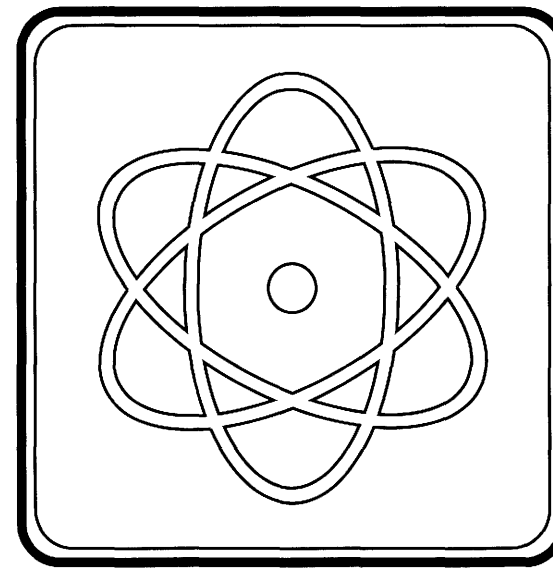
COMPENDIUM OF AGREEMENTS BETWEEN THE EUROPEAN ATOMIC ENERGY COMMUNITY AND SUPPLIER COUNTRIES



EURATOM
SUPPLY AGENCY

Compendium of agreements between the European Atomic Energy Community and supplier countries

compiled by the
Euratom Supply Agency,
March 1997

A great deal of additional information on the European Union is available on the Internet.
It can be accessed through the Europa server (http://europa.eu.int)

Cataloguing data can be found at the end of this publication

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Euratom/Canada

The Agreement between Euratom and the Government of Canada of 6 October 1959 entered into force on 18 November 1959. It was amended by an exchange of letters of 16 January 1978. This exchange of letters included an interim arrangement with regard to enrichment beyond 20% and reprocessing, which was replaced by a further exchange of letters of 18 December 1981. A further amendment of the 1959 agreement was made by an exchange of letters of 21 June 1985, which dealt, *inter alia*, with procedures for retransfers and the application of mechanisms for making material subject to or removing material from the coverage of the agreement (i.e. international exchanges of safeguards obligations). Another amendment of the 1959 agreement, covering transfers of tritium and tritium-related equipment to Euratom, was made by the exchange of letters of 15 July 1991.

Contents:

- Agreement between the Government of Canada and the European Atomic Energy Community of 6 October 1959 (*OJ No. 59 of 24.11.59, pp. 1165-1180).*
- Amendment to the Agreement in the form of an exchange of letters of 16 January 1978 (*OJ L 65 of 8.3.78, pp. 16-32).*
- Agreement in the form of an exchange of letters of 18 December 1981 *(OJ L 27 of 4.2.82, pp. 25-30).*
- Agreement in the form of an exchange of letters of 21 June 1985 *(OJ C 191 of 31.7.85, pp. 3-6).*
- Agreement in the form of an exchange of letters of 15 July 1991 *(OJ C 215 of 17.8.91, pp. 5-8).*
- Note verbale of 29 April 1996 adding Switzerland to the retransfer mechanism for tritium.

COMMUNAUTÉ EUROPÉENNE DE L'ÉNERGIE ATOMIQUE

LA COMMISSION

ACCORD DE COOPÉRATION ENTRE LA COMMUNAUTÉ EUROPÉENNE DE L'ÉNERGIE ATOMIQUE (EURATOM) ET LE GOUVERNEMENT DU CANADA CONCERNANT LES UTILISATIONS PACIFIQUES DE L'ÉNERGIE ATOMIQUE

PRÉAMBULE

La Communauté européenne de l'énergie atomique (Euratom) agissant par l'intermédiaire de sa Commission (ci-après dénommée «la Commission») et le gouvernement du Canada,

CONSIDÉRANT que, par le traité signé à Rome le 25 mars 1957, le royaume de Belgique, la république fédérale d'Allemagne, la République française, la République italienne, le grand-duché de Luxembourg et le royaume des Pays-Bas ont institué la Communauté en vue de contribuer, par l'établissement des conditions nécessaires à la formation et à la croissance rapides des industries nucléaires, à l'élévation du niveau de vie dans les États membres et au développement des échanges avec les autres pays;

CONSIDÉRANT que la Communauté et le gouvernement du Canada ont exprimé leur commun désir de voir s'établir une coopération étroite dans le domaine des utilisations pacifiques de l'énergie atomique;

AGREEMENT BETWEEN THE GOVERNMENT OF CANADA AND THE EUROPEAN ATOMIC ENERGY COMMUNITY (EURATOM) FOR CO-OPERATION IN THE PEACEFUL USES OF ATOMIC ENERGY

PREAMBLE

The Government of Canada and the European Atomic Energy Community (Euratom), acting through its Commission (hereinafter referred to as "the Commission");

CONSIDERING that the Community has been established by the Kingdom of Belgium, the Federal Republic of Germany, the French Republic, the Italian Republic, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands in the Treaty signed at Rome on March 25, 1957, with the aim of contributing to the raising of the standard of living in the Member States and to the development of exchanges with other countries by the creation of conditions necessary for the speedy establishment and growth of nuclear industries;

CONSIDERING that the Government of Canada and the Community have expressed their mutual desire for the development of close co-operation in the peaceful uses of atomic energy;

DÉSIRANT collaborer entre eux en vue de promouvoir et d'accroître la contribution que le développement des utilisations pacifiques de l'énergie atomique peut apporter au bien-être et à la prospérité dans la Communauté et au Canada;

RECONNAISSANT en particulier qu'il serait de leur intérêt de coopérer en établissant un programme commun de recherches et de développement;

CONSIDÉRANT qu'un accord instituant une coopération dans le domaine des utilisations pacifiques de l'énergie atomique amorcerait de fructueux échanges d'expérience, fournirait des occasions d'activités mutuellement profitables et renforcerait la solidarité en Europe et par delà l'Atlantique;

SONT CONVENUS de ce qui suit:

Article premier

1. La coopération envisagée dans le présent accord concerne les utilisations pacifiques de l'énergie atomique et s'étend aux domaines ci-après:

(a) La communication de connaissances, notamment sur:

(i) la recherche et le développement,

(ii) les questions d'hygiène et de sécurité,

(iii) l'équipement, les installations et les dispositifs matériels (y compris la fourniture de plans, dessins et spécifications) et

(iv) l'utilisation d'équipement, d'installations, de dispositifs matériels et de matières;

(b) La fourniture de matières;

(c) L'obtention d'équipement et de dispositifs matériels;

(d) L'utilisation des droits de brevet;

(e) L'accès aux équipement et installations et la faculté de les utiliser.

DESIRING to collaborate with each other in order to promote and enlarge the contribution which the development of the peaceful uses of atomic energy can make to welfare and prosperity in Canada and within the Community;

RECOGNIZING in particular that it would be to their mutual benefit to co-operate by establishing a joint programme of research and development;

CONSIDERING that an arrangement providing for co-operation in the peaceful uses of atomic energy would initiate a fruitful exchange of experience, provide opportunities for mutually beneficial action and reinforce solidarity within Europe and across the Atlantic;

HAVE AGREED as follows:

Article I

1. The co-operation intended by this Agreement relates to the peaceful uses of atomic energy and includes

(a) the supply of information, including that relating to:

(i) research and development,

(ii) problems of health and safety,

(iii) equipment, facilities and devices (including the supply of designs, drawings, and specifications), and

(iv) uses of equipment, facilities, devices and material;

(b) the supply of material;

(c) the procurement of equipment and devices;

(d) the use of patent rights;

(e) access to and use of equipment and facilities.

2. La coopération prévue par le présent accord sera mise en œuvre à des conditions à convenir et conformément aux lois et règlements, ainsi qu'aux prescriptions applicables en matière de licence, en vigueur dans la Communauté et au Canada.

3. Chacune des parties contractantes s'engage vis-à-vis de l'autre à veiller à ce que les dispositions du présent accord soient acceptées et respectées, en ce qui concerne la Communauté conformément aux dispositions du traité précité, par toutes les personnes établies dans la Communauté dûment autorisées en vertu du présent accord et, en ce qui concerne le Canada, par toutes les entreprises gouvernementales et par toutes les personnes relevant de sa juridiction.

Article II

Sans limiter la portée générale de l'article premier, la coopération envisagée dans le présent accord comportera un programme commun de recherches et de développement concernant le type de réacteur nucléaire à uranium naturel modéré à l'eau lourde.

Article III

1. (a) Les parties contractantes pourront mettre à la disposition l'une de l'autre ainsi que de personnes relevant de la juridiction du gouvernement du Canada, ou établies dans la Communauté, les connaissances dont elles disposent sur les questions relevant du domaine d'application du présent accord.

(b) La communication de connaissances reçues de tiers à des conditions interdisant une telle communication est exclue de l'application du présent accord.

(c) Les connaissances considérées par la partie contractante qui les fournit comme présentant une valeur commerciale ne seront communiquées qu'à des conditions fixées par ladite partie contractante.

2. (a) Les parties contractantes encourageront et faciliteront les échanges de connaissances entre personnes établies dans la Communauté, d'une part, et personnes relevant de la juridic-

2. The co-operation provided for in this Agreement shall be effected on terms and conditions to be agreed and in accordance with the applicable laws, regulations and other licensing requirements in force in Canada and within the Community.

3. Each Contracting Party shall be responsible toward the other for ensuring that the provisions of this Agreement are accepted and complied with as to Canada by all of its governmental enterprises and by all persons under its jurisdiction, and as to the Community, in accordance with the provisions of the above-mentioned Treaty, by all persons within the Community to whom authorization has been granted pursuant to this Agreement.

Article II

Without limiting the generality of Article I, the co-operation envisaged in this Agreement will include a joint programme of research and development connected with the natural uranium fuelled heavy water moderated type of nuclear reactor.

Article III

1. (a) The Contracting Parties may make available to each other and to persons within the Community or under the jurisdiction of the Government of Canada, information at their disposal on matters within the scope of this Agreement.

(b) The supply of information received from any third party under terms preventing such supply shall be excluded from the scope of this Agreement.

(c) Information regarded by the supplying Contracting Party as being of commercial value shall be supplied only under terms and conditions specified by the said Contracting Party.

2. (a) The Contracting Parties shall encourage and facilitate the exchange of information between persons under the jurisdiction of the Government of Canada on the one hand and

tion du gouvernement du Canada, d'autre part, sur les questions relevant du domaine d'application du présent accord.

(b) Les connaissances détenues en toute propriété par de telles personnes ne seront communiquées qu'avec l'assentiment de ces personnes et aux conditions fixées par elles.

Article IV

1. (a) Chacune des parties contractantes concédera ou fera concéder à l'autre ou à des personnes relevant de la juridiction du gouvernement du Canada ou établies dans la Communauté, à des conditions à convenir, des licences ou des sous-licences de brevets qui sont la propriété de l'une ou de l'autre partie contractante ou sur lesquels l'une ou l'autre a le droit de concéder des licences ou sous-licences, pour les questions relevant du domaine d'application du présent accord.

(b) La concession des licences ou sous-licences sur des brevets ou licences reçus de tiers, à des conditions interdisant une telle concession, est exclue de l'application du présent accord.

2. (a) Les parties contractantes encourageront et faciliteront la concession, aux personnes relevant de la juridiction du gouvernement du Canada ou établies dans la Communauté, de licences sur des brevets qui sont la propriété de personnes établies dans la Communauté ou relevant de la juridiction du gouvernement du Canada, respectivement, pour les questions relevant du domaine d'application du présent accord.

(b) Les licences ou sous-licences sur des brevets ou licences détenus par de telles personnes ne seront concédées qu'avec l'assentiment de ces personnes et aux conditions fixées par elles.

Article V

1. Dans la mesure du possible, les parties contractantes se fourniront mutuellement ou fourniront à des personnes relevant de la juridiction du gouvernement du Canada ou établies dans la Communauté, des conseils techniques, soit par mise à disposition d'experts, soit de toute autre manière dont il aura été convenu.

persons within the Community on the other hand on matters within the scope of this Agreement.

(b) Information owned by such persons shall be supplied only with the consent of and under terms and conditions to be specified by those persons.

Article IV

1. (a) The Contracting Parties shall grant or cause to be granted, to each other or to persons within the Community or under the jurisdiction of the Government of Canada, on terms and conditions to be agreed, licences or sublicences under patents owned by either Contracting Party, or as to which either has the right to grant licences or sublicences on matters within the scope of this Agreement.

(b) The granting of licences or sublicences under patents or licences received from any third party under terms preventing such grants shall be excluded from the scope of this Agreement.

2. (a) The Contracting Parties shall encourage and facilitate the granting, to persons within the Community or under the jurisdiction of the Government of Canada, of licences under patents, on matters within the scope of this Agreement, owned by persons under the jurisdiction of the Government of Canada or within the Community, respectively.

(b) Licences or sublicences under patents or licences owned by such persons shall be granted only with the consent of, and under terms and conditions to be specified by, those persons.

Article V

1. The Contracting Parties shall to such extent as is practicable provide technical advice to each other or to persons within the Community or under the jurisdiction of the Government of Canada by the secondment of experts or in such other ways as may be agreed.

2. Chacune des parties contractantes assurera, dans la mesure du possible, dans ses propres écoles ou établissements, et aidera à faire assurer ailleurs dans la Communauté ou au Canada, aux étudiants et stagiaires recommandés par l'autre partie, une formation dans les domaines intéressant les utilisations pacifiques de l'énergie atomique.

Article VI

Les parties contractantes conviennent que, moyennant l'autorisation générale ou spéciale de la Commission, dans les cas requis par le traité instituant la Communauté européenne de l'énergie atomique (Euratom), ou du gouvernement du Canada, des matières brutes et des matières nucléaires spéciales pourront être fournies ou reçues dans le cadre du présent accord, à des conditions commerciales ou selon toute autre modalité à convenir, par l'Agence d'approvisionnement de la Communauté, par les entreprises gouvernementales du Canada ou par des personnes établies dans la Communauté ou relevant de la juridiction du gouvernement du Canada.

Article VII

Les parties contractantes aideront, dans la mesure du possible, les personnes relevant de la juridiction du gouvernement du Canada ou établies dans la Communauté à se procurer des réacteurs de recherche et de puissance et à s'assurer des concours pour la conception, la construction et l'exploitation de tels réacteurs.

Article VIII

Les parties contractantes se prêteront mutuellement assistance, dans la mesure du possible, pour l'acquisition par l'une ou l'autre des parties contractantes ou par des personnes relevant de la juridiction du gouvernement du Canada ou établies dans la Communauté, de matières, équipement et autres éléments nécessaires aux travaux de recherches, de développement et de production concernant l'énergie atomique au Canada ou dans la Communauté.

Article IX

1. La Communauté et le gouvernement du Canada prennent chacun l'engagement que les matières ou équipement obtenus en vertu du

2. Each Contracting Party shall, wherever possible, provide in its own schools or facilities, and assist in obtaining elsewhere in Canada or within the Community, training in subjects relevant to the peaceful uses of atomic energy for students and trainees recommended by the other.

Article VI

The Contracting Parties agree that with the general or specific authorization of the Government of Canada or, when required by the Treaty establishing the European Atomic Energy Community (Euratom), of the Commission, source material and special nuclear material may be supplied or received under this Agreement on commercial terms or as otherwise agreed, by the Governmental enterprises of Canada, by the Supply Agency of the Community, or by persons under the jurisdiction of the Government of Canada or within the Community.

Article VII

The Contracting Parties shall, to such extent as is practicable, assist persons within the Community or under the jurisdiction of the Government of Canada in obtaining research and power reactors and in obtaining assistance in the design, construction and operation of such reactors.

Article VIII

The Contracting Parties shall, to such extent as is practicable, assist each other in the procurement, by either Contracting Party or by persons within the Community or under the jurisdiction of the Government of Canada, of material, equipment and other requisites for atomic energy research, development and production within the Community or in Canada.

Article IX

1. The Government of Canada and the Community each undertakes that material or equipment obtained pursuant to the present Agreement,

présent accord ainsi que les matières brutes ou matières nucléaires spéciales provenant de l'utilisation de toute matière ou de tout équipement ainsi obtenus, seront utilisés à seule fin de promouvoir et de développer les utilisations pacifiques de l'énergie atomique et non à des fins militaires; et qu'à cet effet aucune matière ni aucun équipement obtenus en vertu du présent accord, non plus qu'aucune matière brute ni matière nucléaire spéciale provenant de l'utilisation de toute matière ou de tout équipement ainsi obtenus ne seront transférés à des personnes non autorisées ou en dehors de son contrôle, sauf autorisation écrite préalable du gouvernement du Canada ou de la Communauté, respectivement.

2. La poursuite de la coopération envisagée dans le présent accord dépendra de l'application, aux fins du paragraphe 1 du présent article et à la satisfaction des deux parties, du système de contrôle créé par la Communauté en vertu du traité instituant la Communauté européenne de l'énergie atomique (Euratom) ainsi que des mesures prises par le gouvernement du Canada en vue de rendre compte de l'utilisation des matières ou équipement.

3. Des consultations et des visites mutuelles auront lieu entre les parties contractantes pour donner à l'une et à l'autre l'assurance que le système de contrôle de la Communauté et les mesures prises par le gouvernement du Canada en vue de rendre compte de l'utilisation des matières et équipement sont satisfaisants et efficaces aux fins du présent accord. Pour la mise en œuvre de ces systèmes, les parties contractantes sont disposées à procéder à des consultations et à des échanges d'expérience avec l'Agence internationale de l'énergie atomique en vue d'établir un système qui soit raisonnablement compatible avec celui de l'Agence internationale de l'énergie atomique.

4. Reconnaissant l'importance de l'Agence internationale de l'énergie atomique, la Communauté et le gouvernement du Canada se consulteront de temps à autre en vue de déterminer s'il existe, en matière de contrôle, des domaines dans lesquels il pourrait être demandé à cette Agence d'apporter une assistance technique.

Article X

1. Sauf dispositions contraires, l'application ou l'utilisation de toute information (y compris

and source material or special nuclear material derived from the use of any material or equipment so obtained, shall be employed solely for the promotion and development of the peaceful uses of atomic energy and not for any military purpose; and that to this end no material or equipment obtained pursuant to the present Agreement, or source or special nuclear material derived from the use of any material or equipment so obtained, shall be transferred to unauthorized persons or beyond its control except with the prior consent in writing of the Community or the Government of Canada, respectively.

2. The continuation of the co-operation envisaged in the present Agreement shall be contingent upon the mutually satisfactory application, for the purposes of Paragraph 1 of this Article, of the system for safeguards and control established by the Community in accordance with the Treaty establishing the European Atomic Energy Community (Euratom) and of the measures for accounting for the use of material or equipment established by the Government of Canada.

3. Consultation and exchange of visits between the Contracting Parties shall take place to give an assurance to both of them that the Community's safeguards and control system and the measures for accounting for the use of material or equipment established by the Government of Canada are satisfactory and effective for the purposes of the present Agreement. In implementing these systems, the Contracting Parties are prepared to consult with and exchange experiences with the International Atomic Energy Agency with the objective of establishing a system reasonably compatible with that of the International Atomic Energy Agency.

4. In recognition of the importance of the International Atomic Energy Agency, the Government of Canada and the Community shall consult from time to time to determine whether there are any areas of responsibility with regard to safeguards and control in which this Agency might be asked to assist.

Article X

1. Except as otherwise agreed, the application or use of any information (including designs,

les plans, dessins et spécifications), ainsi que de toutes matières, tout équipement et tous dispositifs matériels échangés ou transférés entre les parties contractantes en vertu du présent accord, se fera sous la responsabilité de la partie contractante bénéficiaire, l'autre partie contractante n'étant nullement garante de l'exactitude ou de l'intégralité de ces informations, ni de la mesure dans laquelle ces informations, matières, équipement ou dispositifs matériels conviennent à telle ou telle utilisation ou application particulière.

drawings and specifications) and any material, equipment, and devices, exchanged or transferred between the Constracting Parties under this Agreement, shall be the responsibility of the Contracting Party receiving it, and the other Contracting Party does not warrant the accuracy or completeness of such information, nor the suitability of such information, material, equipment, and devices for any particular use or application.

2. Les parties contractantes reconnaissent que la réalisation des objectifs du présent accord appelle des mesures appropriées en matière de responsabilité civile. Les parties contractantes coopéreront afin d'élaborer et de faire adopter aussitôt que possible des dispositions générales mutuellement satisfaisantes en matière de responsabilité civile. En cas de retard dans l'adoption de telles dispositions générales, les parties contractantes se consulteront en vue de prendre des dispositions «ad hoc» mutuellement satisfaisantes permettant la poursuite de transactions particulières.

2. The Contracting Parties recognize that adequate measures in respect of third party liability are necessary for the carrying out of the objects of this Agreement. The Contracting Parties will co-operate in developing and securing the adoption of mutually satisfactory general arrangements in respect of third party liability by the earliest possible date. If there is a delay in concluding such general arrangements, the Contracting Parties shall consult with a view to making mutually satisfactory ad hoc arrangements for the furtherance of specific transactions.

Article XI

Article XI

1. L'article 106 du traité instituant la Communauté européenne de l'énergie atomique (Euratom), signé à Rome le 25 mars 1957, prévoit que les États membres qui, avant l'entrée en vigueur de ce traité, auront conclu avec des États tiers des accords visant la coopération dans le domaine de l'énergie nucléaire, seront tenus d'entreprendre, conjointement avec la Commission, les négociations nécessaires avec ces États tiers en vue de faire assumer autant que possible la reprise par la Communauté des droits et obligations découlant de ces accords

1. Article 106 of the Treaty signed at Rome on March 25, 1957, establishing the European Atomic Energy Community (Euratom) provides that Member States which before the date of entry into force of that Treaty have concluded Agreements with third countries for co-operation in the field of nuclear energy shall jointly with the Commission enter into the necessary negotiations with such third countries in order as far as possible to cause the rights and obligations arising out of such Agreements to be assumed by the Community.

2. Le gouvernement du Canada est disposé à entreprendre de telles négociations en ce qui concerne tout accord auquel il est partie.

2. The Government of Canada is prepared to enter into such negotiations with reference to any Agreement to which it is a party.

Article XII

Article XII

Les parties contractantes réaffirment leur intérêt commun à promouvoir les utilisations pacifiques de l'énergie atomique par l'inter-

The Contracting Parties reaffirm their common interest in fostering the peaceful uses of atomic energy through the International Atomic

médiaire de l'Agence internationale de l'énergie atomique et sont d'avis que cette Agence et ses members devraient bénéficier des résultats de leur coopération.

Article XIII

1 A la demande de l'une ou l'autre des parties contractantes, leurs représentants se réuniront de temps à autre afin de se consulter sur les problèmes soulevés par l'application du présent accord, de surveiller son fonctionnement et d'examiner d'autres mesures de coopération venant s'ajouter à celles prévues au présent accord.

2. Les parties contractantes pourront, d'un commun accord, inviter d'autres pays à participer au programme commun mentionné à l'article II.

Article XIV

Aux fins du présent accord, et à moins qu'ils n'y soient différemment précisés:

(a) Le terme «parties contractantes» désigne la Communauté européenne de l'énergie atomique (Euratom), d'une part, et le gouvernement du Canada et les entreprises gouvernementales du Canada définies au paragraphe (b) du présent article, d'autre part;

(b) Le terme «entreprises gouvernementales du Canada» désigne l'«Atomic Energy of Canada Limited» et l'«Eldorado Mining and Refining Limited» et toutes autres entreprises relevant de la juridiction du gouvernement du Canada dont pourront être convenues les parties contractantes;

(c) Le terme «personne» désigne toute personne physique, société (firme, compagnie, «partnership»), association, institution ou entreprise publique et toute autre personne morale, publique ou privée, mais ne s'applique pas aux parties contractantes définies au paragraphe (a) du présent article;

(d) Le terme «équipement» désigne les parties principales ou éléments constitutifs essentiels de machines ou d'installations, particulièrement appropriés à l'utilisation dans des projets concernant l'énergie atomique;

Energy Agency and intend that the results of their co-operation shall benefit this Agency and its Members.

Article XIII

1. At the request of either Contracting Party, representatives of the Contracting Parties shall meet from time to consult with each other on matters arising out of the application of the present Agreement, to supervise its operation and to discuss arrangements for co-operation additional to those provided in the present Agreement.

2. The Contracting Parties may by mutual consent invite other countries to take part in the joint programme mentioned in Article II.

Article XIV

For the purpose of this Agreement, except as otherwise specified therein,

(a) "Contracting Parties" means the Government of Canada and the Governmental enterprises of Canada as defined in Paragraph (b) of this Article on the one hand and the European Atomic Energy Community (Euratom) on the other hand;

(b) "Governmental enterprises of Canada" means Atomic Energy of Canada Limited and Eldorado Mining and Refining Limited, and such other enterprises under the jurisdiction of the Government of Canada as may be agreed between the Contracting Parties;

(c) "persons" means individuals, firms, corporations, companies, partnerships, associations, Government agencies or Government corporations and other entities, private or governmental; but the term "persons" shall not include the Contracting Parties as defined in Paragraph (a) of this Article;

(d) "equipment" means items of machinery or plant, or major components thereof, specially suitable for use in atomic energy projects.

(e) Le terme «matière» désigne toute matière brute, toute matière nucléaire spéciale, l'eau lourde, le graphite de qualité nucléaire ainsi que toute autre substance qui, en raison de sa nature ou de sa pureté, est particulièrement appropriée à l'utilisation dans des réacteurs nucléaires;

(f) Le terme «matière brute» désigne l'uranium contenant le mélange d'isotopes se rencontrant dans la nature; l'uranium appauvri en isotope 235, le thorium; l'une quelconque des matières précitées sous forme de métal, d'alliage, de composé chimique ou de concentré; toute autre matière contenant une ou plusieurs des matières précitées à un degré de concentration dont seront convenues les parties contractantes et toute autre matière désignée comme telle par les parties contractantes;

(g) Le terme «matière nucléaire spéciale» désigne le plutonium; l'uranium-233; l'uranium-235; l'uranium enrichi en isotopes 233 ou 235; toute substance contenant une ou plusieurs des matières précitées et toute autre substance désignée comme telle par les parties contractantes; toutefois, le terme «matière nucléaire spéciale» ne s'applique pas aux «matières brutes»;

(h) Le terme «provenant» signifie provenant d'une ou de plusieurs opérations, successives ou non;

(i) Le terme «dans la Communauté» signifie sur les territoires auxquels le traité instituant la Communauté européenne de l'énergie atomique (Euratom) s'applique ou s'appliquera.

Article XV

1. Le présent accord entrera en vigueur par voie d'un échange de notes à cet effet entre la Communauté et le gouvernement du Canada (1).

2. Il restera en vigueur pendant une période de dix ans, et ultérieurement jusqu'à expiration d'un préavis de six mois signifié à cet effet par la Communauté ou par le gouvernement du Canada, à moins qu'un tel préavis n'ait été signifié six mois avant l'expiration de ladite période de dix ans.

(1) Entré en vigueur le 18 novembre 1959.

(e) "material" means source material, special nuclear material, heavy water, graphite of nuclear quality, and any other substance which by reason of its nature or purity is specially suitable for use in nuclear reactors;

(f) "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 may be agreed between the Contracting Parties; and such other material as may be agreed between the Contracting Parties;

(g) "special nuclear material" means plutonium; uranium 233; uranium 235; uranium enriched in the isotopes 233 or 235; any substance containing one or more of the foregoing; and such other substance as may be agreed between the Contracting Parties; but the term "special nuclear material" shall not include "source material";

(h) "derived" means derived by one or more processes, whether successive or not;

(i) "within the Community" means within the territories to which the Treaty establishing the European Atomic Energy Community (Euratom) applies or shall apply.

Article XV

1. The present Agreement shall be brought into force through an exchange of notes between the Government of Canada and the Community to that effect (1).

2. It shall remain in force for a period of ten years, and thereafter until six months after notice of termination has been given by either the Government of Canada or the Community, unless such notice has been given six months prior to the expiry of the said period of ten years.

(1) Entered into force on November 18, 1959.

EN FOI DE QUOI les soussignés, dûment autorisés à cet effet respectivement par la Commission et le gouvernement du Canada ont signé le présent accord et y ont apposé leur sceau.

Fait à Bruxelles le 6 octobre 1959, en langues allemande, anglaise, française, italienne et néerlandaise, les cinq textes faisant également foi.

Pour la Communauté européenne de l'énergie atomique (Euratom)

E. HIRSCH
E. MEDI
P. DE GROOTE
H. KREKELER
E. M. J. A. SASSEN

Pour le gouvernement du Canada

S. D. PIERCE

IN WITNESS WHEREOF the undersigned, duly authorized for this purpose by the Government of Canada and the Commission respectively, have signed the present Agreement and have affixed thereto their seals.

Done at Brussels, this 6th day of October, 1959, in the English, French, German, Italian and Netherlands languages, all five texts being equally authentic.

For the European Atomic Energy Community (Euratom)

E. HIRSCH
E. MEDI
P. DE GROOTE
H. KREKELER
E. M. J. A. SASSEN

For the Government of Canada

S. D. PIERCE

ÉCHANGE DE LETTRES ENTRE LE GOUVERNEMENT DU CANADA ET LA COMMUNAUTÉ EUROPÉENNE DE L'ÉNERGIE ATOMIQUE (EURATOM)

N° 1

M. S. D. Pierce à M. E. Hirsch

Bruxelles, le 6 octobre 1959

Monsieur le Président,

J'ai l'honneur de me référer à l'accord de coopération signé ce jour entre le gouvernement du Canada et la Communauté européenne de l'énergie atomique (Euratom) concernant les utilisations pacifiques de l'énergie atomique, et plus particulièrement à l'article IX, paragraphe 1, relatif aux réexportations.

Il est entendu que l'autorisation écrite prévue dans cet article dépend de l'assujettissement de telles réexportations à un système de contrôle satisfaisant pour l'une et l'autre partie.

Nous espérons qu'une fois instaurés, les systèmes de contrôle de l'Agence internationale de l'énergie atomique et de l'Agence européenne pour l'énergie nucléaire s'avéreront satisfaisants à cet égard.

Je vous prie d'agréer, etc.

S. D. PIERCE
Ambassadeur

EXCHANGE OF LETTERS BETWEEN THE GOVERNMENT OF CANADA AND THE EUROPEAN ATOMIC ENERGY COMMUNITY (EURATOM)

No. 1

Mr. S. D. Pierce to Mr. E. Hirsch

Brussels, 6 October 1959

Mr. President,

I have the honour to refer to the Agreement of today's date between the Government of Canada and the European Atomic Energy Community (Euratom) for cooperation in the peaceful uses of atomic energy, and in particular to Article IX, Paragraph 1, dealing with reexports.

It is our understanding that the consent in writing mentioned therein is contingent upon such reexports being subject to a mutually satisfactory system of safeguards.

It is our expectation that the control systems of the International Atomic Energy Agency and the European Nuclear Energy Agency, when established, will prove to be satisfactory in this respect.

Accept, etc.

S. D. PIERCE
Ambassador

N° 2

M. E. Hirsch à M. S. D. Pierce

Bruxelles, le 6 octobre 1959

Monsieur l'Ambassadeur,

J'ai l'honneur d'accuser réception de la note de Votre Excellence en date d'aujourd'hui dont la teneur est la suivante:

«Monsieur le Président,

J'ai l'honneur de me référer à l'accord de coopération signé ce jour entre le gouvernement du Canada et la Communauté européenne de l'énergie atomique (Euratom) concernant les utilisations pacifiques de l'énergie atomique, et plus particulièrement à l'article IX, paragraphe 1, relatif aux réexportations.

Il est entendu que l'autorisation écrite prévue dans cet article dépend de l'assujettissement de telles réexportations à un système de contrôle satisfaisant pour l'une et l'autre partie.

Nous espérons qu'une fois instaurés, les systèmes de contrôle de l'Agence internationale de l'énergie atomique et de l'Agence européenne pour l'énergie nucléaire s'avéreront satisfaisants à cet égard.

Je vous prie d'agréer, etc.»

J'ai l'honneur de vous confirmer que telle est bien également la façon de voir de la Commission de l'Euratom.

Je vous prie d'agréer, etc.

E. Hirsch

Président
Commission d'Euratom

No. 2

Mr. E. Hirsch to Mr. S. D. Pierce

Brussels, 6 October 1959

Your Excellency,

I have the honour to acknowledge receipt of Your Excellency's note of today's date which reads as follows:

"Mr. President,

I have the honour to refer to the Agreement of today's date between the Government of Canada and the European Atomic Energy Community (Euratom) for cooperation in the peaceful uses of atomic energy, and in particular to Article IX, Paragraph 1, dealing with reexports.

It is our understanding that the consent in writing mentioned therein is contingent upon such reexports being subject to a mutually satisfactory system of safeguards.

It is our expectation that the control systems of the International Atomic Energy Agency and European Nuclear Energy Agency, when established, will prove to be satisfactory in this respect.

