

*came into force
7/17/88*

PROPOSED AGREEMENT BETWEEN THE UNITED STATES AND JAPAN CONCERNING PEACEFUL USES OF NUCLEAR ENERGY

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

A PROPOSED AGREEMENT FOR COOPERATION BETWEEN THE GOVERNMENT OF THE UNITED STATES AND THE GOVERNMENT OF JAPAN CONCERNING PEACEFUL USES OF NUCLEAR ENERGY, INCLUDING AN IMPLEMENTING AGREEMENT PURSUANT TO ARTICLE 11 OF THE PROPOSED AGREEMENT, PURSUANT TO 42 U.S.C. 2153(b)



NOVEMBER 9, 1987.—Message and accompanying papers referred to the Committee on Foreign Affairs and ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

To the Congress of the United States:

I am pleased to transmit to the Congress, pursuant to sections 123 b. and 123 d. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2153(b), (d)), the text of a proposed Agreement for Cooperation Between the Government of the United States of America and the Government of Japan Concerning Peaceful Uses of Nuclear Energy, including an implementing agreement pursuant to Article 11 of the proposed agreement. I am also pleased to transmit my written approval, authorization and determination concerning the agreement, and the Nuclear Proliferation Assessment Statement by the Director of the United States Arms Control and Disarmament Agency concerning the agreement. The joint memorandum submitted to me by the Departments of State and Energy, which includes a summary of the provisions of the agreement, the views of the Director of the United States Arms Control and Disarmament Agency, and an analysis of the approvals and consents contained in the agreement, including the implementing agreement, and associated subsequent arrangements are also enclosed.

I also enclose for your information the texts of a proposed subsequent arrangement under the United States-Norway Revised Agreement for Cooperation Concerning Peaceful Uses of Nuclear Energy and a proposed subsequent arrangement under the United States-EURATOM Additional Agreement for Cooperation Concerning Peaceful Uses of Atomic Energy. These subsequent arrangements are designed to give effect to certain provisions of the United States-Japan implementing agreement and will enter into force only after the agreement enters into force. They are being processed by the Department of Energy in accordance with the applicable provisions of the Atomic Energy Act of 1954, as amended.

The proposed agreement with Japan, including the implementing agreement, has been negotiated in accordance with the Nuclear Non-Proliferation Act of 1978 (NNPA). In my judgment it meets all statutory requirements. It will supersede our 1968 agreement with Japan and, given the magnitude of our long-standing cooperation with Japan in the peaceful uses of nuclear energy, will represent the most significant achievement to date in our program initiated pursuant to section 404(a) of the NNPA to update all existing agreements for peaceful nuclear cooperation to include the more stringent standards established by that Act.

I believe that the new agreement will strengthen the basis for continued close cooperation between the United States and Japan in the peaceful nuclear area and that it will further the non-proliferation and other foreign policy interests of the United States. The implementing agreement provides Japan advance, long-term consent for reprocessing, transfers, alteration, and storage of nuclear material subject to the agreement, provided that the reprocessing and subsequent use of the recovered plutonium meet and continue

to meet the criteria set out in U.S. law, including criteria relating to safeguards and physical protection. These arrangements should enable Japan to plan for its long-term energy needs on a more assured, predictable basis, while at the same time embodying the most advanced concepts of physical security and safeguards of any agreement. This step forward in our cooperative relations with Japan will be consistent with the NNPA's injunction to take such actions as are required to confirm the reliability of the United States as a nuclear supplier consistent with non-proliferation goals.

Japan is not only a close ally of the United States but is also a party to the Treaty on the Non-Proliferation of Nuclear Weapons and has long been one of the strongest supporters of the international non-proliferation regime. Moreover, the United States and Japan have a substantial identity of views and intentions with regard to preventing nuclear proliferation and are prepared to work together on measures that will contribute to the prevention of proliferation consistent with the peaceful uses of nuclear energy. An exchange of letters between the United States and Japan, the text of which is included in the agreement package, sets forth in detail our shared views on non-proliferation.

I have considered the views and recommendations of the interested agencies in reviewing the proposed agreement and have determined that its performance will promote, and will not constitute an unreasonable risk to, the common defense and security. Accordingly, I have approved the agreement and authorized its execution and urge that the Congress give it favorable consideration.

I have also found that this agreement meets all applicable requirements of the Atomic Energy Act, as amended, for agreements for peaceful nuclear cooperation, and therefore, I am transmitting it to the Congress without exempting it from any requirement contained in section 123 a. of that Act. This transmission shall constitute a submittal for purposes of both sections 123 b. and 123 d. of the Atomic Energy Act. The Administration is prepared to begin immediately the consultations with the Senate Foreign Relations and House Foreign Affairs Committees as provided in section 123 b. Upon completion of the 30-day continuous session period provided in section 123 b., the 60-day continuous session period provided for in section 123 d. shall commence.

RONALD REAGAN.

THE WHITE HOUSE, November 9, 1987.

