

# COMMISSION OF THE EUROPEAN COMMUNITIES

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## COMMISSION STAFF PAPER

### First session of the EURATOM/Canada negotiations

#### 1. Introduction

The first session of the Euratom/Canada negotiations was held in Brussels on the 28 and 29 April 1983.

The Canadian delegation was led by Mr Don CAMPBELL, deputy under-secretary of State at the Ministry of Foreign Affairs ; the Community delegation was led by Mr Jos LOEFF, deputy Director general in DG I ; Mr C. AUDLAND, Director general of DG XVII also took part.

As a basis for discussion, the Commission put forward a draft exchange of letters (see Annex).

This first session enabled both parties to outline their respective positions. With regard to retransfers and security of supply, the Canadian and Community positions are, as expected, far apart. The Community delegation emphasised the need for a certain flexibility in the Canadian position in order for the agreement to form a stable and foreseeable framework for the Community's supply (and for its relations with Canada).

In general the Canadians agreed that an exchange of letters was the appropriate form for modifying and updating certain aspects of the agreement, without formally changing the 1959 text.

#### 2. Duration of the Agreement

The Canadian delegation agreed in principle to the Community proposal (a 20 year extension), but stated that the adoption of a definite position on this question depended on the form of the solutions agreed upon for the other questions under discussion and in particular the questions related to security of supply.

### 3. Retransfers

The Community delegation emphasised the need to arrive at a more flexible system than the one foreseen in the 1959 agreement and explained the proposals put forward in the draft exchange of letters which are based on the "London Guidelines".

The Canadians stated that their policy in this field went beyond the London Guidelines. It consisted of authorising retransfers only to those countries with which Canada has concluded bilateral agreements. (To date these countries are : US, Japan, South Korea, Indonesia, Philippines, Euratom (10 countries), Finland, Sweden, Egypt, Roumania, Australia ; moreover, negotiations are currently taking place with Spain, Mexico, Yougoslavia and Switzerland.)

The "concession" that they could make to the Commission would be to foresee an automatic retransfer mechanism, without authorisation, to all these countries. All nuclear materials, including plutonium, would benefit from this system. Moreover, if it is foreseen in the bilateral agreement concluded with the receiving country, the retransfer would also be allowed in that country without authorisation (to date, the only agreements which provide for such conditions are those with Euratom and Japan).

Furthermore, for those materials which are not on the "trigger list", the Canadians are prepared to consider more flexible conditions for their retransfer.

The Community delegation underlined the restrictive nature of the Canadian policy. It declared that the impossibility of retransferring materials of Canadian origin to a country with no bilateral agreement with Canada had not been, to its knowledge, the subject of an official publication or public statement of the Canadian government. If this was not the case, the Commission would welcome the appropriate references. The Canadian delegation took note of this request.

The Community delegation also emphasised that the Community's nuclear industry which transforms nuclear materials of Canadian origin, exports on a world-wide basis. The list of third countries with which Canada has an interest in concluding bilateral agreements does not necessarily correspond to that of third countries to which European industry has an interest in exporting materials transformed in the Community and under conditions in which the receiving third countries would give the same assurances to the Community as those given by the latter to Canada for the original transfer.

In support of this request by the Community, the fact that Canada had recently recognised, in the framework of the IEA Board of Governors, the need to remove trade obstacles in the energy field in the OECD/IEA zone, was brought to the attention of the Canadian delegation.

In conclusion, the Community delegation requested that the Canadians provide more precise information on their policy (whether public or not) regarding retransfers and suggest practical solution arising from this. On its side, the Community delegation would provide the Canadians with a list of countries to which the Community could be interested in retransferring materials.

#### 4. Security of Supplies

The Canadian reactions to the Community's proposals were particularly reserved. They stated that they could not guarantee that there would be no changes to their non-proliferation policy, and, if there were, that these changes would not apply to materials to be supplied with respect to contracts already concluded. For the Canadians there is a strong link between this question and the duration of the agreement. In the current situation whereby the agreement can be denounced with six months notice, they could possibly accept our proposals ; however if the duration of the agreement was fixed at twenty years, they could not commit themselves to authorising the delivery of materials as a result of contracts already concluded.

In effect, as the contracts in question are often of long duration, this could result in deliveries being continued for periods of up to 10 or 15 years without conforming to any eventual new non-proliferation policy.

The Community delegation strongly underlined the unsatisfactory nature of the Canadian position regarding security of supply. In effect, the "annual review panel", which each year, on the basis of a series of criteria (1), grants export licences for the coming year for nuclear materials, as a result of contracts which have been or will be concluded, could, at any moment in time, refuse to grant these licences in particular in cases where the transfer conditions of the amended Euratom/Canada agreement no longer correspond to an eventual new Canadian non-proliferation policy. In these conditions the Euratom/Canada agreement would be limited to outlining the transfer conditions which would only be valid until Canada unilaterally decides otherwise.

At the risk of losing all credibility, there should be no possibility of modifying an international agreement on long term energy programmes without the agreement of both parties.

Equally, if the agreement were modified in this way, it would be normal that the conditions would not be retroactive, that is to say they would not apply to materials which have been or will be supplied as a result of concluded contracts (Art. XVIII and Side Letter n° 1 of the Euratom/Australia agreement).