Accept, etc."

I have the honour to confirm that the above is also the understanding of the Euratom Commission.

Accept, etc.

E. Hirsch

President
Euratom Commission

ACCORD TECHNIQUE ENTRE LA COMMUNAUTÉ EUROPÉENNE DE L'ÉNERGIE ATOMIQUE (EURATOM) ET L'«ATOMIC ENERGY OF CANADA LIMITED» CONCERNANT LES UTILISATIONS PACIFIQUES DE L'ÉNERGIE ATOMIQUE

La Communauté européenne de l'énergie atomique (Euratom) agissant par l'intermédiaire de sa Commission (ci-après dénommée «la Commission») et l'«Atomic Energy of Canada Limited» (ci-après dénommée «l'A.E.C.L.»),

CONSIDÉRANT que la Communauté européenne de l'énergie atomique (Euratom) et le gouvernement du Canada ont, en date du 6 octobre 1959, signé un accord constituant un cadre général de coopération concernant les utilisations pacifiques de l'énergie atomique;

CONSIDÉRANT que l'A.E.C.L. a fait porter ses efforts dans le domaine de l'énergie atomique sur la mise au point du type de réacteur à uranium naturel modéré à l'eau lourde et qu'elle a conduit ce type de réacteur au stade de la construction à l'échelle industrielle, que diverses organisations publiques et privées établies dans la Communauté ont entrepris des études sur ce type de réacteur et que, dans le cadre du programme de recherches de la Communauté, la Commission a décidé de promouvoir le développement de ce type de réacteur;

CONSIDÉRANT qu'il serait de leur intérêt de coopérer en établissant un programme commun de recherches et de développement centré sur les réacteurs de ce type;

SONT CONVENUES de ce qui suit:

Article premier

Les parties contractantes entreprendront un programme commun de recherches et de développement centré sur le type de réacteur modéré à l'eau lourde et devant être mis en œuvre dans la Communauté et au Canada. Ledit programme comprendra des études et des travaux de mise au point sur le type de réacteur modéré à l'eau lourde et refroidi au moyen d'un liquide organique et sur le type de réacteur modéré et refroidi à l'eau lourde, et l'équipement connexe.

TECHNICAL AGREEMENT BETWEEN ATOMIC ENERGY OF CANADA LIMITED AND THE EUROPEAN ATOMIC ENERGY COMMUNITY (EURATOM) CONCERNING PEACEFUL USES OF ATOMIC ENERGY

Atomic Energy of Canada Limited (hereinafter sometimes referred to as "AECL") and the European Atomic Energy Community (Euratom) acting through its Commission (hereinafter sometimes referred to as "the Commission"):

CONSIDERING that the Government of Canada and the European Atomic Energy Community (Euratom) on October 6, 1959 signed an agreement which provides a general framework for co-operation in the peaceful uses of atomic energy;

CONSIDERING that AECL has devoted its efforts in the field of atomic energy to the development of the natural uranium fuelled heavy water moderated type of reactor and brought this type of reactor to the point of industrial scale construction, that several public and private organizations within the Community have undertaken studies on the said type of reactor and that in the framework of the research program of the Community the Commission has decided to promote the development of this type of reactor;

CONSIDERING that it would be to their mutual benefit to co-operate by establishing a joint research and development program centered on reactors of this type;

HAVE AGREED as follows:

Article I

The Contracting Parties shall undertake a joint research and development program centered on the heavy water moderated type of reactor to be carried out both in Canada and within the Community. In the said program will be included study and development work on the heavy water moderated organic-cooled type of reactor, and on the heavy water moderated and cooled type of reactor and associated equipment.

Article II

Chaque partie contractante mettra à la disposition de l'autre des informations du genre de celles que l'on trouve normalement dans les rapports scientifiques et techniques, notamment sur les systèmes de réacteurs de recherche et de puissance modérés à l'eau lourde et sur l'expérience acquise concernant leur fonctionnement. Les parties contractantes échangeront les plans fondamentaux de réacteurs de puissance ainsi que des informations et plans concernant par exemple les matières, dispositifs de chargement et déchargement, échangeurs de chaleur, pompes, vannes, gainages et embouts. Les parties contractantes échangeront des informations concernant la mise en œuvre des plans ainsi communiqués. Les modalités d'application du programme ainsi que toute autre méthode de coopération dont il sera convenu de temps à autre feront l'objet d'échanges de lettres ou de mémorandums entre les parties contractantes.

Article III

Les parties contractantes contribueront à parts égales au programme commun, jusqu'à concurrence chacune d'un montant équivalent à 5 millions d'unités de compte A.M.E., pour une période de cinq ans. La contribution de l'A.E.C.L. sera représentée par une affectation au programme commun de fonds prélevés sur son budget ordinaire et destinés à être dépensés au Canada, et la contribution de la Commission par des dépenses effectuées au sein de la Communauté, à moins qu'il n'en soit convenu autrement.

Article IV

1. Le terme «pays», tel qu'il est utilisé en ce qui concerne la Communauté européenne de l'énergie atomique (Euratom), sera considéré comme se référant aux territoires auxquels s'applique ou s'appliquera le traité instituant la Communauté européenne de l'énergie atomique (Euratom).

2. En ce qui concerne toute invention ou découverte utilisant des informations communiquées aux termes du présent accord et faite ou conçue pendant la durée de l'accord et sur laquelle l'une ou l'autre partie a des droits, chaque partie:

(a) Consent, dans la mesure où elle en dispose, à transférer et à céder à l'autre partie tous droits, titre et intérêts af-

Article II

Each Contracting Party will make available to the other information of the type normally contained in scientific and technical reports, including heavy water moderated research and power reactor systems and operating experience. The Contracting Parties will exchange basic designs of power reactors as well as information and designs relating to such things as materials, fuelling machines, heat exchangers, pumps, valves, cladding and end fittings. The Contracting Parties will exchange information concerning development of designs so communicated. Details of the program and further methods of co-operation as agreed upon from time to time will be set out in exchanges of letters or memoranda between the Contracting Parties.

Article III

The Contracting Parties shall make equal contributions to the joint program up to the equivalent of 5 million European Monetary Agreement accounting units each, over a period of five years, the contribution of AECL being represented by allocation to the joint program of funds of its normal budget, to be spent in Canada, and the contribution of the Commission being represented by expenditures within the Community, unless otherwise agreed.

Article IV

1. The word "country" as used herein in relation to the European Atomic Energy Community (Euratom) shall be deemed to refer to the territories to which the Treaty establishing the European Atomic Energy Community (Euratom) applies or shall apply.

2. With respect to any invention or discovery employing information which has been communicated under this agreement and made or conceived thereafter during the period of the agreement and in which invention or discovery rights are owned by either party, each party:

(a) agrees to transfer and assign to the other all right, title and interest in and to any such invention, discovery, patent appli-

férents à l'invention, la découverte, la demande de brevet ou le brevet en cause dans le pays de cette autre partie et sous réserve d'une licence gratuite, non exclusive et irrévocable pour son propre usage;

cation or patent in the country of the other, to the extent owned, subject to a royalty-free, non exclusive, irrevocable licence for its own purposes.

(b) Conservera tous droits, titre et intérêts afférents à l'invention, la découverte, la demande de brevet ou le brevet en cause dans son propre pays ou dans les pays tiers; toutefois, à la demande de l'autre partie, elle accordera à celle-ci une licence gratuite, non exclusive et irrévocable pour son propre usage dans les pays en question, couvrant entre autres l'exploitation, à des fins de production dans lesdits pays, de matières destinées à être vendues à l'autre partie par un fournisseur de cette dernière. En cas d'invention faite conjointement par du personnel des deux parties, les demandes de brevets déposées dans des pays tiers et les brevets délivrés sur la base de ces demandes seront propriété commune des deux parties. Sous réserve de ce qui précède, chaque partie fera usage à son gré de ses droits afférents à l'invention, la découverte, la demande de brevet ou le brevet en cause dans son pays et dans tous pays autres que celui de l'autre partie, mais en aucun cas n'exercera de discrimination à l'égard des personnes physiques ou morales ayant la nationalité de l'autre pays en ce qui concerne la concession de toute licence sur les brevets dont elle est propriétaire dans son pays ou dans tout autre pays;

(b) shall retain all right, title and interest in and to any such invention, discovery, patent application or patent in its own or third countries but will, upon request of the other party, grant to the other party a royalty-free, non exclusive, irrevocable licence for its own purposes in such countries including use in the production of materials in such countries for sale to the other party by a contractor of such other party. In the case of an invention made jointly by personnel of both parties, patent applications and patents made or granted in respect thereof in third countries shall be the joint property of the two parties. Subject as aforesaid, each party may deal with its interest in any such invention, discovery, patent application or patent in its own country and all countries other than that of the other party as it may desire, but in no event shall either party discriminate against citizens of the other country in respect of granting any licence under the patents owned by it in its own or any other country.

(c) Renonce à toute espèce de revendication à l'égard de l'autre partie en vue d'obtenir des indemnisations, redevances ou primes concernant l'invention, la découverte, la demande de brevet ou le brevet en cause, ainsi qu'à toute action contre l'autre partie en ce qui concerne toute revendication de cette nature.

(c) waives any and all claims against the other party for compensation,, royalty or award as respect any such invention or discovery, patent application or patent, and releases the other party with respect to any such claim.

3. Si l'exploitation d'informations communiquées au titre du présent accord implique l'utilisation d'une invention brevetée, la partie ayant reçu ces informations sera, dans la mesure du

3. The use of any patented invention involved in the application of information communicated under this agreement, will, so far as practicable, and on terms and conditions to be agreed, be

possible et à des conditions à convenir, autorisée à utiliser l'invention en cause.

Article V

Il sera institué un comité mixte chargé de conseiller la Commission et l'A.E.C.L. sur l'exécution du présent accord. Il sera composé en nombre égal de représentants de la Commission et de l'A.E.C.L. bénéficiant du droit de vote, et de tels autres membres et conseillers qui pourront être désignés de temps à autre d'un commun accord. Les parties contractantes pourront, d'un commun accord, inviter des représentants de tierces parties à se joindre au comité.

Article VI

Les lettres et mémorandums échangés au titre du présent accord conformément à l'article II seront signés au nom de la Commission par un membre de la Commission et au nom de l'A.E.C.L. par son président, ou par toute autre personne (ou personnes) pouvant de temps à autre être autorisée à cet effet par la Commission ou par l'A.E.C.L., respectivement.

Article VII

Le présent accord entre en vigueur le jour de sa signature et reste en vigueur pendant une période de cinq ans, sauf prolongation décidée d'un commun accord.

EN FOI DE QUOI les représentants soussignés, dûment autorisés à cet effet, ont signé le présent accord.

Fait à Bruxelles, le 6 octobre 1959, en double exemplaire, en langues allemande, anglaise, française, italienne et néerlandaise, les cinq textes faisant également foi.

Pour la Communauté européenne de l'énergie atomique (Euratom):

E. HIRSCH
E. MEDI
P. DE GROOTE
H. KREKELER
E. M. J. A. SASSEN

Pour l'«Atomic Energy of Canada Limited»

J. L. GRAY

made available to the party receiving such communication.

Article V

A joint board shall be established to advise AECL and the Commission on the carrying out of the present agreement. It will consist of voting representatives of AECL and the Commission in equal numbers, and such other members and advisers as may from time to time be agreed. By mutual consent the Contracting Parties may invite representatives of third parties to join the board.

Article VI

Letters and memoranda exchanged hereunder as contemplated by Article I will be signed on behalf of AECL by the President and on behalf of the Commission by a member of the Commission or by such other person or persons as may from time to time be authorized by AECL or the Commission respectively for such purpose.

Article VII

This agreement shall enter into force on the day of signature and subject to renewal by mutual consent shall remain in force for five years from its date.

IN WITNESS WHEREOF the undersigned representatives duly authorized thereto have signed this agreement.

Done at Brussels, this 6th day of October, 1959, in duplicate in the English, French, German, Italian, and Netherlands languages, each language being equally authentic.

For the European Atomic Energy Community (Euratom)

E. HIRSCH
E. MEDI
P. DE GROOTE
H. KREKELER
E. M. J. A. SASSEN

For Atomic Energy of Canada Limited

J. L. GRAY

II

(Acts whose publication is not obligatory)

COMMISSION

Amendment to the Agreement of 6 October 1959 [1], in the form of an exchange of letters, between the European Atomic Energy Community (Euratom) and the Government of Canada for cooperation in the peaceful uses of atomic energy

(78/217/Euratom)

[1] OJ No 60, 24. 11. 1959, p. 1165/59.

COMMISSION
OF THE
EUROPEAN COMMUNITIES

Brussels, 16 January 1978

Mr Chargé d'Affaires,

I have the honour to acknowledge receipt of your letter dated 16 January 1978, stating the following:

'Mr Commissioner,

As the Commission has been informed, the Canadian Government has decided to require more stringent safeguards in respect of sales abroad of Canadian material, equipment and information.

This decision implies an updating of the existing Agreement between the Government of Canada and the European Atomic Energy Community (Euratom) for cooperation in the Peaceful Uses of Atomic Energy of 6 October 1959 (hereinafter referred to as the Canada/Euratom Agreement of 1959) particularly in so far as it relates to safeguards.

The Canadian Government considers it necessary to come to an interim agreement through the present exchange of letters until the entire Canada/Euratom Agreement of 1959 has been updated, to provide for the requirement of the new Canadian safeguards policy by amending the relevant provisions of the Canada/Euratom Agreement of 1959.

Accordingly, I propose that the Canada/Euratom Agreement of 1959 be amended to include the following provisions relating to safeguards:

(a) For the purposes of the Canada/Euratom Agreement of 1959, the phrase "machinery and plant" in paragraph (d) of Article XIV of the Canada/Euratom Agreement of 1959 shall be deemed to include all items listed in Annex A to this letter.

(b) Equipment which a Member State has designed to the Commission as equipment designed, constructed or operated on the basis of or by the use of information obtained from Canada and which is within the jurisdiction of that Member State at the time of designation, shall be considered as equipment subject to the Canada/Euratom Agreement of 1959, as amended.

Equipment which Canada has designated, as equipment designed, constructed or operated on the basis of or by the use of information obtained from that Member State shall be considered as equipment subject to the Canada/Euratom Agreement of 1959, as amended.

(c) Material which is subject to the terms of the Canada/Euratom Agreement of 1959 shall not be used for the manufacture of any nuclear weapon or for other military uses of nuclear energy or for the manufacture of any other nuclear explosive device. The foregoing undertaking shall be verified within Canada by the IAEA pursuant to an agreement between Canada and the IAEA and within the Community by the Community and by the IAEA pursuant to the Treaty establishing the European Atomic Energy Community and the agreements concluded between the Community, its Member States and the IAEA or if at any time such verification procedures are not in effect, there shall be agreement between the Contracting Parties for the application of a safeguards system which conforms with IAEA safeguards principles and procedures.

Mr P. D. Lee
Chargé d'Affaires a.i.
Mission of Canada
to the European Communities
Rue de Loxum, 6 (fifth floor)
1000 Brussels

(d) Equipment or material transferred between Canada and the Community after the coming into force of this Agreement, shall be subject to the Canada/Euratom Agreement of 1959 only if the supplying Contracting Party has so informed the other Contracting Party in writing prior to the transfer. In the case of transfer of equipment from the Community to Canada, notifications may also be given by a Member State.

(e) Material referred to in paragraph (c) shall be enriched beyond 20 % or reprocessed and plutonium or uranium enriched beyond 20 % shall be stored only according to conditions agreed upon in writing between the parties. (See Annex C — Interim Arrangement concerning enrichment, reprocessing and subsequent storage of nuclear material within the Community and Canada.)

(f) In no event shall a Contracting Party use the provisions of the present Agreement for the purpose of securing commercial advantages or for the purpose of interfering with the commercial relations of the other Contracting Party.

(g) The Community shall inform Member States of the levels of physical protection set out in Annex B to this letter which should be applied as minima to the material referred to in paragraph (c) above. Canada will apply such levels of physical protection as minima to material referred to in paragraph (c).

(h) Any dispute arising out of the interpretation or application of the present Agreement which is not settled by negotiation or as may otherwise be agreed by the Contracting Parties concerned shall, on the request of either Contracting Party, be submitted to an arbitral tribunal which shall be composed of three arbitrators. Each Contracting Party shall designate one arbitrator and the two arbitrators so designated shall elect a third, who shall be the chairman. If within 30 days of the request for arbitration either Contracting Party has not designated an arbitrator, either Contracting Party to the dispute may request the Secretary General of the OECD to appoint an arbitrator. The same procedure shall apply if, within 30 days of the designation or appointment of the second arbitrator, the third arbitrator has not been elected. A majority of the members of the arbitral tribunal shall constitute a quorum, and all decisions shall be made by majority vote of all members of the arbitral tribunal. The arbitral procedure shall be fixed by the tribunal. The decisions of the tribunal, including all rulings concerning its constitution, procedure, jurisdiction and the division of the expenses of arbitration between the Contracting Parties shall be binding on both Contracting Parties and shall be implemented by them, in accordance with their respective constitutional procedures. The remuneration of the arbitrators shall be determined on the same basis as that for *ad hoc* judges of the International Court of Justice.

(i) The provisions of paragraphs (a) to (h) above, inclusive, as well as Articles III, IX and XIV of the Canada/Euratom Agreement of 1959 (as those Articles are amended by the proposals in this letter) shall in all circumstances remain in force so long as any equipment or material referred to in this letter or in the Canada/Euratom Agreement of 1959 remains in existence or it is otherwise agreed.

If the foregoing is acceptable to the European Atomic Energy Community I have the honour to propose that this letter which is authentic in both English and French, together with Your Excellency's reply to that effect shall constitute an amendment to the Canada/Euratom Agreement of 1959 which shall enter into force on the date of Your Excellency's reply and which shall continue in force so long as any equipment, material or facilities referred to in this letter or in the Canada/Euratom Agreement of 1959 remain in existence or it is otherwise agreed.

Please accept, Mr Commissioner, the assurance of my highest consideration.

ANNEX A

1. *Nuclear reactors* capable of operation so as to maintain a controlled self-sustaining fission chain reaction, excluding zero energy reactors, the latter being defined as reactors with a designed maximum rate of production of plutonium not exceeding 100 grams per year.

   A nuclear reactor basically includes the items within or attached directly to the reactor vessel, the equipment which controls the level of power in the core, and the components which normally contain or come in direct contact with or control the primary coolant of the reactor core.

   It is not intended to exclude reactors which could reasonably be capable of modification to produce significantly more than 100 grams of plutonium per year. Reactors designed for sustained operation at significant power levels, regardless of their capacity for plutonium production, are not considered as 'zero energy reactors'.

2. *Reactor pressure vessels:* metal vessels, as complete units or as major shop-fabricated parts therefor, which are especially designed or prepared to contain the core of a nuclear reactor as defined in paragraph 1 above and are capable of withstanding the operating pressure of the primary coolant.

   A top plate for a reactor pressure vessel is a major shop-fabricated part of a pressure vessel.

3. *Reactor internals:* (e.g. support columns and plates for the core and other vessel internals, control rod guide tubes, thermal shields, baffles, core grid plates, diffuser plates, etc.).

4. *Reactor fuel charging and discharging machines:* manipulative equipment especially designed or prepared for inserting or removing fuel in nuclear reactors as defined in paragraph 1 above capable of on-load operation or employing technically sophisticated positioning or alignment features to allow complex off-load fuelling operations such as those in which direct viewing of or access to the fuel is not normally available.

5. *Reactor control rods:* rods especially designed or prepared for the control of the reaction rate in a nuclear reactor as defined in paragraph 1 above.

   This item includes, in addition to the neutron absorbing part, the support or suspension structures therefor if supplied separately.

6. *Reactor pressure tubes:* tubes which are especially designed or prepared to contain fuel elements and the primary coolant in a reactor as defined in paragraph 1 above at an operating pressure in excess of 50 atmospheres.

7. *Zirconium tubes:* Zirconium metal and alloys in the form of tubes or assemblies of tubes, and in quantities exceeding 500 kg per year especially designed or prepared for use in a reactor as defined in paragraph 1 above, and in which the relationship of hafnium to zirconium is less than 1 : 500 parts by weight.

8. *Plants for the reprocessing of irradiated fuel elements*, and equipment especially designed or prepared therefor.

   A plant for the reprocessing of irradiated fuel elements includes the equipment and components which normally come in direct contact with and directly control the irradiated fuel and the major nuclear material in fission product processing streams. In the present state of technology only two items of equipment are considered to fall within the meaning of the phrase 'and equipment especially designed or prepared therefor'. These items are:

   (a) irradiated fuel element chopping machines: remotely operated equipment especially designed or prepared to use in a reprocessing plant as identified above and intended to cut, chop or shear irradiated nuclear fuel assemblies, bundles or rods; and

   (b) critically safe tanks (e.g. small diameter, annular or slab tanks) especially designed or prepared to use in a reprocessing plant as identified above, intended for dissolution of irradiated nuclear fuel and which are capable of withstanding hot, highly corrosive liquid, and which can be remotely loaded and maintained.

9. *Plants for the fabrication of fuel elements:*

A plant for the fabrication of fuel elements includes the equipment:

(a) which normally comes in direct contact with or directly processes or controls, the production flow of nuclear material; or

(b) which seals the nuclear material within the cladding.

The whole set of items for the foregoing operations, as well as individual items intended for any of the foregoing operations, and for other fuel fabrication operations, such as checking the integrity of the cladding or the seal, and the finish treatment to the sealed fuel.

10. *Equipment, other than analytical instruments, especially designed or prepared for the separation of isotopes of uranium:*

Equipment, other than analytical instruments, especially designed or prepared for the separation of isotopes of uranium includes each of the major items of equipment especially designed or prepared for the separation process. Such items include:

— gaseous diffusion barrier,
— gaseous diffusion housings,
— gas centrifuge assemblies, corrosion resistant to UF_6,
— large UF_6 corrosion resistant axial or centrifugal compressors,
— special compressor seals for such compressors.

11. *Plants for the production of heavy water:*

A plant for the production of heavy water includes the plant and equipment specially designed for enrichment of deuterium or its compounds, as well as any significant fraction of the items essential to the operation of the plant.

ANNEX B

LEVELS OF PHYSICAL PROTECTION

The levels of physical protection to be ensured by the appropriate governmental authorities in the use, storage and transportation of the materials of the attached table shall as a minimum include protection characteristics as follows:

Category III

Use and storage within an area to which access is controlled.

Transportation under special precautions including prior arrangements between sender, recipient and carrier, and prior agreement between States in cases of international transport specifying time, place and procedures for transferring transport responsibility.

Category II

Use and storage within a protected area to which access is controlled, i.e. an area under constant surveillance by guards or electronic devices, surrounded by a physical barrier with a limited number of points of entry under appropriate control, or any area with an equivalent level of physical protection.

Transportation under special precautions including prior arrangement between sender, recipient and carrier, and prior agreement between States in cases of international transport specifying time, place and procedures for transferring transport responsibility.

Category I

Materials in this category shall be protected with highly reliable systems against unauthorized use as follows:

Use and storage within a highly protected area, i.e. a protected area as defined for Category II above, to which, in addition, access is restricted to persons whose trustworthiness has been determined and under surveillance by guards who are in close communication with appropriate response forces. Specific measures taken in this context should have as their objective the detection and prevention of any assault, unauthorized access or unauthorized removal of material.

Transportation under special precautions as identified above for transportation of Category II and III materials and, in addition, under constant surveillance of escorts and under conditions which assure close communication with appropriate response forces.

Categorization of nuclear material

Material	Form	Category		
		I	II	III
1. Plutonium (a)	Unirradiated (b)	2 kg or more	Less than 2 kg but more than 500 g	500 g or less (c)
2. Uranium-235	Unirradiated (b)			
	— uranium enriched to 20 % U-235 or more	5 kg or more	Less than 5 kg but more than 1 kg	1 kg or less
	— uranium enriched to 10 % U-235 but less than 20 %	—	10 kg or more	Less than 10 kg (c)
	— uranium enriched above natural, but less than 10 % U-235 (d)	—		10 kg or more
3. Uranium-233	Unirradiated (b)	2 kg or more	Less than 2 kg but more than 500 g	500 g or less
4. Irradiated fuel			Depleted or natural uranium, thorium or low enriched fuel (less than 10 % fissile content) (e) (f)	

(a) As identified in the Statute of the IAEA.

(b) Material not irradiated in a reactor or material irradiated in a reactor but with a radiation level equal to or less than 100 rad/hour at one metre unshielded.

(c) Less than a radiologically significant quantity should be exempted.

(d) Natural uranium, depleted uranium and thorium and quantities of uranium enriched to less than 10 % not falling in Category III should be protected in accordance with prudent management practice.

(e) Although this level of protection is recommended, it would be open to States upon evaluation of the specific circumstances, to assign a different degree of physical protection.

(f) Other fuel which by virtue of its original fissile material content is classified as Category I or II before irradiation may be reduced one category level while the radiation level from the fuel exceeds 100 rad/hour at one metre unshielded.

ANNEX C

INTERIM ARRANGEMENT CONCERNING ENRICHMENT, REPROCESSING AND SUBSEQUENT STORAGE OF NUCLEAR MATERIAL WITHIN THE COMMUNITY AND CANADA

1. Both parties recognize that while increasing reliance is placed on nuclear energy for peaceful purposes to satisfy world energy requirements, its use requires that every precaution should be taken with respect to the generation and dissemination of material that can be used for nuclear weapons. The parties agree to cooperate both bilaterally and internationally to identify arrangements which will advance this objective.

   Both parties agree that their objective is to meet their energy needs while avoiding the danger of the spread of such material and respecting the choices and decisions of each party in the peaceful nuclear field.

   The parties note with satisfaction that the organizing Conference on International Fuel Cycle Evaluation (INFCE), in which Canada, the Commission of the European Communities and Member States of Euratom took part, agreed to carry out a study which is expected to extend over the next two years. INFCE will explore the best means of advancing the objectives of making nuclear energy for peaceful purposes widely available to meet the world's energy requirements while at the same time minimizing the danger of the proliferation of nuclear weapons.

   The participants in the study are pledged to cooperate constructively in the study which will examine all aspects of the nuclear cycle.

   Among the matters to be examined by working groups of INFCE are reprocessing and enrichment and storage of plutonium and uranium enriched beyond 20 %.

   Against this background, the parties agree on the following interim arrangement which shall apply to reprocessing and to enrichment beyond 20 % U-235; and the storage of plutonium and uranium enriched beyond 20 %.

2. With respect to material which has been transferred between 20 December 1974 and the end of the interim period, Euratom will notify the Government of Canada in advance of its intention to undertake any such reprocessing, enrichment or storage. This notification will include the quantities of material to be enriched, reprocessed or stored, the facility in which such operations will take place, and the intended disposition and use of the special fissionable material. The purpose of such advance notification is to permit joint consultation to take place between the parties concerning the adequacy of safeguards for the operation contemplated and avoidance of the risks of nuclear proliferation. Consultations shall enable each party to appreciate to the fullest extent possible the nature and purposes of the operation involved.

   These consultations shall be without prejudice to the commercial or industrial policy of either party. An early meeting will be held to work out appropriate modalities for notification and consultations.

3. It is understood between the parties that during the period of the interim arrangement supplies of Canadian uranium to be exported to Euratom would be broadly limited to the current needs of Euratom, the term 'current needs' to take account also of enrichment contract commitments entered into by the member countries of Euratom.

   The contracting parties shall consult at the request of either concerning the application of this part of this interim arrangement, in accordance with Article XIII of the 1959 Agreement.

4. Subject to the foregoing it is agreed that Canadian-origin uranium transferred to Euratom subsequent to 20 December 1974 or any Canadian-origin uranium being exported to Euratom during the period of the interim arrangement may be reprocessed or enriched beyond 20 % U-235, if the need arises in plants now operating or foreseen to be operating in Euratom. The same applies to plutonium and uranium enriched beyond 20 % U-235 stored in Euratom. In respect of Canadian-origin uranium transferred to Euratom prior to 20 December 1974, it is open to either Party to request consultation as provided in Articles IX (3) and XIII, of the 1959 Agreement.

5. As soon as possible after 31 December 1979 or the termination of the INFCE study, whichever is earlier, the parties will commence negotiations with a view to replacing this arrangement by other arrangements which will take into account *inter alia* any results of the INFCE studies in relation to the operations in question. If no such arrangements have been agreed upon by the end of 1980, the parties may jointly agree to extend the present interim arrangement.'

I have the honour to confirm that these proposals are acceptable to the European Atomic Energy Community.

Please accept, Mr Chargé d'Affaires, the assurance of my highest consideration.

COMMISSION
OF THE
EUROPEAN COMMUNITIES

Brussels, 16 January 1978

Mr Chargé d'Affaires,

I refer to the exchange of letters between us of 16 January 1978 regarding nuclear safeguards, and have the honour to state further as follows, for the information of the Canadian authorities:

During the Council consideration of the abovementioned exchange, it was agreed that the following represented our understanding of the procedure provided for in (c).

1. Supply of Canadian material to persons in the territory of the seven non-nuclear weapon States parties to the Euratom/IAEA verification Agreement, and transfer of such material within these States:

   This event would raise no problem, the verification agreement having entered into force on 21 February 1977.

2. Supply of Canadian material to the United Kingdom or transfer of Canadian material into the United Kingdom:

   Although the trilateral UK/Euratom/IAEA Agreement has not yet entered into force, no interim agreements providing IAEA verification of such material in the United Kingdom will be required by Canada for a reasonable period of time, which should not exceed 18 months starting from 23 December 1976.

3. Supply of Canadian material to France or transfer of Canadian material into France:

   Canadian material for end-use in France shall be submitted to IAEA verification as from the entry into force of the trilateral France/Euratom/IAEA Agreement currently under negotiation.

   The Council took note of statement by the French representative that material subject to the Canada/Euratom Agreement of 1959, as amended, would not be employed for end use in France before the entry into force of this trilateral Agreement.

   The Council also took note that the Canadian Government, given the application of Euratom safeguards and their verification under the trilateral France/Euratom/IAEA Agreement currently under negotiation, agrees that Canadian material may be directly supplied from Canada to France or be transferred into France in order to be enriched or reprocessed in France provided that it would leave France after the normal period required for those operations.

Please accept, Mr Chargé d'Affaires, the assurance of my highest consideration.

Mr P. D. Lee
Chargé d'Affaires a.i.
Mission of Canada
to the European Communities
Rue de Loxum. 6 (fifth floor)
1000 Brussels

MISSION OF CANADA
TO THE
EUROPEAN COMMUNITIES

Brussels, 16 January 1978

Mr Commissioner,

I wish to acknowledge receipt of your letter of 16 January 1978, which reads as follows and of which the contents have been noted by the Canadian authorities and upon which Canada shall reply when authorizing transfers to Euratom :

'Mr Chargé d'Affaires,

I refer to the exchange of letters between us of 16 January 1978 regarding nuclear safeguards, and have the honour to state further as follows, for the information of the Canadian authorities :

During the Council consideration of the abovementioned exchange, it was agreed that the following represented our understanding of the procedure provided for in (c) :

1. Supply of Canadian material to persons in the territory of the seven non-nuclear weapon States parties to the Euratom/IAEA verification Agreement, and transfer of such material within these States :

   This event would raise no problem, the verification agreement having entered into force on 21 February 1977.

2. Supply of Canadian material to the United Kingdom or transfer of Canadian material into the United Kingdom :

   Although the trilateral UK/Euratom/IAEA Agreement has not yet entered into force, no interim agreements providing IAEA verification of such material in the United Kingdom will be required by Canada for a reasonable period of time, which should not exceed 18 months starting from 23 December 1976.

3. Supply of Canadian material to France or transfer of Canadian material into France :

   Canadian material for end-use in France shall be submitted to IAEA verification as from the entry into force of the trilateral France/Euratom/IAEA Agreement currently under negotiation.

   The Council took note of statement by the French representative that material subject to the Canada/Euratom Agreement of 1959, as amended, would not be employed for end use in France before the entry into force of this trilateral Agreement.

   The Council also took note that the Canadian Government, given the application of Euratom safeguards and their verification under the trilateral France/Euratom/IAEA Agreement currently under negotiation, agrees that Canadian material may be directly from Canada to France or be transferred into France in order to be enriched or reprocessed in France provided that it would leave France after the normal period required for those operations.

Mr Guido Brunner
Commissioner
Commission of the European Communities
Rue de la Loi, 200
1049 Brussels

Please accept, Mr Chargé d'Affaires, the assurance of my highest consideration.'

I have been instructed to confirm the understanding reached during the negotiations that any transfer within the Community of material subject to the Agreement which does not take place in accordance with paragraph (c) of the exchange of letters will constitute a breach of the Agreement on the Euratom side. Under such circumstances, the Canadian authorities would of course be required to review their obligations under the Agreement.

Please accept, Mr Commissioner, the assurance of my highest consideration.

