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The Honorable Penny Pritzker
Secretary of Commerce
Attn: Enforcement & Compliance
Central Records Unit - Room 1870
U.S. Department of Commerce
14th Street and Constitution Avenue, NW
Washington, DC 20230

Submitted online using ACCESS

Re: Uranium Producer of America (UPA) rebuttal to the Oct. 31, 2016 responses from TENEX, the Ad Hoc Utilities Group (AHUG), Centrus Energy Corp. and United States Enrichment Corporation (USEC), concerning their collective comments to the October 12th UPA letter responding to the: Department of Commerce (DOC) Request for Comments on 2016 Export Limit Adjustments; Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation (Suspension Agreement or Agreement)

Dear Secretary Pritzker:

The UPA believes the positions outlined in the above referenced letters from TENEX, AHUG and USEC ignore U.S. law regarding the language and intent of the Section IV.B.1. in the Suspension Agreement. The positions also ignore standard industry practices concerning the calculation of nuclear fuel requirements and the World Nuclear Association (WNA) assumptions and parameters applicable to Section IV.B.1 of the Suspension Agreement.

As noted in the DOC September 9th letter, The Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation, as amended in 2008 (“Agreement”), requires that the U.S. Department of Commerce (“the Department”) adjust the annual export limits in Section IV.B.1 (for sales of Russian uranium products directly to U.S. utilities or otherwise) in 2016 and 2019 to match the projected nuclear reactor demand for subsequent years. Specifically, in Section IV.B.1, the Agreement lists the annual export limits and states the following:

These limits were derived from the reference data in the World Nuclear Association’s 2005 “Global Nuclear Fuel Market Supply and Demand 2005-2030.” The Department

shall adjust these export limits in 2016 and 2019 to match the projected reactor demand for subsequent years in that publication or its successor.... The DOC letter goes further to state: “The Department is hereby releasing preliminary adjusted export limits, in accordance with these provisions. See Attachment 1.”

However, the next sentence in the DOC September 9th letter is where the basis for DOC calculations departs from the correct methodology as outlined in Section IV.B.1 and is not in accordance with the above referenced provisions;

“The Department calculated the adjusted export limits using the same assumptions and parameters used in the calculation of the initial export limits listed in Section IV.B.1 of the Agreement.”

This would be the correct approach if the same assumptions and parameters used for determining projected reactor demand in the initial export limits were also those used by the WNA in deriving projected reactor demand in their most recent report. The key point here is, for the initial export limits, the projected reactor demand was “derived” with a tails assay of 0.30%. In the most recent report, the WNA reactor demand is “derived” using a tails assay of 0.22%. Following the same assumptions and parameters in the WNA report is critical in order to correctly “match the projected reactor demand in subsequent years”, otherwise the results are like comparing apples and oranges.

Substituting different variables in an equation will yield different results. Likewise, ignoring the variables used by the WNA in calculating reactor demand for “subsequent years” will not provide the correct adjustments to the export limits. In order to correctly calculate the export adjustments as required by Section IV.B.1 in the Agreement, the DOC must use the same assumptions and parameters the WNA uses to derive reactor demand in years where adjustments are required under the Agreement.

The most recent World Nuclear Association (WNA) report containing projected reactor demand is titled “The Nuclear Fuel Report, Global Scenarios for Demand and Supply Availability 2015-2035”. In the WNA report, the United States projected Enriched Requirements (in thousands of SWU) are listed in Table 7.1 on page 124. On page 122 the WNA report states:

...tails assay assumptions must be closely examined when comparing these projections with those published by other bodies. In projecting uranium and enrichment requirements in this report, the World Nuclear Association has assumed a tails assay of 0.22% for determining global SWU requirements. The tails assay is held constant for all years and all demand scenarios for nuclear generation. ...lower tails assays mean that the same quantity of SWU will yield a smaller quantity of enriched uranium (assuming product assays remain fixed).”

The quantity of (Low Enriched Uranium) LEU derived from the WNA reference data to adjust the export limits required in Section IV.B.1 must reflect the WNA assumptions and parameters to be consistent with the Agreement. Using the incorrect tails assay of 0.3% versus the correct

tails assay of 0.22% used in the WNA report has a significant impact on the amount of Russian LEU that can enter the U.S. under the Suspension Agreement. For illustration purposes, the WNA U.S. projected reactor demand in 2016 is presented below, showing the differences in LEU quantities using a 0.3% tails assay and a 0.22% tails assay:

The total reference case SWU listed in the WNA report for 2016 is:	15,210,000
20% of this SWU applicable to the Agreement is:	3,042,000

The product assay is fixed at a 4.4% in the LEU. Using an industry web based calculator (UxC Fuel Quantity & Cost Calculator) found at:
<https://www.uxc.com/p/tools/FuelCalculator.aspx> the LEU quantity is:

503,761 KgU of 4.4% LEU using 3,042,000 SWU, at 0.30% tails assay

427,568 KgU of 4.4% LEU using 3,042,000 SWU, at 0.22% tails assay

As noted in the WNA report, using the same quantity of SWU at 0.30 and 0.22 tails will result in a lower quantity of LEU at the lower tails assay. In addition, the lower quantity of LEU will also result in a lower quantity of contained natural uranium compared to that required using 0.30 tails assay. The natural uranium contained in the above LEU cases is:

503,761 KgU of 4.4% LEU contains 5,025,352 KgU of natural UF₆ at 0.30 tails assay

427,568 KgU of 4.4% LEU contains 3,639,984 KgU of natural UF₆ at 0.22 tails assay

Using 0.30 tails assay increases the amount of Russian LEU that can enter the U.S. under the Agreement in the above example by 17.82% (76,193 KgU). The contained uranium in the higher quantity of LEU equates to 1,385,368 KgU of additional natural UF₆ for the 2016 calendar year. In this example, translated into U₃O₈ contained in the LEU, using the higher 0.30 tails assay results in over 3.6 million pounds of additional uranium. Over the 2017-2020 period, the total amount of contained U₃O₈ would exceed an additional 15 million pounds U₃O₈ if DOC continues to use the incorrect tails assay of 0.30 versus the correct tails assay of 0.22.

