uranium imports from Russia, facilitating entry of low enriched uranium (LEU) downblended from Russian weapons-origin HEU, while excluding commercial, non-weapons origin LEU.

We recognize that imports of Russian commercial LEU would compete directly with and could therefore undermine the viability of the HEU Purchase Agreement. For this reason, the September 2007 *Eurodif* ruling by the Court of Appeals is cause for serious concern. Absent a change in the court's ruling or legislative relief, Russia could gain unrestricted access to the U.S. nuclear fuel market.

Unfettered access to the U.S. market before the HEU Agreement is completed could allow Russia to sell commercial LEU ahead of downblended HEU from weapons. It has been our preference therefore to exclude Russian commercial LEU from the U.S. market until after 2013, when the HEU Agreement expires.

Another drawback of the Court's *Eurodif* ruling is that it may also preclude future HEU downblending agreements with Russia. Both the United States and Russia have implemented major nuclear reductions in the period since 1993, when the HEU Purchase Agreement entered into force. It is reasonable to expect, then, that Russia has additional excess HEU, especially as the Moscow Treaty reductions are carried forward, and it is in our nonproliferation interest that all excess HEU be declared and disposed of in ways that are transparent to us and the international community.

While we are committed to facilitating Russia's transition into the U.S. nuclear market as a commercial partner, we believe it should be accomplished in ways that advance our national security, nonproliferation, and energy interests. A reasonable means for doing so would be to continue Executive control over nuclear imports until such time that we conclude the Suspension Agreement. This would protect the gains realized in the existing HEU Agreement and any future agreement providing for the transparent disposition of additional excess Russian HEU.

I don't wish to leave the committee with the impression that negotiation of a new HEU agreement covering materials in excess of the original 500 metric tons would be straightforward or simple. Russia would have to show an interest in pursuing such an agreement, something it has not done in the recent past. Discussions held in 2002 foundered over questions relating to cost, domestic uranium market impacts, and other provisions, with no progress made since that time. And while we can't predict whether Russia will be persuaded to enter into a future HEU Agreement, we can certainly foresee no progress in the absence of incentives—incentives that the *Eurodif* decision effectively undercuts.

It is important that Congress ensure we have the tools needed to pursue such an agreement with Russia.

We believe that disposing of additional HEU from military stocks would serve a number of important goals: it would eliminate weapons-usable materials sought by proliferants and terrorists, reinforcing our material, protection and consolidation efforts; it would complement strategic nuclear warhead reductions required under the U.S.-Russian Moscow Treaty; it would complement our efforts to pursue a global Fissile Material Cutoff Treaty; and it would demonstrate our shared commitment to promote the Non-Proliferation Treaty's Article VI nuclear disarmament goals.

Demonstrating a continued commitment to make progress on Article VI strengthens our ability to improve other parts of the Treaty, including compliance by non-nuclear-weapon states and verification that civilian nuclear programs are not used as a cover to pursue nuclear weapons. I have had the opportunity to travel recently with NNSA Administrator Tom D'Agostino to the United Nations, the International Atomic Energy Agency, and the Conference on Disarmament, where we have highlighted the significant, concrete steps taken by the United States in support of Article VI of the NPT. Part of this dialogue has focused on related nonproliferation achievements and partnerships with Russia, including the HEU Purchase Agreement. It is clear from these discussions that continued and transparent reductions

of nuclear material removed from weapons stocks are regarded as a high priority and help improve international confidence in the Treaty.

Allow me to address one additional issue having to do with our nuclear weapons program. To meet long-term tritium production needs, the United States must have a domestically owned source of nuclear fuel, which would be unburdened by the peacefuluse assurances typically required of foreign-owned suppliers. This in turn requires that the United States have a domestic enrichment supplier capable of providing unobligated fuel for some time. Only one such U.S.-owned supplier exists—the U.S. Enrichment Company, which is also the Executive agent for the HEU Purchase Agreement.

Over the near term, retaining Executive control on LEU imports, regardless of the type of contract under which the material enters the U.S. market, may therefore affect materially our long-term access to unobligated fuel for tritium production.

To conclude, if we are to ensure that the current agreement is successfully completed, it will be necessary to overcome the effects of the *Eurodif* ruling. I also remain hopeful that we can continue the transparent disposition of excess Russian HEU beyond the expiration of the current agreement and reestablish the circumstances that allowed us to grasp the opportunities presented in 1993.

Thank you and I look forward to your questions.

The CHAIRMAN. Thank you, both, very much.

Let me start, I'll ask a few questions.

Mr. Spooner, let me start with you. You said the Russian imports may threaten USEC's ability to enrich uranium for defense purposes—how much uranium does USEC enrich for our defense needs, at this time?

Mr. SPOONER. I must confess, Mr. Chairman, I don't know the quantitative answer to that question. I only know that USEC is, again, not subject to the peaceful use limitations that foreign-owned suppliers would be.

But I cannot, at least not off the top of my head, provide you with a quantitative answer.

The CHAIRMAN. OK, let me ask another question. If Russian uranium threatens our national security—as I believe our—that's our government's position in the Supreme Court case—why not seek protection under section 232 of the Trade Expansion Act, instead of section 731 of the Tariff Act?

Mr. SPOONER. If I understand your cite correctly, sir, that might be the IEPA authority that the President has. The answer to that would be that, that is something we may consider if we need to, but that the executive branch, and I would hope the Senate would agree with us, we would prefer to work with the Senate to enact legislative effects, instead of using the President's extraordinary Executive authority to fix the problem.

The CHAIRMAN. You're convinced that the legislation that has now been introduced is the legislative solution that Congress should adopt while awaiting this action by the Supreme Court, is that correct?

Mr. SPOONER. That is correct, sir.

The CHAIRMAN. Mr. Tobey, you agree with that?

Mr. TOBEY. Yes, sir.

The CHAIRMAN. You believe that legislating enrichment as a good and not a service will set a precedent for other services industries, such as banking or insurance?

Mr. SPOONER. No, Mr. Chairman. Of course, the trade remedy laws can not apply to services such as banking or legal services, or insurance. But, again, our view is that LEU is a product, and regardless of what the two parties to a transaction may term their

contract, or may call the manufacturing process, it's up to Commerce to enforce, reasonably, the regulatory scheme that it's trusted to enforce—the dumping law—which talks about applying dumping duties to merchandise, which crosses the border for sale. It's our view that LEU is merchandise, regardless of whether or not—whether or not it's a conventional contract or a SWU contract—by which that merchandise crosses the border. That there's no danger that—we're only seeking to go back to the status quo before *Eurodif*. We're not seeking, in any way, to expand the dumping law to traditional services.

The CHAIRMAN. Is it your position, Mr. Spooner, that if Russia were to resume the free sale of low-enriched uranium, or enrichment services to the United States today, the sale price would be sufficiently low as to qualify as dumping?

Mr. SPOONER. Yes, Mr. Chairman.

The CHAIRMAN. That's your firm belief?

Mr. SPOONER. Yes.

The CHAIRMAN. All right, let me defer to Senator Domenici for his questions.

Senator DOMENICI. Thank you very much, Mr. Chairman.

First, Mr. Spooner, I listened as well as I could to your testimony, and I don't listen to arguments as a judge very often, if ever, and certainly not on complicated trade matters. But I would tell you that it didn't do me much good to hear you iterate your reasoning for why we should have gotten a different result from the Court. We're not the Court, and we can't do much about the Court, and it looks like you lost rather handily, twice. That disturbs me, because it appears that that shouldn't have been the case. So, I don't know what happened along the way, but something did. Somebody had a better lawyer than the other, or somebody did something to the other that appears very unreasonable to a logical person, here in the United States, and certainly to me.

But, let me see if I understand, fundamentally, before we go off on some questions.

You know, I remember—just so you know, you weren't around, neither of you were—when I walked over to the Appropriations Committee here with my trusted helper, and Chairman Obey was presiding, and they were doing a supplemental, and believe it or not, I presented a case for $350 million supplemental then and there—no documents, and told them why we should do it. For a very substantial amount, for the purchase of the Russian plutonium.

The chairman of the House Committee said, "I don't see how we can not do that. That sounds like the best thing America could ever do with $350 million," and they gave it to us.

Now, that's where the money came from, for a huge amount of plutonium, and we've also got to figure out what to do with some that Russia is supposed to take care of. All of this uranium, since that day, has been blended to make fuel for our reactors. Now, are we in tune that we're talking about the same uranium. We know what that uranium is? That's the uranium that came from their missiles. They had a surplus, and the United States had made an agreement, but we didn't have the money. We came over here 1 day, and all of a sudden we got the money.

Then we've been using it ever since, and along came the President and he decided to select the company that is now an agent, the agent of the United States to handle this transaction. Believe it or not, we wrote the charter for that company, which was never a private sector—it was a public sector entity for all of its existence, until we—Senator Ford from Kentucky, and I—wrote that bill, and made them such that they could be private.

It's never been a very good deal for them, I don't think, at least they claim it's not been. But some people made a lot of money out of it, so I'm not sure. Somebody, made a lot of money. So, they haven't told me yet as to whether they lost money or not.

But anyway, what I understand is that this decision says that the Russians can decide, while the state is going on, that they want to sell it another way from their own sources, and dump on the United States, is that right?

Mr. SPOONER. That is correct, yes, sir.

Senator DOMENICI. Easy to understand, sounds very wrong on the part of Russia, that they should be able to do that, and certainly it won't do much to enhance America's initiative to do more of what it did in the first agreement. What it did in the first agreement is in the international interest, as I understand from your testimony—it's in the interest of the world if we can do that, with all of their surplus from weapons, it's in the interest of the world to get it all inventoried and get it into the market, is that correct?

Mr. SPOONER. I wholeheartedly agree. Yes, Mr. Senator.

Senator DOMENICI. If we could.

Now, what do you recommend that a committee of the the United States Senate—we'll start with you, Mr. Spooner—what do you recommend we do to correct this situation, and what are you trying to correct with your recommendation?

Mr. SPOONER. I think, two things. The first would be to adopt the simple legislative fix which Senator McConnell has introduced. I think it's a three- or four-line bill, which simply stipulates that should LEU cross the border, it's a good, not a service, pursuant to our trade laws.

Of course, in doing so, we would both support our HEU Agreement, and all the national security objectives which you outlined so well, and also, at least set a precedent, send a shot across the ballast, so to speak, for others who may want to dump into the United States other products using the same logic as the court used in this court case.

Senator DOMENICI. OK, so, if we did that, we would then have the right definition—if all that held up in court, that you could make that decision. Somebody would challenge that, too, that we could make such a change, legislatively, but let's assume we did. What would that accomplish in terms of the HEU Agreement, and as far as Russia's sale of their uranium to us? The HEU Agreement would proceed, and nothing would be changed by that definition, right?

Mr. SPOONER. Right. That's exactly right.

Senator DOMENICI. What could Russia do then?

Mr. SPOONER. Should the legislation pass, the HEU Agreement would proceed without danger, so to speak, and also the Suspension Agreement which we negotiated with Russia, and I hope I put

this well, but it would immediately plug into the legislation, so to speak, so that Russia would be capped, immediately, at 20 percent of the United States market in future years.

Senator DOMENICI. So, what you're saying to us, you favor 20 percent, after all of your negotiations, you think the United States would be getting a fair deal if it was 20 percent, and that were enforceable?

Mr. SPOONER. Yes, sir. Indeed, in the negotiations, we of course, consulted with stakeholders, both the miners and USEC and the utilities, and the guidance we received from all sides was right around 20 percent.

Senator DOMENICI. All right, now I'm going to just quickly ask Mr. Tobey the same question.

Mr. TOBEY. I can make it easy—I agree with the answer that Mr. Spooner gave.

Senator DOMENICI. All right, thank you very much.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Barrasso.

STATEMENT OF HON. JOHN BARRASSO, U.S. SENATOR FROM WYOMING

Senator BARRASSO. Thank you very much, Mr. Chairman.

First, I recognize that the primary purpose of this hearing is to receive testimony regarding the domestic enrichment capability, as it relates to the Russian Suspension Agreement. But I must, Mr. Chairman, make reference to the fact that this agreement and the recent amendment to it can have a direct impact on America's uranium mining industry.

Wyoming currently leads the Nation in domestic uranium production, and several witnesses will note the importance of a robust, competitive, domestic uranium industry in our Nation.

In my view, there are at least four distinct sectors of the nuclear industry worth mentioning, and one is the uranium mines, the miners. Number 2 is the enrichment companies; Number 3 is the electric generators; and then Number 4, at some future point is a viable, secure, cost-effective mechanism for addressing the waste from the generators.

I know we have many folks who are going to speak, I don't want to take much time, Mr. Chairman, so I ask that a statement on the recent amendments that comes from the Uranium Producers of America* be submitted for the record, if that's all right with you, Mr. Chairman.

The CHAIRMAN. It will be included in the record.

Senator BARRASSO. I just wanted to make sure, Mr. Chairman, that the role of the mining and production of uranium not be lost in the discussion. So, I'm looking forward to the testimony, I have some questions, but the issues have many facets—international trade, national guard security, economic security, and then national energy policy.

So, it seems to me that we have an opportunity to encourage domestic uranium production and enrichment, not discourage it. I want to commend the leadership of this committee for its success

* See Appendix II.

in the area of nuclear energy over the years. Historically, the committee has carefully examined and encouraged a robust, competitive nuclear energy industry.

When it comes to our energy policy, as a Nation, I believe we need it all—the wind, the solar, the geothermal, the fossil fuels, coal, oil and gas, and then conservation and investment in energy efficiency, and of course, nuclear.

So, with that, Mr. Chairman, I have a few questions—first to Mr. Spooner. With respect to the amendments to the Russian Suspension Agreement, I understand it allows the Department of Commerce to unilaterally raise the exports, the limits, from Russia that would then come into the United States in the agreement. How, and under what circumstances, do you foresee the Administration would use that power?

Mr. SPOONER. Thank you, Mr. Senator, and you're correct. The agreement does contain a provision which gives the Department of Commerce the unilateral authority to raise the quotas, should we have a severe supply problem. That's something which the miners have expressed some concern over.

We will issue guidance in the very near future, adopting some objective and more transparent criteria as to how we would enforce that provision. But, I can assure the miners and you, sir, that that provision is only intended to address severe supply shortages, or crises. We would not raise the export limits—I hope this is a good way to put it—but, you know, on a whim, or because we're under a little bit of pressure from other stakeholders—it was simply a pressure valve, should we face somewhat of a crisis in the market.

Senator BARRASSO. Mr. Tobey, if I could, I think the uranium producers, the miners, view either Russian uranium or sale of Department of Energy uranium, as having a cumulative impact on the market. I know this isn't directly related to your activities. I think the Department of Energy is working on a policy right now, developing a policy on how to dispose of the Department of Energy inventory. What can we expect from that? When do we expect that policy to be released—to give us a little more assurances as folks in the industry make plans?

Mr. TOBEY. Sir, I believe that analytical work is underway, you're correct that it isn't directly under my control, but I know my colleagues are thinking about those issues. I know that they are mindful of the justifiable concerns about United States industry—including miners—and, in fact, there are—as I understand it—legal restrictions on what the Department can do in terms of sales in order that markets not be damaged.

I would expect that there would probably be something forthcoming in the reasonably near future, but I don't know an exact time for that.

Senator BARRASSO. OK. Thank you very much.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

Senator Craig.

STATEMENT OF HON. LARRY E. CRAIG, U.S. SENATOR FROM IDAHO

Senator CRAIG. Mr. Chairman, thank you very much.

Gentlemen, I'm struggling to understand the ins and outs of all of this. I think I have a grasp of it, but Mr. Spooner, in your testimony—you discuss the importance of the *Eurodif* case, and its impact on the domestic enrichment market. If you lose the *Eurodif* case, and there is no legislative fix, when would you anticipate the influx of Russian LEU?

Mr. SPOONER. That's a very good question, Mr. Senator, and it's something we've considered. Frankly, I don't know if anybody has a firm answer for.

I think, to be frank, for the time being, we've made it clear to—potential utility customers, that we intend to fix *Eurodif*, either by Supreme Court review, or hopefully through a legislative fix.

Senator CRAIG. The Suspension Agreement expires in 2020?

Mr. SPOONER. Yes, sir.

Senator CRAIG. Is that a timeline that you look at in relation to——

Mr. SPOONER. Actually, we could very well see an influx well before 2020. But, I think right now, utilities are somewhat reluctant to aggressively engage in contracts with Russia because we've made it clear that we intend to fix this. Over time, if the market becomes more and more confident that we won't fix it, I think then we quickly have a train wreck. But, at least for the moment, there's some uncertainty and caution in the market.

Senator CRAIG. OK.

Could the latest Russian Suspension Agreement have been concluded without referencing the outcome of the *Eurodif* case?

Mr. TOBEY. There's a provision in the Suspension Agreement which says that the agreement will be implemented in accordance with United States law. This doesn't explicitly reference the *Eurodif* case, but of course *Eurodif* is the law of the land, right now.

Senator CRAIG. Mr. Tobey, I watched what went on in Russia yesterday with Gazprom, and of course, apparently the fellow who made the decision to start turning the valve down on the Ukraine, happens to be the new President of Russia. Then you talk about Russia as a commercial partner—a reliable commercial partner?