P. D. LEE
Chargé d'Affaires a.i.

COMMISSION
OF THE
EUROPEAN COMMUNITIES

Brussels, 16 January 1978

Mr Chargé d'Affaires,

I refer to the exchange of letters between us of 16 January 1978 regarding nuclear safeguards, and have the honour to state further as follows, for the information of the Canadian authorities:

During the Council consideration of the abovementioned exchange of letters, the Council took note of the 'Declaration on transfer of technology' made by the nine Member States and the Community and approved it in so far as it concerns the Community. The text of this declaration is annexed to the present letter (Annex I).

The Council further agreed to the following declarations:

— 'Both sides agreed to ask the Joint Technical Working Group to look into the question of information on reprocessing of Canadian material transferred to Euratom prior to 20 December 1974.'

— 'Neither party will invoke any rights under an agreement entered into with a third State to impair any rights or obligations under this agreement as amended.'

The technical note on the *pro rata* principle and the interpretation with respect to double labelling, agreed upon during the negotiations, was also approved by the Council and inserted in the minutes of the meeting. The text of this technical note is annexed to the present letter (Annex II).

Lastly, the Council took note of the 'Note on physical protection' to be sent by the Member States to the Canadian Ambassadors. The text of this note is annexed to this letter (Annex III).

Please accept, Mr Chargé d'Affaires, the assurance of my highest consideration.

Mr P. D. Lee
Chargé d'Affaires a.i.
Mission of Canada
to the European Communities
Rue de Loxum, 6 (fifth floor)
1000 Brussels

ANNEX I

DECLARATION ON TRANSFER OF TECHNOLOGY

'The Member States and the Community are prepared to confirm to the Canadian Government that they recognize the legitimacy of transferring sensitive technology within the meaning of the London Guidelines on the conditions laid down therein. They note that Canada also intends to make transfers of CANDU technology (heavy water moderated pressure tube reactor technology and fuel element fabrication technology, D_2O technology) and other technology specific to its fuel cycle to any Member State subject to certain conditions.

They consider that it is or will be for the Member States wishing to import such technology to conclude agreements with Canada comprising the commitments required by the Canadian Government in connection with these transfers.

However, these States must be entitled to transfer this technology to another Member State on condition that the second recipient Member State has provided the Canadian Government with the same commitments as those provided by the first Member State.

Accordingly, the Community and the Member States confirm that there is no obstacle to the conclusion of such agreements between Canada and any Member State of the Community wishing to conclude them, provided that these agreements are entirely consistent with the Treaty establishing the European Atomic Energy Community.'

ANNEX II

TECHNICAL NOTE

1. 'Pro rata' principle

Where Canadian material is produced, processed or used together with material of other origin, materials produced as well as losses during the operation will be attributed to materials subject to the Canada/Euratom Agreement in proportion to the percentage of materials subject to that agreement initially included in the mixture. The words 'produced, processed or used' cover conversion, fabrication, enrichment, reprocessing and irradiation.

2. Interpretation with respect to double labelling

In many cases, material which originates in one of the Contracting Parties to the 1959 Agreement between the Government of Canada and the European Atomic Energy Community (Euratom) for Cooperation in the Peaceful Uses of Atomic Energy, as amended, is sent to a third State for processing, including conversion, enrichment and fabrication, before delivery to the receiving Contracting Party. Such processed material is obtained by the receiving Contracting Party pursuant to the 1959 Agreement and is therefore subject to the provisions of that Agreement, as amended.

It is recognized that there is legitimate concern regarding the accumulation of safeguard provisions over nuclear material and the resulting administrative problems. These difficulties are being considered in international fora and suppliers and recipients should continue to seek mutually satisfactory solutions, both bilaterally and multilaterally.

ANNEX III

NOTE ON PHYSICAL PROTECTION

From Euratom Member State Foreign Minister to Canadian Ambassadors.

Your Excellency,

I have the honour to 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 of 6 October 1959, as amended (hereinafter referring to as the Agreement).

In addition to the obligations to Canada entered into under the Agreement, I have the honour to inform you that my Government confirms that the items referred to in the Agreement which are within the territory, jurisdiction or control of my Government shall be subject to the levels of physical protection described in the Agreement.

Please accept, Your Excellency, the assurance of my highest consideration.

COMMISSION
OF THE
EUROPEAN COMMUNITIES

Brussels, 16 January 1978

Mr Chargé d'Affaires,

I refer to the Agreement between us of 16 January 1978 and have the honour to state that during the Council consideration of that Agreement the following interpretation was given by the Council concerning the effect of the Agreement in relation to the period after the interim period:

'In approving the exchange of letters between Canada and Euratom, the Council recognizes that the conditions under which:

— material covered by the Canada/Euratom Agreement shall be enriched beyond 20 % or reprocessed,

— and those under which uranium enriched beyond 20 % and plutonium shall be stored,

have been covered by an Agreement for an interim period.

For materials supplied after the end of the interim period, an agreement on the regime governing these sensitive operations remains to be concluded. The Council, therefore, recognizes that, for these materials, the parties have not accepted any obligation, either as to the supply of the materials or as to the fact that the regime to be negotiated, and which would govern the sensitive operations, would include any conditions, nor *a fortiori* as to the nature of any such conditions.'

I would be obliged if you would confirm that this interpretation is shared by the Canadian authorities.

Please accept, Mr Chargé d'Affaires, the assurance of my highest consideration.

Mr P. D. Lee
Chargé d'Affaires a.i.
Mission of Canada
to the European Communities
Rue de Loxum, 6 (fifth floor)
1000 Brussels

MISSION OF CANADA
TO THE
EUROPEAN COMMUNITIES

Brussels, 16 January 1978

Mr Commissioner,

I have the honour to acknowledge receipt of your letter dated 16 January 1978, stating the following:

'Mr Chargé d'Affaires,

I refer to the Agreement between us of 16 January 1978 and have the honour to state that during the Council consideration of that Agreement the following interpretation was given by the Council concerning the effect of the Agreement in relation to the period after the interim period:

"In approving the exchange of letters between Canada and Euratom, the Council recognizes that the conditions under which:

— material covered by the Canada/Euratom Agreement shall be enriched beyond 20 % or reprocessed,

— and those under which uranium enriched beyond 20 % and plutonium shall be stored,

have been covered by an Agreement for an interim period.

For materials supplied after the end of the interim period, an agreement on the regime governing these sensitive operations remains to be concluded. The Council, therefore, recognizes that, for these materials, the parties have not accepted any obligation, either as to the supply of the materials or as to the fact that the regime to be negotiated, and which would govern the sensitive operations, would include any conditions, nor *a fortiori* as to the nature of any such conditions."

I would be obliged if you would confirm that this interpretation is shared by the Canadian authorities.

Please accept, Mr Chargé d'Affaires, the assurance of my highest consideration.'

I have the honour to confirm that this interpretation is shared by the Canadian authorities.

Please accept, Mr Commissioner, the assurance of my highest consideration.

P. D. LEE
Chargé d'Affaires a.i.

Mr Guido Brunner
Commissioner
Commission of the European Communities
Rue de la Loi, 200
1049 Brussels

COMMISSION

AGREEMENT

in the form of an exchange of letters between the European Atomic Energy Community (Euratom) and the Government of Canada intended to replace the 'Interim Arrangement concerning enrichment, reprocessing and subsequent storage of nuclear material within the Community and Canada' constituting Annex C of the Agreement in the form of an exchange of letters of 16 January 1978 between Euratom and the Government of Canada

(82/52/Euratom)

Brussels, 18 December 1981

A. Letter from the Government of Canada

Sir,

1. I have the honour to refer to the 16 January 1978 exchange of letters between the Government of Canada and the European Atomic Energy Community (Euratom) (hereinafter referred to as the exchange of letters) amending the Agreement between the Government of Canada and the European Atomic Energy Community for cooperation in the peaceful uses of atomic energy of 6 October 1959, (hereinafter referred to as the Agreement) particularly in so far as it relates to safeguards (followed by an additional exchange of letters). I specifically refer to paragraph (e) of the exchange of letters which states that:

> 'Material referred to in paragraph (c) shall be enriched beyond 20 % or reprocessed and plutonium or uranium enriched beyond 20 % shall be stored only according to conditions agreed upon in writing between the parties (see Annex C: Interim Arrangement concerning enrichment, reprocessing and subsequent storage of nuclear material within the Community and Canada).'

Paragraph 5 of Annex C states that the parties would commence negotiations as soon as possible after 31 December 1979, or the termination of the INFCE study, whichever was earlier, with a view to replacing the Interim Arrangement by other arrangements that would take into account *inter alia* any results of the INFCE studies in relation to the operations in question.

Wilhelm Haferkamp,
Vice President of the
Commission of the European Communities,
200 rue de la Loi,
B-1049 Brussels

2. These negotiations have now been completed and I have the honour to propose that the guidelines set forth below should cover reprocessing and plutonium storage and use :

(a) an effective commitment to non-proliferation should have been made and should continue to be maintained by the party envisaging reprocessing and plutonium storage and use ;

(b) all nuclear material subject to a peaceful uses commitment in facilities involved in reprocessing and the storage and use of plutonium should be subject to IAEA safeguards ;

(c) all nuclear material subject to a peaceful uses commitment in facilities involved in reprocessing and the subsequent storage and use activities, including related transport, should be subject to adequate physical protection measures ;

(d) mutually satisfactory notification and material reporting procedures should be in place between the parties ;

(e) a description of the current and planned nuclear energy programme including in particular a detailed description of the policy, legal and regulatory elements relevant to reprocessing and plutonium storage and use should be provided by the party envisaging such activities ;

(f) the parties should agree to periodic and timely consultations at which *inter alia* the information provided under guideline (e) should be updated and significant changes in the nuclear energy programme would receive the fullest possible consideration ;

(g) the reprocessing and plutonium storage should only take place when the information provided on the nuclear energy programme of the party in question has been received, when the undertakings, arrangements and other information called for by the guidelines are in place or have been received and when the parties have agreed that the reprocessing and plutonium storage are an integral part of the described nuclear energy programme ; where it is proposed to carry out reprocessing or storage of plutonium when these conditions are not met, the operation should take place only when the parties have so agreed after consultation, which should take place promptly to consider any such proposal ;

(h) the reprocessing and plutonium storage envisaged should only take place so long as the commitment of the party in question to non-proliferation does not change and so long as the commitment to periodic and timely consultations referred to in guideline (f) is honoured.

3. I note that Canada and the Community have agreed that the objectives of the above guidelines have been met.

In particular I note that Canada and the Community and its Member States, to the extent of their respective competences, have made an effective commitment to non-proliferation and have submitted all relevant material to IAEA safeguards, and to adequate physical protection measures, in paragraphs (c) and (g) of the exchange of letters completed by the letters from Member States' foreign ministers to Canadian ambassadors on physical protection. I also note that the Community has provided Canada with the description of the current and planned nuclear energy programmes of the Community and of its Member States and that the notification and material reporting procedures have been settled.

4. Finally I note that these arrangements take into account *inter alia* the results of INFCE's studies in relation to the operations in question, as envisaged in paragraph 5 of Annex C to the exchange of letters. I note that the parties, in particular, acknowledge that the separation, storage, transportation and use of plutonium require particular measures to reduce the risk of nuclear proliferation ; are determined to continue to support the development of international safeguards and other non-proliferation measures relevant to reprocessing and plutonium, including an effective and generally accepted international plutonium storage scheme ; recognize the role of reprocessing in connection with the maximum use of available resources and the management of materials contained in spent fuel or other peaceful non-explosive uses, including research, in particular in the context of significant nuclear energy programmes ; and desire the predictable and practical implementation of paragraph (e) of the exchange of letters taking into account both their determination to ensure the furtherance of the objective of non-proliferation and the long-term needs of the nuclear energy programmes of the parties.

5. I have the honour to inform the Commission that pursuant to the above, in accordance with paragraph (e) of the exchange of letters, the Government of Canada agrees that material subject to the Agreement may be reprocessed and plutonium stored within the framework of the current and planned nuclear energy programmes as described and up-dated from time to time by the Community and its Member States.

6. I have the honour to inform the Commission that the Agreement given by the Government of Canada in paragraph 5 will remain in force as long as the following conditions are met :

   (i) that the Community maintain its commitment to non-proliferation with respect to guideline (a) which is set out in paragraph (c) of the exchange of letters, and

   (ii) that the Community continue to consult with the Government of Canada, as provided for by the Agreement with a view to up-dating the described nuclear energy programmes and informing the Government of Canada of any significant changes.

7. Paragraph (e) of the exchange of letters provides that material subject to the Agreement shall be enriched beyond 20 % and that uranium enriched beyond 20 % shall be stored only according to conditions agreed upon in writing between the parties. I have the honour to propose that the parties agree to consult within 40 days of the receipt of a request from either party to consider proposals for conditions to be agreed upon in writing according to which material subject to the Agreement may be enriched beyond 20 % or uranium enriched beyond 20 % may be stored.

8. I have the honour to confirm that the documents containing the descriptions of current and planned nuclear energy programmes of the Community and its Member States shall remain confidential to the Contracting Parties.

9. If the foregoing is acceptable to the European Atomic Energy Community, I have the honour to propose that this letter, which is authentic in both English and French, together with Your Excellency's reply to that effect shall constitute the Agreement required by paragraph (e) of the exchange of letters, and replace both Annex C thereto and the 23 December 1980 exchange of letters. This Agreement shall take effect as of the date of Your Excellency's reply to this letter.

Please accept, Sir, the assurance of my highest consideration.

Brussels, 18 December 1981

B. Letter from the Community

Your Excellency,

I have the honour to acknowledge receipt of your letter of todays date which reads as follows :

'1. I have the honour to refer to the 16 January 1978 exchange of letters between the Government of Canada and the European Atomic Energy Community (Euratom) (hereinafter referred to as the exchange of letters) amending the Agreement between the Government of Canada and the European Atomic Energy Community for cooperation in the peaceful uses of atomic energy of 6 October 1959 (hereinafter referred to as the Agreement) particularly in so far as it relates to safeguards (followed by an additional exchange of letters). I specifically refer to paragraph (e) of the exchange of letters which states that :

"Material referred to in paragraph (c) shall be enriched beyond 20 % or reprocessed and plutonium or uranium enriched beyond 20 % shall be stored only according to conditions agreed upon in writing between the parties (see Annex C : Interim Arrangement concerning enrichment, reprocessing and subsequent storage of nuclear material within the Community and Canada)."

Paragraph 5 of Annex C states that the parties would commence negotiations as soon as possible after 31 December 1979, or the termination of the INFCE study, whichever was earlier, with a view to replacing the Interim Arrangement by other arrangements that would take into account *inter alia* any results of the INFCE studies in relation to the operations in question.

2. These negotiations have now been completed and I have the honour to propose that the guidelines set forth below should cover reprocessing and plutonium storage and use :

(a) an effective commitment to non-proliferation should have been made and should continue to be maintained by the party envisaging reprocessing and plutonium storage and use ;

(b) all nuclear material subject to a peaceful uses commitment in facilities involved in reprocessing and the storage and use of plutonium should be subject to IAEA safeguards ;

(c) all nuclear material subject to a peaceful uses commitment in faciljties involved in reprocessing and the subsequent storage and use activities, including related transport, should be subject to adequate physical protection measures ;

(d) mutually satisfactory notification and material reporting procedures should be in place between the parties ;

Mr Richard Tait,
Ambassador Extraordinary and Plenipotentiary,
Head of the Canadian Mission to the European Communities

(e) a description of the current and planned nuclear energy programme including in particular a detailed description of the policy, legal and regulatory elements relevant to reprocessing and plutonium storage and use should be provided by the party envisaging such activities;

(f) the parties should agree to periodic and timely consultations at which *inter alia* the information provided under guideline (e) above would be updated and significant changes in the nuclear energy programme would receive the fullest possible consideration;

(g) the reprocessing and plutonium storage should only take place when the information provided on the nuclear energy programme of the party in question has been received, when the undertakings, arrangements and other information called for by the guidelines are in place or have been received and when the parties have agreed that reprocessing and plutonium storage are an integral part of the described nuclear energy programme; where it is proposed to carry out reprocessing or storage of plutonium when these conditions are not met, the operation should take place only when the parties have so agreed after consultation, which should take place promptly to consider any such proposal;

(h) the reprocessing and plutonium storage envisaged should only take place so long as the commitment of the party in question to non-proliferation does not change and so long as the commitment to periodic and timely consultations referred to in guideline (f) is honoured.

3. I note that Canada and the Community have agreed that the objectives of the above guidelines have been met.

In particular I note that Canada and the Community and its Member States, to the extent of their respective competences, have made an effective commitment to non-proliferation and have submitted all relevant material to IAEA safeguards, and to adequate physical protection measures in paragraphs (c) and (g) of the exchange of letters completed by the letters from Member States' foreign ministers to Canadian ambassadors on physical protection. I also note that the Community has provided Canada with the description of the current and planned nuclear energy programmes of the Community and of its Member States and that the notification and material reporting procedures have been settled.

4. Finally I note that these arrangements take into account *inter alia* the results of INFCE's studies in relation to the operations in question as, envisaged in paragraph 5 of Annex C to the exchange of letters. I note that the parties, in particular acknowledge that the separation, storage transportation and use of plutonium require particular measures to reduce the risk of nuclear proliferation; are determined to continue to support the development of international safeguards and other non-proliferation measures relevant to reprocessing and plutonium including an effective and generally accepted international plutonium storage scheme; recognize the role of reprocessing in connection with the maximum use of available resources and the management of materials contained in spent fuel or other peaceful non-explosive uses, including research, in particular in the context of significant nuclear energy programmes; and desire the predictable and practical implementation of paragraph (e) of the exchange of letters taking into account both their determination to ensure the furtherance of the objective of non-proliferation and the long-term needs of the nuclear energy programmes of the parties.

5. I have the honour to inform the Commission that pursuant to the above, in accordance with paragraph (e) of the exchange of letters, the Government of Canada agrees that material subject to the Agreement may be reprocessed and plutonium stored within the framework of the current and planned nuclear energy programmes as described and up-dated from time-to-time by the Community and its Member States.

6. I have the honour to inform the Commission that the agreement given by the Government of Canada in paragraph 5 will remain in force as long as the following conditions are met:

   (i) that the Community maintain its commitment to non-proliferation with respect to guideline (a) which is set out in paragraph (c) of the exchange of letters, and

   (ii) that the Community continue to consult with the Government of Canada, as provided for by the Agreement, with a view to up-dating the described nuclear energy programmes and informing the Government of Canada of any significant changes.

7. Paragraph (e) of the exchange of letters provides that material subject to the Agreement shall be enriched beyond 20 % and that uranium enriched beyond 20 % shall be stored only according to conditions agreed upon in writing between the parties. I have the honour to propose that the parties agree to consult within 40 days of the receipt of a request from either party to consider proposals for conditions to be agreed upon in writing according to which material subject to the Agreement may be enriched beyond 20 % or uranium enriched beyond 20 % may be stored.

8. I have the honour to confirm that the documents containing the descriptions of current and planned nuclear energy programmes of the Community and its Member States shall remain confidential to the Contracting Parties.

9. If the foregoing is acceptable to the European Atomic Energy Community, I have the honour to propose that this letter, which is authentic in both English and French, together with Your Excellency's reply to that effect shall constitute the agreement required by paragraph (e) of the exchange of letters and replace both Annex C thereto and the 23 December 1980 exchange of letters. This Agreement shall take effect as of the date of Your Excellency's reply to this letter.'

I have further the honour to inform Your Excellency that the European Atomic Energy Community takes note of the guidelines set forth by the Canadian Government in Your Excellency's letter and accepts that they should cover the reprocessing of material subject to the Agreement and the storage of plutonium so obtained and agrees that Your Excellency's letter and this reply shall constitute the agreement required by paragraph (e) of the exchange of letters and replace both Annex C thereto and the 23 December 1980 exchange of letters.

Please accept, Your Excellency, the assurance of my highest consideration.

AGREEMENT

in the form of an exchange of letters between the European Atomic Energy Community (Euratom) and the Government of Canada, amending the Agreement between the European Atomic Energy Community (Euratom) and the Government of Canada of 6 October 1959 for cooperation in the peaceful uses of atomic energy

(85/C 191/03)

A. Letter from the Community

Brussels, 21 June 1985

Your Excellency,

I refer to the Agreement between the European Atomic Energy Community (Euratom) and the Government of Canada for Cooperation in the Peaceful Uses of Atomic Energy, signed on 6 October 1959 and subsequently amended by the exchange of letters of 16 January 1978 and 18 December 1981, hereinafter referred to as the 'Agreement'.

The nuclear relationship between Euratom and Canada has grown significantly and undergone transformation since 1959. There is therefore some importance in updating the Agreement so that it should provide a more stable, predictable and administratively effective legal framework for the expanded relationship between the Contracting Parties.

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

1. Pursuant to Article XV.2 of the Agreement, after the initial period of 10 years, which expired on 17 November 1969, either Contracting Party can terminate the Agreement at any time, subject to six months' notice. The Contracting Parties hereby agree that the Agreement shall remain in force for a further period of 20 years from today's date. If neither Contracting Party has notified the other Contracting Party of its intention to terminate the Agreement at least six months prior to expiry of that period, the Agreement shall continue in force for additional periods of five years each unless, at least six months before the expiration of any such additional period, a Contracting Party notifies the other Contracting Party of its intention to terminate the Agreement.

2. Article IX (1) of the Agreement provides that the prior consent in writing of the Community or the Government of Canada, as the case may be, is required for the transfer beyond the control of either Contracting Party of material or equipment obtained pursuant to the Agreement or source of special nuclear material derived through the use of such material or equipment. In order to facilitate the administration of the Agreement:

   (a) In the case of natural uranium, depleted uranium, other source materials, uranium enriched to 20 % or less in the isotope U-235 and heavy water, Canada hereby provides its consent to the future retransfers of such items by the Community to third parties, provided that:

      (i) such third parties have been identified by Canada;

      (ii) procedures acceptable to both Contracting Parties relating to such retransfers shall be established;

   (b) retransfers to third parties of material or equipment other than those referred to in (a) above, shall continue to require the prior written consent of Canada prior to the retransfer;

   (c) in the case of non compliance by Euratom with the provisions in this paragraph, Canada shall have the right to terminate the arrangements made pursuant to this paragraph in whole or in part.

3. Further to Article IX (1) of the Agreement, Canada hereby provides its consent for the retransfer, in any given period of 12 months, to any third party, signatory to the NPT, of the following materials and quantities:

   (a) special fissionable material (50 effective grams);

   (b) natural uranium (500 kilograms);

(c) depleted uranium (1 000 kilograms), and

(d) thorium (1 000 kilograms).

The Joint Technical Working Group shall establish administrative arrangements for the purpose of reviewing the implementation of this provision.

4. With reference to paragraph (d) of the exchange of letters of 16 January 1978 amending the Euratom/Canada Agreement of 1959, Euratom agrees to waive the requirement for prior notification in cases where natural uranium, depleted uranium, other source materials, uranium enriched to 20 % or less in the isotope U-235 and heavy water are received by Euratom from a third party, identified in accordance with paragraph 2 (a) (i) above, which has identified the item or the items as being subject to an Agreement with Canada. In such cases, the item or items shall become subject to the Agreement upon receipt.

5. The Contracting Parties may wish, in particular circumstances, to apply mechanisms other than those set forth in the Agreement in order to:

(a) make material subject to the Agreement, or

(b) remove material from coverage of the Agreement.

There shall be prior written agreement between the Contracting Parties in each case on the conditions under which such mechanisms are to be applied.

6. The Contracting Parties recognize that the programme provided for in Article II of the Agreement has been successfully carried out and brought to conclusion and reaffirm their commitment to mutual cooperation in nuclear research and development as laid down in Article I. They note that the list of fields of cooperation, set out in Article I, is illustrative and not exhaustive.

If the foregoing is acceptable to the Government of Canada, I have the honour to propose that this letter, which is authentic in both English and French, together with Your Excellency's reply to that effect shall constitute an agreement amending the Agreement. The present agreement shall take effect as of the date of Your Excellency's reply to this letter.

Please accept, your Excellency, the assurance of my highest consideration.

For the European Atomic Energy Community

WILLY DE CLERCQ

B. Letter from the Government of Canada

Brussels, 21 June 1985

Sir,

I have the honour to acknowledge receipt of your letter of today's date which reads as follows:

'I refer to the Agreement between the European Atomic Energy Community (Euratom) and the Government of Canada for Cooperation in the Peaceful Uses of Atomic Energy, signed on 6 October 1959 and subsequently amended by the exchange of letters of 16 January 1978 and 18 December 1981, hereinafter referred to as the "Agreement".

The nuclear relationship between Euratom and Canada has grown significantly and undergone transformation since 1959. There is therefore some importance in updating the Agreement so that it should provide a more stable, predictable and administratively effective legal framework for the expanded relationship between the Contracting Parties.

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

1. Pursuant to Article XV.2 of the Agreement, after the initial period of 10 years, which expired on 17 November 1969, either Contracting Party can terminate the Agreement at any time, subject to six months' notice. The Contracting Parties hereby agree that the Agreement shall remain in force for a further period of 20 years from today's date. If neither Contracting Party has notified the other Contracting Party of its intention to terminate the Agreement at least six months prior to expiry of that period, the Agreement shall continue in force for additional periods of five years each unless, at least six months before the expiration of any such additional period, a Contracting Party notifies the other Contracting Party of its intention to terminate the Agreement.

2. Article IX (1) of the Agreement provides that the prior consent in writing of the Community or the Government of Canada, as the case may be, is required for the transfer beyond the control of either Contracting Party of material or equipment obtained pursuant to the Agreement or source of special nuclear material derived through the use of such material or equipment. In order to facilitate the administration of the Agreement:

   (a) In the case of natural uranium, depleted uranium, other source materials, uranium enriched to 20 % or less in the isotope U-235 and heavy water, Canada hereby provides its consent to the future retransfers of such items by the Community to third parties, provided that:

      (i) such third parties have been identified by Canada;

      (ii) procedures acceptable to both Contracting Parties relating to such retransfers shall be established;

   (b) retransfers to third parties of material or equipment other than those referred to in (a) above, shall continue to require the prior written consent of Canada prior to the retransfer;

   (c) in the case of non compliance by Euratom with the provisions in this paragraph, Canada shall have the right to terminate the arrangements made pursuant to this paragraph in whole or in part.

3. Further to Article IX (1) of the Agreement, Canada hereby provides its consent for the retransfer, in any given period of 12 months, to any third party, signatory to the NPT, of the following materials and quantities:

   (a) special fissionable material (50 effective grams);

   (b) natural uranium (500 kilograms);

   (c) depleted uranium (1 000 kilograms), and

   (d) thorium (1 000 kilograms).

   The Joint Technical Working Group shall establish administrative arrangements for the purpose of reviewing the implementation of this provision.

4. With reference to paragraph (d) of the exchange of letters of 16 January 1978 amending the Euratom/Canada Agreement of 1959, Euratom agrees to waive the requirement for prior notification in cases where natural uranium, depleted uranium, other source materials, uranium enriched to 20 % or less in the isotope U-235 and heavy water are received by Euratom from a third party, identified in accordance with paragraph 2 (a) (i) above, which has identified the item or the items as being subject to an Agreement with Canada. In such cases, the item or items shall become subject to the Agreement upon receipt.

5. The Contracting Parties may wish, in particular circumstances, to apply mechanisms other than those set forth in the Agreement in order to:

   (a) make material subject to the Agreement, or

   (b) remove material from coverage of the Agreement.

   There shall be prior written agreement between the Contracting Parties in each case on the conditions under which such mechanisms are to be applied.

6. The Contracting Parties recognize that the programme provided for in Article II of the Agreement has been successfully carried out and brought to conclusion and reaffirm their commitment to mutual cooperation in nuclear research and development as laid down in Article I. They note that the list of fields of cooperation, set out in Article I, is illustrative and not exhaustive.

If the foregoing is acceptable to the Government of Canada, I have the honour to propose that this letter, which is authentic in both English and French, together with Your Excellency's reply to that effect shall constitute an agreement amending the Agreement. The present agreement shall take effect as of the date of Your Excellency's reply to this letter.'

I have the honour to inform you that the Government of Canada is in agreement with the contents of your letter, and to confirm that your letter and this reply, which is authentic in English and French, shall constitute an agreement amending the Agreement between the Government of Canada and the European Atomic Energy Community (Euratom) of 6 October 1959, as amended, which shall enter into force on the date of this letter.

Please accept, Sir, the assurance of my highest consideration.

For the Government of Canada

Jacques GIGNAC

AGREED MINUTES

to the Agreement in the form of an exchange of letters between the European Atomic Energy Community (Euratom) and the Government of Canada, amending the Agreement between the European Atomic Energy Community (Euratom) and the Government of Canada of 6 October 1959 for cooperation in the peaceful uses of atomic energy

1. Paragraph 2 (a) of the present Agreement contemplates simplified procedures for transfers of nuclear items.

2. In implementation of such provision Canada shall provide the Community with, and keep up to date, the list of countries to which nuclear items can be transferred in accordance with the aforementioned provision. In identifying such countries Canada will take into account both the non-proliferation policy of the Canadian Government and requests made by the Community to cover its industrial and commercial interests. Canada will be prepared to consider any requests by the Community for the maintenance of any countries on the list or the inclusion of any additional countries on it.

3. During the negotiations on 19 and 20 November 1984, the Canadian delegation stated, with reference to paragraph 2 (a) (ii) of the present Agreement, that Canada would use its best endeavours in discussions with other trading partners concerned progressively to simplify as far as possible, consistent with its non-proliferation policy, the notification and related procedures connected with retransfers. Canada's general aim is to establish a network of partner countries amongst which Canadian-origin nuclear material could circulate as easily as possible.

4. With reference to paragraph 5 of the present Agreement, the intention of the Contracting Parties would be, jointly and progressively, to develop a body of administrative precedents aimed at enabling individual cases to be treated expeditiously.

AGREEMENT

in the form of an exchange of letters between the European Atomic Energy Community (Euratom) and the Government of Canada amending the Agreement between the European Atomic Energy Community (Euratom) and the Government of Canada for cooperation in the peaceful uses of atomic energy of 6 October 1959

(91/C 215/05)

A. *Letter from the Community*

Your Excellency,

I refer to the history of cooperation between Euratom and Canada in the peaceful use of atomic energy and in the field of fusion research and development and to the common desire of Euratom and Canada to pursue their cooperation in these domains.

In the development of this cooperation, I note the importance of the Agreement between the European Atomic Energy Community (Euratom) and the Government of Canada for cooperation in the peaceful uses of atomic energy, signed on 6 October 1959 and subsequently amended by exchanges of letters of 16 January 1978, 18 December 1981 and 21 June 1985 (hereinafter referred to as 'the Agreement') and the Memorandum of Understanding between the European Atomic Energy Community represented by the Commission of the European Communities and the Government of Canada concerning cooperation in the field of fusion research and development, concluded on 6 March 1986.

Euratom requires substantial quantities of tritium for the implementation of the Euratom programme of research and training in the field of controlled thermonuclear fusion. I note that Canada has declared its readiness to supply tritium and tritium-related equipment for this purpose subject to appropriate non-proliferation assurances.

At present, tritium and tritium-related equipment do not come within the purview of the Agreement. The Agreement can provide the basis for the application of non-proliferation assurances to tritium and tritium-related equipment transferred from Canada to Euratom for use in the Fusion programme, and to tritium produced or processed with such equipment.

I have therefore the honour to propose that the Agreement be completed by the following provisions:

1. Tritium and tritium-related equipment transferred from Canada to Euratom, whether directly or indirectly, for use in the Fusion programme and tritium produced or processed with such equipment (all such tritium and tritium-related equipment being hereinafter referred to as 'tritium items') shall be subject to the Agreement. Accordingly, in particular, such tritium items:

   (a) shall not be used for the manufacture of any nuclear weapon or for other military uses of nuclear energy or for the manufacture of any other nuclear explosive device; and

   (b) shall not be re-transferred beyond the territories in which the Euratom Treaty is applied, except as provided for in paragraph 4 of this exchange of letters, without the prior written consent of the Government of Canada.

2. Unless the prior written consent of the Government of Canada is obtained for another use, tritium items subject to the Agreement shall only be used in the Fusion programme.

3. With reference to the undertakings made in Article IX of the Agreement and paragraph (c) of the exchange of letters of 16 January 1978, Euratom shall apply to tritium items appropriate recording, accounting and inventory procedures. These procedures shall be regularly reviewed by the Joint Technical Working Group (JTWG), and, at the request of either Contracting Party, shall be subject to consultations in accordance with Article XIII of the Agreement.

4. (a) Paragraph 2 of the exchange of letters of 21 June 1985 shall apply to re-transfers of tritium items, for use in connection with the Fusion programme, to third parties cooperating in or with the Fusion programme.

(b) Pursuant to this exchange of letters, Canada shall identify a third party, in accordance with paragraph 2 (a) (i) of the exchange of letters of 21 June 1985, once it has given Canada appropriate non-proliferation assurances equivalent to those provided by the present exchange of letters.