Enclosures

1. Text of Agreement for Cooperation, Including Implementing Agreement, and Associated Documents
2. Presidential Approval, Authorization and Determination
3. ACDA Nuclear Proliferation Assessment Statement
4. Memorandum from the Departments of State and Energy to the President, with Attachments:
 - Summary of the Agreement
 - Summary of the Implementing Agreement
 - Views of the Director of the Arms Control and Disarmament Agency
 - Analysis of the Approvals and Consents Contained in the Agreement, Implementing Agreement and Associated Subsequent Arrangements
5. Draft Proposed Subsequent Arrangement under the U.S.-Norway Agreement for Cooperation
6. Draft Proposed Subsequent Arrangement under the U.S.-EURATOM Agreement for Cooperation
7. Views of the Members of the Nuclear Regulatory Commission
8. Joint State/Energy/ACDA Comments on the NRC Views

(3)

AGREEMENT FOR COOPERATION
BETWEEN THE GOVERNMENT OF
THE UNITED STATES OF AMERICA
AND THE GOVERNMENT OF JAPAN
CONCERNING PEACEFUL USES OF NUCLEAR ENERGY

The Government of the United States of America
and the Government of Japan,

Considering the close cooperation between the two countries in the peaceful uses of nuclear energy pursuant to the Agreement for Cooperation Between the Government of the United States of America and the Government of Japan Concerning Civil Uses of Atomic Energy, signed on February 26, 1968, as amended (hereinafter referred to as "the previous Agreement");

Recognizing the importance of research on and development and use of nuclear energy for peaceful purposes;

Desiring to continue and expand cooperation in this field with due respect for their relevant national programs;

Desiring to enter into arrangements in the peaceful uses of nuclear energy on a predictable and reliable basis which take account of the long-term requirements of their nuclear energy programs;

Mindful that both Governments are parties to the Treaty on the Non-Proliferation of Nuclear Weapons (hereinafter referred to as "the Non-Proliferation Treaty");

Reaffirming their commitment to ensuring that the international research on and development and use of nuclear energy for peaceful uses are carried out in such a manner as will to the maximum extent further the objectives of the Non-Proliferation Treaty; and

Affirming their support of the objectives of the International Atomic Energy Agency (hereinafter referred to as "the Agency") and their desire to promote universal adherence to the Non-Proliferation Treaty;

Have agreed as follows:

Article 1

For the purposes of this Agreement:

(a) "Parties" means the Government of the United States of America and the Government of Japan; "Party" means one of the above "parties";

(b) "Person" means any individual or entity under the territorial jurisdiction of either party, but does not include the parties;

(c) "Reactor" means any apparatus, other than a nuclear weapon or other nuclear explosive device, in which a self-sustaining fission chain reaction is maintained by utilizing uranium, plutonium or thorium, or any combination thereof;

(d) "Equipment" means any reactor as a complete unit, other than one designed or used primarily for the formation of plutonium or uranium-233, and any other items specified in Part A of Annex A of this Agreement;

(e) "Component" means a component part of equipment or other item, so designated by agreement of the parties;

(f) "Material" means material for reactors which is specified in Part B of Annex A of this Agreement, but does not include "nuclear material";

(g) "Nuclear material" means (i) "source material", namely, 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 substance containing one or more of the foregoing in such concentration as may be agreed to by the parties; and such other substances as may be agreed to by the parties; and (ii) "special fissionable material", namely, 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 may be agreed to by the parties. The term "special fissionable material" does not include "source material";

(h) "High enriched uranium" means uranium enriched to twenty percent or more in the isotope 235;

(i) "Restricted data" means any data concerning (i) design, manufacture, or utilization of nuclear weapons; (ii) the production of special fissionable material; or (iii) 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;

(j) "Sensitive nuclear technology" means any data which are not available to the public and which are important to the design, construction, fabrication, operation or maintenance of enrichment, reprocessing or heavy water production facilities, or such other data as may be so designated by agreement of the parties.

Article 2

1. (a) The parties shall cooperate under this Agreement in the peaceful uses of nuclear energy in the two countries in the following ways:
 - (i) The parties shall encourage cooperation between their respective organizations, public and private, by exchanges of experts. When execution of an agreement or contract pursuant to this Agreement between United States and Japanese organizations requires such exchanges of experts, the parties shall facilitate the entry of the experts to their territories and their stay therein.
 - (ii) The parties shall facilitate supply and exchange of information on such terms as may be agreed either between themselves, between persons under their territorial jurisdiction or between

either party and persons under the territorial jurisdiction of the other party. Subjects that may be covered include health, safety and environmental considerations.

(iii) Either party or its authorized persons may supply to or receive from the other party or its authorized persons material, nuclear material, equipment and components on such terms as may be agreed between the supplier and the recipient.

(iv) Either party or its authorized persons may perform services for or receive services from the other party or its authorized persons on matters within the scope of this Agreement on such terms as may be agreed between the supplier and the recipient.

(v) The parties may cooperate in other ways as deemed appropriate by them.

(b) Notwithstanding the provisions of sub-paragraph (a) above, restricted data and sensitive nuclear technology shall not be transferred under this Agreement.

2. Cooperation between the parties as specified above shall be subject to the provisions of this Agreement, and the applicable treaties, laws, regulations and license requirements in force in their respective countries and shall require, in the case of cooperation envisaged in sub-paragraph (a)(iii) of paragraph 1 above, the application of safeguards by the Agency:

(a) with respect to all nuclear material in all nuclear activities within the territory of Japan, under its jurisdiction or carried out under its control anywhere, when the recipient is the Government of Japan or its authorized persons. Implementation of the agreement between the Government of Japan and the Agency in connection with the Non-Proliferation Treaty shall be considered as fulfilling this requirement; and

(b) with respect to all nuclear material in all civil nuclear activities within the territory of the United States of America, under its jurisdiction or carried out under its control anywhere, when the recipient is the Government of the United States of America or its authorized persons. Implementation of the agreement between the United States of America and the Agency for the application of safeguards in the United States of America shall be considered as fulfilling this requirement.