Mr. TOBEY. I think that Russia's actions with respect to gas must give people pause. Our interest in all of this, obviously, has been one that would allow us to take material that had formerly been in weapons stocks, and to use it for productive purposes.

Senator CRAIG. Why are the Russians unwilling to expand the HEU Agreement, and how much additional HEU do the Russians have?

Mr. TOBEY. It's difficult for us to say. They've told us that at this point they have no further excess quantities. Now, given the Moscow treaty reductions, I'm not sure that's entirely logical. In terms of how much more they might have, the one statement that we have that sheds some light on this is the one that I referred to earlier that, according to Russian officials, the 500 metric tons accounted for roughly 40 percent of the Soviet nuclear stockpile. There was a public statement.

Senator CRAIG. OK.

I guess that's all of the questions I have of this panel, thank you.

The CHAIRMAN. All right, well, thank you both very much for your testimony, we have a second panel with five witnesses, and we'll go ahead with the second panel.

We have Marvin Fertel, who is Executive Vice President with the Nuclear Energy Institute, James Malone who is Vice President for Fuels Management at Exelon, Reinhard Hinterreither, who is the President and CEO of Louisiana Energy Services, John Welch, who is the President and CEO of USEC, Robert Ervin who is the President of United Steel Workers Local 550 in West Paducah, Kentucky.

So, thank you all for being here.

Why don't we operate on the same basic format we did with the prior panel. If we could just start with Mr. Fertel, and just go right across the table, here, and have each of you give us 5 or 6 minutes of testimony as to the main points you believe we ought to understand about this issue, and your recommendations to us. Then we will have some questions for you.

Mr. Fertel.

STATEMENT OF MARVIN FERTEL, EXECUTIVE VICE PRESIDENT AND CHIEF NUCLEAR OFFICER, NUCLEAR ENERGY INSTITUTE

Mr. FERTEL. Thank you, Mr. Chairman and Ranking Member Domenici, and members of the committee. I'm pleased to be able to address the subject of the Russian Suspension Agreement.

The United States faces major demand for new baseload electricity generation and a response, you know, the nuclear industry is in a major expansion mode.

In the face of rising energy costs to consumers, ensuring a predictable, reliable, nuclear fuel supply is essential to being able to continue to offer the benefits of nuclear energy to our electricity customers.

Also, worldwide expansion of nuclear energy requires the expansion of the world's fuel suppliers. That is why it's important for United States utilities to have access to international suppliers, and why domestic fuel suppliers look beyond the United States for their business.

My comments today are based on the following four principles. It is critical for a nonproliferation and a United States nuclear fuel reliability perspective that the existing United States/Russian HEU Agreement be fully and efficiently implemented through its completion in 2013.

It is necessary to modernize and expand the economical and reliable domestic uranium and conversion services capabilities in the United States It is also necessary to modernize and expand economically competitive and reliable domestic enrichment capacity, as currently being pursued by USEC, LES, AREVA, GE and any others that might want to locate in this country.

Finally, given that the United States/Russia HEU Agreement will be fulfilled by the end of 2013, it is necessary for reliability of nuclear fuel supply that United States nuclear power plants have access to the global nuclear fuel supply market, including uranium conversion and enrichment. Even with the expansion previously

cited, domestic supply will not be sufficient to meet all United States needs by 2013.

A key responsibility of NEI is to work with all sectors of the industry to develop positions on government policies that support the overall health of the entire nuclear energy enterprise. In the overall fuel supply, a healthy tension always exists between the interests of buyers and sellers. NEI has been, in the past, been able to successfully bring them together in preparing input to the United States Government.

The greatest assurance of market stability is multiple suppliers, and our primary goal with respect to the fuel market is to create as much certainty in the marketplace as possible. Certainty is important to the development and deployment of new properties for all components of the fuel supply chain. The fuel supply from the United States/Russia HEU Agreement, has formed a vital part of the enrichment supply for United States reactors, at time providing more than 50 percent of our annual enrichment requirements.

We will continue to rely on this supply through the completion of the agreement in 2013. Based upon the announced plans by domestic enrichers, even with the timely completion of USEC's American Centrifuge Plant, the LES National Enrichment Facility, the combined capacity of these plants will not fully replace the existing capacity of USEC's Paducah facility by 2014, much less be able to compensate for the contribution now received under the HEU Agreement.

Looking at the most optimistic projections by all of the companies planning production in the United States, in 2014, domestic supply is slated to be at less than 11 million SWU, not sufficient to meet the current demand of about 14.4 million SWU. Adding new plants could increase demand between 1.5 to 3 million SWU.

At least two of the planned facilities—the ACP and the GE Hitachi's SILEX project—currently, involve currently commercially unproven technologies, although we hope they do get deployed. While AREVA has announced plans for a facility using proven technology, the AREVA facility is not yet been sited.

Delays in opening any of these enrichment plants will further increase the gap between domestic supply and demand. With these uncertainties in future supply, it's essential that nuclear generators have access to international sources of supply, including that from Russia.

As the ultimate users of nuclear fuel, with billions of dollars of generation investment at risk, no sector has more incentive to ensure the continued operation of a healthy fuel supply industry than the utility sector. It is not in the self-interest of fuel buyers to become over-dependent on any single source of supply.

United States utilities fully recognize the need to manage the costs and risks of operating a generating plant by maintaining diverse sources of supply.

Mr. Chairman, Senator Domenici, other Senators—as recently as this morning, many of the parties represented at this table, along with others in the sector, met to discuss the issues we are talking about today, and we are committed to work together in cooperation with this committee, the United States Government and the Rus-

sians, if necessary, to achieve a framework that meets the common objectives we all share.

In my written testimony, we discuss the potential for using a government-to-government agreement. While we still believe this is a viable path, we would like to engage with the committee to see if legislation could be passed that provides the certainty needed to ensure both the deployment of new enrichment facilities, and a competitive and reliable fuel supply for our 104 operating plants.

I appreciate the opportunity to testify today, and look forward to hearing your questions.

[The prepared statement of Mr. Fertel follows:]

PREPARED STATEMENT OF MARVIN FERTEL, EXECUTIVE VICE PRESIDENT AND CHIEF NUCLEAR OFFICER, NUCLEAR ENERGY INSTITUTE

Chairman Bingaman, Ranking Member Pete Domenici, and distinguished members of the committee, I am Marvin Fertel, Executive Vice President and Chief Nuclear Officer at the Nuclear Energy Institute (NEI). I am honored to address the subcommittee on the subject of the Russian Suspension Agreement (RSA).

NEI brings together and is responsible for developing policy for the U.S. nuclear industry. NEI's 307 corporate and other members represent a broad spectrum of interests, including every U.S. electric company that operates a nuclear power plant, the existing U.S. enricher and all proposed U.S. enrichers, the sole U.S. convertor, and the major U.S. uranium miners. NEI's membership also includes suppliers, engineering and consulting firms, national research laboratories, manufacturers of radiopharmaceuticals, universities, labor unions, and law firms.

The United States faces major demand for new base-load electricity generation. The Administration and Congress both have recognized that nuclear power plants are critical to meeting electricity supply and for addressing climate change issues. The 104 operating nuclear power plants represent about 11% of installed capacity; however, they provide nearly 20% of electricity demand. In response, the nuclear industry is in an expansion mode. One of the strengths of the nuclear option relative to other energy sources is forward price stability. In the face of rising energy costs to consumers, ensuring a predictable, reliable nuclear fuel supply is essential to being able to continue to offer the benefits of nuclear energy to our electricity consumers. Expansion of nuclear energy is also occurring throughout the world. The International Atomic Energy Agency is protecting about a 15% increase in the number of operating reactors by 2020. This world wide expansion requires the expansion of the world suppliers of nuclear fuel cycle services. This is why it is important for U.S. utilities to have access to international suppliers.

In 2007 utilities submitted to the NRC combined license applications for 7 new nuclear power plants and additional announcements account for 24 more plants. This expansion is predicated on a reliable and economically competitive nuclear fuel supply. Numerous mining and milling companies have reactivated or have submitted applications to states and/or the Nuclear Regulatory Commission (NRC) for uranium mines and mills. In 2007 Converdyn, working with Honeywell, increased the conversion capacity of the Metropolis, IL facility. USEC has licensed a new enrichment facility which is currently in the demonstration phase, LES has licensed and begun construction of a new enrichment facility, and AREVA and General Electric have both announced plans for new enrichment facilities. The billion of dollars in financing for these facilities is proceeding under existing law. It is critical to the utilities, nuclear fuel suppliers, and the country that everyone succeeds. In this environment, the RSA must be viewed in terms of the overall fuel supply market and how perturbations in one facet of the market can have ramifications across all sectors.

Our comments today are based on the following principles:

1. It is critical from both a non-proliferation and a U.S. nuclear fuel reliability perspective that the existing U.S./Russian HEU Agreement be fully and efficiently implemented through completion in 2013.
2. It is desirable to modernize and expand the economical and reliable domestic uranium and conversion service capabilities.
3. It is desirable to modernize and expand economically competitive and reliable domestic enrichment capacity as currently being pursued by USEC, LES, AREVA, and GE and any others that might want to locate in the US.

4. Given that the U.S.-Russian HEU Agreement will be fulfilled by the end of 2013, it is necessary, for reliability of nuclear fuel supply, that U.S. nuclear power plants have access to the global nuclear fuel supply market including uranium, conversion, and enrichment. Even with the expansions previously cited, domestic supply will not be sufficient to meet all U.S. needs by 2013.

A key responsibility of NEI is to work together with all sectors of the industry to develop positions on government policies that support the overall health of the entire nuclear energy enterprise. In the area of fuel supply, a healthy tension always exists between the interests of buyers and suppliers. NEI has been able to successfully bring them together in preparing input to the U.S. government. The greatest assurance of market stability is multiple suppliers. Our primary goal with respect to the fuel market is to create as much certainty in the marketplace as possible. This certainty is important to the development and deployment of new properties for all components of the fuel supply chain. Competition among all suppliers is a good thing. Certainly the U.S. suppliers want access to sell in the broad international market, and utilities want to be able to buy internationally as well.

Today's situation in Russian is quite different from what existed when the RSA first came about. At that time, Russia was still functioning as a non-market economy.

Today it is on the verge of ascension to the World Trade Organization, and its energy resources form a major component for its continued economic growth.

Well before the current amendment to the RSA was signed, the U.S. industry had discussions about what might constitute acceptable quantities of Russian commercial material entering the U.S. market. The quantity limits for Russian exports to the U.S. now contained in the RSA are reasonably consistent with what the industry had discussed. The provision that states that the Department of Commerce can allow additional imports in case of supply emergencies provides an important way to ensure adequate supply. The RSA also provides for a needed transition period for getting from our current reliance on Russian supplies under the U.S.-Russian HEU Agreement to what will be required once that Agreement terminates in 2013. Post-2013, access to Russian commercial enrichment will be essential.

The material supplied in the U.S. under the U.S.-Russian HEU Agreement has formed a vital part of the enrichment supply for U.S. reactors over the term of the agreement, at times providing more than 50 percent of our annual enrichment requirements through sales by the U.S. executive agent, USEC. We will continue to rely on this material through the completion of the existing agreement in 2013. Yet while we have every expectation that the Russians are committed to fulfilling their obligations under the existing agreement, the Russians have been very clear that they do not intend to seek an extension of the agreement. This agreement that established this significant source of supply for U.S. reactors will cease to exist after 2013, and alternate sources will be required to fully meet the needs of existing reactors as well as for any new generating capacity.

Even assuming the timely completion of USEC's American Centrifuge Plant (ACP) and the LES National Enrichment Facility now under construction in New Mexico, the combined capacity of these plants will not fully replace the existing capacity of USEC's Paducah facility by 2014, much less be able to compensate for the contribution now received under the HEU agreement. Looking at the most optimistic projections by all the companies with future domestic enrichment facilities under construction or on the drawing boards, production in the U.S. in 2014 is slated to be less than 11 million SWU, clearly not sufficient to meet the current demand of about 14.4 and adding new plants will increase it between approximately 1.5 to over 3.0 million SWU. At least two of the planned facilities, the ACP and GE Hitachi's SILEX effort, involve commercially unproven technologies. While AREVA has announced plans for a facility using proven technology similar to that being used by LES in New Mexico, the AREVA facility has not yet even been sited. Delays in opening any of these enrichment plants will further increase the gap between domestic supply and demand.

With these uncertainties in future supply, it is essential that nuclear generators have access to international sources of supply, including that from Russia. The implications of uncertainty and unreliability that could result from having even one nuclear unit sit idle for lack of timely delivery of fuel would be totally unacceptable. A nuclear fuel market that is open and fair will be critical to expansion of nuclear generation worldwide. Technological innovation is fostered by open markets. Advancement is fostered by market competition, not by government protections and allocation schemes. Recent trends in uranium pricing vividly illustrate that market signals can and do work.

As the ultimate users of nuclear fuel with billions of dollars of generation investment at stake, no sector has more incentive to ensure the continued operation of a healthy fuel supply industry than the utility sector. It is not in the self-interest of fuel buyers to become over-dependent on any single source of supply. U.S. utilities fully recognize the need to manage the costs and risks of operating their generating plants by maintaining diverse sources of supply for all fuel components. Events in recent years have demonstrated dramatically the importance of supply diversity. Physical and regulatory issues have triggered prolonged shutdowns of operating mining and conversion facilities, and delayed the opening of anticipated new sources. Unexpected disruptions can occur in any portion of the supply chain, and utility managers cannot afford to be left without options to ensure plants stay on line.

The electric utility sector cannot operate its nuclear units without a secure fuel supply; without a successful nuclear electricity utility market, the nuclear fuel supply community will have no customers. The parties represented at this table, along with the other sectors of the industry, are willing to work together, in cooperation with the U.S. government and the Russians, to achieve a framework that meets the common objective we all share—the continued growth of clean, safe nuclear energy.

While there could be a number of options used to support continued growth of nuclear energy and competitive fuel supply, one potential vehicle for achieving our joint objectives might be a government to government agreement modeled after the very successful U.S.-Russian HEU Agreement. Such an agreement could be consistent with the mutual U.S. and Russian objectives of fuel supply assurance. Successful development and maintenance of adequate sources for enrichment supply in both countries to support a robust generation industry underscores that countries seeking to begin nuclear generation need not pursue their own enrichment facilities to be certain of supply.

NEI appreciates the opportunity to address the committee and would be happy to answer any questions you may have.

The CHAIRMAN. Thank you very much.

Mr. Welch, go right ahead.

STATEMENT OF JOHN K. WELCH, PRESIDENT AND CEO, USEC, INC., BETHESDA, MD

Mr. WELCH. Good afternoon. My name is John Welch, and I am President and CEO of USEC, Inc., a leading supplier of enriched uranium fuel for commercial nuclear power plants.

Thank you, Chairman Bingaman, Ranking Member Domenici, and members of the committee for inviting me to testify on America's ability to maintain domestic enrichment capability in light of recent agreement between Russia and the United States on Russian uranium imports.

There is complete agreement throughout the industry that we want expanded use of nuclear power in the United States. This includes a strong domestic fuel nuclear fuel industry, robust competition among domestic and international fuel suppliers, and a reinvigorated nuclear industrial manufacturing base needed to achieve all of the above. The question before us is, how to get there?

One of the most pressing challenges we face is how to integrate Russia's huge nuclear fuel supply into the United States market without endangering our future nuclear fuel production capability. We all agree that the principles reflected in the recent agreement are the way to move forward with Russia. The Agreement provides a critical transition period, to deploy new domestic capacity, while giving Russia the opportunity to sell here, without threatening the stability of the United States market.

The problem we face now, and the reason I am here today, is that the Agreement may not be enforceable, because of the *Eurodif* case.

We strongly believe that today, stable market conditions will not hold if the United States Government can not enforce limits on Russian uranium imports. Without an enforceable agreement during the transition, our Paducah Plant, our advanced technology projects, and I suspect all of the projects underway to ensure America has a secure fuel supply, may be in jeopardy.

No one, including USEC, wants to exclude Russia from the United States market, but we need Congress to give the Administration the authority to make the agreement work.

A successful American nuclear renaissance needs a corresponding growth in American nuclear fuel production. USEC is one of four companies that are making, or planning to make multibillion dollar investments in the United States enrichment plants to meet America's fuel supply needs. It is a testament to the openness of the United States market today that we have four commercial projects for new enrichment domestic capacity, while no other country has more than one.

It is vital that these projects are successfully deployed. Our Nation must have a secure fuel supply to ensure that an expanded reliance on nuclear power does not lead to increased dependence on yet another foreign source of energy.

I want to acknowledge the forward-thinking efforts of you, Mr. Chairman, Senator Domenici, Congress and the Administration to support the growth of nuclear power by passing the Energy Policy Act of 2005, and USEC thanks the United States Government for its support of efforts to close the gap in the coverage of United States trade law created by the Federal Appeals Court decision.

I want to thank Kentucky Senators, Mitch McConnell and Jim Bunning, as well as Congressman Ed Whitfield, for introducing legislation clarifying that all nuclear fuel imports should be subject to United States trade law. This legislation will ensure that the agreement with Russia can be enforced according to the terms of the agreement.