(c) The waiver provided in paragraph 4 of the exchange of letters of 21 June 1985 shall be deemed to apply to a tritium item received by Euratom from a third party identified in accordance with (b) above which has identified the tritium item as being subject to an agreement with Canada. For greater certainty, the tritium item so received shall become subject to the Agreement upon receipt.

5. Appropriate measures shall be applied within the Community to prevent unauthorized taking and use of tritium items subject to the Agreement.

6. (a) 'Fusion programme' means the Euratom programme of research and training in the field of controlled thermonuclear fusion as adopted by the Council of the European Communities by 'Council Decision 88/448/Euratom of 25 July 1988 adopting a multi-annual research and training programme in the field of controlled thermonuclear fusion' (OJ No L 222, 12. 8. 1988, p. 5) and, for the purpose of greater certainty, includes Euratom's participation in the international Thermonuclear Experimental Reactor (ITER). Each time a change is made to the substance of the Euratom programme of research and training in the field of controlled thermonuclear fusion, Euratom shall notify Canada of the change. At the request of either Contracting Party, any change to the Fusion programme shall be reviewed at consultations pursuant to Article XIII of the Agreement.

(b) 'Tritium-related equipment' means equipment specially designed or prepared for the production, recovery, extraction, concentration or handling of tritium and its compounds and mixtures.

(c) 'Tritium' includes compounds and mixtures that contain tritium in which the ratio of tritium to hydrogen by atoms is greater than 1 part in 1 000.

If the foregoing is acceptable to the Government of Canada, I have the honour to propose that this letter, which is authentic in both English and French, together with Your Excellency's reply to that effect, shall constitute an agreement amending the Agreement. The present Agreement shall enter into force as of the date of Your Excellency's reply to this letter and shall remain in force so long as any tritium items referred to in this letter remain in existence or it is otherwise agreed.

Please accept, Your Excellency, the assurance of my highest consideration.

For the European Atomic Energy Community
represented by the
Commission of the European Communities
Frans ANDRIESSEN
Vice-President

B. *Letter from the Government of Canada*

Sir,

I have the honour to acknowledge receipt of your letter of today's date which reads as follows:

'I refer to the history of cooperation between Euratom and Canada in the peaceful use of atomic energy and in the field of fusion research and development and to the common desire of Euratom and Canada to pursue their cooperation in these domains.

In the development of this cooperation, I note the importance of the Agreement between the European Atomic Energy Community (Euratom) and the Government of Canada for cooperation in the peaceful uses of atomic energy, signed on 6 October 1959 and subsequently amended by exchanges of letters of 16 January 1978, 18 December 1981 and 21 June 1985 (hereinafter referred to as "the Agreement") and the Memorandum of Understanding between the European Atomic Energy Community represented by the Commission of the European Communities and the Government of Canada concerning cooperation in the field of fusion research and development, concluded on 6 March 1986.

Euratom requires substantial quantities of tritium for the implementation of the Euratom programme of research and training in the field of controlled thermonuclear fusion. I note that Canada has declared its readiness to supply tritium and tritium-related equipment for this purpose subject to appropriate non-proliferation assurances.

At present, tritium and tritium-related equipment do not come within the purview of the Agreement. The Agreement can provide the basis for the application of non-proliferation assurances to tritium and tritium-related equipment transferred from Canada to Euratom for use in the Fusion programme, and to tritium produced or processed with such equipment.

I have therefore the honour to propose that the Agreement be completed by the following provisions:

1. Tritium and tritium-related equipment transferred from Canada to Euratom, whether directly or indirectly, for use in the Fusion programme and tritium produced or processed with such equipment (all such tritium and tritium-related equipment being hereinafter referred to as "tritium items") shall be subject to the Agreement. Accordingly, in particular, such tritium items:

   (a) shall not be used for the manufacture of any nuclear weapon or for other military uses of nuclear energy or for the manufacture of any other nuclear explosive device; and

   (b) shall not be re-transferred beyond the territories in which the Euratom Treaty is applied, except as provided for in paragraph 4 of this exchange of letters, without the prior written consent of the Government of Canada.

2. Unless the prior written consent of the Government of Canada is obtained for another use, tritium items subject to the Agreement shall only be used in the Fusion programme.

3. With reference to the undertakings made in Article IX of the Agreement and paragraph (c) of the exchange of letters of 16 January 1978, Euratom shall apply to tritium items appropriate recording, accounting and inventory procedures. These procedures shall be regularly reviewed by the Joint Technical Working Group (JTWG), and, at the request of either Contracting Party, shall be subject to consultations in accordance with Article XIII of the Agreement.

4. (a) Paragraph 2 of the exchange of letters of 21 June 1985 shall apply to re-transfers of tritium items, for use in connection with the Fusion programme, to third parties cooperating in or with the Fusion programme.

(b) Pursuant to this exchange of letters, Canada shall identify a third party, in accordance with paragraph 2 (a) (i) of the exchange of letters of 21 June 1985, once it has given Canada appropriate non-proliferation assurances equivalent to those provided by the present exchange of letters.

(c) The waiver provided in paragraph 4 of the exchange of letters of 21 June 1985 shall be deemed to apply to a tritium item received by Euratom from a third party identified in accordance with (b) above which has identified the tritium item as being subject to an agreement with Canada. For greater certainty, the tritium item so received shall become subject to the Agreement upon receipt.

5. Appropriate measures shall be applied within the Community to prevent unauthorized taking and use of tritium items subject to the Agreement.

6. (a) "Fusion programme" means the Euratom programme of research and training in the field of controlled thermonuclear fusion as adopted by the Council of the European Communities by "Council Decision 88/448/Euratom of 25 July 1988 adopting a multiannual research and training programme in the field of controlled thermonuclear fusion" (OJ No L 222, 12. 8. 1988, p. 5) and, for the purpose of greater certainty, includes Euratom's participation in the International Thermonuclear Experimental Reactor (ITER). Each time a change is made to the substance of the Euratom programme of research and training in the field of controlled thermonuclear fusion, Euratom shall notify Canada of the change. At the request of either Contracting Party, any change to the Fusion programme shall be reviewed at consultations pursuant to Article XIII of the Agreement.

(b) "Tritium-related equipment" means equipment specially designed or prepared for the production, recovery, extraction, concentration or handling of tritium and its compounds and mixtures.

(c) "Tritium" includes compounds and mixtures that contain tritium in which the ratio of tritium to hydrogen by atoms is greater than 1 part in 1 000.

If the foregoing is acceptable to the Government of Canada, I have the honour to propose that this letter, which is authentic in both English and French, together with Your Excellency's reply to that effect, shall constitute an agreement amending the Agreement. The present Agreement shall enter into force as of the date of Your Excellency's reply to this letter and shall remain in force so long as any tritium items referred to in this letter remain in existence or it is otherwise agreed.'

I have the honour to inform you that the Government of Canada is in agreement with the contents of your letter, and to confirm that your letter and this reply, which is authentic in English and French, shall constitute an agreement amending the Agreement between the Government of Canada and the European Atomic Energy Community (Euratom) of 6 October 1959, as amended, which shall enter into force on the date of this letter and shall remain in force so long as any tritium items referred to in this letter remain in existence or it is otherwise agreed.

Please accept, Sir, the assurance of my highest consideration.

For the Government of Canada
Daniel MOLGAT

The Canadian Mission
to the European Union

Canada

La Mission du Canada
auprès de l'Union européenne

Note No. 5528

The Canadian Mission to the European Union presents its compliments to the European Commission and has the honour to refer to the Exchange of Letters of July 15, 1991 between the Government of Canada and the European Atomic Energy Community (Euratom) amending the Agreement for Cooperation in the Peaceful Uses of Atomic Energy of October 6, 1959.

The Canadian Mission has the honour to inform Euratom that, pursuant to paragraph 4 (b) of the Exchange of Letters between Canada and Euratom of July 15, 1991, Canada wishes to identify Switzerland as a third party with which retransfers of tritium items in the context of the fusion research programme of Euratom may take place.

The Canadian Mission avails itself of this opportunity to renew to the European Commission the assurance of its highest consideration.

Brussels, April 29, 1996

Euratom/Australia

The Agreement between the Government of Australia and Euratom concerning transfers of nuclear material from Australia to Euratom entered into force on 15 January 1982. It has not so far (March 1997) been amended. Two subsequent exchanges of notes deal respectively with international exchanges of safeguards obligations, and with retransfers of plutonium obligated both to Australia and the US from the Community to Japan.

Contents:

- Agreement between the Government of Australia and the European Atomic Energy Community concerning transfers of nuclear material from Australia to the European Atomic Energy Community of 21 September 1981 *(OJ L 281 of 4.10.82, pp. 8-20)*.

- Exchange of notes between the Australian Mission to the European Communities and the Commission concerning the safeguards obligations attaching to material transferred or retransferred pursuant to the Agreement on Nuclear Transfers, 8 September 1993.

- Exchange of notes between the Commission and the Australian Mission to the European Communities concerning the granting of Australian advance consent to the retransfer from the Community to Japan of plutonium, where such plutonium is subject in the Community to the Agreement on Nuclear Transfers and to the United States/Euratom Agreement, and has been recovered from spent fuel that was subject in Japan to the Japan-United States agreement and to the Japan-Australia agreement, 8 September 1993.

II

(Acts whose publication is not obligatory)

COMMISSION

AGREEMENT

between the Government of Australia and the European Atomic Energy Community concerning transfers of nuclear material from Australia to the European Atomic Energy Community

(82/672/Euratom)

THE GOVERNMENT OF AUSTRALIA

AND THE EUROPEAN ATOMIC ENERGY COMMUNITY,

DETERMINED to ensure that the international development and use of nuclear energy for peaceful purposes are carried out under arrangements which will further the objective of the non-proliferation of nuclear weapons;

MINDFUL that Australia and the following Member States of the Community, Belgium, Denmark, the Federal Republic of Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands and the United Kingdom of Great Britain and Northern Ireland are Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, done at London, Moscow and Washington on 1 July 1968 (hereinafter referred to as 'the Treaty');

MINDFUL also that Member States of the Community have concluded with Australia bilateral nuclear cooperation agreements and that the provisions of this Agreement shall, when in force, be regarded as complementary to the provisions of any such bilateral agreements in force and shall, where appropriate, supersede the provisions of those agreements;

RECOGNIZING that Australia, as a non-nuclear weapon State, has, under the Treaty, undertaken not to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices and that it has concluded an agreement with the International Atomic Energy Agency (hereinafter referred to as 'the Agency') for the application of safeguards in connection with the Treaty;

RECOGNIZING that the Community, pursuant to Article 2 (e) of the Euratom Treaty, must ensure 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 will be applied in accordance with Chapter VII of the Euratom Treaty;

RECOGNIZING further that the Community and the Member States of the Community have entered into agreements with the Agency for the application of safeguards within the Community;

DESIRING to establish conditions consistent with their determination to ensure the furtherance of the objective of non-proliferation under which nuclear material can be transferred from Australia to the Community for peaceful purposes,

HAVE AGREED AS FOLLOWS:

Article I

For the purpose of this Agreement:

(a) 'appropriate authority' means, in the case of Australia, the Australian Safeguards Office, and, in the case of the Community, the Commission of the European Communities, or such other authority as the Party concerned may from time to time notify the other Party;

(b) 'military purpose' means direct military applications of nuclear energy such as nuclear weapons, military nuclear propulsion, military nuclear rocket engines or military nuclear reactors but does not include indirect uses such as power for a military base drawn from a civil power network, or production of radioisotopes to be used for diagnosis in a military hospital;

(c) 'nuclear material' means any 'source material' or special fissionable material' as those terms are defined in Article XX of the Statute of the Agency. Any determination by the Board of Governors of the Agency under Article XX of the Agency's Statute which 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;

(d) 'Parties' means Australia and the Community;

(e) '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;

(f) 'within the Community' means within the territories to which the Euratom Treaty applies;

(g) 'beyond the Community' has the corresponding meaning;

(h) 'peaceful purposes' means all uses other than use for a military purpose.

Article II

1. This Agreement shall apply to:

(a) nuclear material transferred from Australia to the Community for peaceful purposes whether directly or through a third country, provided that Australia has so informed the Community in writing prior to, or at the time of, the transfer of such nuclear material. Notwithstanding the abovementioned requirement for notification, all the provisions of this Article shall apply to nuclear material which has been transferred between Australia and Member States of the Community pursuant to bilateral agreements and which is notified to the Community at the time this Agreement comes into force;

(b) all forms of nuclear material prepared by chemical or physical processes or isotopic separation provided that the quantity of nuclear material so prepared shall only be regarded as falling within the scope of this Agreement in the same proportion as the quantity of nuclear material used in its preparation, and which is subject to this Agreement, bears to the total quantity of nuclear material so used;

(c) all generations of nuclear material produced by neutron irradiation provided that the quantity of nuclear material so produced shall only be regarded as falling within the scope of the Agreement in the same proportion as the quantity of nuclear material which is subject to this Agreement and which, used in its production, contributes to this production;

(d) if so provided for in a bilateral agreement between Australia and a Member State, nuclear material produced, processed or used in equipment which that Member State or Australia in consultation with that Member State has designated to the Community as equipment of Australian origin or as equipment derived from equipment or technology of Australian origin, and which is within the jurisdication of that Member State at the time of designation and use.

2. The items referred to in paragraph 1 of this Article shall be transferred pursuant to this Agreement only to

a natural or legal person duly authorized to receive those items.

Article III

1. Nuclear material referred to in Article II of this Agreement shall remain subject to the provisions of this Agreement until it is determined that it is no longer usable, or that it is practicably irrecoverable for processing into a form in which it is usable for any nuclear activity relevant from the point of view of safeguards or until it has been transferred beyond the Community in accordance with the provisions of Article IX of this Agreement.

2. For the purpose of determining when nuclear material subject to this Agreement is no longer usable or is no longer practicably recoverable for processing into a form in which it is usable for any nuclear activity relevant from the point of view of safeguards, both Parties shall accept a determination made by the Agency in accordance with the provisions for the termination of safeguards of the relevant safeguards agreement to which the Agency is a party and which is referred to in Articles V and VI of this Agreement.

Article IV

Nuclear material subject to this Agreement shall not be used for, or diverted to, the manufacture of nuclear weapons or other nuclear explosive devices, research on or development of nuclear weapons or other nuclear explosive devices, or be used for any military purpose.

Article V

1. Compliance with Article IV of this Agreement shall be ensured by a system of safeguards applied by the Community and the Agency pursuant to the Euratom Treaty and to the following safeguards agreements:

(a) the agreement concluded in accordance with Article III of the Treaty on 5 April 1973 between Belgium, Denmark, the Federal Republic of Germany, Ireland, Italy, Luxembourg, the Netherlands, the Community and the Agency;

(b) the agreement concluded in connection with the Treaty on 6 September 1976 between the United Kingdom, the Community and the Agency;

(c) the agreement concluded on 27 July 1978 between France, the Community and the Agency.

2. Without prejudice to Articles VI and VII of this Agreement, nuclear material subject to this Agreement shall be subject at all times to an agreement referred to in subparagraphs (a), (b) or (c) of paragraph 1 of this Article or to another agreement concluded in accordance with Article III of the Treaty.

Article VI

If, notwithstanding the provisions of Article V of this Agreement, nuclear material subject to this Agreement is present within the Community or any part thereof and the Agency has ceased to administer safeguards within the Community or such part thereof under the relevant safeguards agreement referred to in Article V of this Agreement, safeguards shall be applied under an agreement to which the Community and the Agency are parties and which provides safeguards equivalent in scope and effect to those provided by the relevant safeguards agreement referred to in Article V of this Agreement.

Article VII

If, notwithstanding the provisions of Articles V and VI of this Agreement, nuclear material subject to this Agreement is present within the Community or any part thereof and the Agency has ceased to administer safeguards within the Community or such part thereof pursuant to a safeguards agreement or agreements referred to in Articles V and VI of this Agreement, Australia and the Community shall forthwith enter into an agreement for the application of a safeguards system in the Community or the relevant part thereof which conforms with the safeguards principles and procedures of the Agency and which provides for safeguards equivalent in scope and effect to the Agency safeguards it replaces. The Parties shall consult and assist each other in the application of such a safeguards system.

Article VIII

1. Nuclear material subject to this Agreement shall be subject at all times to adequate levels of physical protection which shall satisfy as a minimum the criteria set out in Annex B to Agency document INFCIRC/254.

2. Measures of physical protection shall be applied by the Member States. The Member States, in applying physical protection measures, will be guided by recommendations of international expert groups and especially by Agency document INFCIRC/225 Rev. 1.

3. To take into account generally accepted developments in the field of physical protection, the provisions of Article XVIII shall apply.

Article IX

Nuclear material subject to this Agreement transferred to the Community shall not be transferred beyond the Community to any other country without the prior written consent of Australia.

Article X

Nuclear material subject to this Agreement shall only be enriched beyond 20 % in the isotope uranium 235 according to conditions agreed upon in writing between the Parties, as set out in Annex B.

Article XI

Nuclear material subject to this Agreement shall only be reprocessed according to conditions agreed upon in writing between the Parties, as set out in Annex C.

Article XII

1. In applying Articles IX, X and XI of this Agreement, Australia will take into account non-proliferation considerations and nuclear energy requirements of the Community. Australia shall not withhold its consent or agreement for the purpose of securing commercial advantage. Australia shall not unduly delay the making of any decision and shall also without undue delay inform the Community of any such decision.

2. If Australia considers that it is unable to grant consent to a matter referred to in Article IX of this Agreement, it shall provide the Community with an immediate opportunity for full consultation on that issue.

Article XIII

1. The appropriate authorities of both Parties shall consult at any time at the request of either Party to ensure the effective implementation of this Agreement. The Parties may jointly invite the Agency to participate in such consultations.

2. If nuclear material subject to this Agreement is present within the Community or any part thereof, the Community shall, upon the request of Australia, provide Australia in writing with the overall conclusions which the Agency has drawn from its verification activities, under the relevant safeguards agreement, in so far as they relate to nuclear material subject to this Agreement.

3. The appropriate authorities of both Parties shall establish an administrative arrangement to ensure the effective fulfilment of the obligations of this Agreement. An administrative arrangement established pursuant to this paragraph may be changed with the agreement of the appropriate authorities of both Parties.

Article XIV

The Parties shall take all appropriate precautions to preserve the confidentiality of commercial and industrial secrets and other confidential information received as a result of the operation of this Agreement.

Article XV

In the event of non-compliance by the Community or by any of its Member States with any of the provisions of Articles IV to XI inclusive, or of Articles XIII or XVI of this Agreement, or of non-compliance with, or repudiation of, Agency safeguards agreements by the Community or by any of its Member States, Australia shall have the right, subject to prior notification, to suspend or cancel further transfers of nuclear material and to require the Community and the relevant Member State or States to take corrective steps. If, following consultation between the Parties, such corrective steps are not taken within a reasonable time, Australia shall thereupon have the right to require the return of nuclear material subject to this Agreement. In the event of detonation of a nuclear explosive device by a non-nuclear-weapon State member of the Community, the aforementioned provisions would apply.

Article XVI

Any dispute arising out of the interpretation or application of this Agreement which is not settled by negotiation shall, at the request of either Party, be submitted to an arbitral tribunal which shall be composed of three arbitrators appointed in accordance with the provisions of this Article. Each Party shall designate one arbitrator who may be in the case of

Australia its national and in the case of the Community a national of one of its Member States, and the two arbitrators so designated shall elect a third, who shall not be a national of Australia or of a Member State of the Community and who shall be the chairman. If, within 30 days of the request for arbitration, either Party has not designated an arbitrator, either Party to the dispute may request the President of the International Court of Justice or the Secretary-General of the United Nations to appoint an arbitrator. In case of conflicting requests by the Parties to the dispute, the request to the Secretary-General of the United Nations shall have priority. The same procedure shall apply if, within 30 days of the designation or appointment of the second arbitrator, the third arbitrator has not been elected. A majority of the members of the tribunal shall constitute a quorum. All decisions shall be made by majority vote of all the members of the arbitral tribunal. The arbitral procedure shall be fixed by the tribunal. The decisions of the tribunal, including all rulings concerning its constitution, procedure, jurisdiction and the division of the expenses of arbitration between the Parties, shall be binding on both Parties and shall be implemented by them.

Article XVII

The provisions of this Agreement shall be regarded as complementary to the provisions of any bilateral nuclear cooperation agreements in force between Australia and Member States of the Community and shall, where appropriate, supersede the provisions of those agreements.

Article XVIII

1. The Parties may consult, at the request of either Party, on possible amendments to this Agreement, particularly to take account of international developments in the field of nuclear safeguards.

2. This Agreement may be amended or revised if the Parties so agree.

3. Any amendment shall enter into force on the date the Parties, by exchange of diplomatic notes, specify for its entry into force.

Article XIX

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

Article XX

1. This Agreement shall enter into force on the date the Parties, by an exchange of diplomatic notes, specify for its entry into force and shall remain in force for an initial period of 30 years. This term may be extended for such additional periods as may be agreed between the Parties.

2. Notwithstanding the suspension, termination or expiration of this Agreement or any cooperation hereunder for any reason, the obligations in Articles III, IV, V, VI, VII, VIII, IX, X, XI, XII, XIII and XIV shall continue in effect so long as any nuclear material subject to these Articles remains in the Community or under its jurisdiction or control anywhere or until it is determined in accordance with the provisions of Article III that such nuclear material is no longer usable, or is practicably irrecoverable for processing into a form in which it is usable, for any nuclear activity relevant from the point of view of safeguards.

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

Done in duplicate at Brussels this twenty-first day of September in the year one thousand nine hundred and eighty-one, in the Danish, Dutch, English, French, German, Greek and Italian languages, each text being equally authentic.

For the European Atomic Energy Community

W. HAFERKAMP

For the Government of Australia

R. FERNANDEZ

ANNEX A

Assurances from the Community

1. During the course of the negotiations between Australia and the European Atomic Energy Community, the Community side advised that it would be able to enter into an agreement with Australia concerning transfers of nuclear material from Australia to the Community. The Australian side acknowledged that an agreement of this scope between Australia and the European Atomic Energy Community would cover a significant area of the nuclear transfers likely to take place between Australia and the Community over the period of the duration of the Agreement.

2. Both sides recognized that there remained other areas of likely nuclear transfers between Australia and Member States and that in such circumstances supplementary arrangements would be required between Australia and the relevant Member State or States. In this connection both sides noted that two bilateral agreements between Australia and the United Kingdom and Australia and France have been concluded.

3. Both sides noted that the Member States, being prepared to confirm their willingness to enter into discussions if and when appropriate, about such arrangements, have submitted declarations to this effect.

4. The Community confirms there is no obstacle to the conclusion of such arrangements between Australia and any Member State of the Community wishing to conclude them, provided that any agreements or contracts are consistent with the Treaty establishing the European Atomic Energy Community.

ANNEX B

Procedure for consultations on conditions for high enrichment

Whereas Article X of the Agreement provides that nuclear material subject to the Agreement shall only be enriched beyond 20 % in the isotope uranium 235 according to conditions agreed upon in writing between the Parties.

The Parties to the Agreement,

declare that they shall not at present enrich nuclear material subject to the Agreement beyond 20 % in the isotope uranium 235; and

agree to consult within 40 days of the receipt of a request from either Party to consider proposals for conditions to be agreed upon in writing according to which nuclear material subject to the Agreement may be enriched beyond 20 % in the isotope uranium 235.

ANNEX C

Reprocessing

Whereas Article XI of the Agreement provides that nuclear material subject to the Agreement (hereinafter referred to as NMSA) shall be reprocessed only according to conditions agreed upon in writing between the Parties.

The Parties to the Agreement,

acknowledging that the separation, storage, transportation and use of plutonium require particular measures to reduce the risk of nuclear proliferation;

recognizing the role of reprocessing in connection with efficient energy use, management of materials contained in spent fuel or other peaceful non-explosive uses including research;

desiring predictable and practical implementation of the agreed conditions set out in this Annex, taking into account both their determination to ensure the furtherance of the objective of non-proliferation and the long-term needs of the nuclear fuel cycle programmes of the recipient Party;

determined to continue to support the development of international safeguards and other measures relevant to reprocessing and plutonium, including an effective and generally accepted international plutonium storage scheme,

Have agreed as follows:

Article 1

NMSA may be reprocessed subject to the following conditions:

(a) reprocessing shall take place under Agency safeguards for the purpose of energy use or management of materials contained in spent fuel, in accordance with the nuclear fuel cycle programme as delineated and recorded in the Implementing Arrangement;

(b) the separated plutonium shall be stored and used under Agency safeguards in accordance with the nuclear fuel cycle programme as delineated and recorded in the Implementing Arrangement;

(c) reprocessing and use of the separated plutonium for other peaceful non-explosive purposes including research shall take place only under conditions agreed upon in writing between the Parties following consultations under Article 2 of this Annex.

Article 2

Consultations shall be held within 40 days of the receipt of a request from either Party:

(a) to review the operation of the provisions of this Annex;

(b) to consider amendments to the Implementing Arrangement as provided therein;

(c) to consider improvements in international safeguards and other control techniques including the establishment of new and generally accepted international mechanisms relevant to reprocessing and plutonium;

(d) to consider amendments to this Annex proposed by either Party in particular to take account of the improvements referred to in paragraph (c) of this Article;

(e) to consider proposals for reprocessing and use of the separated plutonium for other peaceful non-explosive purposes including research.

Article 3

The provisions of Article XIV of the Agreement shall apply to the information included in the Implementing Arrangement referred to in Article 1 above.

Article 4

This Annex may be amended in accordance with Article XVIII of the Agreement.

Letters sent to Australia from Euratom Member States which do not have bilateral agreements with Australia (1)

I have the honour to refer to the Agreement between the Government of Australia and the European Atomic Energy Community concerning transfers of nuclear material from Australia to the European Atomic Energy Community.

In the light of this Agreement and in particular Annex A thereto, my Government confirms that it would be prepared, if and when appropriate, to enter into discussions about arrangements concerning the transfer of non-nuclear material, equipment and technology between Australia and ..... (2), and of nuclear material from ..... (2) to Australia, consistent with non-proliferation and nuclear energy requirements of Australia and my Government.

Letters on physical protection sent to Australia from Euratom States which do not have bilateral agreements with Australia (1)

I have the honour to refer to the Agreement between the Government of Australia and the European Atomic Energy Community concerning transfers of nuclear material from Australia to the European Atomic Energy Community.

In addition to the obligations to Australia entered into under the Agreement, I have the honour to inform you that my Government confirms that nuclear material subject to the Agreement which is within the territory, jurisdiction or control of my Government shall be subject to the levels of physical protection referred to in Article VIII of the Agreement and to the measures applied by my Government to meet these levels.

My Government also confirms its willingness to consult as necessary on matters concerning levels of physical protection and general matters relating to physical protection.

(1) This letter was forwarded on 21 September 1981 by the Permanent Representatives to the European Communities of all the Member States, except for France and the United Kingdom, to the Australian Ambassador to the European Communities.

(2) Name of the country.

Side letter No 1

A. *Letter from Australia to the Community*

Brussels, 21 September 1981

Sir,

I have the honour to refer to the Agreement between the Government of Australia and the European Atomic Energy Community concerning transfers of nuclear material from Australia to the European Atomic Energy Community signed today at Brussels.

1. The Australian Government considers this Agreement to be an important element in the establishment of a network of bilateral agreements between Australia and potential customer countries for Australian uranium, in accordance with the Australian Government's nuclear safeguards policy as announced by the Prime Minister on 24 May 1977. One of the requirements of that policy is that Australian origin nuclear material cannot be transferred to a non-nuclear weapon State that is not a party to the Treaty on the Non-Proliferation of Nuclear Weapons. Australia is seeking to conclude further agreements with other countries on the basis of the Government's nuclear safeguards policy.

2. In the application of Article XV of the Agreement, Australia will have due regard to the nature of the non-compliance or repudiation involved so as to avoid any disproportionate interference with supply.

3. In relation to Article XVIII of the Agreement, no amendment or revision of the Agreement shall be applicable to nuclear material subject to the Agreement supplied or to be supplied pursuant to contracts entered into before such amendment or revision, unless the Parties so agree.

I should be obliged if you would acknowledge receipt of this letter.

Please accept, Sir, the assurance of my highest consideration.

For the Government of Australia

R. FERNANDEZ

B. *Letter in reply from the Community to Australia*

Brussels, 21 September 1981

Your Excellency,

I have the honour to acknowledge receipt of your letter of today's date which reads as follows:

'I have the honour to refer to the Agreement between the Government of Australia and the European Atomic Energy Community concerning transfers of nuclear material from Australia to the European Atomic Energy Community signed today at Brussels.

1. The Australian Government considers this Agreement to be an important element in the establishment of a network of bilateral agreements between Australia and potential customer countries for Australian uranium, in accordance with the Australian Government's nuclear safeguards policy as announced by the Prime Minister on 24 May 1977. One of the requirements of that policy is that Australian origin nuclear material cannot be transferred to a non-nuclear weapon State that is not a party to the Treaty on the Non-Proliferation of Nuclear Weapons. Australia is seeking to conclude further agreements with other countries on the basis of the Government's nuclear safeguards policy.

2. In the application of Article XV of the Agreement, Australia will have due regard to the nature of the non-compliance or repudiation involved so as to avoid any disproportionate interference with supply.

3. In relation to Article XVIII of the Agreement, no amendment or revision of the Agreement shall be applicable to nuclear material subject to the Agreement supplied or to be supplied pursuant to contracts entered into before such amendment or revision, unless the Parties so agree.

I should be obliged if you would acknowledge receipt of this letter.'

I have the honour to inform you that the European Atomic Energy Community has taken note of the contents of your letter.

Please accept, Your Excellency, the assurance of my highest consideration.

For the European Atomic Energy Community

W. HAFERKAMP

Side Letter No 2

A. *Letter from Australia to the Community*

Brussels, 21 September 1981

Sir,

I have the honour to refer to the Agreement between the Government of Australia and the European Atomic Energy Community concerning transfers of nuclear material from Australia to the European Atomic Energy Community signed today at Brussels.

1. In the negotiations between Australia and the European Atomic Energy Community on an agreement concerning transfers of nuclear material from Australia to the Community for peaceful purposes, both Parties discussed the arrangements that would apply, in accordance with the Agreement, to transfers to third countries for conversion, enrichment up to 20 %, fuel fabrication, reprocessing and storage of nuclear material subject to the Agreement (hereinafter referred to as 'NMSA').

2. The Community delegation described the different stages of the nuclear fuel cycles of Member States. In addition to using conversion, enrichment, fuel fabrication, reprocessing and storage facilities inside the Community, Member States also make use of such facilities outside the Community.

3. In the light of these discussions, the following conclusions were reached:

A. (i) Transfers of NMSA between the Community and third countries, which have an agreement in force with Australia concerning nuclear transfers in relation to which agreement the Australian Government has not advised the Community that it has found it necessary to suspend, cancel or refrain from making nuclear transfers, can take place within the nuclear fuel cycle programme referred to in Annex C to the Agreement for conversion, enrichment up to 20 % in the isotope uranium 235, fuel fabrication, reprocessing or storage.

(ii) The Community shall promptly notify Australia, in accordance with the procedures set out in the Administrative Arrangement, of such transfers.

B. (i) Transfers of NMSA between the Community and third countries which do not have an agreement in force with Australia concerning nuclear transfers can take place within the nuclear fuel cycle programme referred to in Annex C to the Agreement for conversion, enrichment up to 20 % in the isotope uranium 235, and fuel fabrication.

(ii) In such cases it will be necessary to ensure the return to the Community, or to another country which has an agreement in force with Australia concerning nuclear transfers in relation to which agreement the Australian Government has not advised the Community that it has found it necessary to suspend, cancel or refrain from making nuclear transfers, of quantities of nuclear material euqivalent to the supplied nuclear material.

(iii) The Community shall promptly notify Australia, in accordance with the procedures set out in the Administrative Arrangement, of such transfers.

C. (i) Transfers of NMSA, other than those referred to in subparagraphs 3.A and B above, from the Community to third countries which have an agreement in force with Australia concerning nuclear transfers in relation to which agreement the Australian Government has not advised the Community that it has found it necessary to suspend, cancel or refrain from making nuclear transfers, can take place for conversion, enrichment up to 20 % in the isotope uranium 235, fuel fabrication, and reprocessing or for use, storage or final disposal.

(ii) The Community shall promptly notify Australia, in accordance with the procedures set out in the Administrative Arrangement, of such transfers.

(iii) Australia shall provide the Community with, and keep up to date, the list of countries to which transfers may be made in accordance with subparagraph 3.C (i) above.

D. Transfers of NMSA enriched beyond 20 % in the isotopes uranium 233 and uranium 235 and plutonium from the Community to third countries can take place only in accordance with conditions agreed upon in writing between the Parties.

