



COMMISSION OF THE EUROPEAN COMMUNITIES

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COMMISSION COMMUNICATION TO THE COUNCIL
CONCERNING THE CONCLUSION OF AN AGREEMENT
FOR PEACEFUL NUCLEAR COOPERATION BETWEEN THE
EUROPEAN ATOMIC ENERGY COMMUNITY (EURATOM) AND
THE GOVERNMENT OF THE UNITED STATES OF AMERICA

Draft
COUNCIL DECISION

**approving the conclusion by the
Commission of an Agreement for peaceful nuclear co-operation
between the European Atomic Energy Community (Euratom)
and the Government of the United States of America**

(presented by the Commission)

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I. Introduction

1. The co-operation between the European Atomic Energy Community and the United States in the peaceful uses of nuclear energy dates back to the late 1950's. It was consolidated in a bilateral agreement that entered into force in 1960 and will expire on 31 December 1995. A new co-operation agreement to replace the existing one has been negotiated on the basis of negotiating Directives proposed by the Commission and adopted by the Council on 16/12/1991. The successful conclusion of these negotiations is the basis of this Communication to the Council with its explanatory memorandum.
2. The co-operation developed over the last 35 years under this agreement is valued as highly positive by both parties. For the European Union it has provided the framework to import from the US essential materials, equipment and technology that made it possible for the European nuclear industry to reach eventually a high level of maturity. For the United States, peaceful nuclear co-operation with Euratom provided a major and reliable nuclear trading partner with which there was, since the beginning, a large degree of agreement on nuclear non-proliferation issues which opened the way to the full commitment to the multilateral nuclear non-proliferation regime that both the E.U. and the U.S. share today.
3. Both parties had therefore a favourable predisposition to negotiate a new cooperation agreement. The degree of interest was however not the same, and as regards Euratom it was greatly influenced by the adoption by the U.S. Congress in 1978 of the U.S. Nuclear Non-Proliferation Act which introduced stricter requirements - including some of a bilateral nature - for U.S. peaceful co-operation with other countries. While Euratom and the U.S. realised that the continuation of their bilateral co-operation in a field as sensitive as nuclear energy was politically important, both sides started the negotiations with specific priorities and not necessarily compatible agendas.
4. For the U.S. Administration it was particularly important to confirm in a new agreement the vested rights that in its view result from the earlier nuclear exports to Europe as well as to cast the new agreement within the basic requirements of present U.S. law. The Commission, the Member States and the nuclear industry of the Community were reluctant to envisage conditions for cooperation that - in spite of the formally reciprocal character of all provisions - could in practice introduce and expand in an unpredictable manner consent rights on U.S.-obligated nuclear material present in the E.U. and thus jeopardize the long term stability that the Community nuclear industry needs for planning and carrying out its activities.

5. It was important for both sides to successfully conclude a cooperation agreement, and also as far as possible, to reach agreement within a timeframe that avoided a lapse of the present Agreement. In the absence of an agreement, trade in US obligated materials with the EU both directly and via third countries, such as deliveries of US-obligated spent fuel from Japan and Switzerland for reprocessing in the EU, would be halted. A lapse with no agreement in prospect, because of its knock-on effects for third countries' fuel cycle choices, would be likely to cause uncertainty and disruption in the international nuclear fuel market. Over a lapse of many years, EU reprocessing and other fuel cycle business worth up to 10 bn ECU could be at stake, and a similar amount of potential business possibly lost by the US. However, a short lapse (for instance for the completion of US Congressional approval procedures), while not without costs for EU industry in rearranging business, would be unlikely to inflict major damage on the industry. EU dependency on US supplies is decreasing, and most of the spent fuel from third countries is already inside the Union. It should be noted that in 1994, there was an average stock in the territory of the European Union of 341 tonnes of plutonium. Some 31% of this is US obligated.

II. Summary of the negotiations

6. In view of the expiration of the current Euratom/U.S. Nuclear Co-operation Agreement (signed in 1960) on 31.12.95, the Commission approved a Communication to the Council for negotiating directives on 23.7.91 and the Council adopted these directives on 16.12.91. The EU legal basis for negotiation was the Euratom Treaty and the U.S. basis its domestic legislation - the Nuclear Non-Proliferation Act of 1978 (NNPA). Negotiations opened in 1992. Good progress was made during 1992 and 1993 in agreeing texts, in particular, on industrial and commercial co-operation, nuclear research and development, nuclear safety and some aspects of safeguards, non-proliferation and related matters. However, some difficulties were caused by U.S. requirements to insert in the Agreement certain conditions stemming largely from U.S. domestic legislation - the Nuclear Non-Proliferation Act of 1978 (NNPA).
7. Early in 1994 a high level démarche was made by the Commission to U.S. Secretary of State, Mr. Warren Christopher. The Commission advised the U.S. that a waiver was the best solution to these problems. The U.S. Secretary of State advised the Commission in June 1994 that the U.S. Government would not be using this waiver but committed the U.S. side to flexibility in its negotiating position. Faced with this situation, Commission negotiators strove to obtain equivalent mechanisms that would provide, in practice, the same kind of long-term assurances and predictability needed for the E.U. nuclear programmes and international trade. The General Affairs Council of 19/20 December 1994, while confirming the December 1991 negotiating mandate, asked the Commission to continue to explore possible solutions. Accordingly, the Commission negotiators explored, in depth, a solution consisting of improving substantially the U.S. original offer of advance generic prior consent on a programmatic basis.
8. The Commission considers that a draft agreement has been reached which fully meets the requirements of the negotiating directives laid down by the Council and

which preserves Euratom's essential interests. Throughout all the lengthy period of the negotiations, which started in March 1992 and involved fifteen formal negotiating sessions, the relevant Working Group of the Council (AQG) has been associated in an unprecedented way with all steps and developments. Innumerable meetings of the AQG, supplemented by frequent ad hoc information meetings in the Commission's premises, have permitted the Commission to provide to Member States prompt, in-depth and exhaustive information, to examine thoroughly with them each issue at stake, and to receive from them an input that the Commission has highly valued and that has contributed significantly to the ad-referendum agreement which was finally reached with the US.

9. Given the extended negotiation period and the long procedures necessary for the approval of the Agreement by the Council of Ministers and the US Congress (6-9 months), there has been an interest on both sides to conclude the Agreement as soon as possible, so that the undesirable lapse of Agreement at the end of 1995 can be avoided. The strong economic interest of EU industry is for there to be no gap between the expiry of the current agreement and the entry into force of a new agreement.

III. The results of the negotiations

10. A primary objective of the negotiations was to agree on a legal framework which would guarantee to European nuclear industry, whenever it operates with U.S.-obligated materials, security of supply, stability and long-term predictability. The Commission considers that these objectives have been attained, since the new agreement, which will remain in force for at least 30 years, followed possibly by subsequent 5-year roll-over periods, guarantees the following framework as long as it remains in force :

- any non-sensitive nuclear activities, as well as enrichment up to 20 %, irradiation of fissile materials, and post-irradiation examination involving chemical dissolution or separation of irradiated nuclear material will be freely and unconditionally allowed;
- retransfers to third countries will take place according to procedures set out in the agreed minute;
- storage of sensitive fissile material will be possible in any facility that meets the usual physical protection levels;
- reprocessing and alteration in form or content of sensitive fissile materials will take place under a generic programmatic consent, in facilities forming part of the peaceful programme delineated by each Party; such generic consent will, in normal circumstances, be defacto irrevocable, and therefore valid in practice for the entire life of the agreement.

11. Against this general background, a number of specific difficult issues have been successfully resolved as follows:-

12. One of the major issues of particular concern to E.U. industry was the U.S. claim for extension of U.S. obligations to non-U.S. items as a result of certain basic

industrial operations, e.g. in power reactors for generating electricity. The U.S. side finally conceded that there would be no practical change in the status quo (under the current Euratom/U.S. Agreement) in these areas.

13. Another special problem was the applicability of national legislation to operations within the scope of this Agreement; in particular the E.U. could not accept that a change in the U.S. NNPA, which Congress could make at any time, could lead to U.S. action amounting to a determination to change the terms of co-operation. In spite of U.S. strong resistance the Commission has secured an Article to protect the E.U. position in this connection (Article 13).
14. As regards exchanges of technology and certain components a side-letter to the proposed Agreement includes terms which are in E.U. interests.
15. In the area of nuclear safeguards, the text of the proposed Agreement confirms that if, for any reason, I.A.E.A. (International Atomic Energy Agency) safeguards were not being applied in the Community then co-operation could continue fully under Euratom safeguards only. This is a useful guarantee and also a further recognition of the non-proliferation credentials of the Community.
16. Furthermore, the U.S. had declined up to now to terminate its separate bilateral nuclear agreements with Portugal, Spain, Austria, Finland and Sweden still in force. Such termination was however a political priority for the Commission. It has now been ensured that these agreements will be terminated on favourable terms and that future relevant co-operation will take place under the proposed new Agreement on more favourable terms for the EU than under these Member States' existing agreements with the U.S.
17. Further issues to which attention should be drawn are:
 - a) Alteration in form or content of certain strategic material
The scope of such alterations is limited. In particular, processing and production operations by E.U. industry for overseas customers (where original U.S. supplies are involved) will continue without hindrance.
 - b) Storage of certain strategic material
The Commission has ensured that storage no longer falls under the programmatic prior consent mechanism; only physical protection and security aspects are relevant. These will pose no problems for Member States.
 - c) Indefinite duration of consent rights (i.e. in the event the Agreement is terminated or suspended - Article 14)
The Commission has not accepted wide U.S. claims for indefinite duration of consent rights on the existing very large inventory of material already transferred under the current agreement. The regime that would continue to apply would be that of the current Agreement but including permanent retransfer consent. Duration of consents relating to certain key fuel cycle activities involving U.S. supplied material under the new Agreement will

be discussed by the Parties whenever the Agreement will terminate¹ and, in case of disagreement, will be deferred to the decision of an arbitral Tribunal. The result cannot be forecast at this stage, but achieving a mutually agreed framework for later consultations on the extent of duration of consent rights has been a key element in reaching agreement on a final text.

d) Suspension of programmatic consent rights

- (i) the programmatic consent rights may only be suspended if, after full consultations, there is objective evidence to show that the Union has committed a fundamental breach of the international non-proliferation regime or unless the safeguarding or physical protection of the installation concerned are seriously and directly threatened. Given the non-proliferation commitments of Member States of the European Union and their powers in this context to enforce due application of safeguards and physical protection, this means that the rights can be considered as de facto non-revocable;
- (ii) even in the extremely unlikely event of such a suspension of the consent rights, the Union retains all the rights existing under the current Euratom/U.S. Agreement on a quantity of US- obligated nuclear material equivalent to that on the inventory at the time of the entry into force of the new Agreement.

