



DEPARTMENT OF STATE

Washington, D.C. 20520

BUREAU OF OCEANS AND INTERNATIONAL ENVIRONMENTAL AND SCIENTIFIC AFFAIRS

NOV 27 1979

EX-101/REPORT  
AND  
INTERNATIONAL STAFFS

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XU08427  
11000105

MEMORANDUM FOR JAMES R. SHEA  
NUCLEAR REGULATORY COMMISSION

Enclosed is an Executive Branch analysis covering a license application (XU08427) for the export of natural uranium to France for enrichment at COGEMA's Pierrelatte (EURODIF) facility. The low enriched uranium produced will be returned to the United States for fabrication into fuel elements by General Electric Corporation in San Jose, California. The fuel elements are intended for export to Switzerland for fueling of the Kernkraftwerk Kaiseraugst power reactor. In accordance with the requirements of Section 126 a.(1) of the Atomic Energy Act, as amended, the analysis addresses the extent to which the specific criteria in Section 127 and 128 are met, as well as certain additional factors envisaged by Section 126 a.(1).

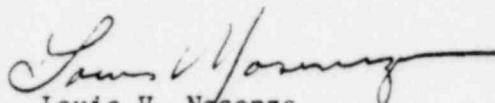
Export of this natural uranium for enrichment is subject to Section 402 (a) of the Atomic Energy Act, as amended by the Nuclear Non-Proliferation Act of 1978. It is the view of the Executive Branch that pending conclusion of negotiations to amend the U.S.-EURATOM Additional Agreement for Cooperation, export for enrichment in France may take place pursuant to the present Agreement with the approval of the United States. The procedures for such approval are to be identical to those for subsequent arrangements, as set out in Part E of the Executive Branch Procedures published in the Federal Register on June 9, 1978.

The Department of Energy as the lead agency for preparation of subsequent arrangements has initiated the necessary procedures for approval under Section 402 (a) and also under 10 CFR 810.

The Executive Branch, on the basis of its review of this export application, has concluded that the requirements of the Atomic Energy Act, as amended by the Nuclear Non-Proliferation Act of 1978 (P.L. 95-242), have been met and it is the Executive Branch judgment that the proposed export would not be inimical to the common defense and security of the United States. Switzerland and the members of EURATOM have adhered to the provisions of their respective agreements for cooperation with the United States. Therefore, the Executive Branch recommends issuance of the requested export license.

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The Commission is requested to give this export license application expeditious consideration in view of the time which has passed since receipt of the application, while the Department of Energy concurrently completes the necessary actions under Section 402(a).



Louis V. Nosenzo  
Deputy Assistant Secretary

Enclosure:  
As stated

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XU08427

Country: Switzerland via France  
Transaction: The export of 68,500 kilograms of natural uranium to France for enrichment in the COGEMA (EURODIF) Pierrelatte Facility  
Applicant: Edlow International Co.  
Applicant Reference: KWK  
Date of Application: July 26, 1978

Purpose of Export

This natural uranium in the form of uranium hexafluoride will be shipped to COGEMA, Pierrelatte, France for low enrichment. The material will then be returned to the United States for fabrication by General Electric in its San Jose, California facility. The completed fuel assemblies are intended for export to Switzerland for use in fueling the Kernkraftwerk Kaiseraugst power reactor in Switzerland, a 925 Megawatt electric boiling water reactor.

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DELEGATION OF THE COMMISSION OF THE EUROPEAN COMMUNITIES

August 25, 1978  
JM/mc

Mr. Vance H. Hudgins  
Assistant Director for Politico-  
Military Security Affairs  
Division of International Security Affairs  
Department of Energy  
Washington, D.C. 20545

Subject: Edlow International Co. application KWK of  
July 26, 1978

XU08427

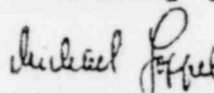
Dear Mr. Hudgins:

We certify that the material mentioned in this application, namely 68,500 Kg of uranium as natural UF<sub>6</sub> and the transfer of this material will be subject to all terms and conditions of the Additional Agreement for Cooperation, dated July 25, 1960, as amended.

Further we certify that COGEMA, Pierrelatte, France, as ultimate consignee, is authorized by EURATOM to receive and possess this material pursuant to the aforementioned Agreement for Cooperation.

The above material, after enrichment in EURODIF facility, will be transferred to General Electric Corp., San Jose, California, for fuel fabrication.

Sincerely yours,



F. SPAAK  
Head of Delegation

cc: Ms. Diane Harmon, Edlow  
Mr. Robert Delabarre, State Department  
Ms. Janice Dunn, NRC

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EMBASSY OF SWITZERLAND  
SCHWEIZERISCHE BOTSCHAFT  
AMBASSADE DE SUISSE

WASHINGTON D.C. 20008,  
2900 Cathedral Avenue N.W.  
Telephone 462-1811/7

*Newman*

Ref.: 651.513 NOK - MR/or  
651.513 Kaiseraugst

September 18, 1978

Colonel Vance H. Hudgins  
Director  
Division of Politico-Military  
Security Affairs  
Office of International  
Security Affairs  
U.S. Department of Energy  
Washington, D.C. 20545

Re: Export License Applications XSNM-953 and XU-8427

Dear Colonel Hudgins:

Reference is made to your letter of September 6, 1978.