I propose that, if the foregoing is acceptable to the European Atomic Energy Community, this letter with your reply shall constitute an Agreement between the Government of Australia and the European Atomic Energy Community which shall enter into force on the date that the Agreement between the Government of Australia and the European Atomic Energy Community concerning transfers of nuclear material from Australia to the European

Atomic Energy Community enters into force and shall remain in force for as long as that Agreement remains in force.

Please accept, Sir, the assurance of my highest consideration.

For the Government of Australia

R. FERNANDEZ

B. *Letter in reply from the Community to Australia*

Brussels, 21 September 1981

Your Excellency,

I have the honour to acknowledge receipt of your letter of today's date which reads as follows:

'I have the honour to refer to the Agreement between the Government of Australia and the European Atomic Energy Community concerning transfers of nuclear material from Australia to the European Atomic Energy Community signed today at Brussels.

1. In the negotiations between Australia and the European Atomic Energy Community on an agreement concerning transfers of nuclear material from Australia to the Community for peaceful purposes, both Parties discussed the arrangements that would apply, in accordance with the Agreement, to transfers to third countries for conversion, enrichment up to 20 %, fuel fabrication, reprocessing and storage of nuclear material subject to the Agreement (hereinafter referred to as 'NMSA').

2. The Community delegation described the different stages of the nuclear fuel cycles of Member States. In addition to using conversion, enrichment, fuel fabrication, reprocessing and storage facilities inside the Community, Member States also make use of such facilities outside the Community.

3. In the light of these discussions, the following conclusions were reached:

   A. (i) Transfers of NMSA between the Community and third countries, which have an agreement in force with Australia concerning nuclear transfers in relation to which agreement the Australian Government has not advised the Community that it has found it necessary to suspend, cancel or refrain from making nuclear transfers, can take place within the nuclear fuel cycle programme referred to in Annex C to the Agreement for conversion, enrichment up to 20 % in the isotope uranium 235, fuel fabrication, reprocessing or storage.

   (ii) The Community shall promptly notify Australia, in accordance with the procedures set out in the Administrative Arrangement, of such transfers.

   B. (i) Transfers of NMSA between the Community and third countries which do not have an agreement in force with Australia concerning nuclear transfers can take place within the nuclear fuel cycle programme referred to in Annex C to the Agreement for conversion, enrichment up to 20 % in the isotope uranium 235, and fuel fabrication.

(ii) In such cases it will be necessary to ensure the return to the Community, or to another country which has an agreement in force with Australia concerning nuclear transfers in relation to which agreement the Australian Government has not advised the Community that it has found it necessary to suspend, cancel or refrain from making nuclear transfers, of quantities of nuclear material equivalent to the supplied nuclear material.

(iii) The Community shall promptly notify Australia, in accordance with the procedures set out in the Administrative Arrangement, of such transfers.

C. (i) Transfers of NMSA, other than those referred to in subparagraphs 3.A and B above, from the Community to third countries which have an agreement in force with Australia concerning nuclear transfers in relation to which agreement the Australian Government has not advised the Community that it has found it necessary to suspend, cancel or refrain from making nuclear transfers, can take place for conversion, enrichment up to 20 % in the isotope uranium 235, fuel fabrication, and reprocessing or for use, storage or final disposal.

(ii) The Community shall promptly notify Australia, in accordance with the procedures set out in the Administrative Arrangement, of such transfers.

(iii) Australia shall provide the Community with, and keep up to date, the list of countries to which transfers may be made in accordance with subparagraph 3.C (i) above.

D. Transfers of NMSA enriched beyond 20 % in the isotopes uranium 233 and uranium 235 and plutonium from the Community to third countries can take place only in accordance with conditions agreed upon in writing between the Parties.

I propose that, if the foregoing is acceptable to the European Atomic Energy Community, this letter with your reply shall constitute an Agreement between the Government of Australia and the European Atomic Energy Community which shall enter into force on the date that the Agreement between the Government of Australia and the European Atomic Energy Community concerning transfers of nuclear material from Australia to the European Atomic Energy Community enters into force and shall remain in force for as long as that Agreement remains in force.'

I have the honour to confirm the conclusions recorded in your letter about the interpretation and application of the Agreement and to advise that the European Atomic Energy Community therefore agrees that your letter with the present reply shall constitute an Agreement between the Australian Government and the European Atomic Energy Community which shall enter into force on the date that the Agreement between the Government of Australia and the European Atomic Energy Community concerning transfers of nuclear material from Australia to the European Atomic Energy Community enters into force and shall remain in force for as long as that Agreement remains in force.

Please accept, Your Excellency, the assurance of my highest consideration.

For the European Atomic Energy Community

W. HAFERKAMP

Note No. 090/93

The Australian Mission to the European Communities (hereinafter referred to as "the Mission") presents its compliments to the Commission of the European Communities (hereinafter referred to as "the Commission") and has the honour to refer to the Agreement between Australia and the European Atomic Energy Community concerning Transfers of Nuclear Material from Australia to the European Atomic Energy Community, done at Brussels on 21 September 1981 (hereinafter referred to as "the Agreement on Nuclear Transfers").

The Mission has the honour further to refer to recent consultations which have taken place between Australia and the Commission concerning the safeguards obligations attaching to material transferred or retransferred pursuant to the Agreement on Nuclear Transfers, in particular under Articles II, III and IX of the Agreement on Nuclear Transfers.

During those consultations Australia and the Commission discussed the attachment and detachment of safeguards obligations undertaken to allow exchanges of safeguards obligations between material located within the European Atomic Energy Community and material located outside the European Atomic Energy Community. Accordingly, the Mission has the honour to propose that, under the Agreement on Nuclear Transfers, exchanges of safeguards obligations could take place in the following manner:

(1) the Agreement on Nuclear Transfers shall be deemed to apply to quantities of material to which either Party, at the request of the other Party, has consented, as part of an arrangement to exchange safeguards obligations, that the Agreement on Nuclear Transfers should apply, and

(2) the Agreement on Nuclear Transfers shall cease to apply to quantities of material to which either Party, at the request of the other Party, has consented, as part of an arrangement to exchange safeguards obligations, that the Agreement on Nuclear Transfers should no longer apply.

The Mission has the honour to propose that Australian and European Atomic Energy Community appropriate authorities should establish procedures to facilitate, through exchanges of diplomatic notes, request and consent for exchanges of safeguards obligations pursuant to this Exchange of Notes. The intention of the Parties would be, jointly and progressively, to develop a body of administrative precedents aimed at enabling individual cases to be treated expeditiously.

The Mission has the honour further to propose that if the foregoing is acceptable this Note and the Commission's favourable reply shall constitute an implementing arrangement to the Agreement on Nuclear Transfers, which shall enter into force on the date of the Commission's reply and which shall remain in force for as long as the Agreement on Nuclear Transfers remains in force, unless otherwise agreed by the Parties.

The Australian Mission to the European Communities avails itself of this opportunity to renew to the Commission of the European Communities the assurances of its highest consideration.

Brussels
8 September 1993

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 08.09.93/XVII/ 09143

The Commission of the European Communities presents its compliments to the Australian Mission to the European Communities and has the honour to refer to the Mission's Note No. 090/93 of 8 September 1993 which reads as follows:

"The Australian Mission to the European Communities (hereinafter referred to as "the Mission") presents its compliments to the Commission of the European Communities (hereinafter referred to as "the Commission") and has the honour to refer to the Agreement between Australia and the European Atomic Energy Community concerning Transfers of Nuclear Material from Australia to the European Atomic Energy Community, done at Brussels on 21 September 1981 (hereinafter referred to as "the Agreement on Nuclear Transfers").

The Mission has the honour further to refer to recent consultations which have taken place between Australia and the Commission concerning the safeguards obligations attaching to material transferred or retransferred pursuant to the Agreement on Nuclear Transfers, in particular under Articles II, III and IX of the Agreement on Nuclear Transfers.

During those consultations Australia and the Commission discussed the attachment and detachment of safeguards obligations undertaken to allow exchanges of safeguards obligations between material located within the European Atomic Energy Community and material located outside the European Atomic Energy Community. Accordingly, the Mission has the honour to propose that, under the Agreement on Nuclear Transfers, exchanges of safeguards obligations could take place in the following manner:

(1) the Agreement on Nuclear Transfers shall be deemed to apply to quantities of material to which either Party, at the request of the other Party, has consented, as part of an arrangement to exchange safeguards obligations, that the Agreement on Nuclear Transfers should apply, and

(2) the Agreement on Nuclear Transfers shall cease to apply to quantities of material to which either Party, at the request of the other Party, has consented, as part of an arrangement to exchange safeguards obligations, that the Agreement on Nuclear Transfers should no longer apply.

The Mission has the honour to propose that Australian and European Atomic Energy Community appropriate authorities should establish procedures to facilitate, through exchanges of diplomatic notes,

Rue de la Loi 200 – B-1049 Brussels, Belgium – Office:
Telephone: direct line (+32-2)29..... exchange 299.11.11 – Fax: 29..... – Telex: COMEU B 21877 – Telegraphic address: COMEUR Brussels

Bât. J. Monnet – Plateau du Kirchberg L-2920 Luxemburg – Office:
Telephone: direct line (+352)4301..... exchange 43011 – Fax: 4301..... – Telex: COMEUR LU 3423 – Telegraphic address: EURDOC LU 2752

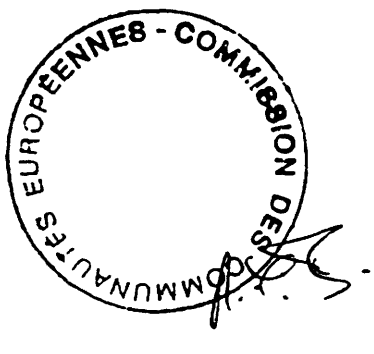
request and consent for exchanges of safeguards obligations pursuant to this Exchange of Notes. The intention of the Parties would be, jointly and progressively, to develop a body of administrative precedents aimed at enabling individual cases to be treated expeditiously.

The Mission has the honour further to propose that if the foregoing is acceptable this Note and the Commission's favourable reply shall constitute an implementing arrangement to the Agreement on Nuclear Transfers, which shall enter into force on the date of the Commission's reply and which shall remain in force for as long as the Agreement on Nuclear Transfers remains in force, unless otherwise agreed by the Parties.

The Australian Mission to the European Communities avails itself of this opportunity to renew to the Commission of the European Communities the assurances of its highest consideration."

The Commission has the honour to confirm that the proposal contained in the Note is acceptable to the European Atomic Energy Community and that the Note and this reply shall constitute an implementing arrangement to the Agreement on Nuclear Transfers, which shall enter into force on the date of this reply and which shall remain in force for as long as the Agreement on Nuclear Transfers remains in force, unless otherwise agreed by the Parties.

The Commission of the European Communities avails itself of this opportunity to renew to the Australian Mission to the European Communities the assurances of its highest considerations.



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 08.09.93/XVII/ 09142

The Commission of the European Communities (hereinafter referred to as "the Commission") presents its compliments to the Australian Mission to the European Communities (hereinafter referred to as "the Mission") and has the honour to refer to Article IX of the Agreement between the Government of Australia and the European Atomic Energy Community concerning Transfers of Nuclear Material from Australia to the European Atomic Energy Community, done at Brussels on 21 September 1981 (hereinafter referred to as "the Agreement on Nuclear Transfers") and to paragraph 3D of its accompanying Side Letter No. 2, and to the Commission's Memorandum of 27 June 1989 whereby the Commission raised the issue of Australian advance generic consent to the retransfer from the European Atomic Energy Community to Japan of plutonium where such plutonium is subject in the Community to the Agreement on Nuclear Transfers and to the Additional Agreement for cooperation between the United States of America and the European Atomic Energy Community (EURATOM) concerning peaceful uses of atomic energy, signed on 11 June 1960, as subsequently amended (hereinafter referred to as "the United States-EURATOM Agreement") and where it has been recovered from spent fuel that was subject in Japan to the Japan-United States Agreement for Cooperation concerning the Peaceful Uses of Nuclear Energy done at Tokyo on 4 November 1987 (hereinafter referred to as "the Japan-United States Agreement") and to the Japan-Australia Agreement for Cooperation in the Peaceful Uses of Nuclear Material, done at Canberra on 5 March 1982 (hereinafter referred to as "the Japan-Australia Agreement").

The Commission has the honour to propose that the Government of Australia grant to the European Atomic Energy Community (hereinafter referred to as "the Community") advance consent to the retransfer from the Community to Japan of plutonium where such plutonium is subject in the Community to the Agreement on Nuclear Transfers and to the United States - EURATOM Agreement and has been recovered from spent fuel that was subject in Japan to the Japan-United States Agreement and to the Japan-Australia Agreement and that such transfers shall take place under the following conditions:

(a) retransfers of recovered plutonium take place in quantities of two kilograms or more per shipment.

(b) prior to each shipment the Community informs the Government of Australia that the Community and the transferring Member State have received from Japan, in accordance with paragraph 4 of the Exchange of Notes of 18 July 1988 between the United States and Euratom constituting an Implementing Arrangement of the United States-Euratom Agreement, notification in writing that the physical protection measures arranged for the international transport of that shipment are in accordance with those set out in the Implementing Agreement to the Japan-United States Agreement.

Rue de la Loi 200 - B-1049 Brussels, Belgium - Office:
Telephone: direct line (+32-2)29..... exchange 299.11.11 - Fax: 29..... - Telex: COMEU B 21877 - Telegraphic address: COMEUR Brussels

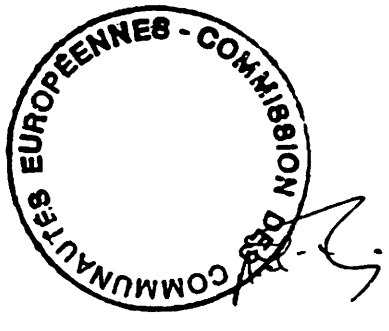
Bât. J. Monnet - Plateau du Kirchberg L-2920 Luxemburg - Office:
Telephone: direct line (+352)4301..... exchange 43011 - Fax: 4301..... - Telex: COMEUR LU 3423 - Telegraphic address: EURDOC LU 2752

(c) nothing in this Exchange of Notes shall derogate from the exclusive responsibilities of the Member States of the Community with regard to the transport of nuclear material within the Community. The Member States will retain exclusive control over the levels of physical protection afforded to the transportation of nuclear material within the Community and they will have the right to conclude any specific agreement that may be proposed for the transportation of the nuclear material out of the Community.

The Commission has the honour further to propose that, in the event that the Japan-United States Agreement ceases to apply, the Commission and the Government of Australia shall forthwith consult on the future operation of the Agreement on Nuclear Transfers in this respect.

The Commission has the honour further to propose that if the foregoing is acceptable to the Government of Australia, this Note and the Mission's confirmatory reply shall constitute an implementing arrangement to the Agreement on Nuclear Transfers which shall enter into force on the date of the Mission's reply and shall remain in force for as long as the Agreement on Nuclear Transfers remains in force, unless otherwise agreed by the Parties.

The Commission of the European Communities avails itself of this opportunity to renew to the Australian Mission to the European Communities the assurances of its highest consideration.



Note No. 091/93

The Australian Mission to the European Communities (hereinafter referred to as "the Mission") presents its compliments to the Commission of the European Communities (hereinafter referred to as "the Commission") and has the honour to refer to the Commission's Note of 8 September 1993, which reads as follows:

"The Commission of the European Communities (hereinafter referred to as "the Commission") presents its compliments to the Australian Mission to the European Communities (hereinafter referred to as "the Mission") and has the honour to refer to Article IX of the Agreement between the Government of Australia and the European Atomic Energy Community concerning Transfers of Nuclear Material from Australia to the European Atomic Energy Community, done at Brussels on 21 September 1981 (hereinafter referred to as "the Agreement on Nuclear Transfers") and to paragraph 3D of its accompanying Side Letter No. 2, and to the Commission's Memorandum of 27 June 1989 whereby the Commission raised the issue of Australian advance generic consent to the retransfer from the European Atomic Energy Community to Japan of plutonium where such plutonium is subject in the Community to the Agreement on Nuclear Transfers and to the Additional Agreement for cooperation between the United States of America and the European Atomic Energy Community (EURATOM) concerning peaceful uses of atomic energy, signed on 11 June 1960, as subsequently amended (hereinafter referred to as "the United States - EURATOM Agreement") and where it has been recovered from spent fuel that was subject in Japan to the Japan-United States Agreement for Cooperation concerning the Peaceful Uses of Nuclear Energy done at Tokyo on 4 November 1987 (hereinafter referred to as "the Japan-United States Agreement") and to the Japan-Australia Agreement for Cooperation in the Peaceful Uses of Nuclear Material, done at Canberra on 5 March 1982 (hereinafter referred to as "the Japan-Australia Agreement").

The Commission has the honour to propose that the Government of Australia grant to the European Atomic Energy Community (hereinafter referred to as "the Community") advance consent to the retransfer from

the Community to Japan of plutonium where such plutonium is subject in the Community to the Agreement on Nuclear Transfers and to the United States - EURATOM Agreement and has been recovered from spent fuel that was subject in Japan to the Japan-United States Agreement and to the Japan-Australia Agreement and that such transfers shall take place under the following conditions:

(a) retransfers of recovered plutonium take place in quantities of two kilograms or more per shipment.

(b) prior to each shipment the Community informs the Government of Australia that the Community and the transferring Member State have received from Japan, in accordance with paragraph 4 of the Exchange of Notes of 18 July 1988 between the United States and Euratom constituting an Implementing Arrangement of the United States-Euratom Agreement, notification in writing that the physical protection measures arranged for the international transport of that shipment are in accordance with those set out in the Implementing Agreement to the Japan-United States Agreement.

(c) nothing in this Exchange of Notes shall derogate from the exclusive responsibilities of the Member States of the Community with regard to the transport of nuclear material within the Community. The Member States will retain exclusive control over the levels of physical protection afforded to the transportation of nuclear material within the Community and they will have the right to conclude any specific agreement that may be proposed for the transportation of the nuclear material out of the Community.

The Commission has the honour further to propose that, in the event that the Japan-United States Agreement ceases to apply, the Commission and the Government of Australia shall forthwith consult on the future operation of the Agreement on Nuclear Transfers in this respect.

The Commission has the honour further to propose that if the foregoing is acceptable to the Government of Australia, this Note and the Mission's confirmatory reply shall constitute an implementing arrangement to the Agreement on Nuclear Transfers which shall enter into force on the date of the Mission's reply and shall remain in force for as long as the Agreement on Nuclear Transfers remains in force, unless otherwise agreed by the Parties.

The Commission of the European Communities avails itself of this opportunity to renew to the Australian Mission to the European Communities the assurances of its highest consideration."

The Mission has the honour to confirm that the proposal contained in the Note is acceptable to the Government of Australia and that the Note and this reply shall constitute an implementing arrangement to the Agreement on Nuclear Transfers, which shall enter into force on the date of this reply and which shall remain in force for as long as the Agreement on Nuclear Transfers remains in force, unless otherwise agreed by the Parties.

The Australian Mission to the European Communities avails itself of this opportunity to renew to the Commission of the European Communities the assurances of its highest consideration.

Brussels
8 September 1993

Euratom/United States of America

This agreement succeeds the earlier 1960 Additional Agreement for Cooperation between the United States of America and Euratom concerning Peaceful Uses of Atomic Energy (as amended), which expired on 31 December 1995, and also succeeds five other bilateral agreements (Austria/US, Spain/US, Portugal/US, Sweden/US, Finland/US). It also terminates the earlier 1958 framework agreement between Euratom and the US, which had no expiry date, and the 1958 Agreement for Cooperation, which was amended by the 1960 Additional Agreement.

The Agreement for Cooperation in the Peaceful Uses of Nuclear Energy between Euratom and the United States of America, signed on 7 November 1995 in the English language and on 29 March 1996 in all other EU languages, entered into force on 12 April 1996. This agreement maintains in application the advance prior consent contained in the 1988 Exchange of notes between the US Mission to the European Communities and the Commission for retransfers from Japan to and from Euratom of certain material subject to the US-Japan agreement.

Contents:

- Agreement for cooperation in the peaceful uses of nuclear energy between the European Atomic Energy Community and the USA, signed on 7 November 1995 and 29 March 1996 (*OJ L 120 of 20.5.96, pp. 1-36).*
- Exchange of Notes between the US Mission to the European Communities and the Commission concerning transfers from Japan to Euratom, and subsequent retransfers to Japan, of certain nuclear material subject to the Agreement for Cooperation between the United States and the Government of Japan, 18 July 1988.
- Exchange of letters on the entry into force of the Euratom-US Agreement, 12 April 1996.

II

(Acts whose publication is not obligatory)

COMMISSION

AGREEMENT

for cooperation in the peaceful uses of nuclear energy between the European Atomic Energy Community and the United States of America

(96/314/Euratom)

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 Cooperation which entered into force on 25 July 1960, as subsequently amended;

WHEREAS the Community and the United States of America recognize the value of their past cooperation in the peaceful uses of nuclear energy and wish to provide for renewed cooperation 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 cooperation activities at an industrial and commercial scale, including peaceful international cooperation 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 cooperation should extend to nuclear research and development on nuclear safety and to regulatory and operational aspects of radiological protection;

WHEREAS cooperation 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 cooperation 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 cooperation 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 cooperation agreement it may have with third States acceding to the Community,

HAVE AGREED AS FOLLOWS:

Article 1

Scope of cooperation

1. The Parties may cooperate 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 cooperation 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 cooperation 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

Cooperation on nuclear research and development

1. The Parties may cooperate 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. Cooperation 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 judgment 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 cooperation

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 cooperation.

Such cooperation 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 specialized 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. Authorizations, including export and import licences as well as authorizations 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 authorizations 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 re-transferred 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 February 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 August 1978;

(c) the Agreement between the Community, France and the IAEA, which entered into force on 12 September 1981;

(d) the Agreement between the United States of America and the IAEA, which entered into force on 9 December 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 of America 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.

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 fulfilment 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. Cooperation 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 20 % 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 20 % in the isotope 235 and re-enrichment of such uranium already enriched to more than 20 % 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;

(E) Conditioning, storage and final disposal of irradiated materials transferred pursuant to this Agreement or used in or produced through the use of non-nuclear material, nuclear material and equipment transferred pursuant to this Agreement.

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 programme 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.

Eeach 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 30 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 may be called for.

Following upon such consultations, each Party 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 United States of America.

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 cooperation 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/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. 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 cooperation 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 cooperation 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 Adminstrative 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 of America or a Member State of the Community, who shall be the Chairman. If, within 30 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 30 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 of America 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 cooperation under this Agreement or to suspend or terminate, in whole or in part, this Agreement. Furthermore, if a Party suspends its consent to the activities, referred to in Article 8.2, for reasons other than those set out in paragraph 8(A) of the Agreed Minute, including situations which are not of the same or greater degree of seriousness as those set out in paragraph 8(A) under (a) or (b) of the Agreed Minute, the other Party shall have the same right.

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 on 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 Member State 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 Member State of the Community detonates a nuclear explosive device using any item subject to this Agreement, the United States of America 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 form 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 subparagraph (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 paragraph 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 constistent 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 from 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 Agreements between the European Atomic Energy Community and the Government of the United States of America that entered into force on 27 August

1958 shall be terminated upon the entry into force of this Agreement. The Additional Agreement for Cooperation between the United States of America and the European Atomic Energy Community (Euratom) that entered into force on 25 July 1960, as subsequently amended, shall expire as provided for in Article VI of that Agreement or shall be terminated upon entry into force of this Agreement, whichever is the earlier.

2. The bilateral nuclear cooperation 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 cooperation 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 cooperation 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.

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 upon which such agreements terminate.

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 material 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 20 % in the isotope 235 (and/or uranium 233); 'low enriched uranium' means uranium enriched to 20 % 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 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 of 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 European Atomic Energy Community and the Government of the United States of America respectively, have signed this Agreement.

AGREED MINUTE

During the negotiation of the Agreement for Cooperation 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 re-transfers 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/Part 1;

— in case of re-transfer 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 cooperation agreement with the United States.

3. Should re-transfers 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 re-transfers 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 programmes 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 cooperation with third countries. The Parties will cooperate in efforts to obtain as soon as possible on a generic basis a confirmation from the third countries on the lists that any re-transferred items will be subject to any agreement for cooperation in force between the receiving country and the non-re-transferring Party. The receipt of such confirmation shall not constitute a precondition for the addition of a third country to the lists.

Re-transfers to third countries not included on the lists may be considered on a case-by-case basis.

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 Cooperation 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 abovementioned 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 re-transfer or the activities involving the re-transferred 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 30 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 an exchange of information and views on safeguards matters of mutual interest.

(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 non-confidential 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 US 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 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 Member State of the Community detonates a nuclear weapon or any other nuclear explosive device;

(ii) a nuclear-weapon Member State 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/Part 1, as it may be revised and accepted by the Parties;

(iv) a Member State of the Community re-transfers 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 18 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 cooperation 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.

Done at Brussels this seventh day of November 1995, in duplicate, in the English language,

Udfærdiget i Bruxelles, den 7. november 1995, i to eksemplarer på engelsk,

Gedaan te Brussel op 7 november 1995, in tweevoud, in de Engelse taal,

Tehty Brysselissä 7 päivänä marraskuuta 1995 kahtena samanlaisena kappaleena englannin kielellä,

Fait à Bruxelles, le 7 novembre 1995, en deux exemplaires, en langue anglaise,

Geschehen zu Brüssel am 7. November 1995 in zwei Urschriften in englischer Sprache,

Έγινε στις Βρυξέλλες, στις 7 Νοεμβρίου 1995, εις διπλούν, στα αγγλικά,

Fatto a Bruxelles, addì 7 novembre 1995, in duplice copia, in lingua inglese,

Feito em Bruxelas em sete de Novembro de mil novecentos e noventa e cinco, em duplo exemplar, em língua inglesa,

Hecho en Bruselas, el 7 de noviembre de 1995, en doble ejemplar en lengua inglesa,

Utfärdat i Bryssel den 7 november 1995 på engelska i två likalydande exemplar,

For the European Atomic Energy Community

For det Europæiske Atomenergifællesskab

Voor de Europese Gemeenschap voor Atoomenergie

Euroopan atomienergiayhteisön puolesta

Pour la Communauté européenne de l'énergie atomique

Für die Europäische Atomgemeinschaft

Για την Ευρωπαϊκή Κοινότητα Ατομικής Ενέργειας

Per la Comunità europea dell'energia atomica

Pela Comunidade Europeia da Energia Atómica

Por la Comunidad Europea de la Energía Atómica

På Europeiska Atomenergigemenskapens vägnar

Sir Leon BRITTAN
Vice-President of the Commission
of the European Communities

Christos PAPOUTSIS
Member of the Commission
of the European Communities

For the United States of America

For Amerikas Forenede Stater

Voor de Verenigde Staten van Amerika

Amerikan yhdysvaltojen puolesta

Pour les États-Unis d'Amérique

Für die Vereinigten Staaten von Amerika

Για τις Ηνωμένες Πολιτείες της Αμερικής

Per gli Stati Uniti d'America

Pelos Estados Unidos da América

Por los Estados Unidos de América

På Förenta staternas vägnar

Ambassador Stuart E. EIZENSTAT

and at Brussels this ... day of ... 1995 (*), in duplicate, in the Danish, Dutch, Finnish, French, German, Greek, Italian, Portuguese, Spanish and Swedish languages, all eleven languages being equally authentic.

og i Bruxelles, den ... 1995 (*), i to eksemplarer, på dansk, tysk, spansk, fransk, græsk, italiensk, nederlandsk, portugisisk, svensk og finsk idet alle elleve sprog er lige autentiske.

en te Brussel op ... 1995 (*), in tweevoud, in de Deense, de Duitse, de Finse, de Franse, de Griekse, de Italiaanse, de Nederlandse, de Portugese, de Spaanse en de Zweedse taal, zijnde alle elf teksten gelijkelijk authentiek.

ja Brysselissä ... päivänä ...kuuta 1995 (*), kahtena samanlaisena kappaleena tanskan, hollannin, suomen, ranskan, saksan, kreikan, italian, portugalin, espanjan ja ruotsin kielellä kaikkien yhdentoista kielen ollessa todistusvoimaisia,

et à Bruxelles, le ... 1995 (*), en deux exemplaires, en langues allemande, danoise, espagnole, finnoise, française, grecque, italienne, néerlandaise, portugaise et suédoise, ces onze langues faisant toutes également foi,

und zu Brüssel am ... 1995 (*) in zwei Urschriften in dänischer, deutscher, finnischer, französischer, griechischer, italienischer, niederländischer, portugiesischer, spanischer und schwedischer Sprache, wobei jeder Wortlaut gleichermaßen verbindlich ist.

και στις Βρυξέλλες, στις ... 1995 (*), εις διπλούν, στα δανικά, ολλανδικά, φινλανδικά, γαλλικά, γερμανικά, ελληνικά, ιταλικά, πορτογαλικά, ισπανικά και σουηδικά, και οι ένδεκα γλώσσες είναι εξίσου αυθεντικές.

e a Bruxelles, addì ... 1995 (*), in duplice copia, nelle lingue danese, olandese, finnico, francese, tedesco, greco, italiano, portoghese, spagnolo, svedese, gli undici testi facenti ugualmente fede.

e em Bruxelas, em ... de ... de 1995 (*), em duplo exemplar, em línguas alemã, dinamarquesa, espanhola, finlandesa, francesa, grega, italiana, neerlandesa, portuguesa e sueca, fazendo fé todas as onze versões linguísticas.

y en Bruselas, el ... de ... de 1995 (*), en doble ejemplar en lenguas alemana, danesa, española, finesa, francesa, griega, italiana, neerlandesa, portuguesa y sueca, siendo los once textos igualmente auténticos.

och i Bryssel den ... 1995 (*) i två likalydande exemplar på danska, finska, franska, grekiska, italienska, nederländska, portugisiska, spanska, svenska och tyska språken vilka alla är lika giltiga.

(*) 29. 3. 1996.

For the European Atomic Energy Community

For det Europæiske Atomenergifællesskab

Voor de Europese Gemeenschap voor Atoomenergie

Euroopan atomienergiayhteisön puolesta

Pour la Communauté européenne de l'énergie atomique

Für die Europäische Atomgemeinschaft

Για την Ευρωπαϊκή Κοινότητα Ατομικής Ενέργειας

Per la Comunità europea dell'energia atomica

Pela Comunidade Europeia da Energia Atómica

Por la Comunidad Europea de la Energía Atómica

På Europeiska Atomenergiegemenskapens vägnar

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Für die Vereinigten Staaten von Amerika

Για τις Ηνωμένες Πολιτείες της Αμερικής

Per gli Stati Uniti d'America

Pelos Estados Unidos da América

Por los Estados Unidos de América

På Förenta staternas vägnar

Ambassador Stuart E. EIZENSTAT
Head of the Mission of the United States of America
to the European Communities

ANNEX A

(Article 8)

EURATOM DELINEATED PEACEFUL NUCLEAR PROGRAMME

Reprocessing facilities

			Capacity (1)
Cogema — Établissement de La Hague	La Hague	France	1 600
Cogema — Usine UP-1 and CEA service de l'atelier pilote	Marcoule	France	400
British Nuclear Fuels plc	Sellafield	United Kingdom	2 700
UKAEA Government Division	Dounreay	United Kingdom	ca 5 (2) ca 0,2 (3)

(1) Capacity is expressed in tonnes of heavy metal per year.
(2) = MOX fuel.
(3) = HEU fuel.

Alteration in form or content facilities

			Capacity (1)
Belgonucleaire — Usine de fabrication d'éléments PU	Dessel	Belgium	35
FBFC International — Assemblage des combustibles MOX	Dessel	Belgium	35
Siemens Brennelementewerk — Betriebsteil MOX-Verarbeitung	Hanau	Germany	160
CERCA/Établissement de Romans	Romans-sur-Isère	France	0,2
Société industrielle de combustible nucléaire	Veurey	France	0,05
Cogema — Complexe de fabrication des combustibles	Cadarache	France	30
Établissement MELOX	Marcoule	France	115
British Nuclear Fuels plc	Sellafield	United Kingdom	128
UKAEA Government Division	Dounreay	United Kingdom	ca 1 (HEU) ca 1 (2)

(1) Capacity is expressed in tonnes of heavy metal per year.
(2) = Pu residues.

UNITED STATES DELINEATED PEACEFUL NUCLEAR PROGRAMME

I. Facilites 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. FACILITES FOR ALTERATION IN FORM OR CONTENT

1. Conversion plants

Name and location	Type	Licensed capacity
Nuclear Fuel Services PO Box 337, MS 123 Erwin, TN 37650	Uranium downblending	7 000 kg U-235
Radiochemistry Processing Pilot Plant Oak Ridge National Lab PO Box X, Oak Ridge, TN 37830	Conversion	Less than 1 000 kg of HEU and more than 100 kg of U-233

2. Fuel fabrication and processing plants

Name and location	Type	Licensed capacity
General Atomics PO Box 81608 San Diego, CA 92138	Fuel fabrication for TRIGA research reactors	> 20 % enriched 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 one (1) effective kilogram do not require specification.