The many other important operations in the nuclear fuel cycle, e.g. enrichment of material and production of electricity, continue on the same basis as at present.

e) Automatic retransfer consent

For a wide range of exports of nuclear material the Commission has obtained what is, in practice, an irrevocable advance consent for exports (where U.S. obligated materials are involved) to proceed to those countries which, as a minimum, meet non-proliferation requirements acceptable to the Community. This is a major improvement on the current regime (case-by-case U.S. prior consent) and brings considerable long-term security to the E.U.'s international nuclear trade.

f) International obligation exchanges

The Community has obtained agreement to the principle of such exchanges which allow, where feasible, book transfers of material internationally thus avoiding the considerable costs of physical transfers as well as the attendant need for safety and security measures during such transport.

¹ After 30 years, but with automatic 5-year roll-over periods.

- g) Special arrangements with Japan and Switzerland
The advantageous retransfer provisions set out in the Exchange of Notes dated 18 July 1988 between the Commission and the United States have been further improved in that these provisions remain in effect for the life of this new Agreement and may only be suspended under the same conditions as those applying to the Agreement. The provisions now also extend to mixed oxide nuclear fuel. In a note attached to the proposed Agreement the United States makes the political commitments that it will apply such an arrangement to imports from and re-exports to Switzerland, provided a U.S./Switzerland nuclear agreement continues to exist. These arrangements are of particular value to the Union's reprocessing and mixed oxide fuel fabrication operations which involve a substantial number of jobs and generate large export revenue.
- h) Commercial guarantees
Articles 3 and 4 provide for appropriate industrial and commercial co-operation, better procedures of handling licences for exports and the fullest possible exchange of equipment, material and information. The text of Article 10 of the Agreement comprises a comprehensive set of commercial guarantees of non-interference by the U.S. in the Union's domestic operations and international trade (and vice versa). These are essential to the Union's nuclear industry, especially since a significant quantity of US-obligated material is already inside the EU. Paragraph 11 of the Agreed Minute C further states that the consents embodied in the Agreement may not be suspended owing to differences over the nature of the Parties' peaceful nuclear programmes or fuel cycle choices, or for purposes of obtaining commercial advantage, or of delaying, hampering or hindering the peaceful nuclear programmes or activities in the Community, the Member States of the Community or the United States, or their peaceful nuclear co-operation with third countries. This is the first time that the U.S. has even given such extensive and important guarantees to a trading partner.

IV. Final overall Assessment

18. The political and commercial importance of the Agreement should not be underestimated. The positive results can be summarised as follows:-
- a) The nuclear energy aspects
As an important energy source for the Union (35% of all electricity is nuclear produced), it was necessary to ensure that industrial and trade aspects relating in particular to security of nuclear supply and competitiveness were secured by the Agreement. This Memorandum demonstrates that, both within the Union and internationally, significant advantages have been obtained in this respect. Although the E.U. is no longer dependent on the U.S. in the nuclear sector, the Agreement forms a secure and favourable basis for considerable co-operation and trade between the E.U. and U.S. nuclear industries as well as a number of third countries, and provides a durable framework for this trade to expand in the future according to the commercial choices and needs of the E.U. nuclear

industry. It also responds effectively to the objectives of the Commission's recent Energy Green paper.

b) Bilateral EC/US aspects

The differences of views, finally resolved, concerning U.S. claims for consent rights should not overshadow the overall picture. The Union and the United States are the two major players in this peaceful use of nuclear energy. (Japan's position is of course also significant). The U.S. voiced the view that it would be inconceivable not to have an Agreement for Co-operation between the U.S. and the Union. This new Agreement constitutes a strong expression of the political and economic value of the partnership that exists between the U.S. and the Union reaffirmed in the Joint Declaration on E.C./U.S. relations of November 1990. There is also no doubt that certain key third countries such as Japan will also welcome this Agreement as bringing stability to nuclear co-operation and trading in the industrialised world.

c) International Non-Proliferation aspects

The European Union, its Member States and the United States have indisputable non-proliferation credentials. These form a key basis of the co-operation. Any form of co-operation under the Agreement is for peaceful use only. Article 11 records that all material is subject to international instruments dealing with their physical protection and security. In addition safety aspects are covered. The Agreement ensures that internationally accepted levels of non-proliferation and physical protection apply indefinitely to all material and sets an appropriate example for other countries.

19. It should be noted that this reciprocal Agreement must, of course, also be approved by the U.S. Congress.

V. Conclusion

20. In conclusion, the Commission considers that the benefits and the satisfactory provisions obtained constitute an Agreement which can suitably replace the current Nuclear Agreement that expires at the end of 1995. The Commission considers that the proposed new Agreement for Nuclear Co-operation between the European Atomic Energy Community and the United States:

- complies in all respects with the negotiating directives issued by the Council on 16.12.1991;
- guarantees to the European nuclear industries the stability, the long-term predictability and all the assurances that they need;
- will provide a significant contribution to strengthening the E.U./U.S.A. overall relationship.

21. The Commission therefore invites the Council to approve the Decision set out in the Annex.

Draft

**Council Decision approving the conclusion by the
Commission of an Agreement for peaceful nuclear co-operation
between the European Atomic Energy Community (Euratom)
and the Government of the United States of America**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular the second paragraph of Article 101 thereof,

Having regard to the draft decision presented by the Commission,

WHEREAS the Commission has carried out negotiations in accordance with Council directives, adopted by Council Decision of 16.12.1991, for an Agreement between the European Atomic Energy Community (Euratom) and the Government of the United States of America,

WHEREAS the conclusion by the Commission of that Agreement should be approved,

HAS DECIDED AS FOLLOWS

Sole Article

The conclusion by the Commission of an Agreement for peaceful nuclear co-operation between the European Energy Community (Euratom) and the Government of the United States is hereby approved.

The text of the Agreement is attached to this Decision.

Done in Brussels

For the Council,
The President

**AGREEMENT FOR CO-OPERATION IN THE PEACEFUL USES
OF NUCLEAR ENERGY BETWEEN THE EUROPEAN ATOMIC ENERGY
COMMUNITY AND THE UNITED STATES OF AMERICA**

THE EUROPEAN ATOMIC ENERGY COMMUNITY, HEREINAFTER REFERRED TO AS "THE COMMUNITY", AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA, HEREINAFTER REFERRED TO AS "THE UNITED STATES OF AMERICA";

PREAMBLE

Whereas the Community and the United States of America concluded an Agreement which entered into force on 27 August 1958 and an Additional Agreement for Co-operation which entered into force on 25 July 1960, as subsequently amended, which expire on 31 December 1995;

Whereas the Community and the United States of America recognise the value of their past co-operation in the peaceful uses of nuclear energy and wish to provide for renewed co-operation on the basis of equality, mutual benefit, reciprocity and without prejudice to the respective powers of each Party;

Whereas the Community and the United States of America are convinced that by strengthening and expanding their partnership on an equal footing they will contribute to continued international stability as well as to political and economic progress;

Whereas the Community, its Member States and the United States of America have attained a comparable advanced level in the use of nuclear energy for electricity production, in the development of their nuclear industries and in the security afforded by their respective laws and regulations concerning health, safety, the peaceful use of nuclear energy and the protection of the environment;

Whereas it is necessary to establish the conditions governing transfers of nuclear items between the Community and the United States of America, to ensure continued compliance with the requirement for free movement of such items within the Community and to avoid interference in nuclear programmes in place in the Community and the United States of America as well as in their international trading relations;

Whereas all Member States of the Community and the United States of America are Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, hereinafter referred to as "the Non-Proliferation Treaty";

Whereas the Community, its Member States, and the United States of America are committed to ensuring that the research, development and use of nuclear energy for peaceful purposes are carried out in a manner consistent with the objectives of that Treaty;

Whereas nuclear safeguards are applied in the Community pursuant to the Treaty establishing the European Atomic Energy Community;

Whereas the Community, its Member States and the United States of America reaffirm their support of the International Atomic Energy Agency, hereinafter referred to as "the IAEA", and of its safeguards system;

Whereas the Community, its Member States and the United States of America are strongly committed to strengthening the international nuclear non-proliferation and related safeguards regimes;

Whereas the Community, its Member States and the United States of America are strongly committed to adequate physical protection of nuclear material and are Parties to the International Convention on the Physical Protection of Nuclear Material;

Whereas it is desirable to facilitate, as appropriate, trade, exchanges and co-operation activities at an industrial and commercial scale, including peaceful international co-operation with third Parties, in accordance with Article IV of the Non-Proliferation Treaty;

Whereas it is also desirable to set up a framework for exchanges of information and for consultations between the Parties on nuclear matters of common interest;

Whereas co-operation should extend to nuclear research and development on nuclear safety and to regulatory and operational aspects of radiological protection;

Whereas co-operation relating to nuclear fission research and development in such fields as safety, radiological protection, health and the environment, and safeguards may be subject to specific agreements between the Community and the United States of America;

Whereas the Community and the United States of America contribute to international co-operation in the field of controlled thermonuclear fusion and, in particular, to the activities of the international thermonuclear experimental reactor (ITER);

Whereas it is appropriate that the nuclear co-operation Agreements concluded between, on the one hand, the United States of America and, on the other hand, the Republic of Austria, the Kingdom of Spain, the Portuguese Republic, the Kingdom of Sweden and the Republic of Finland before their accession to the European Community be terminated upon the entry into force of the present Agreement;

Whereas likewise the United States of America is prepared to terminate any nuclear co-operation agreement it may have with third states acceding to the Community,

HAVE AGREED AS FOLLOWS:

Article 1

SCOPE OF CO-OPERATION

1. The Parties may co-operate in the peaceful uses of nuclear energy in the following areas:
 - A) Nuclear fission research and development on such terms as may be agreed between the Parties;
 - B) Nuclear safety matters of mutual interest and competence, as set out in Article 2;
 - C) Facilitation of exchange and co-operation activities at an industrial or commercial scale between persons and undertakings;
 - D) Subject to the provisions of this Agreement, supply between the Parties of non-nuclear material, nuclear material and equipment and provision of nuclear fuel cycle services, whether for use by or for the benefit of the Parties or third countries;
 - E) Exchange of information on major international questions related to nuclear energy, such as promotion of development in the field of international nuclear safeguards and non-proliferation within areas of mutual interest and competence, including collaboration with the IAEA on safeguards matters and on the interaction between nuclear energy and the environment;
 - F) Controlled thermonuclear fusion including multilateral projects;
 - G) Other areas of mutual interest.
2. The co-operation referred to in this Article, as between the Parties, may also take place between persons and undertakings established in the respective territories of the Parties.