I also want to acknowledge United Steel Workers for taking the lead in requesting the legislation, and in particular, the efforts of Local 550 in Kentucky, and Local 689 in Ohio.

USEC will support any measure that will ensure that the terms negotiated with Russia can be enforced. Those terms provide a reasonable market access for Russia and for utilities, and they give USEC and others, who want to provide a secure domestic fuel supply to support the renaissance, the market stability we need to finance and complete our new enrichment projects.

Our new American Centrifuge Plant will help produce the fuel that American utilities need, and will replace the fuel that, today, comes from Russian nuclear warheads under the Megatons-to-Megawatts program. This United States technology will ensure a reliable and competitive domestic supply of nuclear fuel, help revitalize America's nuclear industrial base, and create hundreds of well-paying jobs in more than 10 States.

The American Centrifuge is the only technology available to meet United States national security needs, such as enriched fuel for defense purposes. Even if plants using foreign technology are deployed in the United States, only the American Centrifuge could be used to meet defense needs, including fuel for our nuclear Navy.

Some contend that without immediate and unlimited access to Russian uranium imports, America will face a shortage in our nuclear fuel supply. I think an examination of the numbers would show something else.

The proposed quotas for Russia, existing and planned domestic capacity, plus a potential expansion and continued imports from our allies in Western Europe, ensure more than sufficient fuel supply to meet domestic needs, provided United States market conditions remain stable, and afford us the certainty needed to maintain and deploy domestic supply.

We are at a critical juncture in our efforts to support the nuclear renaissance. Action now to ensure that the recent agreement with Russia is enforceable, will facilitate the stable and strong United States nuclear fuel industry needed for the renaissance.

Thank you very much.

[The prepared statement of Mr. Welch follows:]

PREPARED STATEMENT OF JOHN K. WELCH, PRESIDENT AND CEO, USEC, INC., BETHESDA, MD

Good afternoon. My name is John Welch, and I am president and CEO of USEC Inc., a leading supplier of enriched uranium fuel for commercial nuclear power plants. Thank you Chairman Bingaman, Ranking Member Domenici and Members of the Committee for inviting me to testify on America's ability to maintain a domestic enrichment capability in light of the recent agreement between Russia and the United States on Russian uranium imports.

Let me begin by saying there is complete agreement within all sectors of the industry that where we want to end up is with expanded use of nuclear power in the United States; a strong domestic nuclear fuel industry; robust competition among domestic and international fuel suppliers; and a reinvigorated nuclear industrial manufacturing base in the United States needed to achieve all of the above. The question before us is how to get there.

In answering this question, one of the most pressing challenges we face is how to integrate Russia's huge nuclear fuel supply into the U.S. market without endangering our own nuclear fuel industry. Fortunately, I believe there is consensus throughout the industry that the principles reflected in the recent agreement are the way to move forward with Russia. The agreement provides a critical transition period to deploy new domestic capacity while giving Russia an opportunity to sell here without threatening the stability of the U.S. market.

The problem we face now—and the reason I am here today—is that the agreement between Russia and the United States may not be enforceable. A 2005 federal appeals court decision in a case involving French nuclear fuel declared that certain enrichment transactions between foreign enrichers and U.S. utilities are outside the scope of the U.S. trade law used to control imports of Russian fuel. This means that if the French case were applied to Russian imports, Russian fuel could be imported without limit as long as the contracts were written and the imports were carried out to qualify for the exception the appeals court created.

Today's stable market conditions will not hold if the U.S. government cannot enforce limits on Russian uranium imports. Without an enforceable agreement with Russia during the transition, our Paducah plant, our advanced technology project and, I suspect, all the projects underway to ensure America has a secure fuel supply face an uncertain future and may well fail.

No one, including USEC, wants to exclude Russia from the U.S. market. But we need Congress to give the Administration the authority needed to make the agreement work. The agreement gives Russia limited access to the U.S. nuclear fuel market starting in 2011, access to 20 percent of the market beginning in 2014 and full access by 2021. Further, it also allows Russia to sell unlimited quantities of fuel for new reactors and gives the Commerce Department the power to adjust the limits on Russian fuel in the event of a real supply shortage.

We believe the terms of the agreement are reasonable and reflect the broad consensus that exists in the U.S. nuclear fuel industry regarding a measured approach to Russia. For USEC, our United Steel Workers (USW) union, our workers and the communities we serve, the agreement provides the assurance of market stability that we need to finance and complete our new enrichment plant.

I think everyone here would agree that a successful American nuclear renaissance needs a corresponding growth in American nuclear fuel production. I am happy to report that USEC is one of four companies that are making or planning to make multi-billion dollar investments in new U.S. enrichment plants to meet America's fuel supply needs. This is unprecedented in the history of commercial nuclear fuel. No other country has more than one domestic producer, and all enrichers other than USEC are wholly or partially government owned. It is a testament to the openness of the U.S. market today that four commercial projects for new enrichment capacity are either under construction or being proposed.

It is vital that these efforts succeed. A domestic supply is a more secure supply. Our nation must have a secure fuel supply to ensure that an expanded reliance on nuclear power does not lead to increased dependence on yet another foreign source of energy. We currently import most of our oil and are becoming increasingly dependent on foreign LNG supplies for our natural gas—we cannot afford to let that happen with our nuclear fuel supply. Just as geo-political change can open up new energy supply sources as we saw with the collapse of the Soviet Union, geo-political change could just as quickly shut down access to foreign energy supplies.

I want to acknowledge the forward-thinking efforts of you, Mr. Chairman, Senator Domenici, Congress and the Administration to support the growth of nuclear power by passing the Energy Policy Act of 2005. This legislation provides important loan guarantees and tax credits to utilities who are working hard to proceed with building new nuclear reactors and modernizing America's nuclear industrial base.

USEC thanks the U.S. government for its support of efforts to close the gap in the coverage of U.S. trade law created by the federal appeals court decision. The U.S. government's support highlights the national interests at stake in this case.

I want to thank Kentucky Senators Mitch McConnell and Jim Bunning, as well as Congressman Ed Whitfield, for introducing legislation clarifying that all nuclear fuel imports are subject to U.S. trade law. This legislation will ensure that the agreement with Russia can be enforced according to the terms of the agreement. I also want to acknowledge the United Steel Workers for taking the lead in requesting the legislation and, in particular, the efforts of International Local 550 in Kentucky and Local 689 in Ohio in support of the legislation.

USEC will support any measure that will ensure that the terms negotiated with Russia can be enforced. Those terms provide an extremely reasonable market opportunity for Russia and for utilities. And they give USEC and others who want to provide a secure domestic fuel supply to support the nuclear renaissance in the United States the market stability we need to finance and complete our projects.

USEC is doing three things that are of vital importance to U.S. energy and national security.

First, we operate the only uranium enrichment facility on U.S. soil—a gaseous diffusion plant in Paducah, Kentucky.

Second, we are deploying the only U.S.-owned and U.S.-operated advanced uranium enrichment technology at USEC's American Centrifuge Plant in Piketon, Ohio.

Third, we are the U.S. government's executive agent for the Megatons to Megawatts nonproliferation program with Russia. This program has converted highly enriched uranium from almost 13,000 dismantled Russian nuclear warheads into fuel that generates approximately 10% of America's electricity annually. The program is on track to eliminate 20,000 warheads by 2013.

USEC supplies approximately one-half of the fuel used to power U.S. nuclear reactors today. USEC also employs more than 2,800 workers at its facilities in five states—Georgia, Kentucky, Ohio, Tennessee and Maryland.

Let me talk briefly about what USEC has been doing to meet our country's need for reliable uranium enrichment supply.

USEC has substantially improved operations at our Paducah plant, which is now operating at historically high levels of efficiency. Market prices for our product at current levels can support continued production from our existing plant.

USEC must also replace the fuel that today comes from dismantled Russian nuclear warheads under the Megatons to Megawatts program, and we are building new capacity using the world's most advanced enrichment technology, which is based on research and development done by the U.S. Department of Energy. USEC is investing billions of dollars in a new enrichment plant to produce the nuclear fuel that American utilities need.

The American Centrifuge Plant we are building in Ohio will use 95 percent less electricity than a comparably sized gaseous diffusion plant. The new plant relies on domestic technology and will employ highly skilled American workers. It will ensure a reliable and competitive domestic supply of nuclear fuel, help revitalize America's nuclear industrial base and create hundreds of new, well-paying U.S. jobs in more than 10 states.

I am personally committed to keeping the project economic for our investors and price competitive for our customers. However, there is an important national security dimension to the project that cannot be ignored. While other domestic plants based on foreign technology have been proposed, the American Centrifuge Plant is unique because it alone will employ U.S. technology. This technology is not only vital to our nation's energy interests, it is also the only technology available to meet U.S. national security needs, such as enriched fuel for defense purposes. Even if plants using foreign technology are deployed in the United States, only the American Centrifuge technology could be used to meet those defense needs. By international agreement, enriched uranium produced using such foreign technology may only be used for peaceful purposes.

Some contend that without immediate and unlimited access to Russian uranium imports, America will face a shortage in our nuclear fuel supply in the future. That is simply not the case.

First, our Paducah plant is setting new production records and can continue to operate throughout the next decade if needed, provided that market prices remain stable and are not depressed by dumped imports.

Second, our American Centrifuge Plant's modular architecture can be expanded years ahead of an increase in fuel demand, thus providing ample supply for utilities.

Third, LES and the other projects I mentioned before are planning to provide additional domestic capacity using foreign technology, which individually or together will provide substantial domestic supply in addition to the supply from the American Centrifuge Plant.

Fourth, we expect the United States will continue to import substantial amounts of nuclear fuel from Western Europe. See our chart, exhibit 1.*

Fifth, as mentioned earlier, the terms of the recent agreement allow unlimited imports of Russian fuel for initial cores of new reactors and permit the Commerce Department to increase the quotas on Russian fuel in the event of a supply shortage for existing reactors.

Therefore, there should be more than sufficient fuel supply to meet domestic needs, provided U.S. market conditions remain stable and afford us the certainty needed to maintain and deploy domestic supply. It is important to note that, under these conditions, nuclear power is very attractive because, among other benefits, it does not put us in a position of being reliant on a single country or cohesive group of countries, like OPEC, for our fuel supply.

In this regard, Russia has the largest nuclear fuel supply in the world and is aggressively seeking to expand its share of the world market, particularly in the United States, as confirmed in the U.S. International Trade Commission's year-long investigation that was completed in 2006 (see exhibit 2). Russia can clearly play an important role in the U.S. nuclear fuel market in the long term, but given Russia's significant excess supply and propensity to use energy to further their policy objectives, unfettered access to the U.S. market would put the United States in the unacceptable position of being at the mercy of Russian fuel imports.

At the beginning of my remarks, I stated that we are all committed to the expanded use of nuclear power, a strong domestic nuclear fuel industry, robust competition among domestic and international nuclear fuel suppliers and a reinvigorated manufacturing base, and I raised the question of how do we get there.

We are at a critical juncture in our efforts to support the nuclear renaissance. Action is required now to assure the stable and strong U.S. nuclear fuel industry that is needed for this renaissance by ensuring that the recent agreement with Russia is enforceable.

The U.S. nuclear power industry, the Congress and the Administration must work together to prevent the United States from becoming dependent on foreign governments, the nuclear fuel companies they control or foreign enrichment technologies to keep America's nuclear plants operating. It would be a great irony if the nation that first harnessed the power of the atom became solely dependent on other nations to provide its nuclear fuel. A nuclear renaissance overly reliant on foreign-controlled fuel is a bad deal, and Congress has the power to ensure that does not happen.

The CHAIRMAN. Thank you very much.

Mr. Malone, go right ahead.

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* Exhibits 1–2 have been retained in committee files.

STATEMENT OF JAMES P. MALONE, VICE PRESIDENT, NUCLEAR FUELS EXELON GENERATION COMPANY, LLC, WARRENVILLE, IL

Mr. MALONE. Thank you, Mr. Chairman, Ranking Member Domenici, and members of the committee.

Today, I would like to present you with four thoughts. One, free markets work best. Two, Exelon supports, and is committed to, a robust domestic enriching services market. Three, utilities utilize strict risk management criteria, and; Four, a government-to-government agreement, or legislation based on the principles of the Russian Suspension Agreement could be in the best interests of all stakeholders.

Let me address free markets. Exelon is a merchant-generator, which means we have no captive customers, and sell our electricity in the competitive wholesale market. Competition makes us work very hard to maintain high performance. We focus on safety, high-quality workmanship, personal responsibility, and accountability for our actions. At Exelon, we believe that our core values are the reason for our success.

I mention those values in the hope that the committee will agree that competition can provide the incentive for any participant to achieve excellent performance, and to rely on sustaining that performance to provide the basis for continued success. Fair and open competition does not favor one competitor over another. Fair and open competition is all having an equal chance, and being judged by their performance—markets reward high performance.

Two, we need a robust domestic enriching services market. Each year, Exelon requires 2.5 to 3 million Separative Work Units for enriching services. Needless to say, those quantities are significant, and represent about 20 percent of the United States annual requirements for nuclear fuel.

Just as we believe in competitive, wholesale electricity markets, we also believe in competition among our fuel suppliers. Exelon is a large customer of both USEC and LES. We are working to reach agreement on terms and conditions with both Global Laser Enrichment, and AREVA, for enrichment services from their proposed United States plants.

Three, rigorous risk management. In light of Exelon's annual nuclear fuel needs, it is important for us to pay particular attention to risk management. We employ a rigorous process to assure that we manage risk in a balanced and informed manner. Risk can manifest itself in many ways, so diverse sources of supply are a necessity when the risk portfolio is as broad as it is in the worldwide nuclear fuel market.

Exelon supports the amendment to the Russian Suspension Agreement. The purpose of the amendment is to open the United States market to commercial SWU from Russia—in other words, it seeks to add an additional competitor to the market.

The importance of the amendment lies in the incremental manner in which Russian origin commercial SWU has increased over time, especially recognizing the end date of the HEU Agreement.

Currently, the HEU Agreement provides about 5.5 million SWU per year to the United States, meeting roughly half of United States demand. This SWU is delivered to USEC, and they use it

to fulfill delivery commitments under their contracts. This is a very important nonproliferation program, and Exelon is pleased to work with USEC to achieve the goals of the HEU blend-down program.

By the end of 2013, there will be a drop in the supply of SWU available to the United States market. Recognizing that the supply of material from the HEU Agreement will end at that point, Exelon is working hard to diversify our SWU supply base.

As we progress through the negotiating process with AREVA and GLE, it is becoming more evident that there is a need to improve the certainty on both sides, or said another way, reduce the risk.

Suppliers need stability and predictability in order to obtain the financing required to build the new facilities. Consumers need stability in order to have reasonably predictable future prices. Exelon recognizes the importance of this issue to both sides. Customers have been surprised when Exelon points out that we believe that our suppliers must be in a position to profit from their investments. We do not believe, for example, that a return of uranium prices to the very low levels seen earlier this decade would be in the industry's long-term interests. The uranium sector needs the ability to explore for, and develop, new ore bodies in order to assure the supply for their customers.

Last, a government-to-government agreement, or legislation. Exelon believes that a new government-to-government agreement between the United States and Russia, or legislation that achieves the same purpose, can form the basis for a stable and predictable supply of uranium enriching services from Russia to the United States The language could be, in large part, that which is already in the Russian Suspension Agreement.

Exelon also believes that the NEI membership can support either approach, and wants to work with the committee to accomplish this. NEI has already accomplished what many thought could not be done, by working with its membership and the Department of Energy to establish mutually agreed-upon terms under which DOE uranium could enter the market.

Market participants are willing to cooperate to reach an agreement that will lead to market stability and adequate supplies of enriching services. Exelon stands ready to work with the consumers, producers, the nonproliferation community, and others to develop a proposal that could serve as the basis for a government-to-government agreement, or legislation that will accomplish the goals of all stakeholders.

On behalf of Exelon, I appreciate the opportunity to address the committee, and would be happy to answer any questions you may have.

[The prepared statement of Mr. Malone follows:]

PREPARED STATEMENT OF JAMES P. MALONE, VICE PRESIDENT, NUCLEAR FUELS
EXELON GENERATION COMPANY, LLC, WARRENVILLE, IL

Mr. Chairman and Members of the Committee: I am James Malone, Vice President, Nuclear Fuels at Exelon Generation Company, LLC. Exelon is honored to address the committee on the subject of the Russian Suspension Agreement (RSA).

In my testimony today, I want to stress the need for a fair and open market for nuclear fuel supplies. Such a market is an essential prerequisite for our industry.

Exelon Generation is the largest owner and operator of commercial nuclear power plants in the United States. We have 17 reactors at 10 sites in Illinois, Pennsyl-

vania and New Jersey. Our total net nuclear generating capacity is 17,649 megawatts.

Exelon's nuclear fleet produced a record of 132.3 million net megawatt-hours of electricity in 2007. The fleet also achieved an average capacity factor of 94.5 percent, the seventh year in a row the capacity factor was greater than 92 percent.

