



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

October 10, 2000

MEMORANDUM TO: Chairman Meserve
Commissioner Dicus
Commissioner Diaz
Commissioner McGaffigan
Commissioner Merrifield

FROM: Janice Dunn Lee, Director
Office of International Programs

SUBJECT: CHINA REQUEST FOR U.S. ASSURANCES

The Government of China recently requested U.S. assurances regarding a proposed export of some 24,000 kilograms of low-enriched uranium (LEU) to the U.S. for use by Global Nuclear Fuels Limited (GNFL) and the Southern Nuclear Operating Company (operator of the Farley, Hatch and Vogtle nuclear power plants). Such government assurances, which are routinely provided for shipments to and from the United States involving nuclear fuel and reactor equipment, confirm that the proposed export will be used for peaceful purposes only and will be subject to other conditions including consent rights over retransfers. These conditions are specified in U.S. Agreements for Peaceful Nuclear Cooperation, including the 1985 U.S.-China Agreement.

The State Department cable at Attachment 1 advises the U.S. Embassy in Beijing that internal confirmation steps were taken in the U.S. for the proposed shipment from China, and instructs the Embassy to deliver the requested assurance letter to the Chinese Atomic Energy Commission.

No NRC license is required for the import. A general license (10 CFR 110.27) allows any person to import byproduct, source or special nuclear material (except for irradiated fuel in quantities greater than 100 kilograms and radioactive waste that is not being returned to a U.S. government or military facility), if the recipient (consignee) is authorized to possess the material under an NRC or Agreement State license, an exemption from licensing requirements issued by the Commission or a contract with the Department of Energy. As NRC licensees authorized to possess LEU, GNFL and the Southern Nuclear Operating Company qualify to use the general license to import LEU from China or other foreign country.

The incoming cable from the Embassy in Beijing associated the Chinese request for assurances in the LEU case with U.S. efforts to obtain assurances from China on proposed transfers of U.S. nuclear technology to that country. To date, China has not been willing to provide assurances on such cases, although they have provided assurances on NRC- licensed exports of nuclear

Contact: Marvin Peterson, OIP
415-1771

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equipment. The assurances sought by the U.S. for 10 CFR 810 technology transfers include a commitment by China not to retransfer U.S.- supplied nuclear technology to a third country without prior U.S. approval. The State Department cable at Attachment 2 provides an account of the issues as they were discussed in a meeting with Chinese experts on September 13, 2000.

Attachment 1: Unclassified DOS Telegram, State 1925
Attachment 2: Unclassified DOS Telegram, UNVIE 1892

cc w/ attach:
SECY
OGC
EDO
NMSS

DISTRIBUTION:

ADAMS (IP-2A-10)
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NAME	M. Peterson				R. Hauber		J. Dunn Lee			
DATE	10/10/00		10/ /00		10/ /00		10/10/00			10/ /00

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OUTGOING
TELEGRAM

PAGE 01 STATE 192500 041958Z
ORIGIN WP-00

SNC7425

STATE 192500 041958Z
RECEIVING THE MATERIAL.

SNC7425

INFO LOG-00 AID-00 AMAD-00 CEA-01 CIAE-00 COME-00 CTME-00
DINT-00 DODE-00 DDEE-00 ITCE-00 SRPP-00 EAP-00 EB-00
EXME-00 E-00 UTE-00 VC-00 FRG-00 H-01 TEDE-00
INR-00 IO-00 ITC-01 L-00 VCE-00 AC-01 NRC-01
NSAE-00 NSCE-00 OES-01 OIC-02 OMB-01 OPIC-01 PM-00
PRS-00 ACE-00 SP-00 STR-00 TRSE-00 T-00 USIE-00
EPAE-00 PME-00 DRL-02 G-00 SAS-00 /012R

(CONTINUE FROM REF B) I HAVE THE FURTHER HONOUR TO INFORM YOU
THAT THE GOVERNMENT OF THE UNITED STATES OF AMERICA
CONFIRMS....

END TEXT ADDITION.

5. RESPONSES SHOULD BE SLUGGED TO R. STRATFORD AND C.
MARTIN, NP/NE.
TALBOTT

192500

SOURCE: CBLEXCLS.000633

DRAFTED BY: NP/NE:CMARTIN -- 10/04/2000 202-647-3353

APPROVED BY: NP/NE:RJKSTRATFORD

NP/NE: RDELABARRE

EAP/CM: JFRITZF

NRC/NMSS: BHORN

DOE/NN43: RGOOREVICH

-----BDAD6B 041958Z /38

O 041956Z OCT 00

FM SECSTATE WASHDC

TO AMEMBASSY BEIJING IMMEDIATE

UNCLAS STATE 192500

E. O. 12958: N/A

TAGS: ENRG, KNNP, TRGY

SUBJECT: RESPONSE TO CHINESE REQUEST FOR ASSURANCES ON
NUCLEAR EXPORT

REF: A. (A) BEIJING 9452

B. (B) STATE 181489

C. (C) BEIJING 9964

THIS IS AN ACTION REQUEST. SEE PARA 2.

1. WE HAVE RECEIVED CONFIRMATION FROM GLOBAL NUCLEAR FUELS
LIMITED (GNFL) VIA THE U.S. NUCLEAR REGULATORY COMMISSION,
THAT A SHIPMENT OF 10 CYLINDERS (APPROXIMATELY 24,000
KILOGRAMS) OF URANIUM HEXAFLUORIDE IS EXPECTED AND THAT THE
END-USERS (BOTH GNFL AND SOUTHERN NUCLEAR OPERATING COMPANY)
ARE AUTHORIZED TO RECEIVE THE MATERIAL. A COPY OF THE
ASSURANCES FROM GNFL ARE BEING FAXED TO POST SEPARATELY, TO
ROBERT ARMSTRONG.