Article 2

CO-OPERATION ON NUCLEAR RESEARCH AND DEVELOPMENT

1. The Parties may co-operate in nuclear research and development including the following activities, in so far as they are covered by the respective nuclear research and development programmes of the Parties:
 - a. nuclear safety, including regulatory and operational aspects of radiological protection;
 - b. development of nuclear energy including, inter alia, research into new reactors, decommissioning of nuclear installations, radiological safety research into

waste management and disposal and interaction between nuclear energy and the environment;

- c. nuclear safeguards;
- d. research on controlled thermonuclear fusion including, inter alia, bilateral activities and contributions towards multilateral projects such as the International Thermonuclear Experimental Reactor (ITER).

2. Co-operation pursuant to this Article may include, but is not limited to, training, exchange of personnel, meetings, exchanges of samples, materials and instruments for experimental purposes and a balanced participation in joint studies and projects.

3. Information arising from the implementation of this article which, in the judgement of the appropriate authorities of the Parties, should be placed in the public domain may be so disseminated by them in a consolidated or other appropriate form, subject to the Guidelines set out in Annex B.

Article 3

INDUSTRIAL AND COMMERCIAL CO-OPERATION

In conformity with the provisions of Article IV of the Non-Proliferation Treaty, the Parties undertake to facilitate the fullest possible exchange of equipment, materials and scientific and technological information for the peaceful uses of nuclear energy. To this end, the Parties will facilitate, as appropriate, commercial relations between persons and undertakings involving nuclear co-operation.

Such co-operation may include, but is not limited to:

- investments;
- joint ventures;
- environmental aspects at industrial or commercial scale;
- trade in nuclear items, non-nuclear material and technical and specialised services as specified in Article 4;
- licensing arrangements between persons and undertakings in the territory of either Party.

Article 4

NUCLEAR TRADE

1. The Parties shall facilitate nuclear trade between themselves, in the mutual interests of industry, utilities and consumers and also, where appropriate, trade between third countries and either Party of items obligated to the other Party.
2. Authorisations, including export and import licences as well as authorisations or consents to third parties, relating to trade, industrial operations or nuclear material movements on the territories of the Parties shall not be used to restrict trade. The relevant authority shall act upon applications for such authorisations as soon as possible after submission and without unreasonable expense. Appropriate administrative procedures shall be in place to ensure respect of this provision.

Article 5

ITEMS SUBJECT TO THE AGREEMENT

1. Non-nuclear material, nuclear material and equipment transferred between the Parties or their respective persons or undertakings, whether directly or through a third country, shall become subject to this Agreement upon their entry into the territorial jurisdiction of the receiving Party, provided that the supplying Party has notified the receiving Party in writing of the intended transfer and the receiving Party has acknowledged in writing the receipt of this notification.
2. Non-nuclear material, nuclear material and equipment referred to in this Article shall remain subject to the provisions of this Agreement until it has been determined, in accordance with the procedures set out in the Administrative Arrangement:
 - that such items have been retransferred beyond the jurisdiction of the receiving Party;
 - that nuclear material or non-nuclear material are no longer usable for any nuclear activity relevant from the point of view of international safeguards or have become practically irrecoverable;
 - or that equipment is no longer usable for nuclear purposes.

Article 6

SAFEGUARDS

1. Safeguards required under this Agreement shall be those applied by the Community pursuant to the Euratom Treaty and by the IAEA pursuant to the following safeguards agreements, as relevant, as they may be revised and replaced so long as coverage as required by the Non-Proliferation Treaty is provided for:

- (a) the agreement between the Community, its non-nuclear weapon Member States and the IAEA, which entered into force on 21.2.1977;
 - (b) the agreement between the Community, the United Kingdom of Great Britain and Northern Ireland and the IAEA, which entered into force on 14.08.78;
 - (c) the agreement between the Community, France and the IAEA, which entered into force on 12.9.1981;
 - (d) the agreement between the United States of America and the IAEA, which entered into force on 9.12.1980;
2. (A) Nuclear material transferred to the Community pursuant to this Agreement, and special fissionable material used in or produced through the use of any non-nuclear material, nuclear material or equipment, so transferred, shall be subject to the relevant agreements referred to in paragraph 1 of this Article.
- (B) Nuclear material transferred to the United States pursuant to this Agreement, and special fissionable material used in or produced through the use of any non-nuclear material, nuclear material or equipment, so transferred, shall be subject to the agreement referred to in paragraph 1(d) of this Article.
3. In the event that any of the IAEA safeguards agreements referred to in paragraph 1(a), (b) or (c) are not being applied,
- (a) the Community shall enter into an agreement or agreements with the IAEA for the application of safeguards which provide for effectiveness and coverage equivalent to that provided by the safeguards agreements required by paragraphs 1(a), (b) and (c) or, if that is not possible,
 - (b) the Community shall give the United States of America an assurance that safeguards are being applied by the Community which provide for effectiveness and coverage equivalent to that provided by the safeguards agreements required by paragraph 1(a), (b) and (c). In the fulfillment of obligations arising from these paragraphs, the United States of America hereby recognizes the unique role and importance of the Euratom safeguards system and of its application in the Community pursuant to the Euratom Treaty. In this context, the United States of America further takes note that the IAEA, pursuant to the safeguards agreements concluded with the Community and its Member States as well as in subsequent implementing arrangements shall take due account, inter alia, of the effectiveness of the Community's system of safeguards enabling the IAEA to deploy an inspection effort less than that applied under other safeguards agreements in which there are comparable nuclear facilities producing, processing, using or storing safeguarded nuclear material where a regional safeguards system does not exist.
 - (c) In the event that conditions arise which do not permit application of such safeguards by the Community, the Parties shall immediately establish safeguards arrangements for the application of safeguards which provide for effectiveness and

coverage equivalent to that provided by the safeguards agreements required by paragraphs 1 (a), (b) and (c) of this Article.

4. In the event that the IAEA. safeguards Agreement referred to in paragraph 1(d) of this Article, is not being applied,

- (a) the United States of America shall enter into an agreement or agreements with the IAEA for the application of safeguards which provide for effectiveness and coverage equivalent to that provided by the safeguards agreement required by paragraph 1(d) of this Article; or, if that is not possible,
- (b) the Parties shall immediately establish safeguards arrangements for the application of safeguards which provide for effectiveness and coverage equivalent to that provided by the safeguards agreement required by paragraph 1(d) of this Article.

Article 7

PEACEFUL USE

1. Co-operation under this Agreement shall be carried out for peaceful purposes.
2. Non-nuclear material, nuclear material and equipment transferred pursuant to this Agreement and special fissionable material used in or produced through the use of such items shall not be used for any nuclear explosive device, for research on or development of any nuclear explosive device or for any military purpose.

Article 8

NUCLEAR FUEL CYCLE ACTIVITIES

1. The nuclear fuel cycle activities carried out pursuant to this Agreement include :
 - (A) Within the territorial jurisdiction of either Party, enrichment up to twenty percent in the isotope 235, of uranium transferred pursuant to this Agreement, as well as of uranium used in or produced through the use of equipment so transferred. Enrichment of such uranium to more than twenty percent in the isotope 235 and reenrichment of such uranium already enriched to more than twenty percent in the isotope 235 may be carried out according to conditions agreed upon in writing which shall be the subject of consultations between the Parties within 40 days of the receipt of a request from either Party.
 - (B) Irradiation within the territorial jurisdiction of either Party of plutonium, uranium-233, high enriched uranium and irradiated nuclear material transferred pursuant to this Agreement or used in or produced through the use of non-nuclear material, nuclear material or equipment so transferred;

(C) Retransfer to third countries according to procedures set out in the Agreed Minute of:

- (i) low enriched uranium, non-nuclear material, equipment and source material transferred pursuant to this Agreement or of low enriched uranium produced through the use of nuclear material or equipment transferred pursuant to this Agreement, for nuclear fuel cycle activities other than the production of HEU;
- (ii) irradiated nuclear material transferred pursuant to this Agreement or irradiated nuclear material used in or produced through the use of non-nuclear material, nuclear material or equipment transferred pursuant to this Agreement, for storage or disposal not involving reprocessing;
- (iii) other nuclear material transferred pursuant to this Agreement and other special fissionable material produced through the use of non-nuclear material, nuclear material or equipment transferred pursuant to this Agreement, for other fuel cycle activities including those specified in paragraphs 2 and 3 of this Article.

(D) Post-irradiation examination involving chemical dissolution or separation of irradiated nuclear material transferred pursuant to this Agreement or irradiated nuclear material used in or produced through the use of non-nuclear material, nuclear material or equipment so transferred.

2. The following nuclear fuel cycle activities may be carried out pursuant to this Agreement within the territorial jurisdiction of either Party in facilities forming part of the delineated peaceful nuclear programs described in Annex A:

A) Reprocessing of nuclear material transferred pursuant to this Agreement and nuclear material used in or produced through the use of non-nuclear material, nuclear material or equipment so transferred;

B) Alteration in form or content of plutonium, uranium 233 and high enriched uranium transferred pursuant to this Agreement or used in or produced through the use of non-nuclear material, nuclear material or equipment so transferred;

3. The following nuclear materials:

(i) plutonium, uranium-233 and high enriched uranium, if not contained in irradiated nuclear fuel, transferred pursuant to this Agreement;

(ii) plutonium, uranium-233 and high enriched uranium recovered from nuclear material transferred pursuant to this Agreement;

(iii) plutonium, uranium-233 and high enriched uranium recovered from nuclear material used in equipment transferred pursuant to this Agreement

may be stored in facilities that are at all times subject, as a minimum, to the levels of physical protection that are set out in Annex C to IAEA document INFCIRC 254/Rev.