3. Material, nuclear material, equipment and components transferred between the two countries, whether directly or through a third country, shall become subject to this Agreement upon their entry into the territorial jurisdiction of the receiving party, only if the supplying party has notified the receiving party in writing of the intended transfer. Prior to the notified transfer of such items, the supplying party shall obtain from the receiving party a written confirmation that the transferred item will be held subject to this

Agreement and that the proposed recipient, if other than the receiving party, will be its authorized person.

4. Material, nuclear material, equipment and components subject to this Agreement shall no longer be subject to this Agreement if:

(a) such items have been transferred beyond the territorial jurisdiction of the receiving party in accordance with the relevant provisions of this Agreement;

(b) in the case of nuclear material, (i) the Agency determines, in accordance with the provisions for the termination of safeguards in the relevant agreement referred to in paragraph 2 of this Article, that the nuclear material has been consumed, or has been diluted in such a way that it is no longer usable for any nuclear activity relevant from the point of view of safeguards, or has become practicably irrecoverable. If either party disputes the Agency determination, the nuclear material will remain subject to this Agreement until the dispute is resolved; or (ii) in the absence of a determination by the Agency, it is agreed by the parties that such nuclear material should no longer be subject to this Agreement; or

(c) in the case of material, equipment and components, it is agreed by the parties.

Article 3

Plutonium and uranium-233 (except as contained in irradiated fuel elements), and high

enriched uranium, transferred pursuant to this Agreement or used in or produced through the use of nuclear material or equipment so transferred, shall only be stored in a facility to which the parties agree.

Article 4

Material, nuclear material, equipment and components transferred pursuant to this Agreement and special fissionable material produced through the use of such material, nuclear material or equipment may be transferred only to persons authorized by a receiving party or, if the parties agree, beyond the territorial jurisdiction of the receiving party.

Article 5

1. Nuclear material transferred pursuant to this Agreement and special fissionable material used in or produced through the use of material, nuclear material or equipment so transferred may be reprocessed if the parties agree.

2. Plutonium, uranium-233, high enriched uranium and irradiated nuclear material transferred pursuant to this Agreement or used in or produced through the use of material, nuclear material or equipment so transferred may be altered in form or content by irradiation. Such special fissionable material may otherwise be altered in form or content if the parties agree.

Article 6

Uranium transferred pursuant to this Agreement or used in equipment so transferred may be enriched to less than twenty percent in the isotope 235. Such uranium may also be enriched to twenty percent or more in the isotope 235 if the parties agree.

Article 7

Adequate measures of physical protection shall be maintained with respect to nuclear material transferred pursuant to this Agreement and special fissionable material used in or produced through the use of material, nuclear material or equipment so transferred, at levels, as a minimum, comparable to those set out in Annex B of this Agreement.

Article 8

1. Cooperation under this Agreement shall be carried out only for peaceful purposes.

2. Material, nuclear material, equipment and components transferred pursuant to this Agreement and nuclear material used in or produced through the use of such items shall not be used for any nuclear explosive device, for research specifically on or development of any nuclear explosive device, or for any military purpose.

Article 9

1. In order to ensure compliance with the provisions of paragraph 2 of Article 8 of this Agreement:

(a) Nuclear material transferred to the territorial jurisdiction of the Government of Japan pursuant to this Agreement and nuclear material used in or produced through the use of material, nuclear material, equipment or components so transferred shall be subject to the agreement referred to in sub-paragraph (a) of paragraph 2 of Article 2 of this Agreement.

(b) Nuclear material transferred to the territorial jurisdiction of the Government of the United States of America pursuant to this Agreement and nuclear material used in or produced through the use of material, nuclear material, equipment or components so transferred shall be subject to (i) the agreement referred to in sub-paragraph (b) of paragraph 2 of Article 2 of this Agreement and (ii) supplementary measures for substitution, to the extent practicable, or for tracking and accounting for such nuclear material.

2. If either party becomes aware that for any reason the Agency is not or will not be applying safeguards as required by paragraph 1 of this Article, the parties shall forthwith consult to take rectifying measures and, in the absence of such rectifying measures, shall immediately

enter into arrangements which conform to safeguards principles and procedures of the Agency and provide effectiveness and coverage equivalent to that intended to be provided by the safeguards required pursuant to paragraph 1 of this Article.

Article 10

If an agreement between either party and another nation or group of nations provides such other nation or group of nations rights equivalent to any or all of those set forth in Article 3, 4, 5, 6 or 12 of this Agreement with respect to any material, nuclear material, equipment or components subject to this Agreement, the parties may, at the request of either of them, agree that the implementation of such rights will be accomplished by such other nation or group of nations.

Article 11

In order to facilitate activities subject to Articles 3, 4 and 5 of this Agreement, the parties shall make, consistent with the objective of preventing nuclear proliferation and with their respective national security interests, and perform in good faith separate arrangements that will satisfy the requirements for mutual agreement set forth in those Articles on a long-term, predictable and reliable basis, and in a manner that will further facilitate peaceful uses of nuclear energy in their respective countries.

Article 12

1. If either party at any time following entry into force of this Agreement:

(a) does not comply with the provisions of Article 3, 4, 5, 6, 7, 8, 9 or 11 of this Agreement or the decisions of the arbitral tribunal referred to in Article 14 of this Agreement; or

(b) terminates or materially violates a safeguards agreement with the Agency,

the other party shall have the rights to cease further cooperation under this Agreement, terminate this Agreement and require the return of any material, nuclear material, equipment or components transferred pursuant to this Agreement or any special fissionable material produced through the use of such items.

