Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

UNITED STATES v. EURODIF S. A. ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

No. 07-1059. Argued November 4, 2008 — Decided January 26, 2009*

Nuclear utilities generally procure their fuel, "low enriched uranium" (LEU), through one of two types of contracts. Under an "enriched uranium product" (EUP) contract, the utility simply pays the enricher cash for LEU of a desired quantity and "assay," i.e., its percentage of the isotope necessary for a nuclear reaction. The amount of energy required to enrich a quantity of "feed uranium" to a given assay is described in terms of an industry standard called a "separative work unit" (SWU). Under a "SWU contract," the utility provides a quantity of feed uranium and pays the enricher for the SWUs to produce the required LEU quantity and assay. SWU contracts do not require that the required number of SWUs actually be applied to the utility's uranium. Because feed uranium is fungible and essentially trades like a commodity, and because profitable operation of an enrichment plant requires the constant processing of feed uranium from the enricher's undifferentiated stock, the LEU provided to a utility under a SWU contract cannot be traced to the particular unenriched uranium the utility provided.

Petitioners (collectively, USEC), who run the only uranium enrichment factory in the United States, petitioned the Commerce Department (Department) for relief under the Tariff Act of 1930, which calls for "antidumping" duties on "foreign merchandise" sold in this country at "less than its fair value," 19 U. S. C. §1673, but does not touch international sales of services. USEC alleged that LEU imported from European countries under both EUP and SWU contracts was being sold in the United States at less than fair value and was

^{*}Together with No. 07–1078, $USEC\ Inc.\ et\ al.\ v.\ Eurodif\ S.\ A.\ et\ al.,$ also on certiorari to the same court.

Syllabus

materially harming domestic industry. In its final determination, the Department concluded that LEU from France, including LEU acquired under SWU contracts, was being sold here at less than fair value. Among other things, the Department rejected the claim that such transactions were sales of enrichment services, as provided in SWU contracts. The Court of International Trade (CIT) ultimately reversed, noting the "legal fiction" expressed in SWU contracts that the very feed uranium delivered by a utility to an enricher is enriched and then returned as LEU to the utility. Finding that the record did not support a determination that the enricher has any ownership rights, the CIT reasoned that the Department's decision was unsupported by substantial evidence and not in accordance with law. The Federal Circuit affirmed, approaching the issues much as the CIT had.

Held: The Department's take on the transactions at issue as sales of goods rather than services reflects a permissible interpretation and application of §1673. Because §1677(1) gives this determination to the Department in the first instance, the Department's interpretation governs in the absence of unambiguous statutory language to the contrary or an unreasonable resolution of ambiguous language. See, e.g., Chevron U. S. A. Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837. Two threshold propositions must be accepted. First, the Department reasonably concluded that §1673 is not limited by its terms to cash-only sales. If that were the case, any sale of a manufactured product could be exempted from the section's operation by a contractual term stating part of the purchase price in terms of a commodity. Second, since public law is not constrained by private fiction, see, e.g., Tcherepnin v. Knight, 389 U.S. 332, 336, the Department is not bound by the legal fiction created by SWU contracts that the very feed uranium delivered by a utility to an enricher is enriched and then returned as LEU to the utility. Thus, the test of the Department's position turns first on whether the statute clearly excludes a transaction involving mixed payment for LEU that may and almost certainly will be produced from uranium feed distinct from what the utility provides. Although it is undisputed that §1673 applies to the sale of goods, not services, the section simply does not speak with the precision necessary to say definitively whether it applies to the LEU and the agreement giving the utility a right to get it. This is the very situation in which the Court looks to an authoritative agency for a decision about a statute's scope. Once the choice is made, the Court asks only whether the Department's application of the statute was reasonable. Where, as here, cash plus an untracked fungible commodity are exchanged for a substantially transformed version of the same commodity, the Department may reasonably

Syllabus

treat the transaction as the sale of a good under §1673. Cf. Powder Co. v. Burkhardt, 97 U. S. 110, 116. The Department's position is reinforced by practical reasons aimed at preserving antidumping duties' effectiveness. It is undisputed that such duties apply to LEU sold to a domestic utility by foreign enrichers under an EUP contract calling for a single cash price that is less than fair value. Such a transaction obviously opens the domestic enrichment industry to material injury, the very threat that §1673 was meant to counter. But the same injury will occur if a SWU contract is untouchable. Under a SWU contract, the domestic utility pays cash to a third party for unenriched uranium and provides this along with additional cash in exchange for LEU; any EUP contract could be structured as a SWU contract simply by splitting the transaction in two, one contract to buy unenriched uranium and another to enrich it. And the restructuring would not stop with uranium; contracts for many types of goods would be replaced by separate contracts for the goods and for processing services, and antidumping duties would primarily chastise the uncreative. The Department's attempt to foreclose this absurd result by treating such transactions as sales of goods is eminently reasonable. Pp. 9-16.

506 F. 3d 1051, reversed and remanded.

Souter, J., delivered the opinion for a unanimous Court.