1/Part 1 (Guidelines for nuclear transfers) as it may be revised and accepted by the Parties and the Member States of the Community.

Each Party shall record its facilities on a list, made available to the other Party. A Party's list shall be held confidential if that Party so requests. Either Party may make changes to its list by notifying the other Party in writing and receiving a written acknowledgement. Such acknowledgement shall be given no later than thirty days after the receipt of the notification and shall be limited to a statement that the notification has been received.

If there are grounds to believe that the provisions of this sub-Article are not being fully complied with, immediate consultations in accordance with the provisions of Article 12.2 of this Agreement may be called for.

The Parties shall ensure by means of such consultations that necessary corrective measures are taken immediately. Such measures shall be sufficient to restore the levels of physical protection referred to above at the facility in question. If this proves not to be feasible, the nuclear material in question shall be transferred for storage at another appropriate, listed facility.

Article 9

INTERNATIONAL OBLIGATIONS EXCHANGES

The Parties shall establish expeditious procedures to be applied when nuclear material is to be made subject to this Agreement or removed from the coverage of this Agreement. These procedures shall include provisions on international exchanges of obligations, which will be set out in the Administrative Arrangement, provided for in paragraph 1 of Article 16.

Article 10

IMPLEMENTATION OF THE AGREEMENT

1. The terms of this Agreement shall be implemented in good faith and with due regard to the legitimate commercial interests, whether international or domestic, of either Party.
2. This Agreement shall be implemented in a manner designed :
 - (a) to avoid hampering or delaying the nuclear activities in the territory of either Party;
 - (b) to avoid interference in such activities;
 - (c) to be consistent with prudent management practices required for the economic and safe conduct of such activities;

- (d) to take full account of the long-term requirements of the nuclear energy programmes in place in the Community and in the U.S.A.
3. The provisions of this Agreement shall not be used for the purpose of :
- (a) securing unfair commercial or industrial advantages, or of restricting trade to the disadvantage of persons and undertakings of either Party or hampering their commercial or industrial interests, whether international or domestic;
 - (b) interfering with the nuclear policy or programmes of either Party nor for hindering the promotion of the peaceful uses of nuclear energy.
 - (c) impeding the free movement of nuclear material, non-nuclear material and equipment within the territory of the Community.
4. In exercising the rights arising from other nuclear co-operation agreements it might have concluded with third parties, each Party to this agreement will pay due regard to the legitimate commercial interests of the other Party; in case of difficulty either Party may call for consultations which shall take place within 40 days, in accordance with the provisions of Article 12.

Article 11

PHYSICAL PROTECTION

1. Nuclear material transferred pursuant to this Agreement and special fissionable material used in or produced through the use of non-nuclear material, nuclear material or equipment so transferred shall be subject to adequate measures of physical protection.
2. Such physical protection measures shall be at levels which shall satisfy the criteria set out in Annex C to IAEA document INFCIRC 254/Rev1/Part1 (Guidelines for nuclear transfers) as it may be revised and accepted by the Parties and the Member States of the Community. As a supplement to this document, the Member States of the Community, the Commission of the European Communities (as appropriate), and the United States of America will refer, when applying these measures, to the recommendations of IAEA document INFCIRC 225/Rev.3 on the Physical Protection of Nuclear Material, as it may be revised and accepted by the Parties and the Member States of the Community.
3. International transport of nuclear material subject to this Agreement shall be subject to the provisions of the International Convention on the Physical Protection of Nuclear Material (INFCIRC 274/Rev.1), as it may be revised and accepted by the Parties and the Member States of the Community.

Article 12

CONSULTATION AND ARBITRATION

1. The Parties shall consult at the request of either of them to promote co-operation under this Agreement and to ensure its effective implementation. A Joint Committee shall be established for these purposes. This Committee will also consult on nuclear questions of mutual interest and any other significant matters relating to the co-operation envisaged by this Agreement. A Joint Technical Working Group reporting to the Joint Committee will be set up to ensure the fulfilment of the requirements of the Administrative Arrangement referred to in Article 16.
2. The Parties shall consult, at the request of either of them, on any question arising out of the interpretation or application of this Agreement.
3. Any dispute arising out of the interpretation or application of this Agreement shall be settled by negotiation, mediation, conciliation or other similar procedure or, if both Parties agree, by submission to an arbitral tribunal which shall be composed of three arbitrators appointed in accordance with the provisions of this paragraph. Each Party shall designate one arbitrator and the two arbitrators so designated shall elect a third, a national of a country other than the United States or a Member State of the Community, who shall be the Chairman. If, within thirty days of the request for arbitration, a Party has not designated an arbitrator, the other Party may request the President of the International Court of Justice to appoint an arbitrator. The same procedure shall apply if, within thirty days of the designation or appointment of the second arbitrator, the third arbitrator has not been elected, provided that the third arbitrator so appointed shall not be a national of the United States or of a Member State of the Community. All decisions shall require the concurrence of two arbitrators. The arbitral procedure shall be fixed by the tribunal. The decisions of the tribunal shall be binding on the Parties.

Article 13

SUSPENSION AND TERMINATION

A. CIRCUMSTANCES

1. If either Party or a Member State of the Community at any time following the entry into force of this Agreement:
 - (a) materially acts in violation of the fundamental provisions of Articles 4, 5, 6, 7, 10 or 11 of the Agreement or contravenes a decision of the arbitral tribunal referred to in Article 12 of this Agreement, or
 - (b) takes action of any kind which results in a material violation of its obligations under this Agreement, including prevention of nuclear trade envisaged under this Agreement,

the other Party shall have the right to cease further co-operation under this Agreement or to suspend or terminate, in whole or in part, this Agreement.

2. If either Party or a Member State of the Community at any time following entry into force of this Agreement terminates or abrogates a safeguards agreement with the Agency and the safeguards agreement so terminated or abrogated has not been replaced by an equivalent safeguards agreement when appropriate and relevant, the other Party shall have the right to require the return in whole or in part of non-nuclear material, nuclear material or equipment transferred pursuant to this Agreement and special fissionable material produced through the use of such items.

3. If the Community or a non-nuclear weapon State member of the Community detonates a nuclear explosive device, the Government of the United States of America shall have the right specified in paragraph 2 of this Article.

4. If a nuclear-weapon-State member of the Community detonates a nuclear explosive device using any item subject to this Agreement, the United States shall have the right specified in paragraph 2 of this Article.

5. If the United States of America detonates a nuclear explosive device using any item subject to this Agreement, the Community shall have the right specified in paragraph 2 of this Article.

B. IMPLEMENTATION

6. Before either Party decides to take action pursuant to paragraphs 1 to 5 above, the Parties shall hold consultations for the purpose of taking corrective measures and shall carefully consider the effects of such action, taking into account the need to make such other appropriate arrangements as may be required and, in particular, to ensure security and continuity of supply and adequate time for replacement and further to honour commitments to third countries and their industrial entities.

7. Before taking action under this Article, the Parties shall consider whether the facts triggering such steps were caused deliberately.

8. Action under this Article shall only be taken if the other Party fails to take corrective measures within an appropriate period of time following consultations.

9. If either Party exercises its right, pursuant to paragraphs 2 to 5 of this Article, to require the return of any items, it shall, prior to the removal from the territory or from the control of the other Party, compensate promptly that Party for the fair market value thereof and for the costs incurred as a consequence of such removal. If the return of nuclear items is to be required, the Parties shall determine jointly the relevant quantity of nuclear items, taking account of the circumstances involved. The Parties shall further satisfy themselves that full safety, radiological and physical protection measures, in accordance with their existing obligations, are taken in relation to the return of the items, that no unreasonable risks are incurred and that the return of items takes place in a manner consistent with all the relevant laws and regulations of the Parties.

Article 14

DURATION AND AMENDMENT

1. This Agreement shall enter into force on the date on which the Parties exchange diplomatic notes informing each other that their respective internal procedures necessary for its entry into force have been completed.

2. This Agreement shall remain in force for a period of thirty years and shall continue in force thereafter for additional periods of five years each. Either Party may, by giving six months' written notice to the other Party, terminate this Agreement at the end of the initial thirty year period or at the end of any subsequent five year period.

3. Notwithstanding the termination or suspension of this Agreement, the rights and obligations pursuant to Articles 6, 7, 8.1.(C) and 11 and to paragraphs 2, 3, 4, 5, 8, 9, 10, 11 and 12 of the Agreed Minute shall continue in effect.

4. If a Party gives to the other Party the written notice provided for in paragraph 2, or if a Party suspends or terminates this Agreement pursuant to Article 13.1, the Parties shall hold consultations as soon as possible but not later than one month afterwards, for the purpose of deciding jointly whether, in addition to those referred to in paragraph 3 of this Article, further rights and obligations arising out of this Agreement, and in particular out of Article 8.1 (A), 8.1.(B), 8.1.(D), 8.2. and 8.3. and the Agreed Minute relating thereto, shall continue in effect.

5. If the Parties are unable to reach a joint decision pursuant to paragraph 4,

- a. quantities of nuclear material equivalent to the inventory described in Article 20.1., and items of equipment described in Article 20.2., shall continue to be subject to the provisions of Articles 8.1.(A), 8.1.(B), 8.1.(D), 8.2., 8.3. and Article 13 and their Agreed Minute but only to the extent covered by the Agreements referred to in Article 19.
- b. The question whether further rights and obligations, in addition to those referred to in paragraph 3 and subparagraph (a) of this paragraph of this Article, shall continue in effect in relation to nuclear material and equipment not covered by sub-paragraph (a), and to all non-nuclear material, shall be submitted to an arbitral tribunal composed pursuant to Article 12.3. The tribunal shall make its decision on the basis of the application of the rules and principles of international law, and in particular the Vienna Convention on the Law of Treaties.
- c. If the arbitral tribunal decides that rights and obligations other than those referred to in paragraph 3 of this Article shall not continue in effect with respect to non-nuclear material, nuclear material and equipment subject to arbitration pursuant to subparagraph (b), either Party shall have the right to require, subject to the procedures provided for in Article 13.9, the return of

such non-nuclear material, nuclear material and equipment in the territory of the other Party on the day of termination of this Agreement.