2. If the United States of America detonates a nuclear explosive device using material, nuclear material, equipment or components transferred pursuant to this Agreement or nuclear material used in or produced through the use of such items, the Government of Japan shall have the same rights as specified in paragraph 1 of this Article.

3. If Japan detonates a nuclear explosive device, the Government of the United States of America shall have the same rights as specified in paragraph 1 of this Article.

4. Before either party takes steps to cease cooperation under this Agreement, to terminate this Agreement, or to require such return, the parties shall consult for the purpose of taking corrective steps and shall carefully consider the economic effects of such actions, taking into account the need to make such other appropriate arrangements as may be required.

5. If either party exercises its rights under this Article to require the return of any material, nuclear material, equipment or components, it shall compensate the other party or the persons concerned for the fair market value thereof.

Article 13

1. The previous Agreement shall terminate on the date this Agreement enters into force.

2. Cooperation initiated under the previous Agreement shall continue under this Agreement. The provisions of this Agreement shall apply to nuclear material and equipment subject to the previous Agreement. Should the separate arrangements called for in Article 11 of this Agreement be suspended with respect to such nuclear material or equipment, they shall be subject to the provisions of this Agreement during the suspension only to the extent covered by the previous Agreement.

Article 14

1. With a view to promoting cooperation under this Agreement, the parties may, at the request of either of them, consult with each other through diplomatic channels or other consultative fora.
2. If any question arises concerning the interpretation or application of this Agreement, the parties shall, at the request of either of them, consult with each other.
3. If any dispute arising out of the interpretation or application of this Agreement is not settled by negotiation, mediation, conciliation or other similar procedure, the parties may agree to submit such dispute 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 who may be a national of its country and the two arbitrators so designated shall elect a third, a national of a third country, who shall be the Chairman. If, within thirty days of the request for arbitration, either party has not designated an arbitrator, either party may request the President of the International Court of Justice to appoint an arbitrator. The same procedure shall apply if, within thirty days of the designation or appointment of the second arbitrator, the third arbitrator has not been elected, provided that the third arbitrator so appointed shall not be a national of the country of either party. A majority of the members of

the arbitral tribunal shall constitute a quorum, and 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 15

The Annexes of this Agreement form an integral part of this Agreement. The Annexes may be modified by mutual consent in writing of the parties without amendment of this Agreement.

Article 16

1. This Agreement shall enter into force on the thirtieth day after the date on which the parties exchange diplomatic notes informing each other that their respective internal legal procedures necessary for entry into force of this Agreement have been completed and shall remain in force for a period of thirty years, and shall continue in force thereafter until terminated in accordance with the provisions of paragraph 2 of this Article.
2. 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 any time thereafter.
3. Notwithstanding the suspension or termination of this Agreement or any cooperation hereunder for any reason, Article 1, paragraph 4 of Article 2 and Articles 3, 4, 5, 6, 7, 8, 9, 11, 12 and 14 shall continue in effect to the extent applicable.

4. At the request of either party, the parties shall consult with each other whether to amend this Agreement or to replace it with a new agreement.

IN WITNESS WHEREOF the undersigned, being duly authorized, have signed this Agreement.

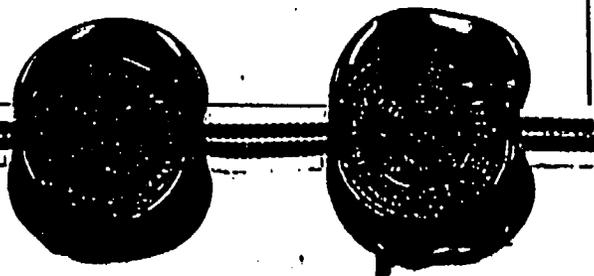
DONE at Tokyo, this fourth day of November, 1987, in duplicate, in the English and Japanese languages, both texts being equally authentic.

Michael J. Tompkins

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF JAPAN:

Tadashi Kuranari



Annex A

Part A

1. 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 reactor and are capable of withstanding the operating pressure of the primary coolant.

2. Reactor fuel charging and discharging machines as complete units:

Manipulative equipment especially designed or prepared for inserting or removing fuel in a reactor capable of on-load operation.

3. Reactor control rods as complete units:

Complete control rod assemblies, including the control rod drive mechanism, especially designed or prepared for the control of the reaction rate in a reactor.

4. Reactor primary coolant pumps as complete units:

Pumps, including the motor, especially designed or prepared for circulating the primary coolant for a reactor.

Part B.

1. Deuterium and heavy water:

Deuterium and any deuterium compound in which the ratio of deuterium to hydrogen exceeds 1:5000 for use in a reactor.

2. Nuclear grade graphite:

Graphite having a purity level better than 5 parts per million boron equivalent and with a density greater than 1.50 grams per cubic centimeter.

Annex B

Levels of physical protection

CATEGORY III

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

Transportation under special precautions including prior arrangements among sender, recipient and carrier, and prior agreement between entities subject to the jurisdiction and regulation of supplier and recipient states, respectively, in case 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 arrangements among sender, recipient and carrier, and prior agreement between entities subject to the jurisdiction and regulation of supplier and recipient states, respectively, in case of international transport, specifying time, place and procedures for transferring transport responsibility.

CATEGORY I

Nuclear material 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 which is under surveillance by guards who are in close communication with appropriate response authorities. Specific measures taken in this context should have as their objective the detection and prevention of any assault, unauthorized access or unauthorized removal of the nuclear material concerned.