While producing this record output, the plants prevented 121 million metric tons of carbon dioxide emissions by eliminating the need for an equivalent amount of coal based generation. When compared with natural gas generation, Exelon Nuclear prevented the release of 63 million metric tons of carbon dioxide. The carbon avoided by the Exelon Nuclear fleet in 2007 is equivalent to the emissions of more than 23 million passenger cars, nearly double the number of cars in Illinois, Pennsylvania and New Jersey combined.

The environmental and economic benefits of Exelon Nuclear's operations are significant. To continue to provide our customers with a clean, safe and economic source of electricity, we must have reliable and economic fuel supplies. Exelon Nuclear is a merchant generator, which means we have no captive customers and sell our electricity in the competitive wholesale market. We sell our output via Exelon's Power Team, primarily into the PJM market, which serves 51 million people in 13 states. Competition makes us work very hard to maintain high performance. We focus on safety, high quality workmanship, personal responsibility and accountability for our actions. At Exelon we believe that our core values are the reason for our success.

I mention those values in the hope that the Committee will agree that competition can provide the incentive for any participant to achieve excellent performance and to rely on sustaining that performance to provide the basis for continued success. Fair and open competition does not favor one competitor over another. All have an equal chance and are judged by their performance. Markets reward high performers.

Each year Exelon consumes between 8.5 and 10 million pounds of uranium. We also require 2.5 to 3 million separative work units (SWU)—a unit of enriching services—each year. Needless to say, those quantities are significant and represent about 20 percent of the United States' annual requirements for nuclear fuel.

Just as we believe in competitive wholesale electricity markets, we also believe in competition among our fuel suppliers. Exelon is a large customer of both USEC and LES. We are working to reach agreement on terms and conditions with both Global Laser Enrichment (GLE) and Areva for enrichment services from their proposed U.S. plants. The negotiating process can be protracted, but we hope that we will be able to reach mutually agreeable terms with both suppliers.

In his prepared testimony, Mr. Fertel of NEI detailed the quantity of 2014 enriching services represented by the proposed new build in the U.S. Each of the four facilities has an initial nameplate capacity of about 3.5 million SWU per year, while U.S. annual demand is about 14.4 million SWU per year. Exelon could choose to sign a contract with a single supplier and ask for terms that reflect the importance to that supplier of having a baseload customer that consumes about 85 percent of its output. That may sound appealing on the surface, but it would not be prudent risk management on either side of the deal.

In light of Exelon's annual nuclear fuel needs, it is important for us to pay particular attention to risk management. We employ a rigorous process to assure that we manage risk in a balanced and informed manner. Risk can manifest itself in many ways. We must manage financial risk, political risk, transportation risk, environmental risk—including adverse weather, and operations risk. Diverse sources of supply are a necessity when the risk portfolio is as broad as it is in the worldwide nuclear fuel market.

We also believe that markets must operate fairly and equitably. Establishing barriers can appear to be a short-term solution to a difficult problem, but eventually the laws of economics will prevail. Thus we support the recently-signed amendment to the Russian Suspension Agreement. The purpose of the amendment is to open the U.S. market to commercial SWU from Russia. In other words, it seeks to add an additional competitor to the market. The importance of the amendment lies in the incremental manner in which Russian origin commercial SWU is increased over time, especially recognizing the end date of the HEU agreement.

Currently the HEU agreement provides about 5.5 million SWU per year to the U.S., meeting roughly half of the U.S. demand. This SWU is delivered to USEC and they use it to fulfill delivery commitments under their contracts. This is a very important non-proliferation program and Exelon is a pleased to work with USEC to achieve the goals of the HEU blend down program.

Thus far, Exelon has loaded the enriching services component of over 5,000 Russian weapons into its reactors. The threat represented by those weapons has been permanently eliminated. The HEU program will have achieved its goal of elimi-

nating about 20,000 Russian weapons by the end of 2013 and at that time there will be a drop in the supply of SWU available to the U.S. market. Recognizing that the supply of material from the HEU agreement will end at that point, Exelon is working hard to diversify our SWU supply base.

As we progress through the negotiating process with Areva and GLE, it is becoming more evident that there is a need to improve certainty on both sides. Suppliers need stability and predictability in order to obtain the financing required to establish the new facilities. Consumers need stability in order to have reasonably predictable future prices. Exelon recognizes the importance of this issue to both sides. Observers have been surprised when Exelon points out that we believe that our suppliers must be in a position to profit from their investments. We do not believe, for example, that a return of uranium prices to the very low levels seen earlier this decade would be in the industry's long-term interest. The uranium sector needs the ability to explore for and develop new ore bodies in order to assure supply for their customers.

Similarly, Exelon believes that it is important for the enriching services market to be stable and predictable. Efforts to expand enriching capacity in the U.S. could be stymied if the Nuclear Regulatory Commission's review of any proposed facility is limited in its "need" assessment under the National Environmental Policy Act (NEPA) to consider only whether there is a need to meet domestic, as opposed to world, requirements. The SWU market is truly international and the U.S. would further its non-proliferation goals more readily if the definition of need were expanded to include contracts signed by non-U.S. consumers for U.S. production. Capping U.S. production capability at the level of domestic consumption is a recipe for instability that could drive customers overseas and encourage other countries to build enrichment capacity.

Exelon believes that a new government-to-government agreement between the United States and Russia can form the basis for a stable and predictable supply of enriching services from Russia to the U.S. The language could be, in large part, that which is already in the Russian Suspension Agreement. Exelon also believes that the NEI membership can support such an agreement despite the fact that many of its members believe that SWU, as a service, should not be limited. NEI has already accomplished what many thought could not be done by working with its membership and the Department of Energy to establish mutually agreed upon terms under which DOE uranium could enter the market.

Market participants are willing to cooperate to reach an agreement that will lead to market stability and adequate supplies of enriching services. Exelon stands ready to work with consumers, producers, the non-proliferation community and others to develop a proposal that could serve as the basis for a government-to-government agreement that will accomplish to goals of all stakeholders.

On behalf of Exelon, I appreciate the opportunity to address the Committee and would be happy to answer any questions you may have.

The CHAIRMAN. Thank you very much.

Mr. Ervin.

STATEMENT OF ROBERT C. ERVIN, JR., PRESIDENT, LOCAL 550, UNITED STEEL WORKERS, WEST PADUCAH, KY

Mr. ERVIN. Good afternoon. At the onset, I would like to thank the chairman and the ranking member for conducting this hearing, and inviting me to testify.

Mr. Chairman, and members of this committee, my name is Rob Ervin. Currently, I serve as President of the United Steel Workers, USW, Local 550 at the Paducah Gaseous Diffusion Plant.

There are nearly 900,000 active members in the USW International Union, and we are the largest industrial union in North America. I represent almost 600 members at our only domestic uranium enrichment plant.

The USW also represents workers at Local 689, at the Portsmouth Gaseous Diffusion Plant in Portsmouth, Ohio. Enrichment activity ceased in 2001, but it will be the site of the United States Enrichment Corporation, USEC, American Centrifuge Plant.

Briefly stated, the recently signed amendment to the Russian Suspension Agreement, RSA, has a weakness. Specifically, it does not cover low-enriched uranium, LEU, imported as Separative Work Units under so-called SWU contracts. This gap in coverage is a result of the recent *Eurodif* goods versus services court decision, and it is a direct threat to the continued operation of the Paducah Plant, and USEC's deployment of the new Centrifuge Plant.

LEU alone, or sold under SWU contracts, is a commodity. Demand for nuclear fuel is largely fixed and stable, so declining prices will not result in a significant increase in demand. However, because of its commodity nature, a small increase in supply could destabilize the market.

The Paducah plan operates very efficiently, in fact, we have recently set all-time production records. However, we compete against foreign enrichers that are either government-owned, or government-subsidized.

Because we are a private corporation, a drop in the LEU, or SWU price, would result in the Paducah Plant operating at a loss. If that happens, we could see significant job losses and possibly the closure of the only domestic uranium enrichment facility.

Under the amended RSA, the Russian Federal Atomic Energy Agency, Rosatom, and the United States nuclear utilities could easily circumvent the quota limits utilizing SWU contracts. The result would be a saturated United States market, and depressed prices.

The Russians have the largest enrichment capacity in the world, and it far exceeds their domestic needs. They have also demonstrated their intent to further their policy initiatives, through manipulation of their energy resources.

The utilities—through their trade association, the Nuclear Energy Institute, NEI—say they have no interest in circumventing the RSA quotas, and flooding the market. Yet, the resulting price drop would benefit them immensely. NEI has stated, we should just trust them to live within the RSA quotas, even though they are not legally bound to do so.

The USW, and all local communities, are not willing to entrust the fate of our domestic industry, and well over 1,500 hourly and salary to NEI, the self-interest of the utilities, or the Russian government.

While the Russians pose the most serious threat to our industry, the fundamental issue is the gap in SWU coverage created by the *Eurodif* decision. To correct this gap, S. 2531, sponsored by Senators McConnell and Bunning, and H.R. 4929, sponsored by Representative Whitefield, were introduced.

These companion bills amend the Tariff Act of 1930 to clarify that all imports of LEU, including SWU contracts, would be subject to our trade laws. In addition to these efforts, the Administration also strongly supports this legislation, as demonstrated by a letter signed by four Cabinet-level agencies. We have attached a copy of their letter as an Exhibit to our written testimony, and we ask that it be included in the record.

The USW is very appreciative of all efforts to ensure our domestic industry and its workers can compete on a level playing field.

In conclusion, the USW urges Congress to take action that would limit the amount of imported LEU. We believe the 20 percent an-

nual RSA quota is reasonable, but it must include LEU sold under SWU contracts.

The USW will support legislative efforts to ensure that these reasonable limits can be enforced, with the terminal objectives of preserving our domestic enrichment capability, timely completion of new and modernized facilities, lessening our dependence on foreign energy, and protecting our national security interests.

Mr. Chairman, this concludes my testimony, and I am happy to answer any questions that you may have.

[The prepared statement of Mr. Ervin follows:]

PREPARED STATEMENT OF ROBERT C. ERVIN, JR., PRESIDENT, LOCAL 550, UNITED STEELWORKERS, WEST PADUCAH, KY

Mr. Chairman and Members of the Committee, I am Rob Ervin, President of Local No. 550 of the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied-Industrial and Service Workers International Union ("USW"). The USW has 850,000 active members and is the largest industrial union in North America. Our union has been fighting on the front lines against foreign governments and companies seeking to gain an unfair competitive advantage by violating the rules of fair trade. The USW represents workers in Paducah, Kentucky at the USEC enrichment plant. This plant is the sole uranium enrichment plant operating in the United States. USW also represents USEC workers in Local No. 689 at the Portsmouth, OH nuclear site. Another enrichment plant, previously shut down after USEC's privatization, is now designated as the site for USEC's new American Centrifuge Plant (ACP).

I appreciate the opportunity to testify about the serious concerns of the USW regarding the recent amendment to the suspension agreement in the antidumping case on Russian uranium imports between the United States and Russia ("RSA"). The USW was the original petitioner in the underlying antidumping investigation and sought relief under the trade laws to stop the dumping of uranium products by Russia that were flooding the market and causing harm to the domestic commercial nuclear fuel industry. That preliminary investigation found that Russian uranium was being dumped at over 110 percent. Thereafter, the Russian government and the Department of Commerce entered into a suspension agreement under which entry of Russian uranium was limited to specified annual quota amounts.

However, as a result of a court decision in the *Eurodif* case[1], low-enriched uranium ("LEU") imported from any country, including the Russian Federation, through sales of Separative Work Units ("SWU") contracts would no longer be subject to the trade laws. Consequently, the quotas under the recently amended Russian Suspension Agreement ("RSA") do not cover LEU sold pursuant to SWU contracts. This creates a large gap in coverage that is an imminent threat to the continued operation of the sole remaining domestic enrichment plant at Paducah, Kentucky. This fatal gap in coverage of Russian LEU sold under SWU contracts also threatens the ability of USEC to build the new American Centrifuge Plant at the Portsmouth, Ohio site. Investment will not be forthcoming if LEU may enter unrestricted from the Russian Federation or other countries that enrich commercial uranium. The USW represents over 1000 hourly workers at these two sites—all of those high-skilled, well-paying jobs are now at serious risk. Moreover, the energy security interests of the United States in maintaining an adequate and competitive commercial uranium enrichment industry are at risk. Finally, and of great importance, the national security and non-proliferation interests of the United States in maintaining a viable domestic military nuclear fuel capacity and the successful completion of the Russian HEU Agreement[2] also are at serious risk. Something must be done to correct this.

LEU—alone are sold under SWU contracts—is a commodity. Demand for nuclear fuel is largely fixed and stable, so lowering prices for LEU or SWU will not increase demand significantly. Yet, even a small increase in supply will significantly lower

[1] *Eurodif* v.U.S., 411 F.3d 1355 (Fed. Cir. 2005). The CAFC held that LEU imports sold under SWU contracts are not covered by the antidumping or countervailing duty laws of the United States because such transactions are for services and not goods. See Slip Op. 04-1209, p.16.

[2] The Russian HEU Agreement is formally known at the "Agreement Between the Government of the United States and the Government of the Russian Federation concerning the Disposition of Highly Enriched Uranium Extracted from Nuclear Weapons", dated February 19, 1993.

prices. Therefore, while the enrichment plant at Paducah operates very efficiently and recently set an all-time high for production, the plant relies on older gaseous diffusion technology, which requires large amounts of electricity. Given the increases in electricity rates for the Paducah plant, a significant drop in the prices of LEU—regardless of how it is sold—likely would force the plant to operate at a loss. When that happens, our union members working at the plant lose their jobs. We are the canary in the mine.

The Russian Federation is the largest enricher of uranium in the world and has capacity well beyond its domestic demand. As the Department of Commerce found in its sunset review of the suspension agreement, the Russian federation has publicly made known it intent to target its excess capacity to the U.S. market now that the law under *Eurodif* prevents the amended RSA from covering LEU sold under SWU contracts. So long as that legal gap in coverage exists, our domestic industry and workers will be under serious threat. This means that the Russian Federal Atomic Energy Agency, "Rosatom" and U.S. nuclear utilities are now free to structure their sales of LEU under SWU contracts thereby easily circumventing the reasonable annual quota limits (20 percent) agreed to under the amended RSA. There is not prohibition against them oversupplying the U.S. market and depress prices to our grave detriment.

The nuclear utilities and their trade association, the Nuclear Energy Institute (NEI) say they have no interest or intent to use SWU contracts to avoid the quotas and flood the market, and we should just trust them. The United Steelworkers are not willing to entrust over 1000 jobs of its members to the good intentions and the commercial interests of the NEI and U.S. utilities, much less the Russian government. We also think that both the Administration and the Congress should not be willing to entrust the critical energy and national security interests of the United States to the good will of the utility industry and the Russian government.

The USW strongly urges the Congress to act to limit the amount of LEU that the Russians can sell into the U.S. market, and SWU contracts must be included in those limits. We are especially vulnerable to excessive Russian LEU imports from now to the end of the Russian HEU Agreement in 2013. The LEU derived from Highly Enriched Uranium ("HEU") from dismantled nuclear warheads from the arsenal of the former Soviet Union, under that agreement currently accounts for over 40% of U.S. supply. It is marketed by USEC as the agent for the U.S. government, and while that is helpful to USEC's profits, it does not directly provide jobs for our workers and members. After the end of the Russian HEU Agreement, starting in January 2014, the RSA allows LEU quotas for the Russians of approximately 20% of U.S. demand through 2020 to provide a transition from the HEU Agreement. By 2014 it is expected that there will be at least two new enrichment plants in operation by USEC and LES, and Paducah can continue operations so long as necessary to provide sufficient supply. That can all be defeated by excess supply from Russian SWU contracts not covered by the quotas.

S. 2531, legislation introduced by Senators McConnell and Bunning, and H.R. 4929 by Rep. Whitfield, would fix the decision in the *Eurodif* case to make LEU sold under SWU contracts subject to the U.S. trade laws. The USW strongly supports such legislation. These companion bills amend the Tariff Act of 1930 so that all imports of LEU—including LEU sold under SWU contracts—would be subject to our trade laws. That would mean that any country dumping or taking prohibited subsidies for LEU products exported here would be held accountable for such unfair trade practices. Certainly, the USW is very appreciative of the efforts to make sure that our domestic industry and workers can compete on a level playing field in the uranium industry. The Administration also strongly supports that legislation[3]. We have attached a copy of that letter as an exhibit to our testimony and ask that it be included in the record.

In conclusion, the USW urges Congress to limit the amount of LEU, in any form—including sold under SWU contracts—to a reasonable quota level now and after the conclusion of the Russian HEU Agreement. We suggest that quota level be no more than twenty (20) percent of U.S. demand for commercial nuclear fuel. SWU contracts must be included within these limits for any effort to be effective. The USW will support legislation if it also attains the following objectives of the Administration:

full implementation of the 1993 Agreement between the Government of the United States of America and the Government of the Russian Federa-

[3] See letter to Sen. McConnell, Sen. Bunning and Rep. Whitfield dated December 21, 2007 signed by the Departments of State, Commerce, Defense and National Nuclear Security Agency of the Department of Energy. (Attach as an Exhibit.)

tion Concerning the Disposition of Highly Enriched Uranium Extracted from Nuclear Weapons (the HEU Agreement);

continued production of nuclear fuel at the remaining domestic uranium enrichment plant and maintaining stability in the U.S. uranium market;

and timely completion of new and modernized facilities for the production of nuclear fuel in the United States.[4]

ATTACHED EXHIBIT

December 21, 2007.