- d. Until the Parties reach a joint decision or the arbitral tribunal renders its decision, this Agreement will remain in force notwithstanding the written notice pursuant to para. 2.

6. The Parties may consult, at the request of either, on possible amendments to this Agreement, particularly to take account of international developments in the field of nuclear safeguards. This Agreement may be amended if the Parties so agree. Any amendment shall enter into force on the date on which the Parties exchange diplomatic notes informing each other that their respective internal procedures necessary for its entry into force have been completed.

Article 15

MULTIPLE OBLIGATIONS

1. The Parties shall endeavour to avoid any difficulties arising out of the overlapping of obligations on nuclear material as a result of the application of several agreements concerning international trade.
2. The Parties shall promote multilateral consultations with a view to achieving mutually satisfactory solutions at international level.

Article 16

ADMINISTRATIVE ARRANGEMENT

1. The appropriate authorities of the Parties shall establish an Administrative Arrangement in order to provide for the effective implementation of the provisions of this Agreement.
2. The principles of fungibility, equivalence and proportionality shall apply to nuclear material subject to the Agreement and the detailed provisions thereof will be set out in the Administrative Arrangement.
3. An Administrative Arrangement established pursuant to this Article may be amended by written agreement between the appropriate authorities of the Parties.

Article 17

INTELLECTUAL PROPERTY

1. The Parties shall apply international rules they have both formally accepted governing the treatment of intellectual property and technology transfers to intellectual property created or transferred and technology transferred pursuant to this Agreement.
2. Annex (B) shall apply to intellectual property created or transferred and technology transferred pursuant to this Agreement.
3. The Parties shall ensure that individual agreements they enter into pursuant to Annex B are consistent with this Agreement and with any additional rules concerning treatment of sensitive or confidential information in the nuclear field that may be agreed by the Parties.

Article 18

STATUS OF ANNEXES

The Annexes form an integral part of this Agreement and, unless expressly provided otherwise, a reference to this Agreement includes its Annexes.

Article 19

TERMINATION OF EXISTING AGREEMENTS

1. The Agreement between the European Atomic Energy Community and the Government of the United States of America that entered into force on 27 August 1958 and the Additional Agreement for Co-operation that entered into force on 25 July 1960, as subsequently amended, shall be terminated upon the entry into force of this Agreement.
2. The bilateral nuclear co-operation agreements that the United States of America has concluded with the Republic of Austria, on 11 July 1969, the Kingdom of Spain, on 20 March 1974, the Portuguese Republic, on 16 May 1974, the Kingdom of Sweden, on 19 December 1983, and the Republic of Finland, on 2 May 1985, shall be terminated upon the entry into force of this Agreement. The rights and obligations with respect to nuclear supply arising out of such agreements shall be replaced by those of this Agreement.
3. The rights and obligations with respect to nuclear supply arising out of a nuclear co-operation agreement between the United States of America and any third State that accedes to the Community after the entry into force of this Agreement shall be replaced by those of this Agreement upon accession by that State to the Community. The rights and obligations with respect to other areas of nuclear co-operation shall be the subject of negotiations between the Community, the United States of America and the third state concerned, in accordance with the provisions of Article 106 of the Euratom Treaty.

the Community, the United States of America and the third state concerned, in accordance with the provisions of Article 106 of the Euratom Treaty.

Article 20

INITIAL INVENTORIES

1. The provisions of this Agreement shall apply to the inventory of nuclear material formerly subject to the agreements referred to in Article 19 from the date such agreements are terminated pursuant to the provisions of that Article.
2. The provisions of this Agreement shall apply to equipment and non-nuclear material transferred pursuant to the agreements referred to in Article 19 only to the extent covered by those agreements.
3. The inventories of nuclear material, equipment and non-nuclear material subject to the agreements referred to in Article 19 shall be approved by the appropriate authorities of the Parties.

Article 21

DEFINITIONS

For the purposes of this Agreement:

1. **"Parties"** means the Government of the United States of America and the European Atomic Energy Community.
2. a) **"Community"** means both:
 - I. the legal person created by the Treaty establishing the European Atomic Energy Community (Euratom), Party to this Agreement;
 - II. the territories to which the Euratom Treaty applies;
- b) **"within the Community"** means within the territories to which the Euratom Treaty applies;
- c) **"beyond the Community"** has the corresponding meaning.
3. **"Appropriate authority"** means, in the case of the United States of America, the Department of State; in the case of the Community, the European Commission, or such other authority as the Party concerned may at any time notify to the other Party;
4. **"Equipment"** means any reactor as a complete unit, other than one designed or used primarily for the formation of plutonium or uranium-233 or any other item so designated jointly by the appropriate authorities of the Parties.

5. **"Non-nuclear material"** means heavy water, or any other material suitable for use in a reactor to slow down high velocity neutrons and increase the likelihood of further fission, as may be jointly designated by the appropriate authorities of the Parties;

6. **"Nuclear material"** means (1) source material and (2) special fissionable material. **"Source material"** means uranium containing the mixture of isotopes occurring in nature; uranium depleted in the isotope 235; thorium; any of the foregoing in the form of metal, alloy, chemical compound, or concentrate; any other material containing one or more of the foregoing in such concentration as the Board of Governors of the IAEA shall from time to time determine; and such other materials as the Board of Governors of the Agency may determine or as may be agreed by the appropriate authorities of both Parties. **"Special fissionable material"** means plutonium, uranium-233, uranium enriched in the isotope 233 or 235, any substance containing one or more of the foregoing, and such other substances as the Board of Governors of the Agency may determine or as may be agreed by the appropriate authorities of both Parties. **"Special fissionable material"** does not include "source material". Any determination by the Board of Governors of the Agency under Article XX of that Agency's Statute or otherwise that amends the list of materials considered to be "source material" or "special fissionable material" shall only have effect under this Agreement when both Parties to this Agreement have informed each other in writing that they accept such amendment.

7. **"High enriched uranium"** means uranium enriched to more than twenty percent in the isotope 235 (and/or uranium 233); **"low enriched uranium"** means uranium enriched to twenty percent or less in the isotope 235 (and/or uranium 233);

8. The following definitions relate to Article 17 and Annex B:

- **"Cooperative activity"** means any joint activity carried on under this Agreement, and includes joint research.

- **"Information"** means scientific or technical data, results or methods of research and development stemming from the joint research and any other information deemed necessary to be provided or exchanged under this Agreement or research pursuant thereto.

- **"Joint research"** means research undertaken jointly by the Parties directly or on their behalf by a person, legal entity, research institute or other body designated by a Party or research undertaken jointly by participants.

- **"Participant"** means a person, legal entity, research institute or other body participating in joint research but not on behalf of one of the Parties.

9. **"Persons and undertakings"** means any natural person who, and any undertaking or institution, whatever its public or private legal status, which pursues all or any of its activities within the Community or in the territory of the United States of America within the scope of this Agreement.

10. "Alteration in form or content" means conversion of plutonium, high enriched uranium or uranium 233 or fabrication of fuel containing plutonium, high enriched uranium or uranium 233; it does not include post irradiation examination involving chemical dissolution or separation, disassembly or reassembly of fuel assemblies, irradiation, reprocessing or enrichment.

11. "Storage facility" means any facility (or any part of a facility so designated by inclusion in one of the lists referred to in Article 8.3) the primary purpose and function of which is the separate storage of sensitive nuclear material as described in paragraphs (i), (ii) and (iii) of Article 8.3 under adequate conditions of control, safety and safeguards as well as of physical protection as described in Article 11.2.

In witness whereof the undersigned, being duly authorized thereto by the Government of the United States and the European Atomic Energy Community respectively, have signed this Agreement.

Done at Brussels on 1995 and at Washington on 1995, in duplicate.

For the European Atomic Energy Community,

For the United States of America

AGREED MINUTE

During the negotiation of the Agreement for Co-operation in the peaceful uses of nuclear energy between the United States of America and the Community signed today, the following understandings, which shall be an integral part of the Agreement, were reached.

A. PEACEFUL PURPOSES

1. The Parties agree that, with reference to Article 7, "peaceful purposes" includes provision of power for a military base drawn from any power network or production of radioisotopes to be used for medical purposes in a military hospital.

B. NUCLEAR FUEL CYCLE ACTIVITIES

2. Upon entry into force of this Agreement, the Parties shall exchange lists of third countries to which retransfers pursuant to Article 8.1.(C)(i) may be made by the other Party. Eligibility for continued inclusion on such lists shall be based, as a minimum, upon satisfaction of the following criteria :

- third countries must have made effective non-proliferation commitments, normally by being party to, and in full respect of their obligations under the Non-Proliferation Treaty or the Treaty of Tlatelolco and by being in compliance with the conditions of INFCIRC 254/Rev.1/Part1, and
- in case of retransfer of items obligated to the United States from the territory of the Member States of the Community, third countries must be party to a nuclear co-operation agreement with the United States.

3. Should retransfers pursuant to Article 8.1.(C)(ii) and (iii) be requested in the future by a Party, a list of third countries to which such retransfers may be made, shall be provided by the other Party. In this connection, the Parties shall take into account the following additional criteria:

- consistency of the proposed action with the guidelines contained in IAEA document INFCIRC 225/Rev.3 and with the provisions of IAEA document INFCIRC 274/Rev.1, as they may be revised and accepted by the Parties and the Member States;
- the nature and content of the peaceful nuclear programs of the third country in question;
- the potential proliferation and security implications of the transfer for either Party or a Member State of the Community.

4. Either Party may add eligible third countries to its lists at any time. Either Party may delete third countries from its lists following consultations with the other Party. Neither Party shall delete third countries from its lists for the purpose of obtaining commercial advantage or of delaying, hampering or hindering the peaceful nuclear programmes of the other Party or its peaceful nuclear co-operation with third countries. The Parties will co-operate in efforts to obtain as soon as possible on a generic basis a confirmation from the third countries on the lists that any retransferred items will be subject to any agreement for co-operation in force between the receiving country and the non-retransferring Party. The receipt of such confirmation shall not constitute a pre-condition for the addition of a third country to the lists.