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

TABLE: CATEGORIZATION OF NUCLEAR MATERIAL

Nuclear Material	Form	Category I	Category II	Category III
1. Plutonium ^a	Unirradiated ^b	2 kg or more	Less than 2 kg but more than 500 g	500 g or less but more than 15g
2. Uranium-235	Unirradiated ^b : - uranium enriched to 20% ²³⁵ U or more - uranium enriched to 10% ²³⁵ U but less than 20% - uranium enriched above natural, but less than 10% ²³⁵ U	5 kg or more	Less than 5 kg but more than 1 kg	1kg or less but more than 15 g
			10 kg or more	Less than 10 kg but more than 1 kg
				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 but more than 15g
4. Irradiated fuel			Depleted or natural uranium, thorium or low-enriched fuel (less than 10% fissile content) ^{d,e}	

- a. All plutonium except that with isotopic concentration exceeding 80% in plutonium-238.
- b. Nuclear material not irradiated in a reactor or nuclear material irradiated in a reactor but with a radiation level equal to or less than 100 rads/hour at one meter unshielded.
- c. Quantities not falling in Category III and natural uranium should be protected in accordance with prudent management practice.
- d. Although this level of protection is recommended, it would be open to a party, upon evaluation of the specific circumstances, to assign a different category of physical protection.
- e. Other fuel which by virtue of its original fissile nuclear material content is classified as Category I and II before irradiation may be reduced one category level while the radiation level from the fuel exceeds 100 rads/hour at one meter unshielded.

AGREED MINUTES

In connection with the Agreement for Cooperation Between the Government of the United States of America and the Government of Japan Concerning Peaceful Uses of Nuclear Energy, signed at Tokyo today (hereinafter referred to as "the Agreement"), the undersigned hereby record the following understandings:

1. With reference to sub-paragraph (a)(iii) and (iv) of paragraph 1 of Article 2 of the Agreement, it is confirmed that the Government of the United States of America will take such actions as may be necessary and feasible to ensure a reliable supply of nuclear fuel to Japan, including the export of nuclear material and in particular the furnishing of enrichment services on a timely basis and the maintenance of the availability of the capacity to carry out this undertaking during the period of the Agreement.
2. With reference to sub-paragraph (c) of paragraph 4 of Article 2 of the Agreement, it is confirmed that the parties will consult with each other for the purpose of developing practical means for determining when material, equipment and components are no longer usable for nuclear purposes.
3. With reference to Article 3 and paragraph 2 of Article 5 of the Agreement, it is confirmed that when alteration in form or content or storage of nuclear material subject to the Agreement is authorized within the terms of an

export license of the supplying party no further agreement between the parties is required for such alteration in form or content or storage.

4. With reference to the provisions of Articles 3, 4 and 5 of the Agreement, it is confirmed that with respect to special fissionable material produced through the use of nuclear material transferred pursuant to the Agreement and not used in or produced through the use of equipment so transferred, such provisions shall in practice be applied to that proportion of special fissionable material produced which represents the ratio of transferred nuclear material used in the production of the special fissionable material to the total amount of nuclear material so used and similarly for subsequent generations. It is further confirmed that the parties will enter into discussions with each other and with other governments with a view to developing formulations which will reflect the relative contributions of special fissionable material and other nuclear material to the production of special fissionable material.

5. With reference to the provisions of Articles 3, 4, 5, 6, 7 and 9 of the Agreement, it is confirmed that the said provisions of the Agreement shall be implemented in such a manner as to avoid hampering, delay or undue interference in the nuclear activities in the two countries and so as to be consistent with prudent management practices required for the economic and safe conduct of their nuclear programs. It is further confirmed that the

provisions of the Agreement shall not be utilized for the purpose of seeking commercial or industrial advantages, for the purpose of interfering with the nuclear policy of either party or the commercial or industrial interests of either party or its authorized persons, or for the purpose of hindering the promotion of the peaceful uses of nuclear energy.

6. With reference to Article 7 of the Agreement, it is confirmed that the physical protection measures as applied in the two countries are at or beyond levels required by the said Article with due regard for the recommendations contained in the document of the International Atomic Energy Agency (hereinafter referred to as "the Agency") INFCIRC/225/Rev. 1 and are therefore adequate.

7. With reference to Article 8 of the Agreement, it is confirmed that peaceful purposes do not include use for any nuclear explosive device, or for research specifically on or development of any nuclear explosive device, inasmuch as it is not possible to differentiate between the technology for nuclear weapons and that for nuclear explosive devices for peaceful purposes.

8. (a) With reference to the provisions of Article 9 of the Agreement, it is confirmed that for the effective implementation of the said Article the parties shall exchange annually the then current inventories of material, nuclear material, equipment and components subject to the Agreement and, in

case of the Government of the United States of America, nuclear material substituted for such nuclear material.

(b) With reference to paragraph 1 of Article 9 of the Agreement, it is confirmed that each party has established and will maintain in accordance with relevant laws and regulations in force in each country a national system of accounting for and control of nuclear material covering all nuclear material subject to the Agreement.

9. It is confirmed that the following measures fulfill the requirements of sub-paragraph (b) (ii) of paragraph 1 of Article 9 of the Agreement:

(a) Pursuant to the agreement referred to in sub-paragraph (b) of paragraph 2 of Article 2 of the Agreement, the Government of the United States of America has undertaken to permit the Agency to apply safeguards on all nuclear material in all facilities within its territorial jurisdiction, excluding only those associated with activities with direct national security significance.