Hon. MITCH MCCONNELL,
Minority Leader, U.S. Senate, Washington, DC.

Hon. JIM BUNNING,
U.S. Senate, Washington, DC.

Hon. ED WHITFIELD,
U.S. House of Representatives, Washington, DC.

DEAR SENATOR MCCONNELL, SENATOR BUNNING, REPRESENTATIVE WHITFIELD: You have requested the views of the Administration regarding H.R. 4929 and a companion bill S. 2531 that would amend the Tariff Act of 1930 to make clear that all imports of low enriched uranium (LEU) are subject to coverage under the antidumping law without regard to the nature of the transactions pursuant to which they are imported. The Administration strongly supports enactment of this legislation. By overturning the decision of the U.S. Court of Appeals for the Federal Circuit in *Eurodif* v. *United States*, the enacted legislation would contribute greatly to the Administration's efforts to address future imports of foreign uranium products, including LEU and enrichment, consistent with our national security and energy security needs. These objectives include:

- full implementation of the 1993 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);
- continued production of nuclear fuel at the remaining domestic uranium enrichment plant and maintaining stability in the U.S. uranium market; and
- timely completion of new and modernized facilities for the production of nuclear fuel in the United States.

Among other matters, the *Eurodif* decision impairs an antidumping proceeding on Uranium from Russia covering all forms of uranium, including LEU, which could endanger the implementation of the HEU Agreement. Prior to the *Eurodif* decision, imports of uranium from Russia were regulated through the combined effects of the HEU Agreement and a Suspension Agreement under the antidumping duty law. Under the HEU Agreement, until the end of 2013, approximately 30 metric tons of Russian weapons grade uranium is down-blended, annually, for use in U.S. nuclear power plants, making an important contribution to preventing the proliferation of nuclear weapons. Under the antidumping Suspension Agreement, such down-blended uranium may enter the United States without being subject to antidumping duties. The antidumping Suspension Agreement effectively excluded all other forms of Russian uranium from the U.S. market, The *Eurodif* decision now excludes certain sales of LEU from the coverage of the antidumping duty law depending on how the transaction for the LEU is structured. As a result, as long as the Russians properly structure their transactions to be excluded under the *Eurodif* decision, the limits imposed by the Suspension Agreement can no longer apply. Such an unregulated increase in supply in the U.S. market will undermine the effect of the Suspension Agreement and thereby compromise the successful operation of the HEU Agreement.

At the end of the Cold War, the Russian Federation inherited the nuclear weapons complex of the former Soviet Union. Consequently, Russia's capacity to produce uranium products substantially exceeds its domestic needs. European enrichment enterprises also have substantial capacity and presence in the U.S. market. Unlimited exports of foreign uranium products to the United States could also threaten the viability of the only U.S. producer of enriched uranium, including that necessary for the reactors that produce tritium for U.S. nuclear weapons: the United States Enrichment Corporation (USEC). USEC is the U.S. Executive Agent under the HEU

[4] Id.

Agreement and is obligated to accept certain amounts of down-blended weapons grade uranium which it resells to domestic utilities. If USEC cannot remain viable this could lead to excessive U.S. dependence on foreign uranium for domestic generation of electricity. At present, about 85 percent of the fuel for U.S. nuclear reactors comes from foreign sources, primarily Russia. To fulfill the objectives of the HEU Agreement and to maintain a viable commercial nuclear fuel industry, critical to U.S, energy and national security interests, we must maintain the ability to prevent massive imports of dumped foreign uranium products.

At the same time, we must also ensure that the U.S. economy remains open to trade with key partners, such as the Russian Federation, For that reason, the Department of Commerce recently negotiated an amendment to the 1992 Suspension Agreement on uranium products with the Russian Federation. That draft agreement would permit Russia to continue to export substantial quantities of uranium products to the United States following the end of the HEU Agreement in 2013, without jeopardizing the ability of domestic nuclear fuel suppliers to produce nuclear fuel to meet our national security and energy security needs. The proposed legislation also will ensure that the United States remains at the forefront of nuclear technology development and has the capability to maintain an adequate domestic source of enriched uranium nuclear fuel for commercial and national security purposes.

We appreciate your leadership on this issue and look forward to working with Congress to enact such measures and thus secure energy and national security objectives vital to the United States.

Sincerely,

PATRICIA A, MCNERNEY,
Department of State,
DAVID M. SPOONER,
Department of Commerce,
JOSEPH A. BENKERT,
Department of Defense,
WILLIAM H. TOBEY,
National Nuclear Security Administration.

The CHAIRMAN. Thank you very much.

Our final witness today, Mr. Hinterreither, thank you for being here.

STATEMENT OF REINHARD HINTERREITHER, PRESIDENT AND CEO, LOUISIANA ENERGY SERVICES, EUNICE, NM

Mr. HINTERREITHER. Thank you, Chairman.

Chairman Bingaman, Senator Domenici, members of the committee, thank you for the opportunity to speak with you today regarding the recently signed Russian Suspension Agreement amendment between the United States and the Russia Federation, and the impacts on the United States domestic enrichment market.

My name is Reinhard Hinterreither, I'm the President and CEO of Louisiana Energy Services, LES, located in Eunice, New Mexico. I have submitted written testimony to the committee, and I would like to summarize that briefly.

As you know, in 2006, LES received the first license in decade from the Nuclear Regulatory Commission, to build a major nuclear project in the United States, the National Enrichment Facility.

This would be the first plant in the United States to enrich uranium using a low-energy, zero-emission, gas centrifuge technology. We're on target to begin shipping low-enriched uranium to United States utility customers in 2009, and full operations in 2013.

The successful completion of the National Enrichment Facility will require a massive investment in financial resources and human capital. Due to the enormous investment required to construct the National Enrichment Facility, LES must make decisions based on its assessment of the long-term growth potential, and pre-

dictability of the United States market for uranium enrichment services. The most significant risk we perceive for the long-term success of the National Enrichment Facility is the excess enrichment capacity in Russia and the potential for that excess enrichment capacity to flood the United States market.

LES estimates current Russian capacity in enriched uranium at around 26 million SWU per year, compared to indigenous demand of just 8. The total excess enrichment capacity in Russia exceeds the total United States enrichment demand, with just 14 million SWU.

We are very concerned that unregulated supplies of fuel from this excess Russian enrichment capacity has the potential to make LES's investment uneconomic, as well as to discourage further investment in the future.

LES believes that there needs to be a reasonable regulation of Russian enrichment services delivered to the United States. Such regulation should serve three purposes.

One, assure supply diversity for United States utilities. Two, encourage the development for a domestic infrastructure and promote the national energy security. As this committee knows, the principal means for regulating the supply of Russian enrichment services to the United States for the past 15 years, has been the Russian Suspension Agreement, which has recently been amended.

The Russian Suspension Agreement has operated in harmony with the landmark 1993 agreement between the United States and Russia in which Russia down-blends HEU, highly enriched uranium, from dismantled nuclear weapons, for commercial nuclear power plant fuel.

Unfortunately, the HEU deal is set to expire in 2013. LES is not opposed to the Suspension Agreement, and recognizes the valuable role the Administration has played in stabilizing trade with Russia in the past.

However, the Suspension Agreement leaves open a back door, whereby unregulated Russian SWU could enter the United States market, and have a devastating effect on the domestic enrichment industry.

LES believes it's time for Congress to consider new options to balance the need of all stakeholders, including those in the United States Government, and come up with the legislative solution that should contain four key elements to ensure that a robust domestic enrichment industry is allowed to take hold, and flourish within the United States.

The four points are: First, enable United States utilities to have direct and immediate access to reasonable quantities of commercial Russian enrichment. Second, ensure long-term market predictability, that is a prerequisite for new investments, by legislating overall limits on Russian enrichment imports that are reasonably consistent with quantities already agreed by Russia under the Suspension Agreement. Third, provide incentives to complete the current HEU Agreement to ensure continued supply of commercial-grade fuel to United States utilities. Finally, fourth, provide incentives to establish a follow-on HEU Agreement that requires additional down-blend of HEU from Russia's nuclear arsenal.

Again, my thanks to the committee for the opportunity to express LES's concern regarding these vital issues relating to United States energy security, and domestic enrichment supply. I look forward to your questions.

[The prepared statement of Mr. Hinterreither follows:]

PREPARED STATEMENT OF REINHARD HINTERREITHER, PRESIDENT AND CEO, LOUISIANA ENERGY SERVICES EUNICE, NM

Chairman Bingaman, Senator Domenici and members of the Committee, thank you for the opportunity to speak to you today about the important issue on the capability of the United States to maintain a domestic enrichment industry after the recent amendment adopted to the Russian Suspension Agreement. My name is Reinhard Hinterreither and I am President and CEO of Louisiana Energy Services (LES) located in Eunice, NM.

Following a 30 month licensing period that culminated in the U.S. Nuclear Regulatory Commission issuing the first Combined Construction/Operating License in June 2006, LES is more than one year into construction of an advanced uranium enrichment plant in southeastern New Mexico that is currently planned to be capable of providing approximately 25% of U.S. demand for enriched uranium.

LES will employ a low-energy use, zero emission centrifuge technology to enrich uranium that has been developed and commercially proven in Europe by its parent company, Urenco. Centrifuge technology lends itself to incremental expansion, which should serve the expanding needs of a potentially larger U.S. nuclear fleet well into the future. All uranium enrichment technology, however, is highly capital intensive. LES' plant in New Mexico is projected to cost nearly $2 billion. Our closest competitor in the U.S., the United States Enrichment Corporation (USEC) has estimated the cost of its similarly sized centrifuge enrichment plant at $3.5 billion.

In order that enrichment activities can begin next year, LES currently employs 190 full-time employees in New Mexico. In addition, over 700 construction workers and construction managers and 235 contractors with more than 10,000 man-years of combined nuclear and construction experience are currently working on-site. Such significant investments in infrastructure, a skilled work-force and the community necessarily demand long-term market stability for the many years required to recover the substantial up-front capital costs associated with a centrifuge facility. A key prerequisite for committing to make this enormous investment were contracts with U.S. utilities to purchase enrichment services from LES. While these contracts give some confidence that LES is not constructing a financial white elephant, long-term success and further investment in potential additional capacity depends on a much longer-term predictability in enrichment fuel markets than is afforded by LES' current contract portfolio. One of the primary reasons LES did not commit to build a U.S. enrichment plant from the late 1980's until June 2006 was that the U.S. market environment was unstable and adjusting to significant new supply sources—from Russia.

Russia enjoys an enormous excess of uranium enrichment capacity largely built during the Cold War for weapons purposes. This capacity was not developed in response to ordinary market supply and demand signals. LES estimates a current Russian capacity to enrich uranium of 26 million Separative Work Units (SWU) per year, compared to indigenous Russian demand (including demand in republics of the former Soviet Union) of just 8 million SWU per year. The excess enrichment capacity in Russia exceeds total annual U.S. enrichment demand, which is just over 14 million SWU per year. We are very concerned that unregulated supplies of fuel from this excess Russian enrichment capacity has the potential to make LES' investment in domestic enrichment capacity uneconomic. LES believes that there needs to be reasonable regulation of Russian enrichment services delivered to the United States that allows consumers to achieve supply diversity but that does not discourage development of domestic infrastructure nor undercut national energy security.

For the past 15 years, the Russian Suspension Agreement has been the principal means for regulating the supply of Russian enrichment services to the United States. The Suspension Agreement was negotiated between the U.S. Department of Commerce and the government of Russia as a resolution to an antidumping action that was brought in 1991. The purpose of the Suspension Agreement has been to ensure that imports of uranium products from Russia would not disrupt the U.S. market to the detriment of domestic suppliers.

The Russian Suspension Agreement has operated in harmony with a landmark 1993 Agreement between the United States and Russia under which Russia down-

blends highly enriched uranium (HEU) from dismantled nuclear weapons into low enriched uranium (LEU) suitable for use as commercial nuclear power plant fuel. To date, HEU from more than 13,000 nuclear weapons in Russia has been converted to nuclear fuel and delivered to U.S. utilities. LES is fully supportive of the nuclear non-proliferation goals achieved through the Agreement, and recognizes the primacy of national security objectives associated with eliminating nuclear weapons over competing commercial objectives. The Suspension Agreement specifically permits the entry of low-enriched uranium produced from HEU into the United States and, until the recent amendments to the Suspension Agreement, did not provide for access to the U.S. market for low-enriched uranium not derived from HEU. Under the HEU Agreement, enriched uranium from Russia has been the single largest source of supply to the U.S. market for the past 15 years.

The most recent amendment to the Suspension Agreement, published on February 1, 2008, establishes export limits on the amount of Russian uranium products that may be exported to the United States through 2020. Due to several developments, however, the stability afforded by the combination of the Russian Suspension Agreement and the HEU Agreement is nearing an end. First, the HEU Agreement, with its concordant non-proliferation benefits, will expire in 2013. Second, the efficacy of the Suspension Agreement as a means to regulate imports of Russian uranium products has been undermined by Court decisions determining that contracts for the provision of enrichment services ("SWU Contracts") fall outside of the scope of the antidumping laws. Third, multiple legal challenges to the continuation of the Russian Suspension Agreement—in any form—are also pending in the U.S. Court of International Trade.

Each of these developments has important implications for LES. The judicial determinations excluding SWU Contracts from the antidumping laws are highly significant. These decisions mean that the apparent limits on exports of Russian uranium products are essentially meaningless. There is nothing in the Amended Suspension Agreement that prevents Russia from exporting far more than the agreed-upon amounts simply by structuring contracts so as to fall outside the coverage of the antidumping laws. Finally, the pending litigation over the Russian Suspension Agreement creates substantial uncertainty to whether the Russian Suspension Agreement will continue to exist at all. In sum, these developments result in an extremely unpredictable environment for further investments in critically needed U.S. enrichment capacity.

LES is not opposed to the Amended Suspension Agreement and recognizes the valuable role that it has played in stabilizing trade with Russia in the past but it is time for Congress to consider new options to balance needs of all stakeholders, including those of the U.S. Government. LES believes that a legislative solution should contain the following elements:

- Enable U.S. utilities to have direct and immediate access to reasonable quantities of commercial Russian enrichment to ensure that their operations are not threatened;
- Ensure long-term market predictability that is a prerequisite for new investments in domestic nuclear fuel cycle infrastructure by legislating overall limits on Russian enrichment imports that are reasonably consistent with quantities already agreed by Russia under the Amended Suspension Agreement;
- Provide incentives to complete the current HEU Agreement, ensuring blend-down of the full scope of Russian nuclear weapons envisioned under the 1993 Agreement and provision of the resulting commercial-grade fuel anticipated by U.S. utilities;
- Provide incentives to establish a follow-on HEU agreement that requires additional blend-down of HEU from Russia's nuclear arsenal.

I thank the Committee for considering steps to address these vital issues relating to energy security and enrichment supply and look forward to your questions.

The CHAIRMAN. Thank you very much for your testimony.

Let me try to understand some of the disagreement, if there is any disagreement, among the witnesses.

Mr. Fertel, let me start with you, and ask your response to the four items that Mr. Hinterreither just went through for us. He identified four items that he felt ought to be included in legislation. Do you agree with those four points? Or do you think we should go ahead with the legislation that has already been introduced, which I take it, does not include all of those items?

Mr. FERTEL. I think that from the discussions we've had with everybody on the front-end of the fuel cycle, and the utilities, there would be strong agreement to look at how we can codify something that would do what's being suggested in the Russian Suspension Agreement, which includes utility access to commercial SWUs between now and 2013. Some certainty on what the SWU market penetration would be post-2013, so that people can deploy here—everybody agrees.

Obviously, we have always, and continue to support, the existing United States/Russia HEU Agreement, we think it's incredibly important, and we would like to see more HEU blended-down.

I think the only thing I would offer on the HEU side is a fear that we have, is unintended consequences of how we might try to get the Russians to do that. We all would like them to blend-down more stuff, and we ought to figure out how to do it, but we ought to figure out how to do it in a way where we have a high degree, probability, that they will do it.

I don't think that the Russians have any intentions of walking away from the current deal. I wouldn't want to do anything to give them any reason to show that they might, as they've done on gas and other things, as we've seen over in Europe.

So, we would agree with all four points, and the only thing I would caution is how to go about accomplishing them, we should do with good forethought and good judgment, Mr. Chairman.

The CHAIRMAN. Any of the other witnesses want to comment on the four points Mr. Hinterreither has made, as to essential elements in an agreement, here?

Mr. Welch, did you have a comment?

Mr. WELCH. One comment—much of what he has talked about, especially in the issues of immediate access and quotas are very well laid out in the modification of the Suspension Agreement and that is reflective of what an industry-consensus position was, both among the miners and the enrichers.

We would all like to see the—we want to see the HEU program go to completion, and we would like to see another one, I mean, it's the right thing for the world.

The only thing I'd come back to is, a little bit, is on the urgency of addressing this gap, or back-door way at additional enrichment entering into the market, is that there is a time sensitivity. So, the idea of being able to make that agreement enforceable as quickly as possible, I think, we would also support.