ANNEX B

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 Organization, done at Stockholm, 14 July 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 licence 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.

5. 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 the 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 names. 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 ensuant privileged nature is readily recognizable 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 authorized for the specific purposes of the joint research under way, 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 recognizable 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.

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, hereinafter referred to as the United States, and the European Union have decided to record the following understandings.

2. The United States and the European Union reaffirm their support for appropriately 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 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 or this relationship has proved important in many deliberations on measures to facilitate international nuclear trade and cooperation.

4. Neither expects any policy changes or other circumstances to take place that would adversely affect the terms for cooperation 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.

5. The United States furthermore confirms its readiness to engage in negotiations with the European Atomic Energy Community concerning elimination of provisions regarding consent in so far as improvements in the global non-proliferation environment lead to changes in the U. S. position in this respect.

6. The United States and the European Union fully support the International Atomic Energy Agency (IAEA) and its indispensable role in non-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 areas of proliferation concern. They share the view that the 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.

7. 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.

8. 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 abovementioned objectives.

9. The United States, the Community, and all its Member States recall that they are parties to the International Convention on 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.

10. The United States and the European Union reaffirm their shared view that the common nuclear non-proliferation export policies and practices reflected in the Nuclear Suppliers Group (NSG) guidelines and the ZANGGER Committee understandings play an important 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 and ZANGGER Committee 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.

11. The United States and the European Union affirm their intention to cooperate 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.

12. 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.

29 March 1996

EUROPEAN COMMISSION

Brussels, 7 November 1995

H.E. Mr Warren Cristopher,

Secretary of State of the United States of America.

Sir,

We have the honour to refer to Article 4.2 of the Agreement for Cooperation 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 our understanding that we have agreed on the following. Authorizations, including export and import licences as well as authorizations 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 US should be facilitated and encouraged; it is recognized that reliability of supply is essential and that industry in the Community and in the USA needs continuing reassurance that deliveries can be made on time in order to plan for the efficient operation of nuclear installations; it is further recognized that undue delays in the grant of export licences and other relevant authorizations including import licences would be inconsistent with the sound and efficient administration of this Agreement.

We 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 recognize that the European Union, it Member States and the USA 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 authorize 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.

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

Please accept, Sir, the assurance of our highest consideration.

For the European Atomic Energy Community:

Sir Leon BRITTAN

Vice-President of the Commission of the European Communities

Christos PAPOUTSIS

Member of the Commission of the European Communities

Brussels, November 7 1995

No 42

The Honorable Sir Leon Brittan,

Vice-President of the Commission
of the European Communities.

The Honorable Christos Papoutsis,

Member of the Commission
of the European Communities.

Sirs:

I have the honor to acknowledge receipt of your letter, dated today, concerning the issue of Export Licenses, a copy of which is attached.

I have the further honor to inform you that the Government of the United States of America shares the understandings recorded in that letter.

Accept, Sirs, the assurances of my highest consideration.

Stuart E. EIZENSTAT

Ambassador

No 43

The United States Mission to the European Union has the honor to present its compliments to the Commission of the European Communities and wishes to inform the Commission that the United States of America is firmly committed to eliminating over time the use of high enriched uranium from civil nuclear energy uses. Toward that end it has promoted the Reduced Enrichment for Research and Test Reactors (RERTR) program to develop low enriched fuels for such reactors and has proposed to adopt a policy of managing spent nuclear fuel from foreign research reactors including the possibility of accepting U.S. origin spent research reactor fuel in the United States for disposal. In the latter case, the United States is preparing a programmatic environmental impact statement which will be completed in 1995.

The United States of America recognizes, however, that specific research reactors in the European Atomic Energy Community may, under certain circumstances, need to use high enriched uranium as fuel.

If, in order to meet such needs, the Community should seek to re-enrich high enriched uranium supplied under the previous agreements for cooperation, the United States of America confirms that it will use its best endeavors to come to agreement with the Community in accordance with the provisions of Article 8.1(A) on the conditions to be applied to such enrichment.

The United States Mission to the European Union wishes to renew to the Commission of the European Communities the assurances of its highest consideration.

Stuart E. EIZENSTAT

Ambassador

United States Mission
to the European Union

Brussels, November 7 1995.

Brussels, November 7 1995

No 44

The Honorable Sir Leon Brittan,

Vice-President of the Commission
of the European Communities

The Honorable Christos Papoutsis,

Member of the Commission
of the European Communities

Sirs:

I have the honor to refer to the Agreement for Cooperation in the Peaceful Uses of Nuclear Energy between the United States of America and the European Atomic Energy Community (hereinafter referred to as 'the U.S.-Euratom Agreement') and in particular to Article 8.1C(iii) of that Agreement.

I have the further honor to confirm that the United States is negotiating a new peaceful nuclear cooperation 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 cooperation 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 program.

Accept, Sirs, the renewed assurances of my highest consideration.

Stuart E. EIZENSTAT

Ambassador

No 45

The United States Mission to the European Union presents its compliments to the Commission of the European Communities and refers the Commission to the Agreement for cooperation in the Peaceful Uses of Nuclear Energy between the United States of America and the European Atomic Energy Community, signed on 7 November 1995, and in particular to Article 21, paragraph 6, thereof.

According to the terms of that provision, plutonium is included in the definition of 'special fissionable material'.

In Article XX of the Statute of the International Atomic Energy Agency (IAEA), the definition of special fissionable material includes a reference to plutonium 239 and not to plutonium.

It is internationally recognized, e. g., in paragraph 36 of IAEA document INFCIRC 153, that plutonium with an isotopic composition of Pu238 exceeding 80 % is of no relevance for safeguards purposes and may be exempt from the usual controls applied to special fissionable material.

The Parties agree that the adoption of the definition of special fissionable material in paragraph 6 of Article 21 is not intended to supersede the IAEA definition or to interfere with the multilateral safeguards regime.

Accordingly, the Parties confirm that plutonium with an isotopic composition of Pu238 exceeding 80 % need not be brought within the scope of the Agreement.

The Mission would appreciate confirmation by the Commission that it shares the understandings recorded in this letter.

The United States Mission to the European Union wishes to renew to the Commission of the European Communities the assurances of its highest consideration.

Stuart E. EIZENSTAT

Ambassador

United States Mission
to the European Union,

Brussels, November 7 1995

EUROPEAN COMMISSION

Brussels, 7 November 1995

The Commission of the European Communities presents its compliments to the Mission of the United States of America to the European Communities and has the honour to acknowledge receipt of the letter, dated 7 November 1995, from the Mission of the United States of America to the European Communities concerning Article 21.6, a copy of which is attached.

The Commission of the European Communities wishes to inform the Mission of the United States to the European Communities that it shares the understandings recorded in that letter.

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

For the European Atomic Energy Community:

The Honorable Sir Leon BRITTAN

Vice-President of the Commission of the European Communities

The Honorable Christos PAPOUTSIS

Member of the Commission of the European Communities

No 46

The United States Mission to the European Union presents its compliments to the Commission of the European Communities and refers the Commission to the Agreement for Cooperation in the Peaceful Uses of Nuclear Energy between the United States of America and the European Atomic Energy Community, signed 7 November 1995.

Sensitive Nuclear Technology

The Government of the United States of America 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 of America confirms to the European Atomic Energy 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 cooperation 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 cooperation.

Reactor Technology

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

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 cooperation.

The Government of the United States of America notes that sensitive technology and Reactor Technology may be transferred from the European Community to the United States outside an agreement for cooperation between them.

The United States Mission to the European Union wishes to renew to the Commission of the European Communities the assurances of its highest consideration.

Stuart E. EIZENSTAT

Ambassador

United States Mission
to the European Union,

Brussels, November 7 1995

(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.

EUROPEAN COMMISSION

Brussels, 7 November 1995

The Commission of the European Communities presents its compliments to the Mission of the United States of America to the European Communities and has the honour to acknowledge receipt of the letter, dated 7 November 1995, from the Mission of the United States of America to the European Communities concerning sensitive nuclear technology and reactor technology, a copy of which is attached.

The Commission of the European Communities wishes to inform the Mission of the United States of America to the European Communities that it has taken due note of the contents of this letter.

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

For the European Atomic Energy Community:

The Honorable Sir Leon BRITTAN

Vice-President of the Commission of the European Communities

The Honorable Christos PAPOUTSIS

Member of the Commission of the European Communities

Brussels, November 7 1995

No 47

The Honorable Sir Leon Brittan,

Vice-President of the Commission
of the European Communities

The Honorable Christos Papoutsis,

Member of the Commission
of the European Communities.

Sirs:

I have the honor to refer to the Agreement for Cooperation in the Peaceful Uses of Nuclear Energy between the United States of America and the European Atomic Energy Community, signed today (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 cooperation 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 cooperation specifically intended to further such military purposes. I can confirm on behalf of the Government of the United States of America that such nuclear cooperation with a Member State for military purposes will be suitably considered when circumstances so warrant.

Accept, Sirs, the renewed assurances of my highest consideration.

Stuart E. EIZENSTAT

Ambassador

No. 8

1. The United States Mission to the European Communities (hereinafter referred to as the Mission) presents its compliments to the Commission of the European Communities (hereinafter referred to as the Commission) and refers to the Additional Agreement for cooperation between the United States of America and the European Atomic Energy Community (Euratom), concerning peaceful uses of atomic energy, signed on 11 June 1960, as subsequently amended on 21/22 May 1962, on 22/27 August 1963 and on 20 September 1972, (hereinafter referred to as the Additional Agreement), and, in particular, to Article I.E. and to Article V, which incorporated by reference the provisions of Article XI of the Agreement for Cooperation between the United States and Euratom signed on 8 November 1958, as subsequently amended on 21/22 May 1962.

2. The Mission refers to transfers from Japan to Euratom, and subsequent retransfers to Japan, of certain nuclear material subject, or in the case of retransfers to be subject, to a new agreement for cooperation between the Government of the United States and the Government of Japan concerning peaceful uses of nuclear energy and an associated Implementing Agreement (hereinafter referred to as the Implementing Agreement), both of which were signed on 4 November 1987.

3. The Mission proposes that the following nuclear material shall become subject to the Additional Agreement, in accordance with its terms, when identified in writing by the Government of Japan to the Commission, prior to shipment, as nuclear material to be transferred from Japan to Euratom pursuant to the Implementing Agreement:

A. irradiated nuclear material transferred for reprocessing (including nuclear material recovered therefrom), alteration in form or content, or storage;

B. unirradiated source material and low enriched uranium;

C. limited quantities of nuclear material transferred for irradiation and subsequent retransfer for testing and analysis.

4. The Government of the United States hereby provides its advance consent, under the Additional Agreement, to retransfers to Japan of nuclear material referred to under paragraph 3 A) and 3 C) above, and of nuclear material recovered from nuclear material referred to in paragraph 3 A), and nuclear material in Euratom subject to the Additional Agreement which was transferred as irradiated nuclear material from Japan for reprocessing prior to the entry into force of the Implementing Agreement and nuclear material recovered therefrom. This consent requires that retransfers of recovered plutonium take place in quantities of two kilograms or more per shipment and that prior to each shipment the Government of Japan provide a

written notification to the Commission and the transferring Member State that the Government of Japan has provided the Government of the United States a written notification advising that the physical protection measures arranged for the international transport are in accordance with those set forth in the Implementing Agreement.

5. Nothing in this exchange of notes shall derogate from the exclusive responsibilities of the Member States of the Community with regard to the transport of nuclear material within the Community. The Member States will retain exclusive control over the levels of physical protection afforded to the transportation of nuclear material within the Community and they will have the right to conclude any specific agreement that may be proposed for the transportation of the nuclear material out of the Community.

6. The Mission hereby confirms that, by this exchange of notes, no additional rights are being provided to the United States Government by the Community. It is in particular confirmed that no obligations are entered into by the Community through this exchange of notes relating to the reprocessing, enrichment, alteration in form or content, storage or retransfer of nuclear material that is, or becomes, subject to the provisions of the Additional Agreement.

7. Transfers and retransfers not described in this note will take place in accordance with the usual modalities under the applicable provisions of the Additional Agreement, including Article V which incorporated by reference the provisions of Article XI of the Agreement of 8 November 1958 between the United States and Euratom.

8. The Mission takes this opportunity to state that no provisions in the new United States/Japan nuclear cooperation agreement are inconsistent with the Additional Agreement or the Treaties of Rome and that the United States Government fully supports the integrity of the nuclear common market in the Community.

9. If the foregoing proposal is acceptable, the Mission proposes that this note, together with the Commission's favorable reply, shall constitute an Implementing Arrangement of the Additional Agreement which shall enter into force as of the date of the Commission's reply, and shall remain in effect until terminated or suspended in whole or in part by a written notice to that effect by either Party.

10. The United States Mission takes this opportunity to renew to the Commission of the European Communities the assurances of its highest consideration.

United States Mission

to the European Communities

July 18, 1988.

COMMISSION
OF THE
EUROPEAN COMMUNITIES

1. The Commission of the European Communities presents its compliments to the United States Mission to the European Communities and acknowledges receipt of the Mission's note of today's date which reads as follows:

"1. The United States Mission to the European Communities (hereinafter referred to as the Mission) presents its compliments to the Commission of the European Communities (hereinafter referred to as the Commission) and refers to the Additional Agreement for cooperation between the United States of America and the European Atomic Energy Community (Euratom), concerning peaceful uses of atomic energy, signed on 11 June 1960, as subsequently amended on 21/22 May 1962, on 22/27 August 1963 and on 20 September 1972, (hereinafter referred to as the Additional Agreement), and, in particular, to Article I.E. and to Article V, which incorporated by reference the provisions of Artricle XI of the Agreement for Cooperation between the United States and Euratom signed on 8 November 1958, as subsequently amended on 21/22 May 1962.

2. The Mission refers to transfers from Japan to Euratom, and subsequent retransfers to Japan, of certain nuclear material subject, or in the case of retransfers to be subject, to a new agreement for cooperation between the Government of the United States and the Government of Japan concerning peaceful uses of nuclear energy and an associated Implementing Agreement (hereinafter referred to as the Implementing Agreement), both of which were signed on 4 November 1987.

3. The Mission proposes that the following nuclear material shall become subject to the Additional Agreement, in accordance with its terms, when identified in writing by the Government of Japan to the Commission, prior to shipment, as nuclear material to be transferred from Japan to Euratom pursuant to the Implementing Agreement:

A. irradiated nuclear material transferred for reprocessing (including nuclear material recovered therefrom), alteration in form or content, or storage;

B. unirradiated source material and low enriched uranium;

C. limited quantities of nuclear material transferred for irradiation and subsequent retransfer for testing and analysis.

4. The Government of the United States hereby provides its advance consent, under the Additional Agreement, to retransfers to Japan of nuclear material referred to under paragraph 3 A) and 3 C) above, and of nuclear material recovered from nuclear material referred to in paragraph 3 A) and nuclear material in Euratom subject to the Additional Agreement which was transferred as irradiated nuclear material from Japan for reprocessing prior to the entry into force of the Implementing Agreement and nuclear

material recovered therefrom. This consent requires that retransfers of recovered plutonium take place in quantities of two kilograms or more per shipment and that prior to each shipment the Government of Japan provide a written notification to the Commission and the transferring Member State that the Government of Japan has provided the Government of the United States a written notification advising that the physical protection measures arranged for the international transport are in accordance with those set forth in the Implementing Agreement.

5. Nothing in this exchange of notes shall derogate from the exclusive responsibilities of the Member States of the Community with regard to the transport of nuclear material within the Community. The Member States will retain exclusive control over the levels of physical protection afforded to the transportation of nuclear material within the Community and they will have the right to conclude any specific agreement that may be proposed for the transportation of the nuclear material out of the Community.

6. The Mission hereby confirms that, by this exchange of notes, no additional rights are being provided to the United States Government by the Community. It is in particular confirmed that no obligations are entered into by the Community through this exchange of notes relating to the reprocessing, enrichment, alteration in form or content, storage or retransfer of nuclear material that is, or becomes, subject to the provisions of the Additional Agreement.

7. Transfers and retransfers not described in this note will take place in accordance with the usual modalities under the applicable provisions of the Additional Agreement, including Article V which incorporated by reference the provisions of Article XI of the Agreement of 8 November 1958 between the United States and Euratom.

8. The Mission takes this opportunity to state that no provisions in the new United States/Japan nuclear cooperation agreement are inconsistent with the Additional Agreement or the Treaties of Rome and that the United States Government fully supports the integrity of the nuclear common market in the Community.

9. If the foregoing proposal is acceptable, the Mission proposes that this note, together with the Commission's favorable reply, shall constitute an Implementing Arrangement of the Additional Agreement which shall enter into force as of the date of the Commission's reply, and shall remain in effect until terminated or suspended in whole or in part by a written notice to that effect by either Party.

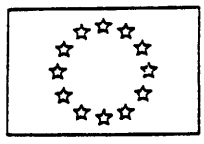
10. The United States Mission takes this opportunity to renew to the Commission of the European Communities the assurances of its highest consideration."

2. The Commission of the European Communities takes note of the proposals set out in the United States Mission's note and confirms that the Mission's note, together with this reply, shall constitute an Implementing Arrangement of the Additional Agreement for cooperation between the United States and Euratom signed on 11 June 1960 (referred to in the Mission's note as the Additional Agreement).

3. The Commission of the European Communities takes this opportunity to renew to the United States Mission the assurances of its highest consideration.

Brussels, 18 July 1988

(s.) NIC MOSAR



EUROPEAN UNION

DELEGATION OF THE EUROPEAN COMMISSION

Head of Delegation

April 12, 1996

The Delegation of the European Commission presents its compliments to the Department of State and has the honour 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 at Brussels on 7 November 1995 and on 29 March 1996, hereinafter referred to as "the Agreement".

The Delegation wishes to inform the Department of State that all internal procedures necessary for the entry into force of the Agreement for the European Atomic Energy Community have been completed.

The Delegation is also pleased to acknowledge receipt of the note from the Department of State of today's date informing the Delegation that the United States of America has completed all its internal procedures necessary for the entry into force of the Agreement.

Therefore, in accordance with its Article 14.1, the Agreement shall enter into force on today's date.

For the European Atomic Energy Community

Hugo Paemen
Head of the Delegation

2300 M Street NW Washington, DC 20037-1434 Telephone: (202) 862-9500 / Fax: (202) 429-1766

The Department of State refers the Delegation of the European Commission to the Agreement for Cooperation in the Peaceful Uses of Nuclear Energy Between the United States of America and the European Atomic Energy Community signed at Brussels on November 7, 1995, and on March 29, 1996, hereinafter referred to as "the Agreement."

The Department wishes to inform the Delegation that all internal procedures necessary for the entry into force of the Agreement for the United States of America have been completed.

The Department is also pleased to acknowledge receipt of the note from the Delegation of today's date informing it that the European Atomic Energy Community has completed all its internal procedures necessary for the entry into force of the Agreement.

Therefore, in accordance with Article 14.1 of the Agreement, the Agreement shall enter into force on today's date.

Department of State,

Washington, April 12, 1996.

Legal texts relating to trade in nuclear materials between Euratom and the Russian Federation

The Agreement on Partnership and Cooperation (PCA) between the European Communities and their Member States and the Russian Federation was signed in Corfu on 24 June 1994. At the time of preparation of this compendium (March 1997) the text was not yet in force pending completion of the ratification process by both sides. In the meantime, some of its provisions have been brought into effect by an Interim Agreement on trade and trade-related matters between the European Community, the European Coal and Steel Community and the European Atomic Energy Community of the one part, and the Russian Federation, of the other part. This latter agreement was signed on 17 July 1995 and entered into force on 1 February 1996. Article 15 of this agreement (identical to Article 22 of the PCA), which maintains in application certain articles of the 1989 Agreement between the Communities and the USSR, the Joint Declaration in relation to Article 15 (1) second indent, and the Exchange of Letters in relation to Article 15 are of particular relevance to nuclear trade. Article 36 of the Interim Agreement identifies the articles of the 1989 Agreement which are replaced by the Interim Agreement. The Joint Declaration in relation to Article 15(1) recognises explicitly that the respective regulations referred to in Article 6 of the 1989 Agreement include with respect to the Community the Euratom Treaty and its implementing regulations, and in particular the provisions which specify the rights, powers and responsibilities of the Euratom Supply Agency and of the Commission of the European Communities.

Contents:

- Interim Agreement on trade and trade-related matters between the European Community, the European Coal and Steel Community and the European Atomic Energy Community, of the one part, and the Russian Federation, of the other part, signed on 17 July 1995 (*OJ L 247 of 13.10.95, pp. 1-31).*
- Agreement between the European Economic Community and the European Atomic Energy Community and the Union of Soviet Socialist Republics on trade and commercial and economic cooperation, signed on 18 December 1989 (*OJ L 68 of 15.3.90, pp. 1-9).*

Legal texts relating to trade in nuclear materials between Euratom and other republics of the Commonwealth of Independent States (CIS)

Nuclear trade with the other uranium-producing republics of the CIS takes place under a number of legal instruments. In all cases, the provisions of the Euratom Treaty apply. Partnership and Cooperation Agreements containing articles on trade, but specifically excluding coverage of nuclear trade, have been signed with Ukraine (14 June 1994), Kazakhstan (23 January 1995), Kyrgyzstan (9 February 1995) and Uzbekistan (21 June 1996). The same trade articles as are contained in these PCA's are the subject of Interim Agreements which put them into provisional application. The Interim Agreement with Ukraine was signed on 1 June 1995 and entered into force on 1 February 1996, but at the time of preparation of this compendium (March 1997), the Interim Agreements putting into provisional application the trade articles of the PCA's with Kazakhstan, Kyrgyzstan and Uzbekistan had not entered into force. Where Interim Agreements are not yet in force, nuclear trade with these countries continues to be subject to the 1989 agreement with the former Soviet Union. Once they enter into force, since they do not cover nuclear trade, no specific nuclear trade provisions exist between the Community and the country in question until such a time as a specific nuclear trade agreement is in place.

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 17 July 1995

on the conclusion by the European Community of the Interim Agreement on trade and trade-related matters between the European Community, the European Coal and Steel Community and the European Atomic Energy Community, of the one part, and the Russian Federation, of the other part

(95/414/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 113 in conjunction with Article 228 (2), first sentence, thereof,

Having regard to the proposal from the Commission,

Whereas, pending the entry into force of the Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Russian Federation, of the other part, signed in Corfu on 24 June 1994, it is necessary to approve, on behalf of the European Community, the Interim Agreement on trade and trade-related matters between the European Community, the European Coal and Steel Community and the European Atomic Energy Community, of the one part, and the Russian Federation, of the other part, initialled on 29 December 1994,

HAS DECIDED AS FOLLOWS:

Article 1

The Interim Agreement on trade and trade-related matters between the European Community, the European Coal and Steel Community and the European Atomic Energy Community, of the one part, and the Russian Federation, of the other part, together with the two Protocols and the declarations relating thereto, is hereby approved on behalf of the European Community.

The text of the Interim Agreement is attached to this Decision.

Article 2

The President of the Council is hereby authorized to designate the persons empowered to sign the Interim Agreement (1).

Article 3

The President of the Council shall give the notification provided for in Article 36 of the Interim Agreement on behalf of the European Community.

Done at Brussels, 17 July 1995.

For the Council
The President
J. SOLANA

(1) The date of entry into force of the Agreement will be published in the *Official Journal of the European Communities* by the General Secretariat of the Council.

INTERIM AGREEMENT

on trade and trade-related matters between the European Community, the European Coal and Steel Community and the European Atomic Energy Community, of the one part, and the Russian Federation, of the other part

The EUROPEAN COMMUNITY, the EUROPEAN COAL AND STEEL COMMUNITY and the EUROPEAN ATOMIC ENERGY COMMUNITY, hereinafter referred to as 'THE COMMUNITY'

of the one part, and

the RUSSIAN FEDERATION, hereinafter referred to as 'RUSSIA'

of the other part,

Parties to the present Agreement,

Whereas an Agreement on Partnership and Cooperation establishing a partnership between the European Communities and their Member States, of the one part, and the Russian Federation, of the other part, hereinafter referred to as 'the Agreement on Partnership and Cooperation', was signed on 24 June 1994;

Whereas the aim of the Agreement on Partnership and Cooperation is to strengthen and widen the relations established previously, notably by the Agreement between the European Economic Community and the European Atomic Energy Community and the Union of Soviet Socialist Republics on trade and commercial and economic cooperation signed on 18 December 1989, hereinafter referred to as the '1989 Agreement';

Whereas it is necessary to ensure the further development of trade between the Parties;

Whereas to this end it is necessary to implement as speedily as possible, by means of an Interim Agreement, the provisions of the Agreement on Partnership and Cooperation concerning trade and trade-related matters;

Bearing in mind the contribution which financial cooperation could make to the trade-related aims of this Agreement;

Have decided to conclude this Agreement and to this end have designated as their plenipotentiaries;

THE EUROPEAN COMMUNITY:

THE EUROPEAN COAL AND STEEL COMMUNITY:

THE EUROPEAN ATOMIC ENERGY COMMUNITY:

RUSSIA:

WHO, having exchanged their full powers, found in good and due form,

HAVE AGREED AS FOLLOWS:

TITLE I

GENERAL PRINCIPLES

Article 1

Respect for democratic principles and human rights as defined in particular in the Helsinki Final Act and the Charter of Paris for a New Europe underpins the internal and external policies of the Parties and constitutes an essential element of partnership and of this Agreement.

Article 2

1. The most-favoured-nation treatment granted by Russia under this Agreement shall not apply in relation to advantages defined in Annex I granted by Russia to other countries of the former USSR.

2. In the case of the most-favoured-nation treatment granted under Title II, the exceptions referred to in paragraph 1 shall not apply after Russia accedes to the General Agreement on Tariffs and Trade, hereinafter referred to as the 'GATT', or the World Trade Organization, hereinafter referred to as the 'WTO'.

TITLE II

TRADE IN GOODS

Article 3

1. The Parties shall accord to one another the general most-favoured-nation treatment described in Article I, paragraph 1 of the GATT.

2. The provisions of paragraph 1 shall not apply to:

(a) advantages accorded to adjacent countries in order to facilitate frontier traffic;

(b) advantages granted with the aim of creating a customs union or a free-trade area or pursuant to the creation of such a union or area; the terms 'customs union' and 'free trade area' shall have the same meaning as those described in paragraph 8 of Article XXIV of the GATT or created through the procedure indicated in paragraph 10 of the same GATT Article;

(c) advantages granted to particular countries in accordance with the GATT and with other international arrangements in favour of developing countries.

Article 4

1. The products of the territory of one Party imported into the territory of the other Party shall not be subject, directly or indirectly, to internal taxes or other internal charges of any kind in excess of those applied, directly or indirectly, to like domestic products.

2. Notwithstanding the provisions of paragraph 1, the parties agree that Russia may continue the temporary implementation of its legislation and regulations as regards excise duties on the following conditions:

— the effective discrimination, as it exists on the date of signature of this Agreement, between the treatment of each Community product and the corresponding domestic product is not increased, and

— treatment granted by Russia to Community products is not less favourable than that granted to the products of any third country.

Russia shall endeavour to ensure full compliance with the obligations laid down in paragraph 1 as soon as possible, and shall be in full compliance with them not later than 1 January 1996. Implementation of this shall be monitored by the Joint Committee.

3. Moreover, the products of the territory of one Party imported into the territory of the other Party shall be accorded treatment no less favourable than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use. The provision of this paragraph shall not prevent the application of differential internal transportation charges which are based exclusively on the economic operation of the means of transport and not on the nationality of the product.

4. Article III, paragraphs 8, 9 and 10 of the GATT shall be applicable *mutatis mutandis* between the Parties.

Article 5

1. The Parties agree that the principle of freedom of transit is an essential condition of attaining the objectives of this Agreement.

In this connection each Party shall provide for freedom of transit through its territory of goods originating in the customs territory or destined for the customs territory of the other Party.

2. The rules described in Article V, paragraphs 2, 3, 4 and 5 of the GATT shall be applicable between the Parties.

Article 6

The following Articles of the GATT shall be applicable *mutatis mutandis* between the Parties:

1. Article VII, paragraphs 1, 2, 3, 4 (a), (b) and (d) and 5;
2. Article IX;
3. Article X.

Article 7

Without prejudice to the rights and obligations stemming from international conventions on the temporary admission of goods which bind both Parties, each Party shall furthermore grant the other Party exemption from import charges and duties on goods admitted temporarily, in the instances and according to the procedures stipulated by any other international convention on this matter binding upon it, in conformity with its legislation. Such legislation shall be applied on a most-favoured-nation basis and thus subject to the exceptions listed in Article 2 (2) of this Agreement. Account shall be taken of the conditions under which the obligations stemming from such a convention have been accepted by the Party in question.

Article 8

1. Goods originating in Russia shall be imported into the Community free of quantitative restrictions without prejudice to the provisions of Articles 10, 13 and 14 of this Agreement and to the provisions of Articles 77, 81, 244, 249 and 280 of the Acts of Accession of Spain and Portugal to the Community.

2. Goods originating in the Community shall be imported into Russia free of quantitative restrictions without prejudice to the provisions of Articles 10, 13 and 14 and of Annex II to this Agreement.

Article 9

Until Russia accedes to the GATT/WTO, the Parties shall hold consultations in the Joint Committee on their import tariff policies, including changes in tariff protection. In particular, such consultations shall be offered prior to the increase of tariff protection.

Article 10

1. Where any product is being imported into the territory of one of the Parties in such increased quantities and under such conditions as to cause or threaten to cause substantial injury to domestic producers of like or directly competitive products, the Community or Russia, whichever is concerned, may taken appropriate measures in accordance with the following procedures and conditions.

2. Before taking any measures, or in cases to which paragraph 4 applies as soon as possible thereafter, the Community or Russia, as the case may be, shall supply the Joint Committee with all relevant information with a view to seeking a solution acceptable to both parties. The Parties shall commence consultations promptly within the Joint Committee.

3. If, as a result of the consultations, the Parties do not reach agreement within 30 days of referral to the Joint Committee on actions to avoid the situation, the Party which requested consultations shall be free to restrict imports of the products concerned or to adopt other appropriate measures to the extent and for such time as is necessary to prevent or remedy the injury.

4. In critical circumstances where delay would cause damage difficult to repair, the Parties may take the measures before the consultations, on the condition that consultations shall be offered immediately after taking such action.

5. In the selection of measures under this Article, the Parties shall give priority to those which cause least disturbance to the achievement of the aims of this Agreement.

6. Where a safeguard measure is taken by one Party in accordance with the provisions of this Article, the other Party shall be free to deviate from its obligations under this Title towards the first Party in respect of substantially equivalent trade.

Such action shall not be taken before consultations have been offered by such other Party nor if agreement has been reached within 45 days following the date these consultations were offered.

7. The right of deviation from the obligations referred to in paragraph 6 shall not be exercised for the first three years that a safeguard measure is in effect, provided that the safeguard measure has been taken as a result of an absolute increase in imports, for the maximum period of four years, and in conformity with the provisions of this Agreement.

Article 11

Nothing in this Title, and in Article 10 in particular, shall prejudice or affect in any way the taking, by either Party, of anti-dumping or countervailing measures in accordance with Article VI of the GATT, the Agreement on implementation of Article VI of the GATT, the Agreement on interpretation and application of Articles VI, XVI and XXIII of the GATT or related internal legislation.

In respect of anti-dumping or subsidy investigations, each Party agrees to examine submissions by the other Party and to inform the interested parties concerned of the essential facts and considerations on the basis of which a final decision is to be made. Before definitive anti-dumping and countervailing duties are imposed, the Parties shall do their utmost to bring about a constructive solution to the problem.

Article 12

The Agreement shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of natural resources; the protection of national treasures of artistic, historic or archaeological value or the protection of intellectual, industrial and commercial property or rules relating to gold and silver. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between the Parties.

Article 13

This Title shall not affect the provisions of the Agreement between the European Economic Community and the Russian Federation on trade in textile products initialled on 12 June 1993 and applied with retroactive effect as from 1 January 1993. Furthermore, Article 8 of this Agreement shall not apply to trade in textile products falling under Chapters 50 to 63 of the Combined Nomenclature.

Article 14

1. Trade in products covered by the Treaty establishing the European Coal and Steel Community shall be governed by:

— the provisions of this Title, with the exception of Article 8, and

— upon its entry into force, by the provisions of the Agreement between the European Coal and Steel Community and the Russian Federation on trade in certain steel products.

2. The establishment of a Contact Group on coal and steel matters is governed by Protocol 1 annexed to this Agreement.

Article 15

Trade in nuclear materials

1. Trade in nuclear materials shall be covered by:

— the provisions of this Agreement with the exception of Articles 8 and 10 (1) to (5) and (7),

— the provisions of Articles 6, 7, 14 and 15 (1) (2) (3), first sentence, and (4) and (5) of the 1989 Agreement,

— the attached Exchange of Letters.