(b) The Government of the United States of America shall provide to the Government of Japan annually the list of facilities which are eligible for the application of safeguards by the Agency and the list of facilities selected by the Agency pursuant to the agreement referred to in sub-paragraph (b)

of paragraph 2 of Article 2 of the Agreement and its Protocol.

(c) When nuclear material is to be made subject to the Agreement and is to be located at facilities not selected by the Agency for the application of safeguards, the parties, at the request of either, shall make, through consultations and without delaying the transfer of such nuclear material, mutually satisfactory arrangements including, to the extent practicable, the substitution of nuclear material of the same quantity and equivalent or higher isotopic content in the fissionable isotopes at facilities which the Agency has selected for the application of safeguards.

(d) When nuclear material is to be made subject to the Agreement and is to be located at facilities not on the list of facilities eligible for the application of safeguards by the Agency and substitution in accordance with sub-paragraph (c) above is not practicable, the parties, at the request of either, shall make, through consultations and without delaying the transfer of such nuclear material, mutually satisfactory arrangements including, to the extent practicable, the substitution of nuclear material of the same quantity and equivalent or higher isotopic content in the fissionable isotopes at facilities eligible, but not selected by the Agency, for the application of safeguards.

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(e) The Government of the United States of America shall provide to the Government of Japan and the Agency, as mutually arranged, a report by facility on an annual basis of inventories, shipments and receipts of nuclear material subject to Article 9 of the Agreement that is located at facilities eligible for the application of safeguards by the Agency.

(f) The parties shall consult, at the request of either, concerning any of the reports provided under sub-paragraph (e) above, and shall take appropriate measures for resolving any questions concerning such reports.

10. (a) With reference to paragraph 2 of Article 9 of the Agreement, it is confirmed that the safeguards arrangements referred to therein shall include the following characteristics in accordance with the safeguards principles and procedures of the Agency:

(i) the review in a timely fashion of the design of any equipment transferred pursuant to the Agreement, or of any facility which is to use, fabricate, process or store any nuclear material subject to the said paragraph;

(ii) the maintenance and production of operating records and of relevant reports for the purpose of assisting in ensuring accountability for nuclear material subject to the said paragraph; and

(iii) the designation of personnel acceptable to the safeguarded party, accompanied if either party so requests by personnel designated by the safeguarded party. These personnel shall have access to all places and data, and any equipment or facility referred to in sub-paragraph (a) (i) necessary to account for the nuclear material referred to in sub-paragraph (a) (i) and shall be permitted to use devices in connection with the performance of inspections and to make such independent measurements as may be deemed necessary by the safeguarded party and the Agency (or, where applicable, the safeguarding party) to account for such nuclear material. The safeguarded party shall not unreasonably withhold acceptance of such personnel designated by the Agency or the safeguarding party. The personnel designated by the Agency (or, where applicable, the safeguarding party) shall not, except pursuant to their responsibilities to the Agency (or, where applicable, the safeguarding party), disclose any industrial or other confidential information coming to their knowledge by reason of their official duties.

(b) With reference to paragraph 2 of Article 9 of the Agreement, it is further confirmed that the simultaneous application of safeguards by the Agency and by the other

party is not intended; the parties shall as necessary consult with a view to avoiding the simultaneous application of safeguards, and if such an exceptional situation should occur, the parties shall consult with the Agency with a view to removing the simultaneous application of safeguards.

11. With reference to sub-paragraph (b) of paragraph 1 of Article 12 of the Agreement, it is confirmed that while a party's safeguards agreement with the Agency referred to in paragraph 2 of Article 2 of the Agreement remains in force the reference to termination of "a safeguards agreement with the Agency" shall not apply to that party.

12. With reference to paragraph 2 of Article 13 of the Agreement, it is confirmed that:

(a) in order to facilitate the application of the provisions of the Agreement to nuclear material and equipment subject to the previous Agreement, the parties shall establish a list of such items;

(b) items transferred pursuant to the previous Agreement not included on the list established pursuant to sub-paragraph (a) above will not be used for any nuclear explosive device, for research specifically on or development of any nuclear explosive device or for any military purpose, and will not be transferred beyond the territorial jurisdiction of either party without the agreement of the other party. Special fissionable material used in or produced

through the use of such items will not be used for any nuclear explosive device, for research specifically on or development of any nuclear explosive device or for any military purpose, and will be subject to safeguards in accordance with the relevant agreements with the Agency referred to in paragraph 2 of Article 2 of the Agreement; and

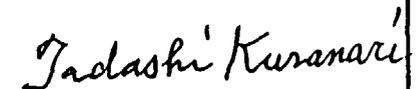
(c) the parties are satisfied with the manner in which the guarantees specified in sub-paragraph (b) above have been implemented under the previous Agreement.

13. With reference to Article 14 of the Agreement, it is confirmed that the parties shall consult, at the request of either, on matters related to the application of physical protection measures and safeguards as referred to in Articles 7 and 9 of the Agreement respectively.