But, again, we're open to anything that would close that loophole in the existing agreement.

The CHAIRMAN. Any of the other witnesses have a comment?

Mr. Malone.

Mr. MALONE. Yes, Mr. Chairman, I think that from the utility perspective, we would support the fundamental underlying principles that were presented, and as Mr. Fertel mentioned earlier, there was a meeting this morning at NEI of the membership, and we were hashing out, basically, something very similar to that, and that was the genesis of my offer to work with the committee and the utilities, the suppliers—as a group—to find the right way to get that legislation in place.

The CHAIRMAN. Mr. Hinterreither, let me just, to try to put a finer point on this—the legislation that Senator McConnell and Senator Bunning have now introduced is simpler than what you have proposed, you've added a few things to it, as I understand. They have proposed to essentially change the definition so that enrichment would become a good, rather than a service—or enriched HEU would be a good, rather than a service.

Could you elaborate a little bit as to why you think something else or something more is needed than just what has been proposed?

Mr. HINTERREITHER. Absolutely, Mr. Chairman. First of all, I would like to state that LES agrees with the intent of the bill that was introduced by Senators McConnell and Senator Bunning to fix what we call "the back door" in the amended Russian Suspension Agreement.

But, we feel there is three points that are not address in this solution. No. 1, should the Russian Suspension Agreement go away in the very near term, because it's challenged on several different fronts by court cases, then this piece of legislation hinges on the Russian Suspension Agreement with the Russian Suspension Agreement going away, this fix would go away. What we need, what LES needs, is long-term predictability of this situation, number one.

The CHAIRMAN. So, you're saying that we should be putting in statute, provisions which would not be in place if there's an effective challenge to the agreement?

Mr. HINTERREITHER. Correct.

The second point that I would like to address, is that LES feels that theissue that we are trying to deal with here is the massive excess over-capacity of Russian imports, and Russian, Soviet-build enrichment capacity that is 18 million SWU over capacity. But the solution introduced in the McConnell-Bunning bill is a much broader solution, because it addresses all imports into the United States, so we feel it's not a—it's a broader solution required for a narrower problem.

The third point, why we are looking for a new solution for this, would be that our customers clearly are adamantly opposed to this legislation as well, and we do not want to get crossed with our customers, customers are very important for the National Enrichment Facility.

The CHAIRMAN. I've run over my time.

Are there any comments? Additional comments from the panel? If not, I'll go on and allow other Senators to ask questions.

Go ahead, Senator Domenici.

Senator DOMENICI. I want to ask, our last witness—first, it's good to see you again, it's a different circumstance, it feels more comfortable out there in the field—are any of the things that you are suggesting we do in addition to the bill dependent upon Russia agreeing?

Mr. HINTERREITHER. No.

Senator DOMENICI. They all could be done by us?

Mr. HINTERREITHER. It's my understanding, yes.

Senator DOMENICI. OK. You want to make sure that the definition of what is limited is just Russian and not all other uranium enriched from other places in the world, is that correct?

Mr. HINTERREITHER. That is correct.

Senator DOMENICI. I wonder, why is that so important? Could you tell us one more time?

Mr. HINTERREITHER. Absolutely. The Russian capacity that we are talking about here, the excess Russian capacity is 18 million SWU which was built during the cold war area mainly to produce weapons for the Russian Federation.

At that point in time, that capacity would be unleashed on the United States market. LES is very happy to compete with any enrichment plant in the United States, or with other imports that are based on Western-style economics. But, what we feel is unfair, and what we feel is not, to compete with Soviet-style capacity is not what we see as—a problem for us.

Senator DOMENICI. Right.

It was clear to me when I started looking into this, that the competition that we speak of is non-existent in Russia, because there is no market. Everything is under government control, and no matter what they tell us, there is really no market. As a consequence, we cannot inject into their relationships, competitiveness as to price, because there is no competitive price in Russia today. You're implying that also, right?

Mr. HINTERREITHER. Yes, I'm not aware of any.

Senator DOMENICI. I've been told that there isn't any. That it's all the same, and all owned by one.

I want to say, Mr. Ervin, for a moment, if I might talk with you—first of all, I'm very glad to see you here. I think you must understand now that you are looking at the possibility for the construction of a number of nuclear plants in the United States, that we have reached a situation in our country where we don't have very many people left to go to work at building the huge nuclear power plants that we intend to build. If we were trying to build 3 or 4 at one time, I think you're fully aware that we'd have difficulty finding the manpower. The kind of people that are in your Union—we just don't have enough of them anymore, we'd have a hard job, and you would be part of filling that need—is that correct? That excites you about the future, because it's good jobs again, people doing big things, right?

Mr. ERVIN. That is correct, sir. We are very excited about being a part of the renaissance, and the renewed interest in both domestic and global nuclear power.

Senator DOMENICI. Do you come to our assistance every now and then, when you hear people that degrade this? That are political allies of yours?

Mr. ERVIN. Absolutely.

Senator DOMENICI. I wouldn't like to be on the other side when you do. But, I think you probably do.

Let me ask you one last question—any of you. It's obvious to me that one of the good things that has happened in the last 25 years, is the HEU Agreement with the Russians. It has been tremendous with reference to getting SWU to America, eventually getting SWU to American power plants at a reasonable price, and at the same

time it has been a terrific incentive for Russia to understand that there is a great value in disarmament. That if they had to get rid of thousands of weapons, the product that comes out of it, by way of uranium, is sellable. That there's one $350 million deal that they've already made, plus the other deal on it.

Now, anything we do by way of new legislation, in my opinion, has to make sure that it's not a disincentive to the Russians to do more of what they did, when we entered into that agreement—do you agree with that?

Mr. FERTEL. Absolutely, Senator.

Senator DOMENICI. Is there anything that you have done, in your recommendations, that would be a disincentive for them to further negotiate with us, regarding their excess military supplies?

Mr. FERTEL. Certainly not consciously. We've—we're very sensitive to that.

Senator DOMENICI. Don't you think the 20 percent limitation that we're imposing, itself, might at least for a while make them a bit upset?

Mr. FERTEL. I think, sir, it's how it's presented to them. They did agree, in the Suspension Agreement, to essentially a 20 percent—I get to sit, as I said in my testimony, with both the buyers and suppliers as we try to provide advice, and the buyers always want more, and the suppliers always want less.

But there are some natural snubbers, as Mr. Malone said, there's a major risk management profile that every company does, to make sure that—just like we do with our 401Ks and other things—to make sure that they are not putting too many eggs in one basket. If you were looking at the reliability of supply, while the Russians have been a reliable supplier, from an HEU standpoint—they're a new player, and they're a different player. So, their risk profile is going to be somewhat higher.

So, I think in the 20 to 25 percent range—I mean, if you think about 5 major suppliers, and you gave each of them 20 percent, you've done a pretty good job.

Senator DOMENICI. Yes.

Mr. FERTEL. So, I think it's how we present it, sir, and how we work with them to get them to understand why what's going on is fair.

Senator DOMENICI. Do any of you have any comments?

Mr. WELCH. Yes, the one comment I would have—and it goes back to the issue of—what we're trying to fix here is the fact that an agreement that was put in place between the two governments, which is—again, in my view, is a pretty good deal for all of the parties involved. The Russians would get 20 percent access to the market, they have—initial cores are not included in that figure, which is about 4 times what an annual re-load is. There is an ability—if there is an emergency—to bring that number up. So, it is a very good deal for the Russians, except it has this one back-door measure in it.

The legislation that's been proposed by Senator Bunning, Senator McConnell, would close that back-door gap. All it would do would say that all of their imports would be subject to trade law. It doesn't impact the amount of imports they would have, it just gets

rid of the unlimited version. So, it is a very clear way to go solve that issue.

I, also—like you—would like to see more HEU down-blending. So, whether there was a way to get that going, because that's good for the world, and are there ways to incentivize through the percentages of activity that's included in the existing agreement—maybe that can be looked at. But, when you look at the cleanest, fastest way to go solve the issue, the proposed legislation would do it.

Senator DOMENICI. I want to close by saying this has been tremendously informative to me, and I think I understand it well enough to proceed at whatever pace the chairman desires.

But, I think many of us up here have gone through a strenuous exercise in trying to change the American situation of near-total dependence upon crude oil from overseas. It's up to 60 percent now—it's an absolute disaster. To try lessen that dependence has proven to be incredibly difficult.

I want to do everything within my power to see that we're not getting in the same mess again. I mean, we have all this hope built around nuclear power, from the standpoint of thousands of good jobs again. Saying to people, we can build big things again, and we don't all have to fight about it.

When that's out there, and you can feel it, and feel the energy, and say, I want to be part of that, and then think that we could mess ourselves up, or somebody could come along and say, "You don't have anything, because we control your feedstock," to me is unbelievable. I mean, we can't do that.

So, whatever we can do to avoid that, I'm on that team, I assure you, and I thank you for your help.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

I'm informed we have a vote at a quarter till five, so Senator Craig, and then Senator Bunning after that.

Senator CRAIG. Let me pick right up where Senator Domenici left off, Mr. Fertel. I think if you're in the Western European energy business today, you're very concerned about how the Russians play the game. How they turn the valve on their pipelines.

Can you tell me what the nuclear industry is doing—or planning to do—to ensure that 20 years from now, we are not substituting a current addiction from Middle East oil, to Russian enrichment?

Mr. FERTEL. I think just the people sitting at the table, Senator, are evidence of what's being done. As we've said, everybody, I think—we're the only country in the world right now that's looking to deploy four new enrichment technologies and facilities, in the world.

It's taken a long time for us to get to this point, but it's certainly very encouraging for that to be happening. All of us—and I mean, all of us, in the industry—this is all of the utilities and everybody else—want diversity of supply, domestic production to be here. So, I think everybody's working toward that.

If I were looking out 20 years, sir, as to what the fear would be, it would be natural gas, not nuclear fuel, as where we're going to be overly dependent from place we don't want to be, and that's not necessarily, for us, Russia. It's probably LNG facilities.

Senator CRAIG. I think, I too would be concerned if I were to look at the field of Presidential candidates today, and their attitudes about cap-and-trade and the kind of fuel-switching that could go on in the next 10 years before we could get up to speed on anything else, and watch the collapse of the chemical industry, and all of those concerns—yes. I think I'd be a bit more concerned about that, in the short term.

But, in the long term, we can clearly watch the Russians move from petro-nationalism, if you will, to national electrons, or however one would word it, and how they play the game.

So, Mr. Malone—how far in advance do you contract for uranium enrichment services, and how many suppliers do you typically contract with at any one time?

Mr. MALONE. Senator, we have several suppliers, as I indicated, we are USEC's largest customer, we are also the largest customer for LES.

We do currently have contracts with Urenco, coming out of Europe, and we have contract with *Eurodif*. So, we have broad coverage, and it's on purpose, because as we pointed out, we have a risk management process that we go through, and I cannot—by corporate regulation—have any more than 20 percent at a particular place if it is not in the United States.

Now, we made a very specific exemption for uranium enrichment, with respect to how much we can take from the United States Because if the four facilities are successful, then I would be very, very comfortable taking 100 percent of my requirements from the United States, in that case.

But, I do have to diversify, even locally or domestically, across as many suppliers as I can, while still being an important customer to them.

With respect to how far in advance we procure, the contracts typically will run a spectrum, depending on our objective, in the case of LES, we were a launch customer for them, and we agreed to a contract that goes out to the mid-teens, on purpose, to give them a bankable contract so that they could get into the business.

We're working on something similar with USEC right now, with respect to the ACP. Our current contract with USEC goes out about—2011, John?

Mr. WELCH. Yes.

Mr. MALONE. So, we have long-term, into the future, we're well-covered, but we do require diverse supply, and we would never sign up for anything more than 20 percent from Russia. I couldn't put my company at that risk, sir.

Senator CRAIG. I'm glad to hear that. Recognizing time, let me get Senator Bunning to the mic.

Thank you all, gentlemen.

The CHAIRMAN. Thank you.

Let me just say one thing before Jim starts his questions. We are going to try to vote on Gregory Copeland who is the President's nominee to be the General Counsel for the Department of Energy in the President's Room following this vote on the floor. If folks could try to help us get a quorum there, that would be great.

Senator Bunning.

Senator BUNNING. Thank you, Mr. Chairman.

Mr. Fertel, and Mr. Malone, the nuclear energy industry has said it supports negotiating a new deal with Russia, is that accurate?

Mr. FERTEL. Yes.

Senator BUNNING. The Administration has testified that they support the legislation I and Senator McConnell introduced, and that this problem poses a threat to the entire antidumping law system.

If you intend to abide by the new agreement, and not use this loophole to get around the antidumping law, will you support the Bunning-McConnell and the other bill that's in the House of Representatives?

Mr. FERTEL. With respect, Senator, we don't support going that way. There's been 7 years of legal battles, it's—I listened to Secretary Spooner say that he just disagrees—well, that's why we have a court system. To see whether or not it's correct.

Now, Congress certainly can change the law. We believe that right now, the way to deal with this and going to Senator Domenici's concern about the Russians and how they may react—they've seen something happen that seems to open up the market. They did agree to a limitation on the market, and we believe we should codify that limitation in some way, because we do want to make sure we get the domestic deployment here, we do want to see Paducah keep operating.

But we don't support going back and when we lose a court case—if it is lost at the Supreme Court, just changing the law, at that point. We don't believe that that's the right way to go on this, and we think there could be unintended consequences which, again, Secretary Spooner knows trade law better—a lot better—than me.

Senator BUNNING. What are the unintended consequences if we do nothing?

Mr. FERTEL. To be honest, we're not proposing we do nothing. We're proposing we go forward and codify something very close to what was agreed to in the Suspension Agreement, so that there is certainty in the market.

Senator BUNNING. Do you think that makes certainty in the market?

Mr. FERTEL. Yes, we think it does provide certainty in the market, yes, sir. Because even if your legislation passed over our objection, sir, it doesn't stop the Russians from selling in the market, it just says they can't dump. We have to have some confidence they won't dump.

Senator BUNNING. Well——

Mr. FERTEL. Why would they take below-market prices——

Senator BUNNING. When dealing with Russia, I don't have that same confidence, I'm sorry. You must have a much, much, much broader of Russia than I do, since I have been here in the United States maybe a shorter time than you.

I know I've talked with Mr. Ervin more than once, positively—

Mr. ERVIN. Absolutely.

Senator BUNNING. I know that they are deeply concerned about the agreement, and the loophole that it creates. Being the only domestic producer of enriched uranium in the United States presently—presently—they're worried about the dumping of additional

enriched uranium by the Russians, until we codify the 20 percent that has been agreed on.

I really am concerned that the nuclear industry is putting the short-term cost ahead of long-term national security, and market stability. In the short-term, more imports from Russia would bring down prices. Is that correct? In the nuclear industry?

Mr. FERTEL. In the short-term, sir, there's contracts, as Mr. Malone said.

Senator BUNNING. I know there are contracts. But what does it do in the short-term?

Mr. FERTEL. It doesn't matter if it comes from Russia, or it comes from Urenco, or it comes from USEC—we get 40 to 50 percent of our fuel from Russia right now, sir, from the HEU Agreement.

Senator BUNNING. Thank God we do, or we wouldn't have enough to supply the need in the United States. I know Mr. Malone would not be able to buy enough.

Mr. FERTEL. We have, over the next 6 years to the agreement is over, with the Russians, on the HEU Agreement, there's probably less than 8 million SWU over——

Senator BUNNING. Have you dealt with Russia on other things than uranium?

Mr. FERTEL. We talk to Russia about a number of things, like nonproliferation issues and other nuclear energy issues.

Senator BUNNING. I've looked at Russia and the behavior of theRussian Federation, once they have undercut our domestic industry and force them out of business. You can be certain that prices would increase.

Mr. FERTEL. We agree. That's why the people won't put their eggs in that basket.

Senator BUNNING. They believe all of their nuclear customers—those that Mr. Welch supplies, and others, including—I can't pronounce your name for the life of me.

Mr. HINTERREITHER. Mr. Hinterreither.

Senator BUNNING. OK.

[Laughter.]

Senator BUNNING. How about Mr. H. just for the time?

Mr. HINTERREITHER. It's a toughie.

Senator BUNNING. It would leave our nuclear energy customers to foot the bill of higher prices, once the Russians have cornered the United States market.

I know that there are other people that are supplying you right now, Mr. Malone.

Mr. MALONE. Yes.

Senator BUNNING. From Europe?

Mr. MALONE. Yes, that is correct.

Senator BUNNING. Where do they get their enriched uranium?

Mr. MALONE. They produce it in Europe, it's produced in the U.K.

Senator BUNNING. But how much, how much—of course they do, because France uses——

Mr. MALONE. Right.

Senator BUNNING [continuing]. A great deal in their own power generation, 80 percent of their generation is done by nuclear energy.

Mr. MALONE. That's correct.

Senator BUNNING. Four percent, or 20 percent of the United States power is done by nuclear energy. We're trying, by the 2005 bill, to move that up.

But I am really concerned, for the workers—not only at Paducah, but at the new plant at Portsmouth. Generally speaking, the investment it takes to build new nuclear power plants. I mean, it's a horrendous undertaking, and until we pass the 2005 bill, there is no certainty we're ever going to have the same rules that you started with, when you finish the plant.