2. ONCE THE FAXED COPY OF THE ASSURANCES IS RECEIVED,
EMBASSY IS REQUESTED TO PASS THE ASSURANCE LETTER IN REF B TO
THE CHINESE ATOMIC ENERGY AUTHORITY, WITH THE AMENDMENTS
NOTED IN PARA 3. EMBASSY IS REQUESTED TO ATTACH A COPY OF
THE FAXED LETTER FROM GNFL.

3. BEGIN TEXT ADDITION TO LETTER IN REF B:

(ADDITION TO FIRST PARAGRAPH) ...LOW-ENRICHED URANIUM FROM
CHINA ATOMIC ENERGY AUTHORITY TO GLOBAL NUCLEAR FUELS,
LIMITED, FOR ULTIMATE USE IN REACTORS UNDER THE AUTHORITY OF
SOUTHERN NUCLEAR OPERATING COMPANY, INC., IN THE UNITED
STATES OF AMERICA WILL BE SUBJECT TO THE AGREEMENT...

(ADD SECOND PARAGRAPH) IT IS OUR PRACTICE TO CONFIRM PROPOSED
TRANSFERS OF NUCLEAR MATERIAL WITH THE U.S. RECIPIENT TO
ENSURE THAT SHIPMENTS ARE EXPECTED AND APPROPRIATE

ARRANGEMENTS HAVE BEEN MADE TO RECEIVE THE MATERIAL. THEREBY
WE ALSO ENSURE THE UNDERSTANDING OF THE U.S. RECIPIENT THAT
THE MATERIAL WILL BE MADE SUBJECT TO THE TERMS AND CONDITIONS
OF THE AGREEMENT FOR COOPERATION. WE APPRECIATE YOUR
HELPFULNESS IN OBTAINING THE ADDITIONAL INFORMATION WHICH
ENABLED US TO CONFIRM THESE MATTERS WITH THE U.S. COMPANY

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Attachment 1

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ACTION NP-00

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UNVIE 01892 00 OF 06 151017Z

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INFO LOG-00 AMAD-00 CIAE-00 INL-00 DODE-00 SRPP-00 EAP-00
EB-00 EUR-00 UTEB-00 VC-00 H-01 TEDE-00 INR-00
IO-00 L-00 VCE-00 M-00 AC-01 NRC-01 NSAE-00
NSCE-00 DES-01 DIC-02 PA-00 PM-00 ACE-00 SP-00
SS-00 TRSE-00 T-00 R-00 EPAE-00 PMB-00 SAS-00
/006W

PURSUED THE ISSUE. HOWEVER, HE INDICATED THAT IF THE CHINESE COULD COMMIT TO CONTINUING DISCUSSION EVEN IF AGREEMENT COULD NOT BE REACHED TODAY, HE THOUGHT THAT THE U.S. SIDE MIGHT LIMIT ITS DISCUSSION OF THE ISSUE TO WELCOMING THE SERIOUS ENGAGEMENT TODAY AND THE AGREEMENT TO CONTINUE THE DISCUSSIONS. LI FOUND THAT APPROACH ACCEPTABLE

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TO SECSTATE WASHDC PRIORITY
INFO AMEMBASSY BEIJING PRIORITY
DOE WASHDC
NRC WASHDC
USMISSION USUN NEW YORK

UNCLAS UNVIE VIENNA 001892

STATE FOR NP/NE, EAP/CM
DOE FOR NN-1 GOTTMOLLER, NN-43 HOLLANDER, GC NEWTON

E.O. 12958: N/A
TAGS: IAEA, KNP, AORC, TRGY, CH
SUBJECT: MEETING WITH CHINESE EXPERTS ON TECHNOLOGY ASSURANCES, SEPTEMBER 13

1. SUMMARY: U.S. AND CHINESE EXPERTS MET IN VIENNA SEPTEMBER 13 TO ATTEMPT TO RESOLVE THE NUCLEAR TECHNOLOGY ASSURANCE IMPASSE. STATE NP/NE DIRECTOR RICHARD STRATFORD LED THE U.S. TEAM; HIS COUNTERPART WAS CHINA ATOMIC ENERGY

AUTHORITY (CAEA) VICE CHAIRMAN LI DONGHUI. THE OBVIOUS DEPTH OF PREPARATION AND SERIOUSNESS OF PURPOSE SHOWN BY VICE CHAIRMAN LI, COUPLED WITH HIS INVITATION TO CONTINUE THE DISCUSSIONS IN BEIJING, PROVIDES MUCH ENCOURAGEMENT THAT THE DISCUSSIONS WILL LEAD TO RESOLUTION OF THE IMPASSE. LI REQUESTED AND STRATFORD AGREED THAT, IN THE BILATERAL DISCUSSIONS NEXT WEEK, THE U.S. SIDE WOULD NOT ATTEMPT TO ENGAGE IN SUBSTANTIVE DISCUSSION OF NUCLEAR TECHNOLOGY ASSURANCES, BUT WOULD MERELY TAKE NOTE OF THE ENCOURAGING PROGRESS MADE IN THE SEPTEMBER 13 MEETING AND WELCOME THE FACT THAT DISCUSSIONS WILL CONTINUE. END SUMMARY.