2. Notwithstanding the provisions of paragraph 1 of this Article, the Parties agree to take all necessary steps to arrive at an arrangement covering trade in nuclear materials by 1 January 1997.

3. Until such an arrangement is reached, the provisions of this Article will continue to apply.

4. Steps will be taken to conclude an agreement regarding nuclear safeguards, physical protection and administrative cooperation in transfers of nuclear materials. Until such an agreement is in force, the respective legislation and international non-proliferation obligations of the Parties will be applicable as regards the transfer of nuclear materials.

5. For the purpose of the application of the regime provided for in paragraph 1:

— the reference in Article 6 and Article 15 (5) of the 1989 Agreement to 'this Agreement' shall be read as meaning the regime established by paragraph 1 of this Article,

— the reference in Article 10 (6) of this Agreement to 'this Article' shall be read as meaning Article 15 of the 1989 Agreement,

— the reference in Articles 6, 7, 14 and 15 of the 1989 Agreement to the 'Contracting Parties' shall be read as meaning the Parties to this Agreement.

TITLE III

PAYMENTS, COMPETITION AND OTHER ECONOMIC PROVISIONS

Article 16

The Parties undertake to authorize, in freely convertible currency, any current payments between residents of the Community and of Russia connected with the movement of goods made in accordance with the provisions of the present Agreement.

Article 17

Competition

1. The Parties agree to work to remedy or remove through the application of their competition laws or otherwise, restrictions on competition by enterprises or caused by State intervention in so far as they may affect trade between the Community and Russia.

2. In order to attain the objectives mentioned in paragraph 1:

2.1. The Parties, within their respective competences, shall ensure enforcement of laws addressing restrictions on competition by enterprises within their jurisdiction.

2.2. The Parties shall refrain from granting export aids favouring certain undertakings or the production of products other than primary products. The Parties also declare their readiness, as from the third year from the date of entry into force of the Agreement on Partnership and Cooperation, to establish for other aids which distort or threaten to distort competition in so far as they affect trade between the Community and Russia, strict disciplines, including the outright prohibition of certain aids. These categories of aids and the disciplines applicable to each shall be defined jointly within a period of three years after entry into force of the Agreement on Partnership and Cooperation.

Upon request by one Party, the other Party shall provide information on its aid schemes or in particular individual cases of State aid.

2.3. During a transitional period expiring five years after the entry into force of the Agreement on Partnership and Cooperation, Russia may take measures inconsistent with paragraph 2.2, second sentence, provided that these measures are introduced and applied in the circumstances referred to in Annex III.

2.4. In the case of State monopolies of a commercial character, the Parties declare their readiness, as from the third year from the date of entry into force of the Agreement on Partnership and Cooperation, to ensure that there is no discrimination between nationals and companies of the Parties regarding the conditions under which goods are procured or marketed.

In the case of public undertakings or undertakings to which Member States or Russia grant exclusive rights, the Parties declare their readiness, as from the third year from the date of entry into force of the Agreement on Partnership and Cooperation, to ensure that there is neither enacted nor maintained any measure distorting trade between the Community and Russia to an extent contrary to the Parties' respective interests. This provision shall not obstruct the performance, in law or fact, of the particular tasks assigned to such undertakings.

2.5. The period defined in paragraphs 2.2 and 2.4 may be extended by agreement of the Parties.

3. Consultations may take place within the Joint Committee at the request of the Community or Russia on the restrictions or distortions of competition referred to in paragraphs 1 and 2 and on the enforcement of their competition rules, subject to limitations imposed by laws regarding disclosure of information, confidentiality and business secrecy. Consultations may also comprise questions on the interpretation of paragraphs 1 and 2.

4. The Party with experience in applying competition rules shall give full consideration to providing the other Party, upon request and within available resources, technical assistance for the development and implementation of competition rules.

5. The above provisions in no way affect a Party's rights to apply adequate measures, notably those referred to in Article 11, in order to address distortions of trade.

Article 18

Intellectual, industrial and commercial property protection

1. Adequate and effective protection and enforcement of intellectual, industrial and commercial property rights shall be ensured pursuant to the provisions of this Article and of Annex IV.

2. If problems in the area of intellectual, industrial and commercial property affecting trading conditions were to occur, urgent consultations shall be undertaken, at the request of either Party, with a view to reaching mutually satisfactory solutions.

Article 19

Standards and conformity assessment

Within the limits of their competence, and in accordance with their legislation, the Parties shall take measures with a view to reducing the differences which exist between the Parties in the fields of metrology, standardization and certification by encouraging the use of internationally agreed instruments in those fields.

The Parties shall closely cooperate in the abovementioned areas with the relevant European and other international organizations.

The Parties shall, in particular, encourage practical interaction of their respective organizations, with the aim of starting to negotiate mutual recognition agreements in the field of conformity assessment activities.

Article 20

Customs

1. The aim of cooperation shall be to achieve compatibility of the customs systems of the Parties.

2. Cooperation shall include the following in particular:

— the exchange of information,

— the improvement of working methods,

— harmonization and simplification of customs procedures regarding the goods traded between the Parties,

— the interconnection between the transit systems of the Community and Russia,

— the support in the introduction and management of modern customs information systems, including computer based systems on the customs check points,

— mutual assistance and joint actions with respect to 'dual-use' goods and goods subject to non-tariff limitations,

— the organization of seminars and training periods.

Technical assistance shall be provided where necessary.

3. Mutual assistance between administrative authorities in customs matters of the Parties shall take place in accordance with Protocol 2 attached to this Agreement.

TITLE IV

INSTITUTIONAL, GENERAL AND FINAL PROVISIONS

Article 21

The Joint Committee set up by the 1989 Agreement shall perform the duties assigned to it by this Agreement until the Cooperation Council provided for in Article 90 of the Agreement on Partnership and Cooperation is established.

Article 22

The Joint Committee may, for the purposes of attaining the objectives of the Agreement, make recommendations in the cases provided for therein.

It shall draw up its recommendations by agreement between the Parties.

Article 23

When examining any issue arising within the framework of this Agreement in relation to a provision referring to an Article of the GATT, the Joint Committee shall take into account to the greatest extent possible the interpretation that is generally given to the Article of the GATT in question by the Contracting Parties to the GATT.

Article 24

1. Within the scope of this Agreement, each Party undertakes to ensure that natural and legal persons of the other Party have access free of discrimination in relation to its own nationals to the competent courts and administrative organs of the Parties to defend their individual rights and their property rights, including those concerning intellectual, industrial and commercial property.

2. Within the limits of their respective powers, the Parties:

— shall encourage the adoption of arbitration for the settlement of disputes arising out of commercial and cooperation transactions concluded by economic operators of the Community and those of Russia,

— agree that where a dispute is submitted to arbitration, each party to the dispute may, except where the rules of the arbitration centre chosen by the parties provide otherwise, choose its own arbitrator, irrespective of his nationality, and that the presiding third arbitrator

or the sole arbitrator may be a citizen of a third State,

— will recommend their economic operators to choose by mutual consent the law applicable to their contracts,

— shall encourage recourse to the arbitration rules elaborated by the United Nations Commission on International Trade Law (Uncitral) and to arbitration by any centre of a state signatory to the Convention on Recognition and Enforcement of Foreign Arbitral Awards done at New York on 10 June 1958.

Article 25

Nothing in this Agreement shall prevent a Party from taking any measures:

1. which it considers necessary for the protection of its essential security interests:

   (a) to prevent the disclosure of information contrary to its essential security interests;

   (b) which relate to fissionable materials or the materials from which they are derived;

   (c) which relate to the production of, or trade in, arms, munitions or war materials or to research, development or production indispensable for defence purposes, provided that such measures do not impair the conditions of competition in respect of products not intended for specifically military purposes;

   (d) in the event of serious internal disturbances affecting the maintenance of law and order, in time of war or serious international tension constituting threat of war or in order to carry out obligations it has accepted for the purpose of maintaining peace and international security; or

2. which it considers necessary to respect its international obligations and commitments or autonomous measures taken in line with such generally accepted international obligations and commitments on the control of dual use industrial goods and technology.

Article 26

1. In the fields covered by this Agreement and without prejudice to any special provisions contained therein:

— the arrangements applied by Russia in respect of the Community shall not give rise to any discrimination between the Member States, their nationals or their companies or firms,

— the arrangements applied by the Community in respect of Russia shall not give rise to any discrimination between Russian nationals, or its companies or firms.

2. The provisions of paragraph 1 are without prejudice to the right of the Parties to apply the relevant provisions of their fiscal legislation to tax payers who are not in identical situations in particular as regards their place of residence.

Article 27

1. Each of the Parties may refer to the Joint Committee any dispute relating to the application or interpretation of this Agreement.

2. The Joint Committee may settle the dispute by means of a recommendation.

3. In the event of it not being possible to settle the dispute in accordance with paragraph 2, either Party may notify the other of the appointment of a conciliator; the other Party must then appoint a second conciliator within two months.

The Joint Committee shall appoint a third conciliator.

The conciliator's recommendations shall be taken by majority vote. Such recommendations shall not be binding upon the Parties.

4. The Joint Committee may establish rules of procedure for dispute settlement.

Article 28

The Parties agree to consult promptly through appropriate channels at the request of either Party to discuss any matter concerning the interpretation or implementation of this Agreement and other relevant aspects of the relations between the Parties.

The provisions of this Article shall in no way affect and are without prejudice to Articles 10, 11, 27 and 32.

Article 29

Treatment granted to Russia hereunder shall in no case be more favourable than that granted by the Member States to each other.

Article 30

In so far as matters covered by this Agreement are covered by the Energy Charter Treaty and Protocols

thereto, such Treaty and Protocols shall upon entry into force apply to such matters but only to the extent that such application is provided for therein.

Article 31

1. This Agreement shall remain in force until the entry into force of the Agreement on Partnership and Cooperation signed on 24 June 1994.

2. Either Party may denounce this Agreement by notifying the other Party. This Agreement shall cease to apply six months after the date of such notification.

Article 32

1. The Parties shall take any general or specific measures required to fulfil their obligations under the Agreement. They shall see to it that the objectives set out in the Agreement are attained.

2. If either Party considers that the other Party has failed to fulfil an obligation under the Agreement, it may take appropriate measures. Before so doing, except in cases of special urgency, it shall supply the Joint Committee with all relevant information required for a thorough examination of the situation with a view to seeking a solution acceptable to the Parties.

In the selection of these measures, priority must be given to those which least disturb the functioning of the Agreement. These measures shall be notified immediately to the Joint Committee if the other Party so requests.

Article 33

Annexes I, II, III and IV together with Protocols 1 and 2 shall form an integral part of this Agreement.

Article 34

This Agreement shall apply, on the one hand, to the territories in which the Treaties establishing the European Community, the European Coal and Steel Community and the European Atomic Energy Community are applied and under the conditions laid down in those Treaties and, on the other hand, to the territory of Russia.

Article 35

This Agreement is drawn up in duplicate in the Danish, Dutch, English, Finnish, French, German, Greek, Italian, Portuguese, Spanish, Swedish and Russian languages, each of these texts being equally authentic.

Article 36

These Agreement shall enter into force on the first day of the second month following the date on which the Parties have notified each other that the legal procedures necessary to this end have been completed.

Upon its entry into force, and as far as relations between the Community and Russia are concerned, this Agreement shall, without prejudice to Article 15 (1), (3) and (5), replace Articles 2, 3 paragraph (1), first, second and fifth indents, and paragraph (2) and Articles 4 to 16 and Article 18 of the 1989 Agreement.

Hecho en Bruselas, el diecisiete de julio de mil novecientos noventa y cinco.

Udfærdiget i Bruxelles, den syttende juli nitten hundrede og femoghalvfems.

Geschehen zu Brüssel am siebzehnten Juli neunzehnhundertfünfundneunzig.

Έγινε στις Βρυξέλλες, στις δέκα επτά Ιουλίου χίλια εννιακόσια ενενήντα πέντε.

Done at Brussels on the seventeenth day of July in the year one thousand nine hundred and ninety-five.

Fait à Bruxelles, le dix-sept juillet mil neuf cent quatre-vingt-quinze.

Fatto a Bruxelles, addì diciassette luglio millenovecentonovantacinque.

Gedaan te Brussel, de zeventiende juli negentienhonderd vijfennegentig.

Feito em Bruxelas, em dezassete de Julho de mil novecentos e noventa e cinco.

Tehty Brysselissä seitsemäntenätoista päivänä heinäkuuta vuonna tuhatyhdeksänsataayhdeksänkymmentäviisi.

Som skedde i Bryssel den sjuttonde juli nittonhundranittiofem.

Совершено в Брюсселе семнадцатого июля тысяча девятьсот девяносто пятого года.

Por las Comunidades Europeas

For De Europæiske Fællesskaber

Für die Europäischen Gemeinschaften

Για τις Ευρωπαϊκές Κοινότητες

For the European Communities

Pour les Communautés européennes

Per le Comunità europee

Voor de Europese Gemeenschappen

Pelas Comunidades Europeias

Euroopan yhteisöjen puolesta

På Europeiska gemenskapernas vägnar

За Правительство Российской Федерации

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ANNEX I

Indicative list of advantages granted by Russia to the countries of the former USSR in areas covered by this Agreement (as of January 1994)

Advantages are granted bilaterally by respective agreements or by established practice. They provide for, *inter alia:*

1. *Import/export taxation*

   No import duties are applied.

   No export duties are applied with respect to goods delivered under annual bilateral interstate trade and cooperation arrangements within the nomenclature and volumes, stipulated therein, considered as 'exportation for federal state needs' as defined by corresponding Russian law.

   No VAT is applied on import.

   No excise duties are applied on import.

2. *Allocation of quotas and licensing procedures*

   Export quotas for deliveries of Russian products under annual bilateral interstate trade and cooperation agreements are opened in the same way as for 'deliveries for State needs'.

3. Special conditions for current payments.

4. Price system regarding Russian export of some kinds of raw materials and semifinished products (coals, crude oil, natural gas, refined oil products)

   Prices are determined on the basis of corresponding average world prices converted in roubles or respective national currency at a rate quoted by the Central Bank of Russia as of the fifteenth day of the month previous to the month of exportation.

5. *Conditions of transportation and transit*

   As regards countries of the Commonwealth of Independent States that are Parties to the Multilateral Agreement 'on the principles and conditions of relations in the field of transport' and/or on the basis of bilateral arrangements on transportation and transit, no taxes or fees are applied on a reciprocal basis for the transportation and customs clearing of goods (including goods in transit) and transit of vehicles.

ANNEX II

Derogations from Article 8 (quantitative restrictions)

1. Exceptional measures which derogate from the provisions of Article 8 may be taken by Russia in the form of quantitative restrictions on a non-discriminatory basis as provided for in Article XIII of the GATT. Such measures can only be taken after the end of the first calendar year following signature of the Agreement on Partnership and Cooperation.

2. These measures may only be taken in the circumstances mentioned in Annex III.

3. The total value of imports of goods which are subject to these measures may not exceed the following proportions of total imports of goods originating in the Community:

   — 10% during the second and third calendar years following signature of the Agreement on Partnership and Cooperation,

   — 5% during the fourth and fifth calendar years following signature of the Agreement on Partnership and Cooperation,

   — 3% afterwards, until Russia's accession to the GATT/WTO.

   The abovementioned proportions will be determinded by reference to the value of imports by Russia of goods originating in the Community during the last year prior to the introduction of quantitative restrictions for which statistics are available.

   These provisions shall not be circumvented by increased tariff protection on the imported goods concerned.

4. These measures shall not be applied after Russia's accession to the GATT/WTO unless otherwise provided for in Russia's accession protocol to the GATT/WTO.

5. Russia shall inform the Joint Committee of any measures it intends to take under the terms of the present Annex, and consultations shall be held in the Joint Committee if so requested by the Community on such measures before they are taken, and on the sectors to which they apply.

ANNEX III

Transitional period for provisions on competition and for the introduction of quantitative restrictions

The circumstances mentioned in Article 17 (2.3) and in Annex II, paragraph 2 are understood in respect of sectors of the Russian economy which:

— are undergoing restructuring, or

— are facing serious difficulties, particularly where these entail serious social problems in Russia, or

— face the elimination or a drastic reduction of the total market share held by Russian companies or nationals in a given sector or industry in Russia, or

— are newly emerging industries in Russia.

ANNEX IV

Protection of intellectual, industrial and commercial property

(Article 18)

Pursuant to the provisions of Article 18, Russia shall continue to improve the protection of intellectual, industrial and commercial property rights in order to provide, by the end of the fifth year after the entry into force of the Agreement on Partnership and Cooperation, for a level of protection similar to that provided in the Community, including comparable means of enforcing such rights.

PROTOCOL 1

on the establishment of a coal and steel Contact Group

1. A Contact Group is established between the Parties. The Group is composed of representatives of the Community and of Russia.

2. The Contact Group exchanges information on the situation of the coal and steel industries in both territories and on trade between them, particularly with the purpose of identifying such problems as might arise.

3. The Contact Group also examines the situation of the coal and steel industries at world level, including developments in international trade.

4. The Contact Group exchanges all useful information on the structure of the industries concerned, the development of their production capacities, the science and research progress in the relevant fields, and the evolution of employment. The Group also examines pollution and environmental problems.

5. The Contact Group also examines the progress made in the framework of technical assistance between the Parties, including assistance to financial, commercial and technical management.

6. The Contact Group exchanges all relevant information as to attitudes taken, or to be taken in the appropriate international organizations or fora.

7. As and when both Parties agree that the presence and/or participation of representatives of the industries is appropriate, the Contact Group is enlarged to include them.

8. The Contact Group meets twice a year, alternately on the territories of each Party.

9. The chairmanship of the Contact Group is held alternately by a representative of the Commission of the European Communities and a representative of the Government of the Russian Federation.

PROTOCOL 2

on mutual administrative assistance for the correct application of customs legislation

Article 1

Definitions

For the purposes of this Protocol:

(a) 'customs legislation' shall mean provisions applicable in the territories of the Parties and governing the import, export, transit of goods and their placing under any customs procedure, including measures of prohibition, restriction and control and adopted by the said Parties;

(b) 'customs duties' shall mean all duties, taxes, fees or many other charges which are levied and collected in the territories of the Parties, in application of customs legislation, but not including fees and charges which are limited in amount to the approximate costs of services rendered;

(c) 'applicant authority' shall mean a competent administrative authority which has been appointed by a Party for this purpose and which makes a request for assistance in customs matters;

(d) 'requested authority' shall mean a competent administrative authority which has been appointed by a Party for this purpose and which receives a request for assistance in customs matters;

(e) 'contravention' shall mean any violation of the customs legislation as well as any attempted violation of such legislation.

Article 2

Scope

1. The Parties shall assist each other, within their competences, in the manner and under the conditions laid down in this Protocol, in ensuring that customs legislation is correctly applied, in particular by the prevention, detection and investigation of contraventions of this legislation.

2. Assistance, in customs matters, as provided for in this Protocol, applies to any administrative authority of the Parties which is competent for the application of this Protocol. It shall not prejudice the rules governing mutual assistance in criminal matters. Nor shall it cover information, including documents obtained under powers exercised at the request of the judicial authority, unless those authorities so agree.

Article 3

Assistance on request

1. At the request of the applicant authority, the requested authority shall furnish it with all relevant information to enable it to ensure that customs legislation is correctly applied, including information regarding operations detected or planned which are, appear, or would be in contravention of such legislation.

2. At the request of the applicant authority, the requested authority shall inform it whether goods exported from the territory of one of the Parties have been properly imported into the territory of the other Partiy, specifying, where appropriate, the customs procedure applied to the goods.

3. At the request of the applicant authority, the requested authority shall take the necessary steps to ensure that a surveillance is kept on:

(a) natural or legal persons of whom there are reasonable grounds for believing that they are contravening or have contravened customs legislation,

(b) places where stocks of goods have been assembled in such a way that there are reasonable grounds for supposing that they are intended as supplies for operations contrary to the customs legislation of the other Party,

(c) movements of goods notified as possibly giving rise to contraventions of customs legislation,

(d) means of transport for which there are reasonable grounds for believing that they have been, are, or may be used in the contravening of customs legislation.

Article 4

Spontaneous assistance

The Parties shall within their competences provide each other with assistance without prior request where they consider that to be necessary for the correct application of customs legislation, particularly when they obtain information pertaining to:

— operations detected or planned, which are, appear, or would be in contravention of such legislation,

— new means or methods employed in realizing such operations,

— goods known to the subject to substantial contravention of customs legislation on import, export, transit or any other customs procedure.

Article 5

Form and substance of requests for assistance

1. Requests pursuant to this Protocol shall be made in writing. Documents necessary for the execution of such requests shall accompany the request. When required because of the urgency of the situation, oral requests may be accepted, but must be confirmed in writing immediately.

2. Requests pursuant to paragraph 1 of this Article shall include the following information:

(a) the applicant authority making the request,

(b) the measure requested,

(c) the object of and the reason for the request,

(d) the laws, rules and other legal elements involved,

(e) indications as exact and comprehensive as possible on the natural or legal persons being the target of the investigations,

(f) a summary of the relevant facts.

3. Requests shall be submitted in an official language of the requested authority or in a language acceptable to such authority.

4. If a request does not meet the formal requirements, its correction or completion may be demanded; the ordering of precautionary measures may, however, take place.

Article 6

Execution of requests

1. Requests for assistance will be executed in accordance with the laws, rules and other legal instruments of the requested Party.

2. In order to comply with a request for assistance, the requested authority shall proceed, within its competence and available resources, as though it were acting on its own account or at the request of other authorities of that same Party, by supplying information already possessed, by carrying out appropriate enquiries or by arranging for them to be carried out.

3. Duly authorized officials of a Party may, with the agreement of the other Party involved and within the conditions laid down by the latter, obtain from the offices of the requested authority or other authority for which the requested authority is responsible, information relating to the contravention of customs legislation which the applicant authority needs for the purposes of this Protocol.

4. Officials of a Party may, with the agreement of the other Party involved and within the conditions laid down by the latter, be present at enquiries carried out in the latter's territory.

5. When, in the circumstances provided for under this Protocol, officials of one Party are present at enquiries carried out in the territory of the other Party, they must, at all times, be able to furnish proof of their official capacity. They must not wear uniform nor carry arms.

Article 7

Form in which information is to be communicated

1. Under the conditions and within the limits laid down in this Protocol, the Parties shall communicate to each other information in the form of documents, certified copies of documents, reports and the like.

2. Original files and documents may be transmitted on request only in cases where certified copies would be insufficient. Those files and documents shall be returned at the earliest opportunity.

3. The documents provided for in paragraph 1 may be replaced by computerized information produced in any form for the same purpose. All relevant information for the utilization of the material shall be supplied on request.

Article 8

Exceptions to the obligation to provide assistance

1. The Parties may refuse to give assistance as provided for in this Protocol, provide it partially or provide it subject to certain conditions or requirements, where to do so would:

(a) be likely to prejudice sovereignty, public policy, security or other essential interests; or

(b) violate an industrial, commercial or professional secret.

2. Where the applicant authority asks for assistance which it would itself be unable to provide if asked so by another party, it shall draw attention to that fact in its request. It shall then be left to the requested authority to decide how to respond to such a request.

3. If assistance is withheld or denied, the decision and the reasons therefor must be notified in written form to the applicant authority without delay.

Article 9

Obligation to observe confidentiality

1. Any information communicated in whatsoever form pursuant to this Protocol shall be of a confidential nature. It shall be covered by the obligation of official secrecy and shall enjoy the protection extended to like

information under the relevant legislation applicable in the Party which received it and the corresponding provisions applying to the Community institutions.

2. Nominative data shall not be transmitted whenever there are reasonable grounds to believe that the transfer or the use made of the data transmitted would be contrary to the basic legal principles of one of the Parties, and, in particular, if the person concerned would suffer a prejudice to fundamental human rights. Upon request, the receiving Party shall inform the furnishing Party of the use made of the information supplied and of the results achieved.

3. Nominative data may only be transmitted to customs authorities and, in the case of need for prosecution purposes, to public prosecution and judicial authorities. Other persons or authorities may obtain such information only upon previous authorization by the furnishing authority.

4. The furnishing Party shall verify the accuracy of the information to be transferred. Whenever it appears that the information supplied was inaccurate or to be deleted, the receiving Party shall be notified without delay. The latter shall be obliged to carry out the correction or deletion.

5. Without prejudice to cases of prevailing public interest, the person concerned may obtain, upon request, information on the data stores and the purpose of this storage.

Article 10

Use of information

1. Information obtained shall be used solely for the purposes of this Protocol and may be used within each Party for other purposes only with the prior written consent of the administrative authority which furnished the information and shall be subject to any restrictions laid down by that authority.

2. Paragraph 1 shall not impede the use of information in any judicial or administrative proceedings subsequently instituted for failure to comply with customs legislation.

3. The Parties may, in their records of evidence, reports and testimonies and in proceedings and charges brought before the courts, use as evidence information obtained and documents consulted in accordance with the provisions of this Protocol.

Article 11

Experts and witnesses

An official of a requested authority may be authorized to appear, within the limitations of the authorization granted, as expert or witness in judicial or administrative proceedings regarding the matters covered by this Protocol in the jurisdiction of another Party, and produce such objects, documents or authenticated copies thereof, as may be needed for the proceedings. The request for an appearance must indicate specifically on what matters and by virtue of what title or qualification the official will be questioned.

Article 12

Assistance expenses

The Parties shall waive all claims on each other for the reimbursement of expenses incurred pursuant to this Protocol, except, as appropriate, for expenses to experts and witnesses and to interpreters and translators who are not dependent upon public services.

Article 13

Implementation

1. The management of this Protocol shall be entrusted to the competent services of the Commission of the European Communities and, where appropriate, the customs authorities of the Member States on the one hand and the central customs authorities of Russia on the other. They shall decide on all practical measures and arrangements necessary for its application, taking into consideration rules in the field of data protection. They may recommend to the Joint Committee amendments which they consider should be made to this Protocol.

2. The Parties shall consult each other and subsequently keep each other informed of the detailed rules of implementation which are adopted in accordance with the provisions of this Protocol.

Article 14

Complementarity

1. This Protocol shall complement and not impede the application of any agreements on mutual assistance which have been concluded between individual or several Member States and Russia. Nor shall it preclude more extensive mutual assistance granted under such agreements concluded or to be concluded.

2. Without prejudice to Article 10, these agreements do not prejudice Community provisions governing the communication between the competent services of the Commission of the European Communities and the customs authorities of the Member States of any information obtained in customs matters which could be of Community interest.

FINAL ACT

The plenipotentiaries of the EUROPEAN COMMUNITY, the EUROPEAN COAL AND STEEL COMMUNITY and the EUROPEAN ATOMIC ENERGY COMMUNITY, hereinafter referred to as 'the Community',

of the one part, and

the plenipotentiary of THE RUSSIAN FEDERATION,

of the other part,

meeting at Brussels on 17 July 1995 for the signature of the Interim Agreement on trade and trade-related matters between the European Community, the European Coal and Steel Community and the European Atomic Energy Community, of the one part, and the Russian Federation, of the other part, hereinafter referred to as 'the Agreement', have adopted the following texts:

the Agreement and the following Protocols:

Protocol 1 on the establishment of a coal and steel Contact Group

Protocol 2 on mutual administrative assistance for the correct application of customs legislation

The plenipotentiaries of the Community and the plenipotentiary of the Russian Federation have adopted the texts of the Joint Declarations listed below and annexed to this Final Act:

Joint Declaration in relation to Title II and Article 23 of the Agreement

Joint Declaration in relation to Article 3 of the Agreement

Joint Declaration in relation to Article 5 of the Agreement

Joint Declaration in relation to Article 10 of the Agreement

Joint Declaration in relation to Article 11 of the Agreement

Joint Declaration in relation to Article 15 (1), second indent, of the Agreement

Joint Declaration in relation to Article 16 of the Agreement

Joint Declaration in relation to Article 17 (2.2) of the Agreement

Joint Declaration in relation to Article 18 of the Agreement

Joint Declaration in relation to Article 25 of the Agreement

Joint Declaration in relation to Article 27 of the Agreement

Joint Declaration in relation to Article 32 of the Agreement

Joint Declaration in relation to Article 32 (2) of the Agreement

Joint Declaration in relation to Articles 1 and 32 of the Agreement

Joint Declaration in relation to Article 36 of the Agreement

Joint Declaration in relation to Article 6 of Protocol 2

The plenipotentiaries of the Community and the plenipotentiary of the Russian Federation have taken note of the Exchange of Letters in relation to Article 15 of the Agreement annexed to this Final Act

The plenipotentiary of the Russian Federation has taken note of the declarations listed below and annexed to this Final Act:

Community declaration in relation to Article 17 of the Agreement

Community declaration in relation to Article 18 of the Agreement

The plenipotentiaries of the Community have taken note of the declarations listed below and annexed to this Final Act:

Declaration by the Russian Federation in relation to Article 6 of the Agreement

Declaration by the Russian Federation in relation to Article 18 of the Agreement

Declaration by the Russian Federation in relation to Article 24 of the Agreement

Hecho en Bruselas, el diecisiete de julio de mil novecientos noventa y cinco.

Udfærdiget i Bruxelles, den syttende juli nitten hundrede og femoghalvfems.

Geschehen zu Brüssel am siebzehnten Juli neunzehnhundertfünfundneunzig.

Έγινε στις Βρυξέλλες, στις δέκα επτά Ιουλίου χίλια εννιακόσια ενενήντα πέντε.

Done at Brussels on the seventeenth day of July in the year one thousand nine hundred and ninety-five.

Fait à Bruxelles, le dix-sept juillet mil neuf cent quatre-vingt-quinze.

Fatto a Bruxelles, addì diciassette luglio millenovecentonovantacinque.

Gedaan te Brussel, de zeventiende juli negentienhonderd vijfennegentig.

Feito em Bruxelas, em dezassete de Julho de mil novecentos e noventa e cinco.

Tehty Brysselissä seitsemäntenätoista päivänä heinäkuuta vuonna tuhatyhdeksänsataayhdeksänkymmentäviisi.

Som skedde i Bryssel den sjuttonde juli nittonhundranittiofem.

Совершено в Брюсселе семнадцатого июля тысяча девятьсот девяносто пятого года.

Por las Comunidades Europeas

For De Europæiske Fællesskaber

Für die Europäischen Gemeinschaften

Για τις Ευρωπαϊκές Κοινότητες

For the European Communities

Pour les Communautés européennes

Per le Comunità europee

Voor de Europese Gemeenschappen

Pelas Comunidades Europeias

Euroopan yhteisöjen puolesta

På Europeiska gemenskapernas vägnar

За Правительство Российской Федерации

JOINT DECLARATION IN RELATION TO TITLE II AND ARTICLE 23

For the purpose of Title II and Article 23, the GATT is understood to be the General Agreement on Tariffs and Trade signed in Geneva in 1947 as amended, as applied at the date of signature of the Agreement on Partnership and Cooperation, if the Parties do not agree otherwise within the framework of the Joint Committee established under Article 21.

JOINT DECLARATION IN RELATION TO ARTICLE 3

The Parties agree that the provisions of paragraph 1 of Article 3 shall not apply to conditions of import of products to the territory of Russia under financial loans and credits granted for development and humanitarian purposes, technical and humanitarian assistance and other similar arrangements, concluded between Russia and third States or international organizations in so far as such States or international organizations require special treatment for such imports.

JOINT DECLARATION IN RELATION TO ARTICLE 5

Article 5, within Title II on trade in goods, deals with the question of transit. It is the understanding of the Parties that Article 5 deals exclusively with the freedom of transit of goods, and does not deal with access to markets for transportation services. This is according to normal GATT practice.

JOINT DECLARATION IN RELATION TO ARTICLE 10

The Parties declare that the text of the safeguard clause, Article 10, does not grant GATT safeguard treatment.

JOINT DECLARATION IN RELATION TO ARTICLE 11

It is understood that the provisions of Article 11 and those of the following paragraph are neither intended to, nor shall, slow down, hinder or impede the procedures provided for in the respective legislation of the Parties regarding anti-dumping and subsidies investigations.

The Parties agree that, without prejudice to their legislation and practice, when establishing normal value due account shall be taken overall, in each case on its merits, when natural comparative advantages can be shown by the manufacturers involved to be held with regard to factors such as access to raw materials, production process, proximity of production to customers and special characteristics of the product.

JOINT DECLARATION IN RELATION TO ARTICLE 15 (1), SECOND INDENT

With respect to the Community the legislation and regulations, referred to in Article 6 of the 1989 Agreement, include, *inter alia*, the Treaty establishing the European Atomic Energy Community and implementing regulations thereof, in particular the provisions of those texts, which specify the rights, powers and responsibilities of the Euratom Supply Agency and of the Commission of the European Communities.

JOINT DECLARATION IN RELATION TO ARTICLE 16 (DEFINITIONS)

'Current payments'

For the purpose of this Article, 'current payments' are payments connected with the movement of goods made in accordance with normal international business practice and do not cover arrangements which materially constitute a combination of a current payment and a capital transaction, such as deferrals of payments and advances which is meant to circumvent respective legislation of the Parties in this field.