I know, I went through one in Cincinnati with the Zimmer nuclear plant—which turned out to be a Zimmer coal-fired generating plant because of audits. But, I really am concerned we lose our ability, domestically, to produce our own enriched uranium if we don't secure certainty with the Russians on buying their surplus.

Mr. WELCH. Yes, OK.

Senator BUNNING. Go ahead.

Mr. WELCH. I think we agree with you, Senator Bunning. Without a doubt, the quotas—the great irony is, that modification of the Suspension Agreement is very close to what we all believe will provide the stability to the market—the quotas without the loophole—provides the stability to the market that we can take to the investment community, and support our large investment in plants, which——

Senator BUNNING. How about your Portsmouth plant, and building that?

Mr. WELCH. It helps with Portsmouth plant, it helps with LES, it helps with the proposed plants.

The stability in the market—and I'll give you one for Paducah—the stability that's in the market today, and the things that have been done at that plant, make it very competitive today. Now, that could change, because it's very power-dependent, but that's clearly a resource we're not going to run away from any time soon, and that will also help deal with these transition issues, relative to capacity.

But the quotas are absolutely critical to ensure that there's—that you—they just don't come and dump into the market, and it provides some certainly to go take a look at.

But this loophole, or way to get around it, is something that has to be—

Senator BUNNING. Has to be addressed.

Mr. WELCH. Yes, sir.

Mr. ERVIN. I think there's—

Senator BUNNING. Go ahead, Rob.

Mr. ERVIN. There are two points that I thought would be certainly worthy to make note of at this point. One is, with respect to the last question that Senator Domenici asked, and that is the 20 percent of our market that the Russians will have access to, is 20 percent more than we have access to their markets.

The second thing is that the Commerce Department was asked when they could anticipate a problem with dumping. The answer is, "We're not in control of that. The Russians will determine when we are susceptible to dumping."

Senator BUNNING. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

Senator Domenici, did you have any other questions?

Senator DOMENICI. No. Mr. Chairman, I just would say to the witnesses and those who they represent, that it's obvious they've been very well prepared. We thank you for that, that makes our job much easier, when you produce good testimony, and you're succinct, and you're not frightened. You know what you stand for. That's good, and makes it easier for us.

Second, I hope you know that we can't get things done as quickly as some of you would like. But, I think this committee—if we have ultimate jurisdiction, here, I don't know whether that's the case or not—we have been pretty quick to deal with important issues on the energy field, and I'm quite sure if the chairman knows that this is our baby, and that we've got to do something about it, we'll do it.

We thank you very much for your concern. Also, we thank you for your great hope about the future success of nuclear power in the United States and in the world.

Thank you very much.

Thank you, Senator.

The CHAIRMAN. Thank you all very much, I think it's been very useful testimony.

We may have some additional questions submitted for the record, which we would ask members to submit by the close of business tomorrow. If you do receive any of those, we would appreciate you answering them, if you could.

Thank you, again.

[Whereupon, at 4:50 p.m., the hearing was adjourned.]

APPENDIXES

APPENDIX I

Responses to Additional Questions

RESPONSES OF JAMES P. MALONE TO QUESTIONS FROM SENATOR BINGAMAN

Question 1. Is it my understanding under the amended suspension agreement, Exelon would still diversify suppliers of enrichment—how would you diversify—according to market price or simply based upon risk?

Answer. As the nation's largest owner and operator of nuclear power plants, it is critical for Exelon to have a stable and reliable supply of nuclear fuel.

In evaluating our supply options, we employ rigorous risk management metrics to ensure that we are not overly dependent on any single source of supply. Indeed, as I stated at the hearing, Exelon's risk management practices prohibit the company from obtaining more than 20 percent of our nuclear fuel from any single source.

While price is one factor that we look at when we evaluate our mix of suppliers, we diversify our fuel supply portfolio based upon a number of other risks as well, including financial risk, political risk, transportation risk, environmental risk—including adverse weather, and operations risk.

Question 2. It is my understanding that the price of enrichment based on a SWU is currently around $150 / SWU and has increased steadily over the past two years from a price of $110/SWU. If Russia has unrestricted enrichment access to U.S. markets, do you think the price of enrichment would drop significantly?

Answer. No. The market already assures that Russian SWU will only enter the U.S. market in an incremental fashion. U.S. utilities are the only customers for Russian SWU in the United States, and those utilities have already purchased—from existing suppliers—all or nearly all of the SWU they will need for at least the next three or four years. LES, the New Mexico enricher, is already sold out for its first 10 years of production—the maximum period it was willing to contract for.

U.S. SWU demand may start to become available around 2012 or 2013, but then only in an incremental manner. As a result, imports of Russian SWU could not increase dramatically even after 2013. And those increases would be limited.

U.S. utilities are principally concerned with stability of supply—knowing that in 5, 10, 15, even 20 years, we will have access to the enrichment services we need to fuel our plants and provide power for our customers. We achieve that stability of supply principally by relying on a number of different enrichers rather than buying all of our enrichment from a single source.

While Russian SWU could be an important additional source of enrichment supply diversity, U.S. utilities would not likely increase their reliance on that supply beyond 20 to 25 percentage of the U.S. market since doing so could undermine the objective of maximizing the stability of their supply.

Question 3. Your testimony says that a new government-to-government agreement is needed, what incentive is there for Russia to enter into such an agreement when under current court decisions they have unrestricted access to U.S. enrichment markets?

Answer. Market participants place a high value on certainty. While current court decisions have been favorable for Russia and other exporters of nuclear fuel, the U.S. Supreme Court has not yet decided whether to consider the current decision by the lower courts. A government-to-government agreement could also provide certainty regarding the potential for adverse legislative changes to current U.S. trade law.

Market certainty is also an important factor for other enrichers planning to establish facilities in the US. The financial community will carefully scrutinize the prob-

able success of any proposed enterprise and market stability is an important factor in their decision making process. The utility community is keenly aware of this aspect of the financing process and has no desire to upset it.

Question 4. Would Exelon support extending the HEU agreement past 2013?

Answer. Yes. Exelon fully supports the goals of the HEU agreement, and we are proud of our role in helping achieve the objectives of the agreement. To date, Exelon has loaded the enriching services component of over 2,600 Russian weapons into its reactors. Should the parties agree to extend the current pact past 2013, Exelon would support such an agreement.

RESPONSES OF JOHN K. WELCH TO QUESTIONS FROM SENATOR BINGAMAN

Question 1. Does the current amended suspension agreement in combination with the recent court decision that enrichment is a service create uncertainty in financing USEC's new centrifuge plant?

Answer. Yes. The current amended suspension agreement specifically states it will be applied consistent with the recent *Eurodif* court decision. This means that transactions involving low enriched uranium (LEU) excluded by the court decision are not covered by the suspension agreement. This gap in coverage creates substantial concern among current and future producers of LEU in the United States that Russian LEU will be imported in such quantities that could jeopardize new enrichment projects like USEC's American Centrifuge Plant. This concern will result in uncertainties by the financial markets as to whether to lend or invest in these new projects.

Question 2. Does USEC favor extending the HEU agreement past 2014?

Answer. Yes. The Russian HEU Agreement is a strategic and successful nonproliferation program and USEC has always supported its extension past 2014. Mr. William Tobey, Deputy Administrator for Defense, Nuclear Nonproliferation in DOE's National Nuclear Security Administration, indicated during the hearing that the U.S. would like to extend the HEU agreement. However, such a step would not be straight forward or simple because the Russians have consistently said that they are not interested in such an extension.

Question 3. What are your current time-lines for opening your new centrifuge plant?

Answer. In April 2007, we received a 30-year NRC construction and operating license for the American Centrifuge Plant (ACP), and in May 2007 we officially commenced commercial plant construction. Activities involved with initiating commercial operations at the ACP will occur in 2009 and approximately 11,500 of our AC100 first generation centrifuge machines will have been deployed in 2012. We expect these machines to produce LEU containing about 3.8 million SWU per year based on our current estimates of machine output and plant availability.

Concurrent with our initial deployment of capacity for 3.8 million SWU per year, we are analyzing the nuclear fuel market to determine the economics of adding additional ACP capacity. We are also evaluating our potential to continue to build and install later generation centrifuges after the initial deployment.

Question 4. If there are delays in opening the centrifuge plant will USEC still operate the Paducah plant?

Answer. USEC can continue to operate the Paducah facility well into the next decade depending on SWU market prices and the availability of an adequate supply of economically priced power. We also have been very active at looking at continued productive uses for the plant, including the enrichment of higher assay tails material. Of course, the future of the plant is dependent on the strength of the market, and in particular, the ability of the U.S. government to prevent an influx of dumped imports.

RESPONSES OF DAVID M. SPOONER TO QUESTIONS FROM SENATOR BINGAMAN

Question 1. Question: Do you believe that, if Russia were to resume free sales of low-enriched uranium or enrichment services to the U.S. today, the sale price would be sufficiently low as to qualify as "dumping"?

Answer. Yes, we do believe this would be the case. In its recent five-year sunset review of the suspension agreement, Commerce determined that, in the absence of the agreement, there would likely be an increase in supply of Russian uranium products into the U.S. market, leading to a decline in prices of uranium products and a continuation or recurrence of dumping in the U.S. market. Further, in a subsequent remand redetermination pursuant to the U.S. Court of International Trade's instruction to reconsider its sunset determination by excluding imports of

low-enriched uranium pursuant to separative work unit, or "SWU," contracts, Commerce confirmed its original determination even though its analysis excluded LEU pursuant to SWU contracts as defined in the *Eurodif* litigation. Likewise, Commerce believes that the loophole created by the *Eurodif* litigation could result in a similar increase in supply, specifically of low-enriched uranium pursuant to SWU contracts, leading to a decline in prices which threatens the viability of USEC and the ability of companies in the United States to develop and put into operation their new enrichment facilities.

Question 2. Did your periodic reviews of this agreement project far enough into the future to account for other countries such as China, which are aggressively expanding their enrichment capacities?

Answer. Our focus during our sunset review proceeding was on whether Russian uranium products would continue to be dumped in the U.S. market, but not on the future enrichment capabilities of third countries. Our determination took into consideration, in large part, Russia's enormous enrichment capacity and the fact that the United States is the largest market for uranium products in the world. We did consider in our analysis the presence of restrictions on imports of Russian uranium products in third-country markets which would make it even more likely that Russia would redirect its exports to the United States in the absence of the suspension agreement.

Question 3. The Department of Energy and its predecessor, the Atomic Energy Commission, provided the Paducah plant as a service to the nuclear utilities for enrichment, which was authorized by Congress in 1964. Did you account for this Congressional intent in determining enrichment was a "good" and not a "service"?

Answer. We did account for Congressional intent in determining whether enrichment was a "good" and not a "service." To administer the antidumping law, the Department first looks to the antidumping statute and then its various legislative histories to interpret any term that appears in the law. In making its determination in the French Low-Enriched Uranium case, the Department recognized that where a manufacturing or production process leads to the creation of a tangible good, the process is a manufacturing operation and not a "service" as that term implies. For example, under the antidumping law where Commerce must construct a normal value to determine whether foreign merchandise is dumped, the statute instructs Commerce to include "the cost of materials and fabrication or other processing of any kind employed in producing the merchandise." 19 U.S.C. 1677b(e)(1). Based on the language in the statute, I believe Congress intended for Commerce to capture the value of processing that leads to the production of merchandise in its antidumping calculations. Commerce normally would not look to the 1964 authorization for purposes of statutory construction. Rather, in administering the dumping law, Commerce first looks to the antidumping statute and its various legislative histories to discern the intent of Congress. In addition, Congress has also separately recognized that for purposes of international trade in services, the term "services" means "economic activities whose outputs are other than tangible goods." 19 USC 2114b(5). Congress expressly listed services that do not result in the production of tangible goods, such as banking, insurance, accounting, construction, professional services, education, health care, tourism and entertainment. Although Commerce specifically recognized that this statutory provision does not pertain directly to the antidumping law, it is a reflection on how Congress views the term "services" in the international trade context.

With respect to the enrichment provided by Paducah to U.S. utilities, Commerce examined the legislative history of the industry support provisions of the antidumping law. In applying those provisions in the case on Low-Enriched Uranium from France, Commerce determined that USEC was the sole domestic producer of low-enriched uranium because enrichment processing was determined to be an important manufacturing operation in the production of low-enriched uranium. In reviewing Commerce's industry support determination in light of the legislative history, the U.S. Court of International Trade and the Court of Appeals for the Federal Circuit in *Eurodif* upheld Commerce's determination that USEC is a producer of low-enriched uranium based solely on its enrichment processing operations.

Question 4. Do you believe that legislating enrichment as a "good," and not a "service," will set a precedent for other services industries such as banking or insurance?

Answer. The legislation currently before Congress simply returns to the status quo before the *Eurodif* decision was decided in 2005. Service industries such as banking and insurance are inapposite to producers of enriched uranium and are not subject to the dumping law. There is no danger that they will be.

Question 5. If such legislation were enacted, do you believe other WTO countries would likewise follow suit?

Answer. We cannot predict what other countries would do. Again, the legislation currently before Congress would simply reverse an erroneous court decision, returning us to Commerce's longstanding interpretation of the law as it was in 2004. If other countries saw no need to act in 2004, they should see no need to act now. We understand that the EU has limited imports of enriched uranium under the Corfu Declaration since 1994.

Question 6. How did Russia's 2002 reclassification from a non-market economy to a market economy affect the calculation of anti-dumping duties? When Russia was a non-market economy, what proxy country was used to calculate the antidumping duty?

Answer. When Russia graduated to market-economy status in 2002, the AD suspension agreement—under the non-market economy provisions of the statute—continued in force unchanged. The recent amendments were made to that agreement (under the non-market economy provisions of the statute). Because no dumping duties were being collected under the suspension agreement, there were no dumping calculations in this uranium proceeding that were affected by Russia's graduation.

RESPONSES OF REINHARD HINTERREITHER TO QUESTIONS FROM SENATOR BINGAMAN

Question 1. Does LES support legislating enrichment as a good?

Answer. LES recognizes that the bill introduced by Senator McConnell and Senator Bunning to redefine enrichment as a good for purposes of the antidumping laws seeks to close the "back door" to the Russian Suspension Agreement that allows limitless quantities of Russian uranium products to be supplied to the United States through contracts for separative work units ("SWU"). While LES strongly supports legislative action to prevent the excess enrichment capacity that exists in Russia from destabilizing the U.S. market, LES believes that amending the trade laws to define enrichment as a good is not the optimal solution to this problem.

The proposal to legislate enrichment as a good for purposes of the antidumping laws would enhance stability in the U.S. market only as long as the Russian Suspension Agreement remains in effect. However, the Russian Suspension Agreement is currently subject to two separate challenges to its continued validity that are being litigated in the Court of International Trade. If Plaintiffs were to succeed in either case, the Russian Suspension Agreement would be eliminated. Under these circumstances, legislation defining enrichment as a good would not be effective in providing the stability necessary for LES and other enrichers to make the massive investments required to build up a healthy domestic infrastructure for uranium enrichment. Moreover, the Russian Suspension Agreement permits Russia to withdraw from the agreement upon 30 days' notice.

Similarly, LES is aware that many of its utility customers strongly oppose legislation to define enrichment as a good. LES understands this opposition to be based on several factors, including (i) a long history of court litigation over this issue, (ii) concern that defining enrichment as a good might impact the availability of enrichment from foreign sources other than Russia, and (iii) concern that the legislation might have unintended adverse consequences (e.g., tax consequences) for utility purchasers. Based on testimony at the hearing, LES believes that there are sufficient points of consensus among industry participants to pursue an alternative legislative solution that would not engender the same opposition from utility customers as would defining enrichment as a good. In particular, LES supports a legislative solution that is specific to the issue of excess enrichment capacity in Russia and that addresses non-proliferation objectives of achieving additional blending down of excess HEU stocks in Russia into commercial nuclear fuel.

Question 2. Does the current agreement affect your ability to expand the LES plant past 3 million SWU?

Answer. The potential for LES to expand beyond 3 million SWU will depend on the ability of LES management to present a satisfactory business case for expansion to the board of LES's corporate parent, Urenco. The potential for unregulated supplies of enriched uranium from Russia to overwhelm the U.S. market is definitely a very significant risk factor that would be weighed in any future decision concerning expansion of the LES facility.

Question 3. Are you aware of whether Europe has similar trade restrictions on enrichment?

Answer. Yes. In Europe, the Euratom Supply Agency regulates the amount of nuclear fuel that European utilities may contract for supply from Russia pursuant to a protocol known as the Corfu Agreement. Under this agreement, Euratom has limited enriched uranium from Russia to approximately 20% of the European market.

Question 4. Would you support extending the current HEU agreement?

Answer. Yes. LES recognizes and strongly supports the non-proliferation benefits that have been achieved through the current HEU agreement. LES believes that a legislative solution to the issue of excess Russian enrichment capacity should include incentives to complete the current HEU agreement and incentives for additional HEU blend-down following expiration of the current agreement in 2013.

Question 5. It would seem to me that having SWU as a good and not a service would provide certainty for future LES expansions. Do you think your parent company would support that?