2. ACCOMPANYING LI WERE YANG DAZHU, DIRECTOR, INTERNATIONAL COOPERATION DEPARTMENT, CAEA; LI YANG, DEPUTY DIRECTOR, DEPARTMENT OF ARMS CONTROL, MINISTRY OF FOREIGN AFFAIRS; LIU YONGDE, SECRETARY CHINESE MISSION; XIAO GANY, ATTACHE, DEPARTMENT OF ARMS CONTROL, MFA; AND ZHANG SHAO PING, DEPARTMENT OF INTERNATIONAL COOPERATION, CAEA. ACCOMPANYING STRATFORD WERE ZANDER HOLLANDER OF THE DEPARTMENT OF ENERGY'S NUCLEAR TRANSFER AND SUPPLIER POLICY DIVISION, OFFICE OF ARMS CONTROL AND NONPROLIFERATION; ROBERT NEWTON OF DOE'S OFFICE OF GENERAL COUNSEL; PATRICIA COMELLA, NP/NE; AND UNVIE SCIENCE ATTACHE LISA HILLIARD.

3. LI OPENED THE MEETING BY EMPHASIZING BOTH HIS DESIRE TO SETTLE THE NUCLEAR TECHNOLOGY ASSURANCES MATTER AS SOON AS POSSIBLE AND HIS RECOGNITION THAT DUE TO THE COMPLEXITY OF THE ASSOCIATED ISSUES, REACHING CONSENSUS ON HOW TO DO SO WOULD TAKE TIME. LI ALSO REQUESTED THAT NUCLEAR TECHNOLOGY ASSURANCES NOT BE DISCUSSED IN DETAIL NEXT WEEK IN THE BILATERAL DISCUSSIONS BETWEEN UNDER SECRETARY GORDON AND THE

HEAD OF THE CHINESE DELEGATION TO THE GENERAL CONFERENCE DUE TO THE SPECIFIC (TECHNICAL) NATURE OF THE ISSUES.

4. RESPONDING, MR. STRATFORD EMPHASIZED THE DESIRE OF SENIOR USG OFFICIALS TO RESOLVE THIS ISSUE AND THEIR INTEREST IN USING THE BILATERAL DISCUSSIONS AS AN OPPORTUNITY TO

5. LI CONTINUED THAT THE CHINESE HAD GIVEN "METICULOUS STUDY" TO THE U.S. PROPOSALS FOR RESOLVING THE ASSURANCES MATTER. BEFORE, HOWEVER, GOVERNMENTAL ASSURANCES COULD BE PROVIDED, IT WOULD BE NECESSARY TO SETTLE SEVERAL QUESTIONS REGARDING: (1) THE DEFINITION OF "NUCLEAR TECHNOLOGY"; (2) ASSURANCES TO BE GIVEN SHOULD THE CHINESE TRANSFER TECHNOLOGY TO THE U.S. OR WHEN TECHNOLOGY TRANSFERS WENT BACK AND FORTH BETWEEN THE TWO COUNTRIES; AND (3) TRANSFERS ASSOCIATED WITH DERIVED ITEMS COMING OUT OF BILATERAL COOPERATIVE PROJECTS. SETTling THESE ISSUES WOULD REQUIRE FURTHER DISCUSSION. BY WAY OF ILLUSTRATION, LI CONTRASTED THE STRAIGHTFORWARD NATURE OF CHINA'S PROVIDING ASSURANCES TO THE U.S. REGARDING USE OF U.S. (WESTINGHOUSE) TECHNOLOGY IN THE OVERHAUL OF QINSHAN-1 WITH THE COMPLEXITY OF THE ASSURANCES THAT WOULD BE ASSOCIATED WITH THE COOPERATION ENVISIONED IN THE MIT-TSINGHUA UNIVERSITY MODULAR PEBBLE BED REACTOR (MPBR) PROJECT.

6. COMMENT: NONE OF THE U.S. PARTICIPANTS ARE AWARE OF ANY ASSURANCES HAVING BEEN GIVEN BY THE CHINESE IN CONNECTION WITH WORK BY WESTINGHOUSE ON QINSHAN-1. DOE INTENDS TO ASK WESTINGHOUSE WHETHER ANYTHING THE CHINESE MIGHT CONSIDER TO BE ASSURANCES WERE GIVEN TO THE FIRM ON A NON-GOVERNMENTAL LEVEL. END COMMENT.

7. LI THEN TURNED SPECIFICALLY TO THE DEFINITION OF "NUCLEAR TECHNOLOGY" IN THE U.S. PROPOSAL. HE EXPRESSED DOUBTS ABOUT THE WORKABILITY OF THE DEFINITION AND OFFERED A "COUNTER-PROPOSAL," WHICH WOULD LAY DOWN A BASIC PRINCIPLE REGARDING THE DEFINITION THAT WOULD BE USED IN CASE-BY-CASE CONSULTATIONS BETWEEN SUPPLIER AND RECIPIENT. LI EXPRESSED THE VIEW THAT THE APPROACH OUTLINED IN THE CHINESE COUNTER-PROPOSAL WOULD BE MORE FLEXIBLE AND EFFECTIVE FOR IMPLEMENTATION. THE CHINESE COUNTER-PROPOSAL STATES:

"DEFINITION

'TECHNOLOGY' MEANS TECHNICAL DATA THAT THE SUPPLIER PARTY HAS DESIGNATED, PRIOR TO TRANSFER AND AFTER CONSULTATION WITH THE RECIPIENT PARTY, AS BEING RELEVANT IN TERMS OF

NON-PROLIFERATION AND IMPORTANT FOR THE DESIGN, PRODUCTION, OPERATION OR MAINTENANCE OF EQUIPMENT OR FOR THE PROCESSING OF NUCLEAR MATERIAL OR MATERIAL (SIC).