5. The Parties agree that, notwithstanding the provisions of paragraphs 2, 3 and 4, the provisions set out in the Exchange of Notes dated 18 July 1988 between the Commission of the European Communities and the United States Mission to the European Communities concerning the Agreement for Co-operation in the Peaceful Uses of Nuclear Energy between the United States of America and Japan shall remain in effect as long as this Agreement remains in force. The Parties confirm that the above-mentioned provisions shall apply, inter alia, to plutonium contained in mixed oxide fuel. The consents granted therein may be suspended only if an event of the same or greater degree of seriousness as those referred to in paragraph 8 arises which directly threatens either the retransfer or the activities involving the retransferred plutonium in Japan.

6. With reference to paragraph 2 of Article 8 of the Agreement and notwithstanding paragraph 6 of Article 14, either Party, acting through its appropriate authorities, may make changes to the peaceful nuclear programmes it has delineated by notifying the other Party in writing in accordance with the procedures set forth below and receiving a written acknowledgement.

7. Such acknowledgement shall be given no later than thirty days after the receipt of the notification and shall be limited to a statement that the notification has been received. Intended changes in delineated programmes shall receive the fullest possible consideration during consultations under the Agreement, which may include discussions on safeguards.

(A) For an addition of a facility within its territorial jurisdiction to the peaceful nuclear programme delineated by the Community, the notification shall contain:

- (i) the name, type and location of the facility and its existing or planned capacity;
- (ii) a confirmation that the Euratom Safeguards Regulation 3227/76, as amended, is fully applied;
- (iii) for a facility to be under IAEA safeguards inspections pursuant to a safeguards agreement referred to in paragraph 1 (a), (b) or (c) of Article 6, a confirmation that relevant safeguards arrangements have been agreed upon with the IAEA and that those arrangements will permit the IAEA to exercise fully its rights pursuant to the aforementioned safeguards agreements, in the light of how these agreements are implemented during the life of this Agreement and so as to enable the IAEA to meet its objectives and inspection goal.

- (iv) such non-confidential information as is available to the Community on the IAEA safeguards approach and information on Euratom safeguards relevant to the facility;
- (v) a confirmation that physical protection measures as required by Article 11 of this Agreement will be applied.

(B) For an addition of a facility within its territorial jurisdiction to the delineated peaceful nuclear programme of the United States, the notification shall contain:

- (i) the name, type and location of the facility and its existing or planned capacity;
- (ii) for facilities licensed or certified by the United States Nuclear Regulatory Commission, a confirmation that the Fundamental Nuclear Material Control Plan, describing how the requirements of the U.S. Code of Federal Regulations, Title 10, Part 74, as amended, will be met, has been approved for the facility; for United States Department of Energy civil facilities, a confirmation that the facility is in compliance with the requirements of the Department of Energy Order 5633.3B, "Control and Accountability of Nuclear Materials," and associated guides, as amended;
- (iii) for a facility to be under IAEA safeguards inspections pursuant to the safeguards agreement referred to in paragraph 1 (d) of Article 6, a confirmation that the relevant safeguards arrangements have been agreed upon with the IAEA and that those arrangements will permit the IAEA to exercise fully its rights pursuant to the aforementioned safeguards agreement, in the light of how this agreement is implemented during the life of this Agreement and so as to enable the IAEA to meet its objectives and inspection goal;
- (iv) information on the basic features contained in the Fundamental Nuclear Material Control Plan or the compliance with the Department of Energy Order referred to above, and such non-confidential information as is available to the United States on the IAEA safeguards approach; and
- (v) a confirmation that physical protection measures as required by Article 11 of this Agreement will be applied.

(C) Either Party may delete a facility from the peaceful nuclear programme it has delineated, by providing to the other Party a notification containing the facility name and other relevant information available.

8. A. The activities referred to in paragraph 2 of Article 8 of this Agreement may proceed as long as those provisions continue in effect with respect to the peaceful nuclear programme delineated by a Party, unless the other Party considers, pursuant to the procedures set out below, that these activities should be suspended on the basis of objective evidence that their continuation would entail a serious threat to the security of either Party or of a Member State of the Community, or a significant increase in the risk of a nuclear proliferation, resulting from a situation of the same or greater degree of seriousness as the following:
- a) **With regard to the Community :**
 - (i) a non-nuclear-weapon State member of the Community detonates a nuclear weapon or any other nuclear explosive device;
 - (ii) a nuclear-weapon State member of the Community detonates a nuclear weapon or any other nuclear explosive device using any item subject to this Agreement;
 - (iii) a Member State of the Community or the Community, as relevant, materially violates, terminates, or declares itself not to be bound by, the Non-Proliferation Treaty or the relevant safeguards agreements referred to in Article 6.1, or the Guidelines applicable to the transfers of nuclear items laid down in document INFCIRC 254/Rev 1./Part1, as it may be revised and accepted by the Parties;
 - (iv) a Member State of the Community retransfers an item subject to this Agreement to a non-nuclear-weapon State which has not concluded a full-scope safeguards agreement with the IAEA;
 - (v) a Member State of the Community is subjected to measures taken by the Board of Governors of the IAEA, pursuant to Article 19 of the relevant safeguards Agreement referred to in Article 6.1.(a), (b) or (c);
 - (vi) acts of war or serious internal disturbances preventing the maintenance of law and order, or serious international tension constituting a threat of war, that threaten severely and directly the safeguarding or physical protection of such activities.
 - b) **With regard to the United States:**
 - (i) the United States detonates a nuclear weapon or any other nuclear explosive device using any item subject to this Agreement;
 - (ii) the United States materially violates, terminates or declares itself not to be bound by, the Non-Proliferation Treaty or the relevant safeguards agreement referred to in Article 6.1.(d), or the Guidelines applicable to the transfers of nuclear items laid down in document INFCIRC 254/Rev.1/Part 1, as it may be revised and accepted by the Parties;

- (iii) the United States retransfers an item subject to this Agreement to a non-nuclear-weapon state which has not concluded a full-scope safeguards agreement with the IAEA;
- (iv) the United States is subjected to measures taken by the Board of Governors of the IAEA, pursuant to Article 19 of the safeguards agreement referred in Article 6.1.(d);
- (v) acts of war or serious internal disturbances preventing the maintenance of law and order or serious international tension constituting a threat of war, that threaten severely and directly the safeguarding or physical protection of such activities.

B. The Party considering that such objective evidence may exist, shall consult with the other Party, at Cabinet level for the United States and at European Commission level for the Community, before reaching any decision.

C. Any such decision that such objective evidence does exist, and that activities referred to in paragraph 2 of Article 8 should therefore be suspended, shall be taken only by the President of the United States or by the Council of the European Union, as the case may be, and shall be notified in writing to the other Party.

D. Any decision taken by a Party pursuant to this paragraph shall apply to the activities of the other Party referred to in Article 8, paragraph 2 of this Agreement, taken as a whole.

E. The Parties confirm that, as of the time of entry into force of this Agreement, there exists no objective evidence of any of the threats referred to above and that they do not foresee any such threats developing in the future.

9. Actions of governments of third countries or events beyond the territorial jurisdiction of either Party shall not be used as a basis for invoking the provisions of paragraph 8 with respect to activities or facility operations within that Party's territorial jurisdiction unless, due to such actions or events, those activities or facility operations would clearly result in a significant increase in the risk of nuclear proliferation or in a serious threat to the security of the Party invoking the provisions of paragraph 8.

10. The Party invoking the provisions of paragraph 8 shall keep under constant review the development of the situation which prompted the decision and shall withdraw its invocation as soon as warranted.

11. The provisions of paragraph 8 shall not be invoked due to differences over the nature of the Parties' peaceful nuclear programmes or fuel cycle choices, or for the purpose of obtaining commercial advantage, or of delaying, hampering or hindering the peaceful nuclear programmes or activities of the other Party, or its peaceful nuclear co-operation with third countries.

12. Any decision to invoke the provisions of paragraph 8 shall only be taken in the most extreme circumstances of exceptional concern from a non-proliferation or security point of view and shall be applied for the minimum period of time necessary to deal in a manner acceptable to the Parties with the exceptional case.

13. Should the activities agreed upon in paragraph 2 of Article 8 of the Agreement be suspended, as provided in paragraph 8, quantities of nuclear material equivalent to the inventory described in Article 20.1 shall, at the option of the Party against which the suspension is applied, be regarded during such suspension as subject to this Agreement but only to the extent covered by the agreements referred to in Article 19.

C. PROPORTIONALITY

14. For the purpose of implementing the provisions of Article 8 and paragraphs 2-5 of Article 13 with respect to special fissionable material produced through the use of nuclear material and/or non-nuclear material transferred pursuant to the Agreement, when such nuclear material and/or non-nuclear material is used in equipment not so transferred, such provisions shall be applied to that proportion of special fissionable material produced that represents the ratio of transferred nuclear material and/or non-nuclear material used in the production of the special fissionable material to the total amount of nuclear material and/or non-nuclear material so used.

D. RESULTING OBLIGATIONS

15. The obligations arising out of Articles 6, 7 and 11 in relation to special fissionable material produced through the use of nuclear material subject to the Agreement in equipment not transferred under the Agreement may be satisfied without specific tracking of that special fissionable material. When such special fissionable material is subsequently used in equipment not so transferred, that equipment shall, during such use, be operated for peaceful applications only.

E. SUSPENSION AND TERMINATION

16. Both sides regard it as extremely unlikely that actions would be taken by the Community, its Member States or the United States of America which would cause the other Party to invoke the rights specified in Article 13. Nonetheless this Article reflects the firm conviction of both Parties that they would view with the utmost concern acts constituting a material violation or breach of non-proliferation commitments by any country and that appropriate actions such as those provided for in Article 13 would be taken by the Community, its Member States or the United States of America in response to any material violation of non-proliferation commitments.

17. No violation may be considered as being material unless corresponding to the definition of material violation or breach contained in the Vienna Convention on the Law of Treaties.

18. Additionally, a determination as to whether there has been a material violation of the fundamental safeguards commitments contained in the safeguards agreements referred to in Article 6.1. or in such other agreement as may amend or replace them, would only be made by the President of the United States of America or the Council of the European Union, as relevant. In making such a determination, a crucial factor will be whether the Board of Governors of the Agency has made a finding of non-compliance.