FOR THE GOVERNMENT OF
THE UNITED STATES
OF AMERICA:

FOR THE GOVERNMENT OF
JAPAN:



Implementing Agreement
Between the Government of
the United States of America
and the Government of Japan
Pursuant to Article 11
of Their Agreement for
Cooperation Concerning
Peaceful Uses of Nuclear Energy

WHEREAS the Government of the United States of America and the Government of Japan (hereinafter referred to as "the parties") signed the Agreement for Cooperation Concerning Peaceful Uses of Nuclear Energy on November 4, 1987 (hereinafter referred to as "the Agreement for Cooperation");

WHEREAS Article 3 of the Agreement for Cooperation provides requirements for the storage of certain special fissionable material;

WHEREAS Article 4 of the Agreement for Cooperation provides requirements for the transfer of certain nuclear material;

WHEREAS Article 5 of the Agreement for Cooperation provides requirements for the reprocessing of certain nuclear material and for the alteration in form or content of certain special fissionable material;

WHEREAS Article 11 of the Agreement for Cooperation provides that to facilitate the peaceful uses of nuclear energy, the parties shall make, consistent with the objective of preventing nuclear proliferation and with their respective national security interests, and perform in good faith separate arrangements whereby the requirements for mutual agreement set forth in Articles 3, 4 and 5 will be satisfied on a long-term, predictable and reliable basis;

The parties, in fulfillment of Article 11 of the Agreement for Cooperation, have agreed as follows:

Article 1

1. (a) The parties hereby agree pursuant to Articles 3, 4 and 5 of the Agreement for Cooperation to the following activities:
 - (i) reprocessing or alteration in form or content in the facilities within the territorial jurisdiction of either party which are listed in Annex 1;
 - (ii) storage in the facilities within the territorial jurisdiction of either party which are listed in Annex 1 or 2; and
 - (iii) transfer beyond the territorial jurisdiction of either party of irradiated nuclear material, except irradiated high enriched uranium and uranium-233, from facilities listed in Annex 1, 2 or 3 to facilities listed in Annex 1.
- (b) The parties hereby agree pursuant to Article 4 of the Agreement for Cooperation to the transfer beyond the territorial jurisdiction of either party of unirradiated source material and low enriched uranium to third countries designated in writing by the parties but not for the production of high enriched uranium.

2. (a) The parties hereby agree pursuant to Articles 3 and 5 of the Agreement for Cooperation to the following activities within each calendar year in each of the facilities within the territorial jurisdiction of either party designated in accordance with procedures agreed to by the parties:

(i) alteration in form or content of plutonium, uranium-233 and high enriched uranium in an aggregate quantity not to exceed 1 effective kilogram of these ~~nuclear materials and of irradiated nuclear material containing plutonium, uranium-233 or high enriched uranium in an aggregate quantity not to exceed 1 effective kilogram of these nuclear materials;~~

(ii) storage of plutonium and uranium-233 (except as contained in irradiated fuel elements) and high enriched uranium in an aggregate quantity not to exceed 5 effective kilograms of these nuclear materials; and

(iii) reprocessing of irradiated nuclear material containing plutonium or uranium-233 in an aggregate quantity not to exceed 500 grams of these nuclear materials.

- (b) The parties hereby agree pursuant to Article 4 of the Agreement for Cooperation to the transfer within each calendar year of unirradiated nuclear material containing

plutonium in quantities not to exceed 500 grams to each facility designated in writing by the parties within the territorial jurisdiction of a third country for irradiation and for its subsequent return to the territorial jurisdiction of the transferring party for testing and analysis. The transfer of unirradiated nuclear material shall take place in quantities not to exceed 500 grams of contained plutonium per shipment.

3. (a) Each party shall keep the government of a third country informed of the facilities within the territorial jurisdiction of that government which are listed in Annex 1 or which are designated pursuant to sub-paragraph (b) of paragraph 2 of this Article. Each party shall give the government of the third country its consent if required under its agreement with that government to:

(i) reprocessing, alteration in form or content and storage (in the case of facilities listed in Annex 1) and irradiation (in the case of facilities designated pursuant to sub-paragraph (b) of paragraph 2);

(ii) return of the nuclear material concerned (except recovered plutonium) to the territorial jurisdiction of the other party; and

(iii) return of the recovered plutonium concerned in quantities of two kilograms or more per shipment to the territorial

jurisdiction of the other party in accordance with the following procedure: prior to each shipment the receiving party will provide the other party a written notification which shall include a statement advising that the measures arranged for the international transport are in accordance with the guidelines set forth in Annex 5 and a description of such measures.

(b) When the procedure set forth in subparagraph (a)(iii) above is not to be followed, the return of the recovered plutonium may only take place upon consent of the non-receiving party under the applicable agreement.

4. Sub-paragraph (a) of paragraph 1 and paragraphs 2 and 3 above shall apply only where the recovered plutonium concerned is or will be located in a facility listed in Annex 1 or 2 or designated pursuant to paragraph 2 of this Article, unless otherwise accepted in writing by the parties.

5. The additional procedural conditions for this Implementing Agreement are set forth in the Agreed Minutes to this Implementing Agreement.

Article 2

1. Annexes 1, 2, 3 and 4 of this Implementing Agreement may be modified in accordance with the procedures set forth in this Article and Annex 5 of this Implementing Agreement may be modified by agreement of the parties, without amendment of this Implementing Agreement.

2. Unless otherwise agreed by the parties, either party may add to or delete from Annex 1, 2, 3 or 4 a facility within its territorial jurisdiction only after notifying the other party in writing in accordance with the provisions of this Article and receiving a written acknowledgment which shall be limited to a statement that such notification has been received. Such acknowledgment shall be given no later than thirty days after the receipt of the notification.