'DERIVED PRODUCTS' REFERS TO EQUIPMENT OR MATERIAL WHICH THE RECIPIENT PARTY, OR THE SUPPLYING PARTY AFTER CONSULTATIONS WITH THE RECIPIENT PARTY, DESIGNATED AS BEING PRODUCED ON THE BASIS OF OR BY THE USE OF THE TECHNOLOGY TRANSFERRED BY THE

SUPPLIER. EQUIPMENT DEVELOPED, DESIGNED, CONSTRUCTED OR OPERATED BY THE RECIPIENT PARTY INDEPENDENT OF TECHNOLOGY AND EQUIPMENT SUPPLIED BY THE SUPPLYING PARTY SHALL NOT BE SUBJECT TO THIS AGREEMENT."

8. COMMENT: IN CONTRAST TO THE DEFINITION OF "NUCLEAR TECHNOLOGY" IN THE U.S. PROPOSAL, WHICH IS ACTUALLY A DEFINITION, THE CHINESE COUNTER-PROPOSAL IS NOT ACTUALLY A DEFINITION BUT RATHER DESCRIBES A PROCESS IN WHICH THE PROSPECTIVE SUPPLIER AND RECIPIENT WOULD AGREE TO DESIGNATE BEFOREHAND THE SPECIFIC TECHNOLOGY THAT WOULD BE SUBJECT TO THE ASSURANCES. TECHNOLOGY NOT DESIGNATED WOULD NOT BE

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SUBJECT TO THE ASSURANCES. AS DISCUSSED BELOW, THE
COUNTER-PROPOSAL AND THE MODIFIED U.S. PROPOSAL APPEAR TO BE
MOVING IN THE SAME DIRECTIONS, WHICH BOTH STRATFORD AND LI
ACKNOWLEDGED IN THEIR COMMENTS. END COMMENT.

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9. STRATFORD EXPRESSED PLEASURE AT HOW CLOSE THE U.S. AND CHINESE APPEARED TO BE IN THEIR THINKING AND BEGAN HIS PRESENTATION OF THE MODIFIED U.S. PROPOSAL. HE EXPLAINED HOW U.S. THINKING HAD EVOLVED SINCE OUR LAST PAPER AND THAT IN REEXAMINING OUR EARLIER PROPOSAL THE U.S. HAD REALIZED THAT IT WAS VERY COMPLEX AND MIGHT BE DIFFICULT TO IMPLEMENT. IN PARTICULAR, THE DEFINITION OF NUCLEAR TECHNOLOGY IN OUR EARLIER PROPOSAL WAS SO COMPLEX BECAUSE IT WAS DRAWN LARGELY FROM NUCLEAR SUPPLIER GROUP (NSG) DOCUMENTS. HE EXPLAINED THAT OUR EARLIER PROPOSAL HAD BEEN AN ATTEMPT TO CREATE SOMETHING SIMILAR TO THE PROCESS WE THOUGHT CHINA AND CANADA USED FOR THEIR TECHNOLOGY TRANSFERS. HE FURTHER EXPLAINED THAT SUCH A PROCESS MIGHT BE DIFFICULT TO IMPLEMENT BECAUSE OF DIFFERENCES BETWEEN U.S. AND CANADIAN LEGAL REQUIREMENTS.

MOREOVER, IN THE U.S.-CHINA RELATIONSHIP, KEEPING A "LOG" OF TRANSFERRED TECHNOLOGY COUPLED WITH ANNUAL MEETINGS TO AGREE ON WHAT NUCLEAR TECHNOLOGY HAD BEEN TRANSFERRED, WOULD BE COMPLEX AND MIGHT LEAD TO DISAGREEMENTS.

10. THAT REALIZATION LED THE U.S. TO THINK HOW IT COULD MAKE BETTER USE OF THE RELATIONSHIP BETWEEN THE U.S. COMPANIES AND THEIR CHINESE PARTNERS. STRATFORD EXPLAINED HOW THE U.S. PROPOSAL WOULD WORK, NOTING THAT IT WAS VERY SIMILAR TO THE IDEAS EXPRESSED IN THE COUNTER-PROPOSAL FOR CONSULTATIONS BETWEEN THE PARTNERS:

--THE U.S. FIRM WOULD TALK TO ITS CHINESE CLIENT ABOUT THE TECHNOLOGY IT WAS PREPARED TO TRANSFER. THE CHINESE FIRM WOULD INDICATE THE TECHNOLOGY IN WHICH IT WISHED TO ACQUIRE.

--THE TWO COMPANIES WOULD SETTLE ON A LIST OF ITEMS FOR TRANSFER, WHICH THE U.S. FIRM WOULD PROVIDE TO DOE AS THE AGREED UPON LIST FOR TRANSFER.

--AFTER DELETING REFERENCES TO ITEMS WHICH DOE DID NOT CONSIDER TO BE "NUCLEAR TECHNOLOGY" SUBJECT TO PART 810 AUTHORIZATION, DOE WOULD GIVE THE LIST TO THE DEPARTMENT OF STATE FOR TRANSMISSION TO THE CAEA WITH A LETTER INDICATING THE U.S. WOULD BE PREPARED TO APPROVE THE LISTED TECHNOLOGY FOR TRANSFER IF CAEA SAID THAT THE CHINESE COMPANY CAN RECEIVE THE TECHNOLOGY, THAT IT WOULD BE USED ONLY FOR PEACEFUL NUCLEAR POWER ACTIVITIES, AND THAT THE U.S. WOULD HAVE CONSENT RIGHTS OVER RETRANSFERS. IN OTHER WORDS, WE WOULD BE ASKING FOR THE SAME ASSURANCES AS BEFORE, COUPLED WITH AN INDICATION THAT THE CHINESE COMPANY COULD RECEIVE THE TECHNOLOGY.