Answer. For the reasons noted in LES's response to Question 1 above, LES does not believe that amending the trade laws to define enrichment as a good would provide long-term predictability concerning access of Russian SWU to the U.S. market. LES believes that an optimal legislative solution would be specific to the issue of excess enrichment capacity in Russia and provide for (i) direct access to commercial Russian enrichment for U.S. utilities, (ii) overall limits on imports of enriched uranium from Russia consistent with the quantities agreed to in the Russian Suspension Agreement, (iii) incentives for Russia to complete the current HEU Agreement, and (iv) incentives to encourage further down-blending of excess HEU from nuclear weapons in Russia.

RESPONSES OF WILLIAM H. TOBEY TO QUESTIONS FROM SENATOR BINGAMAN

HEU PURCHASE AGREEMENT/SUSPENSION AGREEMENT

Question 1. Has Russia explicitly told the U.S. government their intention not to renew the HEU agreement when it expires in 2014?

Answer. Russian officials have indicated numerous times in various fora their unwillingness to extend the 1993 HEU Agreement or to consider another such agreement. During formal HEU Transparency negotiations in 2004 and several times since at the working level, the Russian side has informed US Government representatives that it does not intend to extend the Agreement. This message was also conveyed during the negotiation of the amendment to the Russian Uranium Suspension Agreement between the U.S. Department of Commerce and Rosatom's Sergey Kiriyenko in June 2007. I understand that during those discussions, the Russian negotiator confirmed that Russia had no interest in extending the HEU Agreement. Kiriyenko has also stated publicly in several press interviews that while Rosatom is committed to implementing the HEU Agreement through 2013, there will not be a follow-on agreement and that Russia's goal was to transition to normal commercial interactions rather than continue through Government to Government agreements.

NUCLEAR DETERRENCE

Question 2. We work routinely with the U.K. and other NATO allies on nuclear deterrence and even stockpile stewardship, why cannot these allies with enrichment programs assist us in the production of tritium?

Answer. Most, if not all, of our NATO allies are members of the Nuclear Suppliers Group. As such, each government has pledged to export tritium as well as equipment and materials for tritium production with peaceful uses assurances. These assurances would not allow for transferred tritium or tritium resulting from equipment or materials transferred to the United States to be used in our military programs. The DOE via the Atomic Energy Act does have a special relationship with other states, but since tritium is integral to our defense needs, it is not prudent to rely on other nations to ensure the continued function of our nuclear deterrent.

HEU

Question 3. The amended agreement keeps the importation threshold of Russian uranium essentially on hold until the HEU agreement ends in 2014, so isn't there a penalty already in place for Russia to continue blending down HEU to sell in the U.S. markets?

Answer. Unfortunately, the amended Suspension Agreement is not comprehensive. Specifically, there is no penalty or limit on the importation of enrichment services provided under certain types of contracts, as was ruled and upheld on appeal in the case of Eurodif, S.A. versus the United States (Eurodif). Per the Eurodif ruling, Russia is now free to export commercial LEU services, outside of downblended HEU from weapons, without restriction into the U.S. market since enrichment services are no longer subject to U.S. antidumping laws. Any such imports of Russian commercial LEU would be in direct competition with the HEU Agreement and could

threaten the viability of the HEU Agreement by reducing or eliminating USEC's ability to sell the down blended HEU at a profit.

HEU AGREEMENT

Question 4. What steps would the administration take if Russia were to suspend participation in the HEU agreement?

Answer. The HEU Agreement is our most significant nonproliferation agreement with Russia on the irreversible elimination of excess weapons-usable HEU. The United States would not take any move to terminate it lightly. However, the HEU Agreement contains a provision that allows either Party to terminate the agreement with one year's written notice to the other Party. In the absence of specific circumstances concerning a threatened Russian termination of the HEU Agreement, speculation on potential steps that might be taken would be inappropriate. Since the Agreement has a commercial impact on the domestic nuclear industry, an analysis of current and projected market conditions would also influence any Administrative action.

RESPONSES OF ROBERT C. ERVIN, JR., TO QUESTIONS FROM SENATOR BINGAMAN

Question 1. Would you support extending the HEU agreement past 2013?

Answer. The USW certainly would support continued nuclear non-proliferation efforts by our government provided that: (1) in any extension of the HEU agreement with the Russian Federation beyond 2013, the HEU down-blended would be counted within the 20 percent quota limits set forth in the amended Russian Suspension Agreement ("RSA") for the life of the agreement; (2) the LEU produced from such down-blended HEU by the Russians could not be sold under contracts for separative work units ("SWU") to circumvent that 20 percent RSA quota limitation; and (3) any new HEU agreement could not conflict with the quota limitations set forth in the amended RSA such that those quota limitations would cease to have legal effect or that could cause, in any manner, an ability to exceed the 20 percent quota limitations.

Question 2. Does the USW support the re-enrichment of depleted uranium tails to help stabilize uranium supply?

Answer. The USW supports the re-enrichment of tails in the manner described in House Resolution 4189 (110th CONGRESS 1st Session).

APPENDIX II

Additional Material Submitted for the Record

STATEMENT OF THE URANIUM PRODUCERS OF AMERICA

The Uranium Producers of America ("UPA") was established in 1985 to promote the viability of the domestic uranium producing industry. UPA member companies are actively pursuing exploration, development and production of domestic uranium resources in Wyoming, Colorado, Texas, South Dakota, Arizona, Nebraska, Nevada, Utah and New Mexico. We appreciate the opportunity to provide comments on the recent amendments to the Russian Suspension Agreement ("Suspension Agreement").

The Suspension Agreement resulted from a trade action originated by an ad hoc group of UPA members.[1] Of the original petitioners, Power Resources, Inc., Crow Butte Resources, Inc. and Uranium Resources, Inc. remain as active parties in the Suspension Agreement. These Petitioners ("Petitioners") were required to approve the recent amendments to the Suspension Agreement and did so. The Petitioners and UPA consulted with the Commerce Department regarding the proposed amendment to the Suspension Agreement. UPA supported a 20% LEU quota for the Russians as called for by the amendment. This quota provides Russia with a market share consistent with the expressed desires of our domestic utility customers, yet maintains a diversity of fuel supply. When the proposed amendment was published, the Petitioners provided extensive comments to the proposal. A summary of the uranium producer comments is attached.[2]

As evidence by these comments, the Petitioners believed that significant modifications could be made to strengthen the amendment. In meetings subsequent to the submittal of these comments with the Commerce Department, Department officials gave assurances that efforts would be made to incorporate these comments as the amendment moved forward.[3]

Of primary concern to the Petitioners and UPA is that government inventory sales, both U.S. and Russian, not adversely impact the domestic uranium industry. UPA has been working with the Department of Energy to prevent DOE uranium inventory sales from having such adverse impacts. Working in conjunction with other stakeholders, a fuel producer/utility consensus has been achieved concerning DOE inventory sales.[4]

The industry consensus provides for DOE to make near term sales of uranium for initial cores for new reactors and gradually increase other DOE sales to 10% of the U.S. utility demands on an annual basis. The gradual ramp up of DOE sales is vital to the ability of developing domestic uranium companies to secure the necessary private investment to finance the exploration, development and operation of new uranium production facilities in the United States. The UPA's ability to reach the consensus with other stakeholders on DOE uranium inventory sales was premised on the quotas allowed the Russian Federation according to the terms of the amendment to the Suspension Agreement. It is critical to the domestic uranium industry that government sales, including the U.S. and Russian Federation not exceed 30% of the commercial market at any time. DOE is currently working on a policy to establish its uranium sales, and it is UPA's hope that the industry consensus points will be closely followed.

It has been suggested that the Russian Federation should be granted incentives of a larger market share than 20% in order to extend the HEU Agreement past

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[1] Agreement Suspending the Antidumping Investigation on Uranium from Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Ukraine, and Uzbekistan, 57 Fed. Reg. 49220 (Oct. 30, 1992).

[2] See Exhibit 1. The complete Petitioner comments dated January 10, 2008, are part of the Commerce Department's record in the proceeding to amend the Suspension Agreement.

[3] See Exhibit 2, January 29, 2008 letter from David Spooner to Mark Pelizza.

[4] See Exhibit 3, copy of the Consensus Agreement on DOE uranium inventory sales.

2013. While UPA supports the continuance of what has been a remarkable agreement, we ask that these incentives not destroy our members' ability to obtain the investment necessary to put this country's tremendous uranium resources into production. If Russia must be offered a higher market share percentage, then DOE must be required to postpone or reduce sales from its inventories. The uranium industry has witnessed relatively small DOE sales causing undue harm to market prices, which has in turn discouraged capital investment required by a growing industry. An over-reliance on government inventory sales will stifle the domestic producing industry's ability to get projects into timely production, just when they are perhaps needed most.

The domestic uranium industry seems to be the forgotten component in current uranium fuel supply cycle discussions. It is analogous to Congress and the Administration focusing on oil refineries without any consideration of the crude oil that will supply them. The UPA agrees that a healthy and vibrant domestic enrichment industry is critical to our nation's energy security; however, to focus narrowly on this stage of the fuel cycle is shortsighted. Once the leading uranium producing country in the world, the United States' miners were almost destroyed by misguided government policies in the 1990's. We have lost at least two generations of human resources and must get it right this time to assure that our skills and ability to produce uranium are not lost forever. UPA members urge that the treatment of U.S. and Russian Federation uranium inventories must be considered together. The impact of all government inventory sales must be cumulatively accounted for in establishing these important policies. The policy makers must determine priorities with the knowledge that only so much government inventory sales can be allowed without adversely impacting domestic producers.

The United States has substantial uranium resources that can support a significant portion of our nation's nuclear power fuel requirements. This Congress and our citizens should demand that we develop and expand our domestic production to the greatest extent possible in support of energy independence. We simply cannot allow a dependence like our nation has on oil to exist in the electricity production arena. Nuclear powered electricity must increase to meet our energy needs and to combat global warming. Given a fair chance, UPA members can provide a significant amount of the uranium to supply the nuclear renaissance.

EXHIBIT 1.—SUMMARY OF PRODUCER COMMENTS TO PROPOSED AMENDMENTS TO RUSSIAN SUSPENSION AGREEMENT

1. Support Amendment to Suspension Agreement that facilitates the normalization of trade in Russian uranium products as a necessary and positive development.

2. Amendment provides for a phase-in of quotas with significant increases at expiration of U.S.-Russian HEU Agreement.

3. Provides Russia with a market share consistent with the expressed desires of U.S. utilities yet maintains diversity of supply.

4. U.S. producers have accepted and planned for large quantities of downblended Russian HEU that will enter the market through the completion fo the HEU Agreement in 2013. Commerce must make it clear the proposed amendment is contingent on Russia's continued fulfillment of the HEU Agreement through 2013. To assure this, producers urge the inclusion of the following language:

> The Department finds that this Suspension Agreement is in the public interest because combined with the U.S.-Russia HEU Agreement, and the USEC Privatization Act, it furthers the security interests of the United States and provides for orderly and predictable sale of Russian uranium in the United States market. This public interest finding is based on the premise that the Russian Federation will fulfill its delivery obligations under the U.S.-Russia HEU Agreement, requiring the blending down of 500 tonnes of HEU and the exportation of the resulting LEU to the United States, through its termination in 2013. The Export Limits under Section IV of the Agreement are conditioned upon the completion of all deliveries of LEU and natural uranium required under the U.S.-Russia HEU Agreement and the related commercial implementing agreements.

5. The draft Amendment does not provide mechanisms enabling the Department to ensure that domestic uranium prices will not be suppressed or undercut by Russian imports.

a. Department must expressly require that Russian suppliers charge "market rates" for all Russian Uranium Products exported to U.S. market.

b.Establish as part of contract reviews, procedures that ensure that Russian exports are at market rates and do not suppress or undercut U.S. producer prices.

6. The proposed quota provision for initial core sales must be more clearly defined and take into account natural uranium stockpiles that DOE intends to make available for the same purpose.

a. Clearly define "initial cores."

b. Limit the quantities of initial cores consistent with DOE's plans to market uranium for initial cores.

c. Establish mechanism to insure that Russian initial core imports are only used for that purpose.

d. Ensure that U.S. utilities don't purchase "initial core" volumes in excess of what is needed for any particular "initial core."

7. Initial cores for Russian should be limited to 10 initial cores—20 million pounds, the same as DOE.

8. Require initial core sales be "necessary for the first loading of fuel into a new reactor for which a Combined Operating License has been submitted to NRC, and accepted by NRC for review.

9. Require a certificate from purchaser of initial core material that material will only be used for initial core and not for any other purpose. Purchaser shall establish a dedicated account for such material, notify Commerce when material moved from account for use, and notify Commerce of material can't be used for initial core purpose.

a. If not used for initial cores must be used in another initial core or only used if Commerce determines use is market neutral.

b. Commerce and DOE shall coordinate to ensure no "double dipping" on initial core sales.

10. Commerce ability to increase Russian quota is unacceptable. Any change is "material" and must go through Amendment process, with opportunities for comment.

EXHIBIT 2

UNITED STATES DEPARTMENT OF COMMERCE,
INTERNATIONAL TRADE ADMINISTRATION,
Washington, DC, January 29, 2008.

Mark S. Pelizza,
Uranium Resources, Inc., 405 State Highway 121 Bypass, Building A, Suite 110, Lewisville, TX.

DEAR MR. PELIZZA, I am writing to provide you with the following assurances as to how the Department of Commerce (the "Department") will administer the Agreement Suspending the Antidumping Investigation of Uranium from the Russian Federation, as amended. The amendment was published in the Federal Register on December 4, 2007 (72 Fed. Reg. 68124) and is scheduled to be signed, in the same form, here in Washington on February 1, 2008.

First, a key purpose of the suspension agreement is and, under the amended suspension agreement, will remain, to support the 1993 Agreement between the U.S. Government and the Government of the Russian Federation Concerning the Disposition of Highly Enriched Uranium Extracted from Nuclear Weapons and the associated implementing agreements (the "HEU Agreement"). If the Russian Federation were to fall substantially short of fulfilling its obligations under the HEU Agreement, the Department would, in consultation with the Departments of State and Energy, give serious consideration to terminating the amended suspension agreement.

Second, with respect to Section IV.B.2. of the amendment, the Department understands the reference to "contracts for the supply of Initial Cores" to refer to contracts for Russian Uranium Products that are actually installed in new nuclear reactors in the United States and used to start up those reactors. If Russian Uranium Products were imported into the United States for use as Initial Cores, but were not actually used for that purpose, the uranium in question would be counted against the Russian Federation's export limit in Section IV.B.1 of the amendment, unless it were re-exported from the United States. We believe that the Russian Federation shares this understanding.

Third, with respect to Section IV.B.4 of the amendment, which gives the Department the unilateral right to raise the export limits in the agreement, the Depart-

ment regards this provision as only giving it the flexibility to deal with unforeseen situations of substantial market disruption. Such situations would not include normal, or even unusual, fluctuations in the U.S. market price of uranium products. Any adjustment under this provision to the export limits in the amended suspension agreement would be made only in order to prevent serious damage to the economy of the United States, and would occur only after consultation with the U.S. uranium industry.

Fourth, the Department recognizes that the comments on the initialed amendment that were provided to the Department by domestic interested parties concerned, in significant part, issues pertaining to the administration of the amended suspension agreement and the need for clarity with respect thereto. In this regard, as has been the case with certain past amendments to the suspension agreement, the Department intends to clarify these issues through Statements of Administrative Intent that will be issued as the Department moves into the implementation phase of the amended suspension agreement.

Sincerely,

DAVID SPOONER,
Assistant Secretary for Import Administration.

EXHIBIT 3.—INDUSTRY POSITION ON DISPOSITION OF DOE'S NUCLEAR FUEL INVENTORY

Principles agreed

1) Material is to be sold only to those entities possessing a US NRC license.

2) DOE will establish a Strategic Reserve of 20 million pounds U308 equivalent as LEU at 4.95 w/o. DOE will establish procedures, with input from the industry, that govern access to the strategic stockpile. Releases from stockpile should only be authorized in cases of national energy emergency.

3) 20 million pounds U308 equivalent will be made available for Initial cores of new reactor build projects on a first come, first served basis at fair market value. In order to qualify for the initial core material a utility must have submitted a COL application to the NRC and the NRC must have agreed to review the application.

4) An Advisory Committee of Industry participants will be established to advise and assist DOE (or to oversee DOE's performance) with respect to DOE's management of the uranium sales program.

5) DOE sales of natural uranium on an annual basis will follow the schedule in item 8 (natural U308 equivalent) and no more than 50% of the annual quantity will be sold under long-term contracts. DOE may begin to place material under contracts with deliveries beginning in 2008.

6) Should DOE barter material for services, any material sold by the recipient, shall be sold at fair market value and considered a part of DOE's annual sales quantity for that year.

7) The industry will cooperate with DOE to lobby for Receipt Authority for the revenues derived from the safe of DOE uranium.

8) DOE's annual targeted delivery quantities are presented in the following table:

Year	Million lbs Natural U308
2008	1.06
2009	1.06
2010	2.13
2011	3.12
2012	4.22
2013	5.3
2014	5.3

9) Any program sales beyond 2014 shall be reviewed by the Advisory Committee in 2011.

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