TENEX, AHUG and USEC claim the tails assay should be the same as that used in the initial calculation. While 0.30 was used as the initial tails assay, it is not applicable to the current time frame. Utilities, Traders and Enrichers adjust the tails assay to reflect market economics of SWU and Uranium. These economics change with time and the tails assay is routinely adjusted to reflect the optimum economics for the LEU required. This is normal industry practice and precisely why the WNA adjusts tails assay for conditions applicable at the time of their determination of projected reactor demand. If the WNA were to keep the tails assay constant at 0.30 or any other value throughout time to calculate changing reactor demand, the argument to adjust tails assay would be moot however, this is not the case.

It is difficult to conceive the knowledgeable authors of IV.B.1. intended for the assumptions and parameters necessary to determine projected nuclear reactor demand remain static through time.

The nuclear industry well knows tails assay adjustment is a critical variable that changes over time in calculating reactor requirements. The authors were knowledgeable enough in this regard to specifically require nuclear reactor demand was to be determined as outlined in the WNA report for future years. It is reasonable to conclude the authors knew the assumptions and parameters used by the WNA are not static and would also likely change over time. Why would the authors call on the initial tails assay to be at 0.30 and then call on the WNA report to match reactor demand in subsequent years if they intended to keep tails assay static at 0.30? If they intended for the calculation to be based on enrichment requirements (SWU) at 0.30 tails for subsequent years, they would have specified it that way in Section IV.B.1 of the Agreement. Instead, the authors specified the adjustments in quotas were to be based on specified nuclear reactor demand in future years as determined by the WNA report, which includes the variable of tails assay.

It is clear the DOC calculations using different assumptions and parameters than used in the most recent WNA report are not consistent with the intent or the specific language outlined in Section IV.B.1. of the Agreement. DOC should reduce the quotas in accordance with section IV.B.1 of the agreement using the correct calculations with a tails assay of 0.22 to be consistent with the Agreement and U.S. law.

Concerning some of the other comments in the October 31 letters made by TENEX, AHUG and USEC, they are hereafter collectively referred to in this letter as (TENEX Group).

The TENEX Group maintains the DOC should follow a consistent approach in establishing the quotas and should be consistent with U.S. law.

We agree with these comments provided the approach is correct and consistent with the terms of the Agreement. As pointed out in previous dialogue, using the incorrect tails assay is not consistent with the Agreement language, its intent, industry practice or U.S. law. The current WNA report is concise in outlining how the reactor demand numbers are derived. The methodology employed by DOC must be consistent with the basis of these calculations outlined in the WNA report in order to “adjust the export limits in 2016 and 2019 to match the projected reactor demand for subsequent years” as specified in Section IV.B.1 of the Agreement.

It should also be noted that if the DOC has made this mistake in a past adjustment, it should be rectified in the current adjustment.

TENEX makes the assertion that sales in the U.S. market do not injure the U.S. mining industry or suppress prices for natural uranium.

We are not sure what school of economics TENEX is basing their conclusion on. The basic fundamentals of Supply and Demand recognize additional supply will put downside pressure on prices. To the point on different forms of uranium, if Russian LEU enters the market with only a SWU sale where the natural UF₆ component is shipped back to Russia, then there would be minimal impact to the uranium market. However, if the TENEX product is sold as LEU, then it most certainly impacts the U.S. uranium market with the natural uranium contained in the LEU.

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This is a simple example of supply displacement and is generally acknowledged to be applicable in the vast majority of the LEU sales made under the Suspension Agreement. If the quotas are not adjusted appropriately, additional damage to the U.S. industry will ensue.

TENEX also refers to LEU accounting for only about 15% of the U.S. reactor demand in 2015.

While this may not seem like a lot to TENEX, 15% of U.S. U₃O₈ demand equates to about 7.5 million pounds of U₃O₈, more than double what the U.S. uranium industry produced in 2015. The U.S. miners do not sell LEU, but the contained U₃O₈ in LEU most certainly affects U.S. miners and does have a material negative impact on the U.S. market. It should be clear to any market participant that any additional LEU entering the market will have a negative impact on prices. Applicable to this quota adjustment, as previously discussed, opening the door for potentially over 15 million pounds of additional U₃O₈ contained in LEU will have a serious impact to the U.S. industry.

TENEX stated “The RSA and the Domenici Amendment expressly refer to particular data contained in the specific WNA publication or its successor that should be used for the purposes of the quota adjustment. The rationale for relying on the data in the specific WNA publication makes sense.”

These statements from TENEX appear to support the basis for using the data presented by the WNA, which means using WNA’s “particular data” as it expressly applies to the quota adjustments required in Section IV.B. 1. To be consistent with the Agreement, the DOC must use the “particular data” used by the WNA in order to correctly “match reactor demand for subsequent years” as derived by the WNA. To do otherwise is inconsistent with normal methods of calculating reactor demand in different time periods as market conditions change the basis for calculations.

The UPA respectfully submits these comments to the DOC and appreciates the opportunity to provide input on this most important decision the DOC is responsible for making under Section IV.B.1 of the Suspension Agreement. Please let us know if we can answer any questions or provide further input on this subject. Thank you for your consideration.

Sincerely,



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JJI/tf

Confirmation of Electronic Submission

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