EURATOM DELINEATED PEACEFUL PROGRAM

REPROCESSING FACILITIES

| | | |
|------------------------------------|------------|----------------|
| COGEMA - ETABLISSEMENT DE LA HAGUE | LA HAGUE | FRANCE |
| COGEMA - USINE UP-1 | MARCOULE | FRANCE |
| BRITISH NUCLEAR FUELS plc | SELLAFIELD | UNITED KINGDOM |
| AEA TECHNOLOGY | DOUNREAY | UNITED KINGDOM |

ALTERATION IN FORM OR CONTENT FACILITIES

| | | |
|--|------------------|----------------|
| BELGONUCLEAIRE - USINE DE FABRICATION D'ELEMENTS PU | MOL | BELGIUM |
| FBFC INTERNATIONAL - ASSEMBLAGE DES COMBUSTIBLES MOX | DESSEL | BELGIUM |
| SIEMENS BRENNLEMENTEWERK - BETRIEBSTEIL MOX-VERARBEITUNG | HANAU | GERMANY |
| CERCA/ETABLISSEMENT DE ROMANS | ROMANS SUR ISERE | FRANCE |
| SOCIETE INDUSTRIELLE DE COMBUSTIBLE NUCLEAIRE | VEUREY | FRANCE |
| COGEMA - COMPLEXE DE FABRICATION DES COMBUSTIBLES | CADARACHE | FRANCE |
| ETABLISSEMENT MELOX | MARCOULE | FRANCE |
| AEA TECHNOLOGY - MTR FUEL | DOUNREAY | UNITED KINGDOM |
| BRITISH NUCLEAR FUELS plc - MOX FACILITY | SELLAFIELD | UNITED KINGDOM |

ANNEX A

U.S. DELINEATED PEACEFUL NUCLEAR PROGRAM

I. Facilities for reprocessing or alteration in form or content of plutonium, uranium 233 and high enriched uranium in an aggregate quantity exceeding one (1) effective kilogram.

A. REPROCESSING FACILITIES

None

B. FACILITIES FOR ALTERATION IN FORM OR CONTENT

1. CONVERSION PLANTS

| <u>NAME and LOCATION</u> | <u>TYPE</u> | <u>LICENSED CAPACITY</u> |
|--|----------------------|--|
| Nuclear Fuel Services P.O. Box 337, MS123 Erwin, TN 37650 | Uranium downblending | 7,000 kgs U-235. |
| Radiochemistry Processing Pilot Plant Oak Ridge Nat'l Lab P.O. Box X Oak Ridge, TN 37830 | Conversion | Less than 1000 kg of HEU and more than 100 kg of U-233. |

2. FUEL FABRICATION AND PROCESSING PLANTS

| <u>NAME and LOCATION</u> | <u>TYPE</u> | <u>LICENSED CAPACITY</u> |
|--|--|------------------------------|
| General Atomics P.O. Box 81608 San Diego, CA 92138 | Fuel fabrication for TRIGA research reactors | >20% enr U, 100 kg U-235. |

II. Facilities for reprocessing or alteration in form or content of plutonium, uranium 233 and high enriched uranium in an aggregate quantity not to exceed one (1) effective kilogram do not require specification.

Intellectual Property Rights

Pursuant to Article 17 of this Agreement, rights to intellectual property created or furnished under this Agreement shall be allocated as provided in this Annex.

I. Application

This annex is applicable to all cooperative activities undertaken pursuant to this Agreement, except as otherwise specifically agreed.

II. Ownership, Allocation and Exercise of Rights

1. For purposes of this Agreement, "intellectual property" shall have the meaning found in Article 2 of the Convention establishing the World Intellectual Property Organisation, done at Stockholm, July 14, 1967.
2. This Annex addresses the allocation of rights, interests and royalties between the Parties and participants. Each Party shall ensure that the other Party may obtain the rights to intellectual property allocated to it in accordance with this Annex. This Annex does not otherwise alter or prejudice the allocation between a Party and its nationals, which shall be determined by that Party's laws and practices.
3. Termination or expiry of this Agreement shall not affect rights or obligations under this Annex.
4. a) In the case of cooperative activities between the Parties, intellectual property arising from joint research, i.e., cooperative research supported by both Parties, shall be treated in a Technology Management Plan according to the following principles :
 - i. The Parties shall notify each other within a reasonable time of any intellectual property rights arising under this Agreement (or relevant implementing arrangements).
 - ii. Unless otherwise agreed, rights and interests in intellectual property created during joint research shall be exploitable by either Party without territorial restriction.
 - iii. Each Party shall seek protection for the intellectual property to which it obtains rights and interests under the Technology Management Plan in a timely fashion.

iv. Each Party shall have a non-exclusive, irrevocable, royalty-free license to use any intellectual property arising under the Agreement for research and development purposes only.

v. Visiting researchers shall receive intellectual property rights and royalty shares earned by the host institutions from licensing of such intellectual property rights under the policies of the host institutions.

b) In all other cases, to the extent required by its laws and regulations, each Party shall require all its participants to enter into specific agreements concerning the implementation of joint research and the respective rights and obligations of the participants. With respect to intellectual property, the agreement will normally address, among other things, ownership, protection, user rights for research and development purposes, exploitation and dissemination, including arrangements for joint publication, the rights and obligations of visiting researchers and dispute settlement procedures. The agreement may also address foreground and background information, licensing and deliverables.

6. While maintaining the conditions of competition in areas affected by the Agreement, each Party shall endeavour to ensure that rights acquired pursuant to this Agreement and arrangements made under it are exercised in such a way as to encourage, in particular i) the use of information created, or otherwise made available, under the Agreement and its dissemination in so far as this is in accordance both with the conditions set out in this Agreement, the provisions of section IV hereof and any rules which may be in force under the Parties' domestic laws governing treatment of sensitive or confidential information in the nuclear field, and ii) the adoption and implementation of international standards.

III. Copyright works

Consistent with the terms of this Agreement, copyright belonging to the Parties or to participants shall be accorded treatment consistent with Agreement on Trade Related Aspects of Intellectual Property Rights administered by the World Trade Organization.

IV. Scientific Literary Works

Subject to the treatment provided for undisclosed information in section V, the following procedures shall apply:

1. Each Party shall be entitled to a non-exclusive, irrevocable, royalty-free licence in all countries to translate, reproduce, and publicly distribute information contained in scientific and technical journals, articles, reports, books, or other media, directly arising from joint research pursuant to this Agreement by or on behalf of the Parties.

2. All publicly distributed copies of a copyrighted work prepared under this provision shall indicate the names of the authors of the work unless an author explicitly declines to be named. They shall also bear a clearly visible acknowledgment of the cooperative support of the Parties.

V. Undisclosed Information

A. Documentary undisclosed information

1. Each Party and the participants shall identify at the earliest possible moment the information that they wish to remain undisclosed in relation to this Agreement, taking account, inter alia, of the following criteria :
 - the information is secret in the sense that it is not, as a body or in the precise configuration or assembly of its components, generally known or readily accessible by lawful means ;
 - the information has actual or potential commercial value by virtue of its secrecy;
 - the information has been subject to steps that were reasonable under the circumstances by the person lawfully in control, to maintain its secrecy;

The Parties or the participants may in certain cases agree that, unless otherwise indicated, parts or all of the information provided, exchanged or created in the course of joint research pursuant to this Agreement may not be disclosed.

2. Each Party or participant shall ensure that undisclosed information under the Agreement and its ensuing privileged nature is readily recognisable as such by the other Party or participant, for example by means of an appropriate marking or restrictive legend. This also applies to any reproduction of the said information, in whole or in part.

A Party or participant receiving undisclosed information pursuant to such agreement shall respect the privileged nature thereof. These limitations shall automatically terminate when this information is disclosed by the owner without restriction.

3. Undisclosed information communicated under this Agreement may be disseminated by the receiving Party or participant to persons employed by the receiving Party or participant including its contractors; and other concerned departments of the Party or participant authorised for the specific purposes of the joint research underway, provided that any undisclosed information so disseminated shall be protected to the extent provided by each Party's laws and regulations and shall be readily recognisable as such, as set out above.

B. Non-documentary undisclosed information

Non-documentary undisclosed or other confidential or privileged information provided in seminars and other meetings arranged under the Agreement, or information arising from the attachment of staff, use of facilities, or joint projects, will be treated by the Parties or their designees according to the principles specified for documentary information in the Agreement, provided, however, that the recipient of such undisclosed or other confidential or privileged information has been made aware in writing of the confidential character of the information communicated not later than the time such a communication is made.

C. Control

Each Party shall endeavour to ensure that undisclosed information received by it under this Agreement shall be controlled as provided herein. If one of the Parties becomes aware that it will be, or may be reasonably expected to become, unable to meet the non-dissemination provisions of paragraphs A and B above, it shall immediately inform the other Party. The Parties shall thereafter consult to define an appropriate course of action.

VI. Dispute Settlement and New Types and Unforeseen Intellectual Property

1. Disputes between the Parties concerning intellectual property shall be resolved in accordance with Article 12 of this Agreement.
2. In the event either Party or a participant concludes that a new type of intellectual property not covered in a TMP or agreement between participants may result from a cooperative activity undertaken pursuant to this Agreement, or if other unforeseen difficulties arise, the Parties shall enter into immediate discussions with the object of assuring that the protection, exploitation and dissemination of the intellectual property in question are adequately provided for in their respective territories.

E.C. Side Letter on Issue of Export Licences

Sir,

I have the honour to refer to Article 4.2 of the Agreement for co-operation in the peaceful uses of nuclear energy between the European Atomic Energy Community and the United States of America.

With regard to the implementation of that Article it is my understanding that we have agreed on the following. Authorisations, including export and import licences as well as authorisations or consents to third parties relating to trade, industrial operations or nuclear material movements on the territories of the Parties should generally be issued within a period of two months of a submission to the relevant authority. Nuclear trade between the European Community and the U.S. should be facilitated and encouraged; it is recognised that reliability of supply is essential and that industry in the Community and in the U.S.A. needs continuing reassurance that deliveries can be made on time in order to plan for the efficient operation of nuclear installations; it is further recognised that undue delays in the grant of export licences and other relevant authorisations including import licences would be inconsistent with the sound and efficient administration of this agreement.

I wish to recall that, in accordance with Article 10 of the Agreement, the Parties will not interfere in the nuclear programmes of each other; they recognise that the European Union, its Member States and the U.S.A. are equally strongly committed to international nuclear non-proliferation and safeguards regimes.