--BY THIS MEANS, CAEA WOULD KNOW IN ADVANCE, AND IN THE WORDS OF THE TWO COMPANIES AS STATED IN THE LIST, WHAT TECHNOLOGY WOULD BE TRANSFERRED AND ALSO THAT THE U.S. GOVERNMENT WOULD APPROVE THE TRANSFER OF THE LISTED TECHNOLOGY ONCE WE RECEIVED THE ASSURANCE LETTER FROM CAEA.

--WHEN THE U.S. COMPANY ACTUALLY TRANSFERRED TECHNOLOGY ON THE LIST TO THE CHINESE FIRM, IT WOULD INFORM DOE THAT THE TRANSFER HAD TAKEN PLACE. WE WOULD GIVE TO CAEA COPIES OF THOSE REPORTS, SO IT WOULD KNOW WHICH TECHNOLOGIES ACTUALLY TRANSFERRED WERE SUBJECT TO CHINESE ASSURANCES.

--THIS WOULD ALSO PROVIDE AN OPPORTUNITY FOR CAEA TO TALK WITH THE CHINESE COMPANIES IF IT CHOSE TO DO SO.

--UNDER THIS MODIFIED PROPOSAL, IT WOULD NOT BE NECESSARY TO

MAINTAIN LOGS OR HOLD ANNUAL GOVERNMENTAL MEETINGS, BUT IF CAEA GOT A REPORT AND HAD QUESTIONS, THESE COULD BE RAISED WITH THE U.S. SIDE.

11. CONCERNING THE CHINESE "DEFINITION" COUNTER-PROPOSAL, STRATFORD SAID IT WOULD BE NECESSARY TO CONSULT WITH WASHINGTON BEFORE RESPONDING IN DEPTH, BUT THOUGHT THAT IT COULD BE SIMPLIFIED, MOST LIKELY ALONG THE LINES INDICATED IN PARA 10. IN THIS REGARD, HE EMPHASIZED THAT THE U.S. MODIFIED PROPOSAL CONTAINED NO DEFINITION OF NUCLEAR TECHNOLOGY AT ALL BECAUSE NONE WAS NEEDED. HE NOTED,

HOWEVER, AGREEMENT WITH THE LAST SENTENCE OF THE "DERIVED PRODUCTS" DEFINITION.

12. STRATFORD THEN TURNED TO DISCUSSION OF POSSIBLE CASES FOR TESTING OUT THE WORKABILITY OF THE MODIFIED PROPOSAL. HE SUGGESTED THAT A "TEST CASE" BE ONE DEALING WITH THE TRANSFER OF EASILY IDENTIFIABLE TECHNOLOGY SUCH AS THE INSTRUMENTATION AND CONTROL TECHNOLOGY OR EQUIPMENT OFFERED BY FOXBORO.

13. STRATFORD ALSO INDICATED THAT THE TWO SIDES SHOULD TRY TO RESOLVE THE MIT-TSINGHUA UNIVERSITY MPBR PROJECT. HE ACKNOWLEDGED THAT THIS CASE WOULD INVOLVE NUCLEAR TECHNOLOGY TRANSFERS IN BOTH DIRECTIONS (FROM U.S. TO CHINA AND FROM CHINA TO THE U.S.). IN THIS UNIQUE CASE, IT WOULD BE A QUESTION OF A RECIPROCAL EXCHANGE OF ASSURANCES, WITH THE U.S. PROVIDING THE SAME ASSURANCES AS THE U.S. ASKED FROM CHINA. HOWEVER, BECAUSE THE COOPERATION INVOLVED JOINT RESEARCH AND DEVELOPMENT, AN ADVANCE "LIST" OF TECHNOLOGIES WOULD NOT/NOT BE REQUIRED. WITH RESPECT TO THE EARLIER PROPOSAL CONCERNING THE MPBR PROJECT, COPIES OF WHICH HE HANDED OUT, THE ONLY DIFFERENCE WOULD BE THAT CAEA WOULD IDENTIFY TSINGHUA UNIVERSITY AS AN AUTHORIZED RECIPIENT OF THE U.S. TECHNOLOGY.

14. STRATFORD SUMMED UP HIS POINTS AS FOLLOWS:

--A DEFINITION OF "NUCLEAR TECHNOLOGY" IS NEGOTIABLE.

--HOWEVER, WE SHOULD THINK ABOUT A SIMPLIFIED MECHANISM ALONG THE LINES OF THE CHINESE DEFINITION COUNTER-PROPOSAL AS IT FITS WELL WITH THE MODIFIED U.S. PROPOSAL.

--IF THE CHINESE THINK THE APPROACH HAS MERIT, THE U.S. WOULD WORK WITH THEM ON A TEST CASE, AS WELL AS TO RESOLVE THE MIT-TSINGHUA MATTER.

STRATFORD ALSO INDICATED HIS WILLINGNESS TO CONTINUE DISCUSSIONS IN BEIJING SHOULD LI WISH TO CONTINUE THE DISCUSSIONS THERE.