The Canadian delegation was not clear on the extent to which an international agreement, such as that between Euratom and Canada, could be unilaterally modified by a "domestic law" or a simple

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(1) The Canadians mentioned four criteria : a) non-proliferation  
 b) "Domestic law"  
 c) Price  
 d) priority for the  
 Canadian transformation industry under competitive conditions.

change of policy. This uncertainty was undoubtedly voluntary, having understood how unacceptable it would be to the Community to adopt a system whereby an international agreement could at any moment in time be unilaterally questioned.

The Canadians stated that they would further reflect on the objections and proposals of the Community and that they might subsequently submit new proposals.

#### 5. Research and Development

The Canadians would be ready to accept the Community's proposals on Article 2 of the Agreement but they considered that in this case it would be advisable to slightly modify Article 1 in order to establish a legal framework which was sufficiently broad so as to include cooperation activities in various R&D fields on which both parties could eventually agree.

The Canadian delegation will propose the appropriate wording on this question. The Commission took note of this intention.

#### 6. General Remarks

The Canadians asked whether the Community considered that the current Agreement still included the application of safeguards on equipment of Canadian origin and for what reason there was no reference to this in the exchange of letters. The Community delegation replied in the affirmative, explaining that the exchange of letters was primarily concerned with those aspects of the agreement which have currently a real practical application.

No date has yet been fixed for the next session of negotiations.

12.4.83

DRAFT EXCHANGE OF LETTERS  
BETWEEN THE EUROPEAN ATOMIC ENERGY COMMUNITY (EURATOM)  
AND THE GOVERNMENT OF CANADA  
(hereafter : letter from the Community to Canada)

Your Excellency,

I refer to the Agreement between the Government of Canada and the European Atomic Energy Community (Euratom) for cooperation in the Peaceful Uses of Atomic Energy signed on 6 October 1959 (hereinafter referred to as the Agreement).

The Agreement, and in particular its provisions related to nuclear safeguards, were subsequently updated, at the request of the Government of Canada, through two exchanges of letters between the Parties, which took place on 16 January 1978 and on 18 December 1981.

It now seems necessary to complete the up-dating of the Agreement to the extent necessary for it to continue to provide a stable and predictable legal framework for the relations between the Parties and, in particular, for nuclear supply from Canada to the Community.

To this end, I propose that the Agreement be updated and completed as follows :

- (a) Pursuant to article XV.2 of the Agreement, after the initial period of ten years, which expired on November 17, 1969, either Party can terminate the Agreement at any time, subject to six months notice.

In order to provide a stable framework for nuclear cooperation between Canada and the Community, the Parties agree that the Agreement shall remain in force for a further period of twenty years from today's date.

- (b) Pursuant to article IX.1 of the Agreement, nuclear material and equipment supplied under the Agreement, and nuclear material derived from the use of such material and equipment, cannot be transferred from the recipient Party to a third country, except with the prior consent of the supplier Party.

The Parties consider that it is desirable to seek appropriate procedures to implement that clause in such a way that, without prejudice to safeguards' requirements and to Canada's non-proliferation policy, industrial realities and the needs of international trade be taken into account.

Since, in practice, retransfers occur only in relation to Canadian-origin material supplied to the Community, the Parties agree that the following procedures shall apply to such retransfers :

- (i) retransfers of nuclear materials not included in the "trigger list" referred to in the "Guidelines for nuclear transfers" (IAEA document INFCIRC/254) may take place subject to a prompt notification from the Community to Canada of each such retransfer;
  - (ii) retransfers of nuclear materials included in the aforementioned "trigger list", except heavy water and weapons-usable materials, may take place subject to a prompt notification from the Community to Canada of each such retransfer, including a confirmation that the recipient third country has provided the same assurances as those required by Canada for the original transfer;
  - (iii) retransfers of heavy water or weapons-usable materials referred to in the aforementioned "trigger list" shall be jointly considered by the Parties and subject to Canada's prior consent on a case-by-case basis.
- (c) The Parties consider that it is desirable to seek appropriate means to reconcile the requirements of Canada's non-proliferation policy with the stability and security necessary for nuclear supplies.

To this end, the Parties agree that, whenever supply contracts are concluded in compliance with the provisions of the existing Agreement, deliveries of uranium to the Community pursuant to such contracts shall not be delayed or interrupted by refusal of an export licence.

The Parties also agree that no future amendment or revision of the provisions of the Agreement shall be applicable to nuclear material supplied or to be supplied pursuant to contracts entered into before the introduction of such amendment or revision, unless Canada and the Community so agree.

Further, the Parties agree that, with a view to facilitating nuclear transfers, they shall consult at the request of either Party and without delay, on questions related to stability and regularity of nuclear supply.

- (d) Article II of the Agreement, "without limiting the generality of Article I", singled out a particular area of cooperation, viz. a joint R & D programme connected with the natural uranium-fuelled, heavy water-moderated type of nuclear reactor.

Pursuant to that Article, the Parties concluded in 1959 a technical agreement aimed at establishing a joint R & D programme centered on such reactors. This agreement, which had been extended in 1965, expired in 1968, as a consequence of a re-orientation of the Community R & D programme.

Since 1959, major developments have been recorded in most areas of nuclear R & D. In particular, the type of nuclear reactors referred to in Article II have now reached industrial maturity. As a consequence, the Parties take note that the R & D programme provided for in Article II has been successfully carried out and is terminated.

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If the foregoing is acceptable to the Government of Canada, I have the honour to propose that this letter which is authentic in the Danish, Dutch, English, French, German, Greek and Italian languages, together with Your Excellency's reply to that effect shall constitute an amendment to the Agreement and shall enter into force on the date of Your Excellency's reply.