(a) For an addition to Annex 1 or 2 of a facility listed in Annex 3 or 4, the notification shall contain:

(i) the name of the owner or operator of the facility, the facility name and the existing or planned capacity;

(ii) the facility location, the type of nuclear material involved, the approximate date of introduction of such nuclear material into the facility and the type of activity; and

(iii) a statement that a relevant safeguards arrangement (namely, a facility attachment or, in the case of ad hoc inspection, an arrangement therefor) has been agreed upon with the International Atomic Energy Agency (hereinafter referred to as "the Agency") and that physical protection measures as required by Article 7 of the Agreement for Cooperation will be maintained;

(b) In addition to the information specified in sub-paragraph (a) above, the notification shall contain the following information:

(i) For an addition to Annex 1 of a facility listed in Annex 4, except where sub-paragraph (b) (ii) is applicable, a statement affirming that the safeguards arrangement is in accordance with the relevant safeguards concept that has been agreed upon between the parties and a description of the key elements contained in the safeguards arrangement.

(ii) For an addition to Annex 1 of a facility listed in Annex 4, when safeguards applicable to that facility are already being applied at an Annex 1 facility within the territorial jurisdiction of the notifying party, a statement affirming that the safeguards arrangement will be in all significant respects the same as that being applied at the corresponding facility listed in Annex 1 and a description of the key elements contained in the safeguards arrangement.

(c) To delete a facility from Annex 1, 2, 3 or 4 or to add a facility to Annex 3 or 4 the notification shall contain the facility name and other relevant information available.

3. A facility within the territorial jurisdiction of the government of a third country may be added to or deleted from Annex 1 by agreement of the parties.

4. (a) When circumstances so require, the parties shall seek to develop as soon as possible a safeguards concept for a facility which is or will be listed in Annex 4 to avoid delaying its operation.

(b) When the Agency cannot administer safeguards in accordance with the safeguards concept that has been agreed upon between the parties with respect to a facility then listed in Annex 4, the parties shall make every effort to ensure that this does not delay the operation of the facility. For this purpose consultations shall take place between the parties or between either party and the Agency. The facility shall be added to Annex 1 pursuant to sub-paragraph (a) of paragraph 2 above on a provisional basis provided that the parties are satisfied that adequate safeguards of the Agency will be applied in the interim. The parties shall make every effort to modify, as may be necessary, the relevant safeguards concept to enable the Agency to administer safeguards in accordance therewith.

Article 3

1. This Implementing Agreement shall enter into force at the same time as the Agreement for Cooperation and shall remain in force in accordance with Article 11 of the Agreement for Cooperation for the same duration. The parties shall, at the request of either of them, consult with each other whether to amend this Implementing Agreement or to replace it with a new agreement.

2. Either party may suspend the agreement it has given in Article 1 of this Implementing Agreement in whole or in part to prevent a significant increase in the risk of nuclear proliferation or in the threat to its national security caused by exceptional cases such as a material breach by the other party of the Treaty on the Non-Proliferation of Nuclear Weapons or withdrawal therefrom, or a material breach by the other party of its safeguards agreement with the Agency, of this Implementing Agreement or of the Agreement for Cooperation. Any decision on such suspension would only be taken in the most extreme circumstances of exceptional concern from a non-proliferation or national security point of view, would be taken at the highest levels of government, and would be applied only to the minimum extent and for the minimum period of time necessary to deal in a manner acceptable to the parties with the exceptional case.

3. During the period of suspension the parties may agree on a case-by-case basis to the activities specified in Article 1 of this Implementing Agreement. Prior to any suspension the parties shall consult with each other to determine the facts of the matter and to discuss to what extent, if at all, a suspension is necessary. The suspending party shall carefully consider the economic effects of such suspension and shall seek to the maximum extent possible to avoid the disruption of international nuclear trade and the fuel cycle operations under this Implementing Agreement. The parties may agree in accordance with Article 14 of the Agreement for Cooperation to refer any of these questions to a third party for resolution.

4. The suspending party shall keep under constant review the development of the situation which caused the suspension and shall withdraw the suspension as soon as warranted. The parties shall, at the request of either of them, consult with each other immediately to determine whether there is a basis for the withdrawal of such suspension.

DONE at Tokyo, this fourth day of November, 1987, in duplicate in the English language.

Michael J. Mansfield

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

Tadashi Kuranare

FOR THE GOVERNMENT OF JAPAN:

Annex 1. Facilities for reprocessing, alteration in form or content and storage

1. Reprocessing Facilities

Name of owner or operator	Facility name	Capacity	Location
Power Reactor and Nuclear Fuel Development Corporation	Tokai Reprocessing Plant	210 t/year	Ibaraki
Power Reactor and Nuclear Fuel Development Corporation	Chemical Processing Facility	7.2 kgs of FBR spent fuel/year	Ibaraki
British Nuclear Fuels Public Limited Company	Sellafield Plant	1,200 t/year	U.K.
Compagnie Générale des Matières Nucléaires	La Hague Plant	1,600 t/year	France

2. Plutonium Conversion Facilities

Name of owner or operator	Facility name	Capacity	Location
Power Reactor and Nuclear Fuel Development Corporation	Tokai Plutonium Conversion Development Facility	10 kgs MOX/day	Ibaraki

3. Plutonium Fuel Fabrication Facilities

Name of owner or operator	Facility name	Capacity	Location
Power Reactor and Nuclear Fuel Development Corporation	Tokai Plutonium Fuel Fabrication Facility (PFFF)	11 t MOX/year	Ibaraki

4. Independent Plutonium Storage Facilities

NIL

5. Other Facilities

NIL