15. LI FOLLOWED THE SUMMING UP BY STATING THAT THE SIMPLIFIED MECHANISM PROVIDED A GOOD BASIS FOR FURTHER DISCUSSION AND WOULD BE EFFECTIVE AND EFFICIENT. HE WOULD RESPOND AFTER FURTHER STUDY. AS TO THE NUCLEAR TECHNOLOGY DEFINITION, HE THOUGHT THAT WE "DID NOT HAVE ESSENTIAL DIVERGENCE" ON IT. HE THEN TURNED TO FURTHER ELABORATION OF THE GUIDELINE EMBODIED IN THE DEFINITION OF NUCLEAR TECHNOLOGY IN THE COUNTER-PROPOSAL, FOCUSING ON THE LANGUAGE, "AS BEING RELEVANT IN TERMS OF NON-PROLIFERATION AND IMPORTANT FOR THE DESIGN, PRODUCTION, OPERATION OR MAINTENANCE OF EQUIPMENT OR FOR THE PROCESSING OF NUCLEAR MATERIAL." HE INDICATED THAT THE GUIDELINE IN THE COUNTER-PROPOSAL HAD TWO MEANINGS: (1) SUCH TECHNOLOGY SHOULD INVOLVE ONLY NUCLEAR TECHNOLOGY OR TECHNOLOGY RELEVANT TO NUCLEAR ENERGY; (2) THE "AS RELEVANT" LANGUAGE WOULD EXCLUDE GENERAL KNOW-HOW, WHICH WOULD BE TREATED AS AN INTELLECTUAL

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PROPERTY RIGHT. HE EMPHASIZED THE IMPORTANCE OF LAYING DOWN A BASIC PRINCIPLE FOR TRANSFERRED NUCLEAR TECHNOLOGY, SO IT WOULD BE POSSIBLE FOR THE CHINESE TO "IMPLEMENT" IT. LI CONCLUDED BY ASKING THAT WE CAREFULLY CONSIDER THE CHINESE COUNTER-PROPOSAL.

16. COMMENT: USDEL ASSUMES THAT "IMPLEMENT" MEANS THAT THE CHINESE INTENDED TO EMPLOY KNOW-HOW TECHNOLOGY IN OTHER APPLICATIONS IN ACCORDANCE WITH CONTRACT LAW GOVERNING USE OF PROPRIETARY INFORMATION, BUT WOULD NOT WANT TO PROVIDE GOVERNMENTAL ASSURANCES IF IT WERE NOT TRULY "RELEVANT IN TERMS OF NON-PROLIFERATION." USDEL IS INFORMED THAT THIS ISSUE HAD TO BE RESOLVED IN IMPLEMENTING THE CANADA-CHINA PEACEFUL NUCLEAR USES AGREEMENT, WHICH COVERS THE TRANSFER OF TECHNOLOGY RELEVANT TO NON-PROLIFERATION. END COMMENT.)

17. LI STATED THAT HE WAS GLAD THAT THE U.S. SIDE NOTED THAT TECHNOLOGY TRANSFERS COULD FLOW IN BOTH DIRECTIONS AND EXPRESSED HOPE TO REACH AGREEMENT ON SOLUTION OF THE ISSUE FOR SUCH CASES OF MUTUAL NUCLEAR TECHNOLOGY TRANSFERS. HE CONCLUDED BY REQUESTING THAT WE STUDY THE CHINESE

COUNTER-PROPOSAL SO THAT WE MIGHT REACH CONSENSUS AS SOON AS POSSIBLE. HE THEN EXTENDED AN INVITATION TO COME TO BEIJING FOR FURTHER DISCUSSIONS.

18. IN ACCEPTING LI'S INVITATION, STRATFORD NOTED THAT A GREAT DEAL OF PROGRESS HAD BEEN MADE AND EXPRESSED APPRECIATION FOR THAT PROGRESS.

19. STRATFORD ALSO INDICATED THAT A POSSIBLE AREA OF DISAGREEMENT CONCERNED THE CHINESE DESIRE TO EXCLUDE GENERAL KNOW-HOW FROM THE NUCLEAR TECHNOLOGY DEFINITION. HE CLARIFIED THAT UNDER U.S. LAW AND COMMITMENTS, U.S. COMPANIES NEEDED DOE PERMISSION WHEN THEY PROPOSED TO "ASSIST" A FOREIGN NUCLEAR PROGRAM AND THAT DOE HAD DEFINED ASSISTANCE BROADLY. HOWEVER, HE ALSO NOTED THAT IT WAS POSSIBLE THAT A

DEFINITION OF NUCLEAR TECHNOLOGY MIGHT NOT HAVE TO BE PART OF THE SOLUTION, AGAIN RETURNING TO THE LIST THAT U.S. AND CHINESE COMPANIES WOULD PREPARE THAT WOULD BECOME THE BASIS FOR THE ASSURANCES. IN THAT REGARD, HE FURTHER NOTED THAT DOE TELLS A U.S. COMPANY WHEN TECHNOLOGY PROPOSED FOR TRANSFER DOES NOT FALL UNDER THE DEFINITION OF NUCLEAR TECHNOLOGY AND, THEREFORE, DOES NOT REQUIRE DOE 810 AUTHORIZATION. SO WHAT WOULD BE ON ANY LIST GIVEN TO CHINA WOULD BE WHAT THE U.S. GOVERNMENT CONSIDERED TO BE NUCLEAR TECHNOLOGY AND, IF CAEA DISAGREED, THE TWO GOVERNMENTS WOULD BE ABLE TO DISCUSS THE MATTER. WHILE A DEFINITION OF NUCLEAR TECHNOLOGY MIGHT BE HELPFUL IN RESOLVING SUCH QUESTIONS, IT MIGHT NOT BE NECESSARY FOR RESOLUTION.