In the negotiation of the Agreement the Parties took due note of the undertakings which had been entered into in this field.

The Parties express their full confidence in each other's compliance with such undertakings. Accordingly the parties, in the grant of licences for the export of items pursuant to this agreement, will refrain from requiring additional confirmation from the other party and its relevant persons, undertakings or authorities about full compliance with these commitments.

In this context, it is further agreed that if the relevant authority considers that an application cannot be processed within the target two months period, it shall immediately provide a reasoned information to the submitting persons or undertakings. In the event of a refusal to authorise an application or of a delay exceeding four months from the date of the first application, the Party of the submitting persons or undertakings may call for urgent consultations under Article 12 of the Agreement which shall take place at the earliest opportunity, and in any case not later than 30 days after such request.

I would appreciate your confirmation that you share the understandings recorded in this letter.

Please accept, Sir, etc.

Note on Switzerland

I have the honour to refer to the Agreement for co-operation in the peaceful uses of nuclear energy between the European Atomic Energy Community and the United States of America (hereinafter referred to as "the U.S./Euratom Agreement") and in particular to Article 8.1. C (iii) of that Agreement.

I have the honour further to confirm that the United States is negotiating a new peaceful nuclear co-operation agreement with the Swiss Federation, and that the United States is prepared to offer long-term prior consent to the Swiss Federation for the transfer of irradiated nuclear material subject to such an agreement into Euratom for reprocessing and for storage of the recovered plutonium and its fabrication into mixed oxide fuel elements. The United States is also prepared, in connection with a new peaceful nuclear co-operation agreement with the Swiss Federation, to offer long-term, prior consent to Euratom to the retransfer of Swiss plutonium, including such plutonium contained in MOX fuel elements, subject to the U.S./Euratom Agreement to Switzerland for use in that country's peaceful nuclear programme.

SIDE LETTER ON SENSITIVE NUCLEAR TECHNOLOGY AND REACTOR TECHNOLOGY

I have the honor to refer to the Agreement for cooperation in the peaceful uses of nuclear energy between the European Atomic Energy Community and the United States of America, signed

Sensitive Nuclear Technology

The Government of the United States notes that the Agreement does not provide for the transfer of sensitive nuclear technology or any component or group of components which are essential to the operation of a complete uranium enrichment, nuclear fuel processing or heavy water production facility. The Government of the United States confirms to the European Community that sensitive nuclear technology, defined as any information (including information incorporated in a production or utilization facility or important component part thereof) which is not available to the public and which is important to the design, construction, fabrication, operation or maintenance of a uranium enrichment or nuclear fuel reprocessing facility or a facility for the production of heavy water, but not including Restricted Data⁽¹⁾, may be transferred to the Community outside an agreement for co-operation pursuant to sections 127 and 128 of the U.S. Atomic Energy Act). The transfer of a reprocessing, enrichment or heavy water facility or a major critical component thereof may take place only pursuant to an agreement for co-operation.

Reactor Technology

The Government of the United States further confirms that nuclear power reactor technology may be transferred to the Community outside an agreement for co-operation.

Non-nuclear material other than the one defined in Article 21.5 of the Agreement, e.g. zirconium and its alloys and compounds may be transferred from the United States of America to persons and undertakings in the Community outside an agreement for co-operation.

The Government of the United States notes that Sensitive Technology and Reactor Technology may be transferred from the European Community to the United States outside an agreement for co-operation between them.

The Government of the United States avails itself of this opportunity to renew to the European Commission the assurance of its highest consideration.

⁽¹⁾"Restricted Data" means any data concerning (1) design, manufacture, or utilization of nuclear weapons, (2) the production of special fissionable material or (3) the use of special fissionable material in the production of energy, but does not include data of a Party which it has declassified or removed from the category of Restricted Data.

**Proposed reply to side letter on Sensitive Nuclear Technology
and Reactor Technology**

The European Commission presents its compliments to the Mission of the United States of America to the European Union and has the honour to acknowledge receipt of the letter, dated, from the Mission concerning sensitive nuclear technology and reactor technology, a copy of which is attached.

The Commission wishes to inform the Mission that it has taken due note of the contents of this letter:

The Commission avails itself of this opportunity to renew to the Mission of the United States of America to the European Union the assurance of its highest consideration.

Declaration on Non-Proliferation Policy

1. On the occasion of the signature of the new Agreement for cooperation in the peaceful uses of nuclear energy between the European Atomic Energy Community and the United States of America, the United States of America and the European Union have decided to record the following understandings.
2. The United States and the European Union re-affirm their support for strengthening nuclear non-proliferation measures on a worldwide basis; their commitment increasingly to open peaceful nuclear trade and technology for states that abide by accepted international non-proliferation rules; and their opposition to controls that unfairly burden legitimate commerce and unduly restrain worldwide growth and opportunity in the peaceful nuclear area.
3. The United States and the European Union are committed to ensuring that research on, and development and use of, nuclear energy for peaceful purposes are carried out in a manner consistent with the objectives of the Treaty on the Non-Proliferation of Nuclear Weapons ("the Treaty"), to which the United States of America and all Member States of the Community are parties. They affirm their intention to work closely together and with other interested states to urge universal adherence to the Treaty. They share the view that the Treaty is the cornerstone of the global non-proliferation regime, and that an effective non-proliferation regime is necessary to achieve a full realization of the peaceful benefits of nuclear energy and the objectives of Article IV of the Treaty. They further share the view that assurance of non-proliferation has an important bearing on assurance of supply and that recognition of this relationship has proved important in many deliberations on measures to facilitate international nuclear trade and co-operation.
4. The United States of America and the European Union consider that nuclear non-proliferation policy, as reflected in the Agreement, fully meets U.S. and E.U. present and foreseeable proliferation concerns.
5. Neither expects any policy changes or other circumstances to take place that would adversely affect the terms for co-operation established by the Agreement including, in particular, those terms relating to agreement for certain activities to be carried out on an assured, secure and uninterrupted basis over the life of the Agreement.
6. The United States and the European Union acknowledge that inclusion of reciprocal consent provisions in the Agreement does not reflect a lack of confidence in the nuclear non-proliferation credentials of either Party.
7. The United States furthermore confirms its readiness to engage in negotiations with Euratom pursuant to paragraph 6 of Article 14 concerning elimination of provisions contained in Article 8.2 of the Agreement, in so far as improvements in the global non-proliferation environment lead to changes in the U.S. position regarding consent.

8. The United States and the European Union fully support the International Atomic Energy Agency (IAEA) and its role in reducing the risk of proliferation. They recognize the IAEA's safeguards system as an essential element of the international non-proliferation regime. They have confidence in the IAEA safeguards system, while recognizing the need for the continuation of work on improvement of that system especially in countries of proliferation concern. They share the view that non-nuclear weapon states having nuclear facilities that are not under IAEA safeguards should put such facilities under IAEA safeguards, and that adherence to the Treaty is the best way to achieve this result.
9. The United States and the European Union are prepared to continue to take such steps as are necessary to allow the IAEA to apply safeguards effectively and efficiently and to attain its inspection goals at nuclear facilities in their respective jurisdictions in accordance, respectively with the safeguards agreement between the Agency and the United States of America and the safeguards agreements between the Agency, the Community and the Member States of the Community.
10. The United States further recognizes that pursuant to the Euratom Treaty, the Community has to make certain, by appropriate supervision, that nuclear materials are not diverted to purposes other than those for which they are intended, and that to this end safeguards are applied in accordance with Chapter VII of the EURATOM Treaty. The United States and the European Union share the view that the Community's regional safeguards system makes an important and valuable contribution to the achievement of non-proliferation goals and the above-mentioned objectives.
11. The United States of America, the Community, and all its Member States recall that they are parties to the International Convention of the Physical Protection of Nuclear Material, the provisions of which are important to the prevention of the illicit circulation of nuclear material. The United States and the Member States of the Community affirm their intention to ensure application of adequate physical protection to the use, storage and transport of nuclear material within their respective jurisdictions.
12. The United States of America and all Member States of the Community recall that they adhere to the Guidelines for Nuclear Transfers of the Nuclear Suppliers Group (NSG). The United States of America and all Member States of the Community that presently export nuclear commodities also participate in the NPT Exporters Committee. The United States and the European Union re-affirm their shared view that the common nuclear non-proliferation export policies and practices reflected in the NSG and the NPT Exporters Committee Guidelines play an essential role in ensuring that peaceful nuclear cooperation is carried out under appropriate conditions and controls. The United States and the European Union stress in particular the importance of the NSG policy of requiring IAEA safeguards on all nuclear activities, present and future, as a condition for transfer to any non-nuclear weapon state of any nuclear facilities, equipment, components or materials on the NSG trigger list and of the NSG arrangement for the control of nuclear-related dual-use equipment, material and related technology. They also reaffirm their intention to exercise caution and restraint in the

export of sensitive items such as reprocessing and enrichment equipment and technology, recovered plutonium, and highly enriched uranium.

13. The United States and the European Union affirm their intention to co-operate with each other and with other interested states to urge all nuclear suppliers to adhere to the NSG Guidelines for Nuclear Transfers and otherwise to conduct nuclear export policies in a manner that contributes to the prevention of nuclear proliferation.
14. The United States and the European Union acknowledge that the separation, storage, transportation, and use of plutonium call for the continuation of measures to ensure the avoidance of risk of nuclear proliferation; they are determined to continue to support the strengthening of international safeguards and other non-proliferation measures.

Signed at _____ on _____ 1995

For the United States of America

for the European Union

U.S. Draft Side Letter

I have the honor to refer to the Agreement for co-operation in the peaceful uses of nuclear energy between the United States of America and the European Atomic Energy Community signed (hereinafter referred to as "the Agreement"), and in particular to paragraph 2 of Article 7 of the Agreement, which provides that "Non-nuclear material, nuclear material and equipment transferred pursuant to this Agreement, and special fissionable material used in or produced through the use of such items shall not be used ... for any military purpose."

In consequence of this provision, any U.S. nuclear co-operation with the Community or a Member State for military purposes would necessarily take place outside the scope of the Agreement and would require a separate agreement for co-operation specifically intended to further such military purposes. I can confirm on behalf of the Government of the United States that such nuclear co-operation with a Member State for military purposes will be suitably considered when circumstances so warrant.

Signed at Washington on

1995.

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