This definition does not preclude Russia from applying or enacting legislation which lays down that such payments must be carried out through those Russian banks which have received the respective licences from the Central Bank of the Russian Federation to carry out such operations in freely convertible currencies.

'Freely convertible currency'

A 'freely convertible currency' is any currency considered as such by the International Monetary Fund.

JOINT DECLARATION IN RELATION TO ARTICLE 17 (2.2)

'Primary products' are those defined as such in the GATT.

JOINT DECLARATION IN RELATION TO ARTICLE 18

Within the limits of their respective competences, the Parties agree that for the purpose of the Agreement, intellectual, industrial and commercial property includes in particular copyright, including the copyright in computer programs, and neighbouring rights, the rights relating to patents, industrial designs, geographical indications, including appellations of origin, trademarks and service marks, topographies of integrated circuits as well as protection against unfair competition as referred to in Article 10*bis* of the Paris Convention for the Protection of Industrial Property and Protection of Undisclosed Information on Know-how.

JOINT DECLARATION IN RELATION TO ARTICLE 25

The Parties agree that the measures provided for in Article 25 shall not be taken with the aim to distort conditions of competition in relevant markets and thus to afford protection to domestic production.

JOINT DECLARATION IN RELATION TO ARTICLE 27

The Parties invite the Joint Committee to examine forthwith the rules of procedure that may be useful for dispute settlement under this Agreement.

JOINT DECLARATION IN RELATION TO ARTICLE 32

The Parties agree, by common consent, for the purpose of its correct interpretation and its practical application that the terms 'cases of special urgency' included in Article 32 of the Agreement mean cases of material breach of the Agreement by one of the Parties. A material breach of the Agreement consists of

(a) repudiation of the Agreement not sanctioned by the general rules of international law

or

(b) violation of the essential element of the Agreement set out in Article 1.

JOINT DECLARATION IN RELATION TO ARTICLE 32 (2)

The Parties agree that 'appropriate measures' referred to in Article 32 (2) are measures taken in accordance with international law.

If a Party takes a measure in a case of 'special urgency' as provided for under Article 32 (2), the other Party may avail itself of the procedure provided for in Article 27.

JOINT DECLARATION IN RELATION TO ARTICLES 1 AND 32

The Parties declare that the inclusion in the Agreement of the reference to the respect for human rights constituting an essential element of the Agreement and to cases of special urgency flows from

— the Community's policy in the area of human rights, in conformity with the Declaration of the Council of 11 May 1992 which provides for the inclusion of this reference in cooperation or association agreements between the Community and its CSCE partners, as well as

— Russia's policy in this field, and

— the attachment of both Parties to the relevant obligations, arising in particular from the Helsinki Final Act and the Charter of Paris for a new Europe.

JOINT DECLARATION IN RELATION TO ARTICLE 36

The Parties confirm that although the present Agreement replaces parts of the 1989 Agreement regarding relations between the Parties, the Agreement shall not prejudice or otherwise affect any measures taken before the entry into force of this Agreement or agreements made between them before that date in conformity with the 1989 Agreement and this upon the conditions and for the period of application contained in such measures or agreements.

JOINT DECLARATION IN RELATION TO ARTICLE 6 OF PROTOCOL 2

1. The Parties agree to take the necessary measures in order to assist each other, as provided for in this Protocol and without delay, for the following movements of goods:

(a) movement of arms, ammunition, explosives and explosive devices;

(b) movement of objects of art and antiquity, which present significant historical, cultural or archaeological value for one of the Parties;

(c) movement of poisonous goods as well as the substances dangerous for the environment and the public health;

(d) movement of sensitive and strategic goods subject to non-tariff limitations in accordance with the lists agreed upon by the Parties.

2. The Parties agree, if permitted by the basic principles of their respective legal systems, to take the necessary measures to allow the appropriate use of the controlled delivery technique on the basis of mutually agreed implementing provisions adopted by them in accordance with the procedures of this Protocol.

3. The Parties agree to take all necessary measures, in accordance with their respective legislation, in order:

— to deliver all documents,

— to notify all decisions,

falling within the scope of this Protocol to an addressee, residing or established in their respective territories on the basis of mutually agreed implementing provisions adopted by them in accordance with the procedures of this Protocol. In such a case Article 5 (3) is applicable.

4. The Parties agree that when the requested authority cannot act on his own, the administrative department to which the request has been addressed by this authority shall proceed under the same conditions applicable to the requested authority.

EXCHANGE OF LETTERS

in relation to Article 15

A. *Letter from Russia*

Sir,

The purpose of this letter is to confirm that with regard to trade in nuclear materials as covered by Article 15 of the Interim Agreement signed today, we have reached the following understanding:

Russia intends to act as a stable, reliable and long-term supplier of nuclear materials to the Community and the Community recognizes that intention. The Russian Government takes note that the Community considers Russia, in particular for the purposes of its supply policy in the nuclear field, as a source of supply which is separate and distinct from other suppliers.

In order to avoid any difficulties in trade, consultations shall be held regularly or on request on developments in the trade of nuclear materials between Russia and the Community. These consultations could include a continuous and regular dialogue on market developments and forecasts.

The consultations shall be held within the framework of Article 21.

As provided in Article 6 of the Interim Agreement the regulations referred to in Article 6 of the 1989 Agreement will be implemented in a uniform, impartial and equitable manner.

I refer to our common desire to facilitate by all practicable means the process of nuclear disarmament underway. We have agreed to take all necessary steps to conduct consultations with all countries concerned, if it appears that the implementation of respective bi- and multilateral agreements causes or threatens to cause substantial injury to the facilities of the Parties.

I propose that this letter and your reply will establish a formal agreement between us.

Please accept, Sir, the assurance of my highest consideration.

For the Government of
the Russian Federation

B. *Letter from the Community*

Sir,

Thank you for your letter of today's date which reads as follows:

'The purpose of this letter is to confirm that with regard to trade in nuclear materials as covered by Article 15 of the Interim Agreement signed today, we have reached the following understanding:

Russia intends to act as a stable, reliable and long-term supplier of nuclear materials to the Community and the Community recognizes that intention. The Russian Government takes note that the Community considers Russia, in particular for the purposes of its supply policy in the nuclear field, as a source of supply which is separate and distinct from other suppliers.

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I propose that this letter and your reply will establish a formal agreement between us.'

I confirm that your letter and my reply establish a formal agreement between us.

Please accept, Sir, the assurance of my highest consideration.

On behalf of the
European Communities

COMMUNITY DECLARATION IN RELATION TO ARTICLE 17

The provisions of the Agreement are without prejudice to the competences of the European Community and its Member States in the field of competition.

COMMUNITY DECLARATION IN RELATION TO ARTICLE 18

The provisions of the Agreement are without prejudice to the competences of the European Community and its Member States in matters of intellectual, industrial and commercial property.

DECLARATION BY RUSSIA IN RELATION TO ARTICLE 6

The provisions of Article 6 (3) are without prejudice to measures outside the competences of the Government of the Russian Federation.

DECLARATION BY RUSSIA IN RELATION TO ARTICLE 18

The provisions of paragraph 2 of Article 54 with the exception of the final indent, and paragraphs 4 and 5 of Annex 10 of the Agreement on Partnership and Cooperation shall be applied from the entry into force of the Interim Agreement.

DECLARATION BY RUSSIA IN RELATION TO ARTICLE 24

The provisions of Article 24 (1) are without prejudice to special powers assigned by Russian legislation in force to patent attorneys who are citizens of the Russian Federation.

OUTSIDE THE AGREEMENT

EXCHANGE OF LETTERS

on the consequences of enlargement

A. *Letter from the Community*

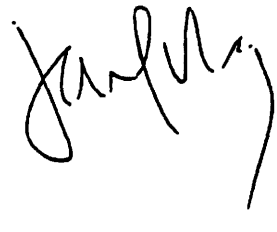
Sir,

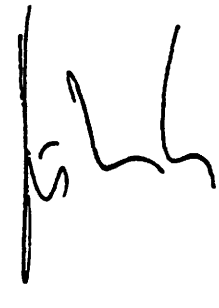
I refer to the Interim Agreement signed today and confirm that if any amendment to this Agreement might become necessary as a result of the enlargement of the Community, this would become the subject of consultations between the Parties pursuant to Article 21 and in this context account would be taken, to the extent possible, of the character of hitherto existing bilateral trade and economic relations between Russia and new Member States.

I would be obliged if you could confirm the agreement of your Government to the content of this letter.

Please accept, Sir, the assurance of my highest consideration.

On behalf of
the European Communities





B. *Letter from Russia*

Sir,

Thank you for your letter of today's date which reads as follows:

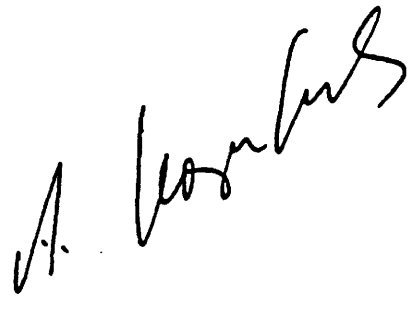
'I refer to the Interim Agreement signed today and confirm that if any amendment to this Agreement might become necessary as a result of the enlargement of the Community, this would become the subject of consultations between the Parties pursuant to Article 21 and in this context account would be taken, to the extent possible, of the character of hitherto existing bilateral trade and economic relations between Russia and new Member States.

I would be obliged if you could confirm the agreement of your Government to the content of this letter.'

I confirm that your letter and my reply establish a formal agreement between us.

Please accept, Sir, the assurance of my highest consideration.

For the Government
of the Russian Federation



COMMISSION

COMMISSION DECISION

of 4 October 1995

concerning the conclusion on behalf of the European Coal and Steel Community and the European Atomic Energy Community of the Interim Agreement between the European Community, the European Coal and Steel Community and the European Atomic Energy Community, of the one part, and the Russian Federation, of the other part, on trade and the Russian Federation, of the other part, on trade and trade-related matters

(95/415/Euratom, ECSC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community and in particular the first paragraph of Article 95 thereof,

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

Whereas, pending the entry into force of the Partnership and Cooperation Agreement signed in Corfu on 24 June 1994, it is necessary to approve the Interim Agreement between the European Community, the European Coal and Steel Community and the European Atomic Energy Community, of the one part, and the Russian Federation, of the other part, on trade and trade-related matters signed in Brussels on 17 July 1995;

Whereas the conclusion of the Interim Agreement is necessary to attain the objectives of the Community set out in particular in Articles 2 and 3 of the Treaty establishing the European Coal and Steel Community and whereas the Treaty did not make provision for all the cases covered by this Decision;

Having consulted the Consultative Committee and with the assent of the Council,

HAS DECIDED AS FOLLOWS:

Article 1

The Interim Agreement between the European Community, the European Coal and Steel Community and the European Atomic Energy Community, of the one part, and the Russian Federation, of the other part, on trade and trade-related matters, together with the two Protocols and the declarations, are hereby approved on behalf of the European Coal and Steel Community and the European Atomic Energy Community.

These texts are attached to this Decision.

Article 2

The President of the Commission shall give the notification provided for in Article 35 of the Interim Agreement on behalf of the European Coal and Steel Community and the European Atomic Energy Community.

Done at Brussels, 4 October 1995.

For the Commission
The President
Jacques SANTER

II

(Acts whose publication is not obligatory)

COUNCIL AND COMMISSION

COUNCIL DECISION

of 26 February 1990

on the conclusion by the European Economic Community of an Agreement between the European Economic Community and the European Atomic Energy Community and the Union of Soviet Socialist Republics on trade and commercial and economic cooperation

(90/116/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 113 and 235 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament (1),

Whereas the conclusion of the Agreement between the European Economic Community and the European Atomic Energy Community and the Union of Soviet Socialist Republics on trade and commercial and economic cooperation is necessary for the achievement of the Community's objectives in the field of external economic relations; whereas this Agreement should be approved on behalf of the European Economic Community;

Whereas is appears that certain measures of economic cooperation provided for by the Agreement exceed the powers of action provided for in the Treaty, and in particular those specified in the field of the common commercial policy,

HAD DECIDED AS FOLLOWS:

Article 1

The Agreement between the European Economic Community and the European Atomic Energy Community and the Union of Soviet Socialist Republics on trade and commercial and economic cooperation is hereby approved on behalf of the European Economic Community.

The text of that Agreement is attached to this Decision (2).

Article 2

The President of the Council shall give the notification, on behalf of the European Economic Community, provided for in Article 25 of the Agreement.

Article 3

The Commission assisted by representatives of the Member States, shall represent the Community in the joint committee set up by Article 22 of the Agreement.

Article 4

This Decision shall enter into force on the day following its publication in the *Official Journal of the European Communities*.

Done at Brussels, 26 February 1990.

For the Council

The President

M. SMITH

(1) Opinion delivered on 14 February 1990 (not yet published in the Official Journal).

(2) See page 3 of this Official Journal.

COMMISSION DECISION

of 27 February 1990

concerning the conclusion on behalf of the European Atomic Energy Community of the Agreement between the European Economic Community and the European Atomic Energy Community and the Union of Soviet Socialist Republics on trade and commercial and economic cooperation

(90/117/Euratom)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Whereas the Agreement between the European Economic Community and the European Atomic Energy Community and the Union of Soviet Socialist Republics on trade and commercial and economic cooperation was signed on 18 December 1989;

Whereas by Decision of 26 February 1990 the Council approved the said Agreement for the purposes of conclusion by the Commission on behalf of the European Atomic Energy Community;

Whereas the said Agreement should be concluded on behalf of the European Atomic Energy Community,

HAD DECIDED AS FOLLOWS:

Article 1

The Agreement [1] between the European Economic Community and the European Atomic Energy Community and the Union of Soviet Socialist Republics on trade and commercial and economic cooperation is hereby concluded on behalf of the European Atomic Energy Community.

Article 2

The President of the Commission shall give the notification provided for in Article 25 of the Agreement on behalf of the European Atomic Energy Community.

Done at Brussels, 27 February 1990.

For the Commission

The President

Jacques DELORS

[1] The text of that Agreement is attached to this Decision.

AGREEMENT

between the European Economic Community and the European Atomic Energy Community and the Union of Soviet Socialist Republics on trade and commercial and economic cooperation

THE EUROPEAN ECONOMIC COMMUNITY, and

The EUROPEAN ATOMIC ENERGY COMMUNITY,

hereinafter together called 'the Community', of the one part, and

THE UNION Of SOVIET SOCIALIST REPUBLICS,

hereinafter called 'the USSR', of the other part,

RECOGNIZING that the Community and the USSR desire to establish direct contractual relations with one another which will permit further development at a later stage,

CONSIDERING that the development of relations between the Contracting Parties will complement and extend bilateral relations between the Community's Member States and the USSR,

HAVING REGARD to the importance of giving full effect to the Final Act of the Conference on Security and Cooperation in Europe and the Concluding Documents of subsequent meetings of the CSCE participating States,

DESIROUS of creating favourable conditions for the harmonious development and diversification of trade and the promotion of commercial and economic cooperation in areas of mutual interest on the basis of equality, mutual benefit and reciprocity,

BELIEVING that the volume and structure of trade between the Contracting Parties do not correspond to the potential represented by their current levels of economic development and their future prospects,

TAKING INTO ACCOUNT the favourable implications for trade and economic relations between the Contracting Parties of the economic restructuring under way in the USSR,

RECALLING the Joint Declaration on the establishment of official relations between the Council for Mutual Economic Assistance and the European Economic Community,

HAVE DECIDED to conclude an Agreement on trade and commercial and economic cooperation between the European Economic Community and the European Atomic Energy Community, of the one part, and the Union of Soviet Socialist Republics, of the other part, and to this end have designated as their Plenipotentiaries:

THE EUROPEAN ECONOMIC COMMUNITY:

Roland DUMAS,

Ministre d'Etat,

Minister for Foreign Affairs of the French Republic,

President-in-Office of the Council of the European Communities;

Frans ANDRIESSEN,

Vice-President of the Commission of the European Communities;

THE EUROPEAN ATOMIC ENERGY COMMUNITY:

Frans ANDRIESSEN,

Vice-President of the Commission of the European Communities;

THE UNION OF SOVIET SOCIALIST REPUBLICS

Eduard SHEVARDNADZE,

Minister for Foreign Affairs of the Union of Soviet Socialist Republics;

WHO, having exchanged their full powers, found in good and due form,

HAVE AGREED AS FOLLOWS

TITLE I

General

Article 1

Within the framework of their respective laws and regulations, the Contracting Parties shall use their best endeavours to facilitate and promote

— the harmonious development and diversification of their trade, and

— the development of various types of commercial and economic cooperation.

To that end, they confirm their resolve to consider favourably, each for its own part, suggestions made by the other Party with a view to attaining these objectives.

TITLE II

Trade and commercial cooperation

Article 2

1. This Agreement shall apply to trade in all goods originating in the Community or in the USSR, with the exception of the products covered by the Treaty establishing the European Coal and Steel Community.

2. This Agreement shall not affect the provisions of the Agreement between the European Economic Community and the USSR on trade in textile products initialled on 11 December 1989 and applied provisionally as from 1 January 1990, nor the provisions of any exchange of letters, any other arrangements concluded in connection therewith and any agreements on trade in textile products subsequently concluded, for the period of application of these provisions.

Article 3

1. The Contracting Parties shall accord to one another most-favoured-nation treatment in all areas in respect of:

— customs duties and charges applied to imports and exports, including the method of collecting such duties and charges,

— provisions relating to customs clearance, transit, warehouses and transhipment,

— taxes and other internal charges of any kind applied directly or indirectly to imported goods,

— methods of payment and the transfer of such payments,

— the rules relating to the sale, purchase, transport, distribution and use of goods on the domestic market.

2. The provisions of paragraph 1 shall not apply to:

(a) advantages granted with the aim of creating a customs union or a free-trade area or pursuant to the creation of such a union or area;

(b) advantages granted to particular countries in accordance with the General Agreement on Tariffs and Trade and with other international arrangements in favour of developing countries;

(c) advantages granted to neighbouring countries to facilitate frontier-zone trade.

Article 4

The Contracting Parties undertake to allow relief from duties, taxes and other charges, and to grant licences in respect of goods temporarily remaining in their territories for re-exportation either in the unaltered state or after inward processing.

Article 5

The USSR shall grant imports of products originating in the Community non-discriminatory treatment as regards the application of quantitative restrictions, the granting of licences and the allocation of the currency needed to pay for such imports.

Article 6

Unless otherwise specified in this Agreement, trade and other commercial cooperation between the Contracting Parties shall be conducted in accordance with their respective regulations.

Article 7

Without prejudice to the provisions of Article 5, each Contracting Party shall accord the highest possible degree of

liberalization to imports of the other's products. The process of liberalization shall take account of the development of trade between the Contracting Parties, market conditions, changes in the rules concerning trade in the Community or in the USSR and progress made in implementing the Agreement.

Article 8

To this end the Community undertakes:

— to make efforts to ensure progress towards the progressive abolition of 'specific quantitative restrictions', namely those quantitative restrictions applied to imports originating in the USSR under Regulation (EEC) No 3420/83 which concern products other than those to which quantitative restrictions are applied under Regulation (EEC) No 288/82,

— to eliminate, within one year of the entry into force of this Agreement, quantitative restrictions on imports into those regions of the Community and of those products listed in Annex I,

— to suspend, within one year of the entry into force of this Agreement, the application of quantitative restrictions on imports into those regions of the Community and of those products listed in Annex II on the terms and conditions specified therein.

Article 9

As regards the specific quantitative restrictions not contained in Annexes I and II, the Contracting Parties shall examine, before 30 June 1992, in the framework of the joint committee referred to in Article 22, the further changes which can be made in the then existing import arrangements. The changes to be considered may include any of the following measures:

— liberalization,

— liberalization with surveillance of imports,

— adoption of appropriate measures by the USSR such as the issue of export licences or certificates to ensure that exports to the Community remain within specified levels,

— measures that may be required to adapt existing Community import arrangements.

Article 10

1. For each calendar year, the Community shall open import quotas for products which are of interest for the USSR and which are subject to quantitative restrictions.

2. The Contracting Parties shall hold consultations each year in the joint committee provided for in Article 22 to determine what increases can be made in the quotas referred to in paragraph 1 and whether quotas can be opened for other products for the following year.

Article 11

1. The Community undertakes to abolish by 31 December 1995 at the latest the remaining specific quantitative restrictions with the exception of those concerning a limited number of products which might be deemed sensitive at that time.

2. The joint committee set up pursuant to Article 22 shall, during its meeting in 1995, draw up the arrangements which shall apply for a prescribed period after 31 December 1995 to the imports of the sensitive products referred to in paragraph 1.

Article 12

Imports into the Community of products covered by this Agreement shall not be charged against the quotas referred to in Article 10 where they are declared as being intended for re-export and are actually re-exported from the Community either in the unaltered state or after inward processing, under the administrative control arrangements in force in the Community.

Article 13

The Parties shall inform one another of any changes in their tariff or statistical nomenclature or of any decision taken in accordance with the procedures in force concerning the classification of products covered by this Agreement.

Article 14

Goods shall be treated between the Contracting Parties at market-related prices.

Article 15

1. The Contracting Parties shall try to avoid conflict situations requiring safeguard measures in mutual trade. If problems nevertheless arise in trade between the Contracting Parties, the Parties shall open consultations not later than 30 days after the submission by one of them of an appropriate request within the framework of the joint committee set up in accordance with Article 22. Such consultations will aim at seeking mutually satisfactory solutions to these problems. Each Contracting Party will ensure that, except in critical circumstances, as defined in paragraph 4, no action is taken before consultations are held.

2. In particular, the provisions of paragraph 1 shall apply if any product is being imported into the territory of one of the Contracting Parties in such increased quantities or under such conditions as to cause, or threaten to cause, injury to domestic producers of like or directly competitive products. In this case, the Contracting Party requesting the consultations shall provide the other Party with all the information required for a detailed examination of the situation.

3. If, as a result of the consultations, the Contracting Parties do not reach agreement on actions to avoid the situation, the Party which requested consultations shall be free to restrict the imports of the products concerned to the extent and for such time as is necessary to prevent or remedy the injury. The other Contracting Party shall then be free to deviate from its obligations towards the first Party in respect of substantially equivalent trade.

4. In critical circumstances where delay would cause damage difficult to repair, the Contracting Parties may take safeguard actions provisionally before the consultations, on the condition that consultations shall be effected immediately after taking such action.

5. In the selection of measures under this Article, the Contracting Parties shall give priority to those which cause least disturbance to the achievement of the aims of this Agreement.

Article 16

1. This Agreement shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, law and order or public security, the protection of life and health of humans, animals or plants, the protection of industrial, commercial and intellectual property, or rules relating to gold or silver or imposed for the protection of national treasures of artistic, historic or archaeological value.

Such prohibitions and restrictions must not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between the Contracting Parties.

2. This Agreement shall not preclude the taking of action justified on grounds of protection of essential security interests:

(i) relating to fissionable materials or the materials from which they are derived;

(ii) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment;

(iii) taken in time of war or other emergency in international relations.

TITLE III

Commercial and economic cooperation

Article 17

1. The Contracting Parties shall make every effort to promote, expand and diversify their trade. The joint committee set up by Article 22 shall attach special importance to ways of encouraging the reciprocal and harmonious expansion of trade.

2. The Contracting Parties undertake to facilitate exchange of commercial and economic information on all matters which would assist the development of trade and economic cooperation.

To this end, the Contracting Parties agree to ensure the publication of comprehensive data on commercial and financial issues, including production, consumption and foreign trade statistics.

3. The Contracting Parties undertake to facilitate cooperation between their respective customs services, in particular in the following areas:

— vocational training,

— simplification of customs documentation and procedures, and

— within the limits of their respective competences, administrative cooperation in order to prevent and detect infringements of the rules on customs matters, including the rules governing application of import quotas.

4. The Contracting Parties, within the limits of their respective powers, undertake to facilitate their trade and economic cooperation, *inter alia*, by the following:

— encouraging trade promotion activities in favour of their enterprises, including advertising, consulting, factoring and other business services,

— providing natural and legal persons of the other Party with guarantees of their individual and property rights, including non-discriminatory access for that purpose to courts and appropriate administrative bodies of the Community and the USSR,

— encouraging contacts between business associations of the Community and the USSR.

5. The Contracting Parties will encourage forms of trade compatible with the efficient conduct of international business relations and will also encourage business partners to decide independently upon their trading patterns.

The Contracting Parties therefore agree that counter-trade practices should be regarded as temporary and exceptional.

They further agree not to compel companies established in the Community or in the USSR to engage in such trade practices. Nevertheless, where firms or companies decide to resort to counter-trade operations, the Contracting Parties will encourage them to furnish all relevant information to facilitate the transaction.

6. In furtherance of the aims of this Article, the Contracting Parties agree to maintain and improve favourable business regulations, facilities and practices for each other's firms or companies on their respective markets, *inter alia* as indicated in Annex III.

Article 18

Within the limits of their respective powers, the Contracting Parties:

— shall encourage the adoption of arbitration for the settlement of disputes arising out of commercial and cooperation transactions concluded by firms, enterprises and economic organizations of the Community and those of the USSR,

— agree that where a dispute is submitted to arbitration, each party to the dispute may, except where the rules of the arbitration centre chosen by the parties provide otherwise, choose its own arbitrator, irrespective of his nationality, and that the presiding third arbitrator or the sole arbitrator may be a citizen of a third State,

— will recommend their economic operators to choose by mutual consent the law applicable to their contracts,

— shall encourage recourse to the arbitration rules elaborated by the United Nations Commission on International Trade Law (Uncitral) and to arbitration by any centre of a State signatory to the Convention on Recognition and Enforcement of Foreign Arbitral Awards done at New York on 10 June 1958.

Article 19

Within the limits of their respective powers, the Contracting Parties undertake to:

— ensure adequate protection and enforcement of industrial, commercial and intellectual property rights,

— ensure that their international commitments in the field of industrial, commercial and intellectual property rights are honoured,

— encourage appropriate arrangements between undertakings and institutions within the Community and the USSR with a view to due protection of industrial, commercial and intellectual property rights.

TITLE IV

Economic cooperation

Article 20

1. In the light of their respective economic policies and objectives, the Contracting Parties shall foster economic cooperation on as broad a base as possible in all fields deemed to be in their mutual interest.

Such cooperation shall be aimed in particular at:

— strengthening and diversifying economic links between the Contracting Parties, taking into consideration the complementarity of their economies,

— contributing to the development of their respective economies and standards of living,

— opening up new sources of supply and new markets,

— encouraging cooperation between economic operators, with a view to promoting investment and joint ventures, licensing agreements and other forms of industrial cooperation to develop their respective industries,

— encouraging participation of small and medium-sized enterprises in trade and co-operation

— encouraging environmentally sound policies,

— encouraging scientific and technological progress.

2. In order to achieve these objectives, the Contracting Parties shall encourage economic cooperation in areas of mutual interest, in particular in the following areas:

— statistics,

— standardization,

— industry,

— raw materials and mining,

— agriculture, including the food-processing industries,

— environmental protection and the management of natural resources,

— energy, including nuclear energy and nuclear safety (physical safety and radiation protection),

— science and technology in areas in which the Contracting Parties are active and which they consider to be of mutual interest, including nuclear research,

— economic, monetary, banking, insurance and other financial services,

— transport, tourism and other service activities,

— management and vocational training.

3. To give effect to the objectives of economic cooperation and within the limits of their respective powers and in accordance with their respective laws and policies, the Contracting Parties shall encourage the adoption of measures aimed at creating favourable conditions for economic and industrial cooperation, in particular by:

— facilitating exchanges and contacts between persons and delegations representing commercial, economic, business or other appropriate organizations,

— encouraging and facilitating trade promotion activities, such as the organization of seminars, fairs and exhibitions,

— facilitating the conduct of market research and other marketing activities on their respective territories,

— promoting activities involving the provision of technical expertise in appropriate areas,

— promoting the exchange of information and contacts on scientific subjects of mutual interest,

— fostering a favourable climate for investment, joint ventures and licensing arrangements, notably by the extension by the Community Member States and the USSR of arrangements for investment promotion and protection, in particular for the transfer of profits and repatriation of invested capital, on the basis of the principles of non-discrimination and reciprocity.

Article 21

Without prejudice to the relevant provisions of the Treaties establishing the European Communities, this Agreement and any action taken thereunder shall in no way affect the powers of the Member States of the Community to undertake bilateral activities with the USSR in the field of economic cooperation and to conclude, where appropriate, new economic cooperation agreements with the USSR.

TITLE V

Joint committee

Article 22

1. (a) A joint committee shall be set up comprising representatives of the Community, on the one hand, and representatives of the USSR, on the other.

(b) The joint committee shall formulate recommendations by mutual consent.

(c) The joint committee shall, as necessary, adopt its own rules of procedure and programme of work.

(d) The joint committee shall meet once a year in Brussels and Moscow alternately. Special meetings may be convened by mutual agreement, at the request of either Contracting Party. The office of chairman of the joint committee shall be held alternately by each of the Contracting Parties. Wherever possible, the agenda for meetings of the joint committee shall be agreed beforehand.

2. (a) The joint committee shall ensure the proper functioning of this Agreement and shall devise and recommend measures for achieving its objectives, keeping in view the economic and social policies of the Contracting Parties.

(b) The joint committee shall endeavour to find ways of encouraging the development of trade and commercial and economic cooperation between the Contracting Parties. In particular, it shall:

— examine the various aspects of trade between the Parties, notably its overall pattern, rate of growth, structure and diversification, the trade balance and the various forms of trade and trade promotion,

— make recommendations on any commercial or economic cooperation problem of mutual concern,

— seek appropriate means of avoiding possible difficulties in the fields of trade and cooperation and encourage various forms of commercial and economic cooperation in areas of mutual interest,

— consider measures likely to develop and diversify trade and economic cooperation, notably by improving import opportunities in the Community and in the USSR,

— exchange information on macro-economic plans and, where they exist, foreign trade plans and forecasts for the economies of the Parties which have an impact on trade and cooperation and, by extension, on the scope for developing complementarity between their respective economies and also on proposed economic development programmes,

— exchange information about amendments and developments in the laws, regulations and formalities of the Contracting Parties in the areas covered by this Agreement,

— seek methods of arranging and encouraging the exchange of information and contacts in matters relating to cooperation in the economic field between the Contracting Parties on a mutually advantageous basis, and work towards the creation of favourable conditions for such cooperation,

— examine favourably ways of improving conditions for the development of direct contacts between firms established in the Community and those established in the USSR,

— formulate and submit to the authorities of the Contracting Parties recommendations for solving any problems that arise, where appropriate by concluding arrangements or agreements.

— examine the situation with regard to the award of contracts for the supply of goods or services consequent upon international invitations to tender.

TITLE VI

General and final provisions

Article 23

Subject to the provisions concerning economic cooperation in Article 21, the provisions of this Agreement shall replace the provisions of the Agreements concluded between the Member States of the Community and the USSR, to the extent to which the latter provisions are either incompatible with, or identical to, the former.

Article 24

This Agreement shall apply, on the one hand, to the territories in which the Treaties establishing the European Economic Community and the European Atomic Energy Community are applied and under the conditions laid down in those Treaties and, on the other hand, to the territory of the Union of Soviet Socialist Republics.

Article 25

1. This Agreement shall enter into force on the first day of the second month following the date on which the Contracting Parties have notified each other that the legal procedures necessary to this end have been completed. The Agreement shall be concluded for an initial period of 10 years. The Agreement shall be automatically renewed year by year provided that neither Contracting Party gives the other Party written notice of denunciation of the Agreement six months before it expires.

The Contracting Parties may expand and/or amend this Agreement or elaborate further on its specific provisons by mutual consent in order to take account of new developments.

The Annexes, the Joint Declaration and the exchange of letters attached to this Agreement shall form an integral part thereof.

Article 26

This Agreement shall be drawn up in duplicate in the Danish, Dutch, English, French, German, Greek, Italian, Portuguese, Spanish and Russian languages, each text being equally authentic.

European Commission

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Rue de Louvain 40-42/
Leuvenseweg 40-42
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Tél. (32-2) 552 22 11
Fax (32-2) 511 01 84

Jean De Lannoy

Avenue du Roi 202/
Koningslaan 202
B-1060 Bruxelles/Brussel
Tél. (32-2) 538 51 69
Fax (32-2) 538 08 41
E-mail: jean.de.lannoy@infoboard.be

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Rue de la Loi 244/
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J. H. Schultz Information A/S

Herstedvang 10-12
DK-2620 Albertslund
Tlf. (45) 43 63 23 00
Fax (45) 43 63 19 69
E-mail: schultz@schultz.dk
URL: www.schultz.dk

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NEDERLAND

SDU Servicecentrum Uitgevers

Christoffel Plantijnstraat 2
Postbus 20014
2500 EA 's-Gravenhage
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Fax (31-70) 378 97 83
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URL: www.sdu.nl.

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