20. GIVING AN EXAMPLE OF THE BROADNESS OF U.S. LAW, STRATFORD NOTED THAT, BECHTEL, WHICH CONSTRUCTS NUCLEAR POWER PLANTS, POSSESSES PROPRIETARY KNOW-HOW, WHICH DOE WOULD TREAT AS SPECIALIZED KNOW-HOW SUBJECT TO PART 810 CONTROL. HE CONTRASTED THE COMPLEXITY OF USING BECHTEL AS A TEST CASE WITH HIS EARLIER SUGGESTION TO USE A FIRM LIKE FOXBORO, WHICH PROPOSED TO TRANSFER SPECIFIC EQUIPMENT AND TECHNOLOGY RELATED THERETO.

21. LI RETURNED TO THE GENERAL KNOW-HOW ISSUE, WITH THE SPECIFIC EXAMPLE OF CIVIL ENGINEERING AS AN EXAMPLE OF HOW THE U.S. DEFINITION OF NUCLEAR TECHNOLOGY IS TOO BROAD. HE THEN INQUIRED AS TO WHETHER THE U.S. RECEIVED SIMILAR ASSURANCES FROM OTHER COUNTRIES.

22. STRATFORD BEGAN BY REVIEWING FOR THE CHINESE PARAGRAPH 10 (B) OF THE NSG GUIDELINES. HE EXPLAINED WHY THAT PARAGRAPH

WAS A KEY REASON FOR ASKING THE CHINESE FOR ASSURANCES THAT WE DO NOT HAVE TO ASK OF OTHER NUCLEAR SUPPLIER STATES THAT ARE NSG MEMBERS. HE ALSO REVIEWED WHY, UNLIKE THE CANADIANS, WE DO NOT INCLUDE TECHNOLOGY WITHIN THE SCOPE OF OUR AGREEMENTS FOR COOPERATION IN PEACEFUL USES OF NUCLEAR ENERGY, POINTING OUT, HOWEVER, THAT IF THE CHINESE WERE TO BUY AN ENTIRE NUCLEAR REACTOR FROM THE U.S., THE EXPORT WOULD BE LICENSED BY THE NUCLEAR REGULATORY COMMISSION AND WOULD INCLUDE THE EXPORT OF THE TECHNOLOGY ASSOCIATED WITH THE HARDWARE EXPORT. IN SUCH A CASE, THE CHINESE GOVERNMENT WOULD NOT HAVE TO PROVIDE SEPARATE ASSURANCES BECAUSE ALL WOULD BE COVERED BY THE U.S.-CHINA AGREEMENT FOR PEACEFUL NUCLEAR COOPERATION.

23. HAVING ADDRESSED UNI-DIRECTIONAL AND BI-DIRECTIONAL TRANSFERS OF TECHNOLOGY AND POSSIBLE MECHANISMS FOR PROVIDING ASSURANCES, LI WANTED TO CONSIDER NEXT DERIVED TECHNOLOGY. STRATFORD INDICATED THAT HE NEEDED TO GIVE FURTHER THOUGHT TO THE QUESTION AND TO CONSULT IN WASHINGTON BEFORE HE COULD RESPOND. HE ALSO ASKED FOR CLARIFICATION OF LI'S THINKING ON THE ISSUE.

24. LI RESPONDED THAT THE ISSUE WAS NOT YET MATURE, BUT THAT IF TECHNOLOGY CAME OUT OF COOPERATION BETWEEN THE TWO COUNTRIES, BOTH GOVERNMENTS WOULD HAVE TO PROVIDE ASSURANCES BEFORE A DERIVED ITEM COULD BE TRANSFERRED. HE LOOKED FOR A FUTURE SOLUTION TO THAT QUESTION. STRATFORD AGREED THAT FURTHER THINKING AND DISCUSSION WOULD BE NEEDED.

25. LI THEN RETURNED TO QUESTIONS THAT HAD BEEN RAISED IN EARLIER DISCUSSIONS ABOUT DIFFERENCES BETWEEN THE WAY THE

U.S. IS PROPOSING TO TREAT CHINA REGARDING ASSURANCES AND THE WAY THE U.S. TREATS OTHERS. IN PARTICULAR, WAS THE PROPOSED MECHANISM APPLIED TO OTHERS AND DID WE REQUIRE CASE-BY-CASE ASSURANCES INSTEAD OF GENERIC ASSURANCES FROM OTHERS? AGAIN, RETURNING TO THE NSG GUIDELINES, STRATFORD NOTED THAT U.S. COMPANIES HAVE GENERAL AUTHORIZATION TO TRANSFER CIVILIAN NUCLEAR POWER TECHNOLOGY TO OUR TRADING PARTNERS AND WE DO NOT REQUIRE ADDITIONAL ASSURANCES FROM THOSE COUNTRIES. HOWEVER, WE DO REQUEST ADDITIONAL ASSURANCES FROM RUSSIA AND UKRAINE IN ORDER TO CONTROL RETRANSFERS TO IRAN, WHICH IS AN NPT PARTY. STRATFORD ALSO REMINDED LI THAT WE DID PREFER

GENERIC ASSURANCES THAT NEVER HAVE TO BE ADDRESSED AGAIN, BUT HAD MOVED TO CASE-BY-CASE ASSURANCES BECAUSE WE THOUGHT THAT THE CHINESE NEEDED TO KNOW WHAT WAS TRANSFERRED IN ORDER TO DEAL ADEQUATELY WITH RETRANSFERS. SO WE DESIGNED OUR PROPOSALS TO CREATE A SITUATION FOR THE CHINESE TO GIVE ASSURANCES WHEN THEY KNOW WHAT TECHNOLOGY THE ASSURANCES WOULD COVER.

26. STRATFORD WENT ON TO SAY THAT FRANKLY, THE NEW PROPOSAL HAS ADVANTAGES FOR THE USG BECAUSE IT GIVES US GREATER ABILITY TO MONITOR TRANSFERS TO A TRADING PARTNER THAT IS POLITICALLY SENSITIVE. HE NOTED THAT CONGRESS PASSED A NEW LAW ABOUT 16 MONTHS AGO THAT REQUIRES THE EXECUTIVE BRANCH TO NOTIFY CONGRESS EVERY TIME THE NRC ISSUES AN EXPORT LICENSE FOR CHINA. HOWEVER, IF CHINA PREFERENCES GENERIC ASSURANCES, WE ARE WILLING TO RECONSIDER.

27. LI NOW SUMMED UP AND INTRODUCED THE PROBLEM OF THE TERM LIMITATION ON TECHNOLOGY TRANSFERS UNDER PRESENT

AUTHORIZATIONS, (SEE LAST POINT):

--WHETHER GENERIC OR CASE-BY-CASE, CHINA THINKS IT IMPORTANT TO HAVE A CLEAR DEFINITION OR GUIDELINE REGARDING NON-PROLIFERATION RELEVANT TECHNOLOGY.

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--THE LIST IDEA MIGHT PROVIDE A BASIS FOR FURTHER DISCUSSION.

--THE U.S. SCOPE OF NUCLEAR TECHNOLOGY ASSURANCES IS TOO BROAD BECAUSE SOME ITEMS ARE NOT NON-PROLIFERATION RELEVANT.

--THE CHINESE COUNTER-PROPOSAL REFLECTS THIS VIEW. FOR EXAMPLE, CIVIL ENGINEERING WOULD NEED GOVERNMENTAL ASSURANCES UNDER THE U.S. DEFINITION EVEN THOUGH IT IS NOT PART OF THE MSG GUIDELINES, WHICH PERTAIN TO TRIGGER LIST ITEMS. THE MSG GUIDELINES ON ASSURANCES APPLY ONLY TO TRIGGER LIST ITEMS OR RELATED TECHNOLOGY. THIS IS ONLY AN EXAMPLE OF THE OVERLY BROAD DEFINITION.

--FINALLY, BOTH OF US AGREE TO FURTHER CONSIDERATION OF THE QUESTION REGARDING DERIVED TECHNOLOGY.

--ANOTHER QUESTION OF OUR DISCUSSION IS RELATED TO GOVERNMENTAL ASSURANCES. THE TERM OF VALIDITY ADDED TO THE AUTHORIZATION COVERING U.S. COMPANIES AND CHINESE CLIENTS OF EITHER 5 OR 3 YEARS. IT IS NOT AN APPROPRIATE TERM, ESPECIALLY IN NUCLEAR POWER PLANT CONSTRUCTION. MANY CHINESE COMPANIES THINK THAT UNDER SUCH A TERM COOPERATION CANNOT BE PREDICTABLE. AN ARGUMENT THAT EXTENSION IS LIKELY IS INSUFFICIENT BECAUSE SUCH A PRACTICE IS NOT GOOD FOR NUCLEAR POWER PLANT CONSTRUCTION. IT IS NOT HELPFUL TO U.S.

COMPANIES THAT WISH TO ENTER CHINA'S NUCLEAR MARKET. IT ADVERSELY AFFECTS THE COMPETITIVENESS OF U.S. COMPANIES, WHICH IS NOT ONLY A WORRY OF THE CHINESE GOVERNMENT, BUT ALSO OF THE CHINESE COMPANIES.

26. STRATFORD INDICATED THE FOLLOWING IN RESPONSE:

--WE UNDERSTAND THE NEED FOR A GUIDING PRINCIPLE ON NON-PROLIFERATION RELEVANT TECHNOLOGY.

--WE NEED TO TEST THE PROCESS, NOT NECESSARILY WORK OUT A DEFINITION, SINCE IF AN ITEM IS NOT ON THE LIST, IT IS NOT NUCLEAR TECHNOLOGY.

--WE APPRECIATES THE STATEMENT THAT THE LIST OF NUCLEAR TECHNOLOGY TO BE TRANSFERRED MIGHT BE THE BASIS FOR FURTHER DISCUSSION.

--THE MSG GUIDELINES TALK ABOUT TRIGGER LIST ITEMS OR RELATED TECHNOLOGY, WHICH IS DEFINED TO INCLUDE TECHNICAL ASSISTANCE AND TECHNICAL DATA.

--WE UNDERSTAND THE CIVIL ENGINEERING POINT AND WILL TALK MORE WITH DOE, BUT MY UNDERSTANDING IS THAT WHEN A REACTOR IS PUT TOGETHER IT INVOLVES NUCLEAR TECHNOLOGY. IF CIVIL CONSTRUCTION DOES NOT IMPACT THE NUCLEAR ISLAND, IT IS NOT NUCLEAR TECHNOLOGY

--WE AGREE THAT WE MUST DEAL WITH DERIVED TECHNOLOGY. TODAY'S MODIFIED PROPOSAL DID NOT ADDRESS THIS QUESTION.

--WE UNDERSTAND THE POINT REGARDING THE 5-YEAR LIMIT AND UNDERSTAND THAT IT MAY HAVE A NEGATIVE EFFECT ON U.S. COMPETITIVENESS. WE WILL DISCUSS THIS ISSUE WITH DOE.

STRATFORD CONCLUDED BY NOTING THAT THE DISCUSSIONS HAD BEEN VERY PRODUCTIVE, THAT A GREAT DEAL OF PROGRESS HAD BEEN MADE, AND THAT WE WOULD BE IN FURTHER TOUCH THROUGH DIPLOMATIC

CHANNELS TO SCHEDULE THE NEXT ROUND OF DISCUSSIONS.
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