This letter serves as official confirmation that

- a) the transfer of the material, as identified on the two license applications, will be subject to all of the terms and conditions of the Agreement for Cooperation, which entered into force on August 8, 1966, as amended, concerning civil uses of atomic energy between the Government of the United States and the Government of Switzerland;
- b) the ultimate consignees, as identified on the applications, are authorized by my Government to receive and possess the material;
- c) physical security measures will be maintained with respect to this material so as to provide, at a minimum, a level of protection comparable to that set forth in IAEC INFCIRC/225/Revision 1.

Sincerely yours,

*R.E. Mueller*

R.E. Mueller  
Energy Counselor

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EXPORT LICENSE APPLICATION ANALYSIS

1. Applicable Agreement for Cooperation

The material covered by the export license applications is subject to all of the terms and conditions of the Agreement for Cooperation Between the United States and Switzerland as amended. This fact has been confirmed by letters from the Embassy of Switzerland, copies of which follow the description of the transaction. The Agreement, as amended, entered into force on August 8, 1966.

Switzerland has adhered to all provisions of this agreement with the United States.

The intermediate transfer of natural uranium to France for enrichment is subject to all of the terms and conditions of the Additional Agreement for Cooperation between the United States and the European Atomic Energy Community (EURATOM), as amended. This was confirmed in a letter from the Delegation of the Commission of the European Communities, a copy of which is enclosed.

The European Atomic Energy Community has adhered to all provisions of this agreement with the United States.

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2. Extent to Which Export Criteria Are Met

A. Section 127 Criteria

As provided in Section 127 of the Atomic Energy Act, the following criteria govern exports for peaceful nuclear uses from the United States of source material, special nuclear material, production or utilization facilities, and any sensitive nuclear technology:

Criterion (1)

"IAEA safeguards as required by Article III(2) of the Treaty will be applied with respect to any such material or facilities proposed to be exported, to any such material or facilities previously exported and subject to the applicable Agreement for Cooperation, and to any special nuclear material used in or produced through the use thereof."

As a nuclear-weapon-state (NWS), France is not subject to IAEA safeguards as required by Article III(2) of the Treaty. Therefore, it is the Executive Branch view that criterion (1) is met with respect to this export to France.

This does not mean, however, that the material proposed for export will not be subject to safeguards while in France. Under Article V of the Additional Agreement for Cooperation of 1960, as amended, which incorporates Article XI, XII and Annex B of the November 8, 1958 Joint Program Agreement, as amended, the Community undertakes the responsibility of establishing and implementing a safeguards and control system designed to give maximum assurance that any material supplied by the US or generated from such supply will be used solely for peaceful purposes ("EURATOM Safeguards System"). The Community is bound to consult and exchange experiences with the IAEA with the objective of establishing a system reasonably compatible with that of the latter. The Community is responsible for establishing and maintaining a mutually (with respect to the US) satisfactory and effective safeguards and controls system in accordance with stated principles.

EURATOM safeguards are being applied to material and facilities previously exported and subject to the US-EURATOM Cooperation Agreements and to special nuclear material used in or produced through the use thereof. These agreements require these safeguards to be applied to such material and facilities and to the proposed export and special nuclear material produced through its use.

Furthermore, some -- if not all -- U.S.-supplied source and special nuclear material and special nuclear material generated through the use thereof may be subject to the application of IAEA safeguards

under the Agreement between France, EURATOM and the IAEA for application of safeguards to certain nuclear material in France which was signed July 27, 1978. This Agreement shall enter into force one month after the Agency has received notification from both France and the European Community that their respective internal requirements for entry into force have been met, and the Director General shall promptly notify France and the Community of the date on which it is to enter into force.

This agreement calls for the application of IAEA safeguards, essentially under INFCIRC/153 technical criteria, on source or special fissionable material to be designated by France in facilities or parts thereof within France. This language is somewhat different from the U.S. and U.K. "Voluntary Offers," under which such safeguards will apply on all nuclear facilities, excluding only those facilities associated with activities with direct national security significance. However, a French official has indicated that, in principle the French offer is no more limited than that of the U.K. and the U.S. but that, in practice, a higher proportion of material in France may be excluded because of its proportionately larger number of facilities which process materials for both military and civil use.

The seven non-nuclear weapons state members of the European Community and the United Kingdom are parties to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT). Each of those seven states (Belgium, Denmark, the Federal Republic of Germany, Ireland, Italy, Luxembourg and The Netherlands) thus undertook the obligation in Article III(1) of the NPT to accept safeguards of the IAEA on all nuclear material in all of its peaceful nuclear activities and to enter into an agreement with IAEA to that effect.

As permitted by Article III(4) of the NPT, those seven states elected to join in concluding a single agreement with the IAEA (INFCIRC/193). Since they had already assigned to the European Atomic Energy Community (EURATOM) the responsibility and authority to apply safeguards within their territories (rather than each state establishing and maintaining a national system of accounting for and control of nuclear material), EURATOM is also a party to that agreement. The agreement, after approval by the Board of Governors of the IAEA and the European Community and ratification by each of the seven states, entered into force on February 21, 1977.

As in the case of all safeguards agreements between the IAEA and non-nuclear weapon states pursuant to Article III(1) of the NPT, the agreement with EURATOM and its seven non-nuclear-weapon member states includes provision for the completion by the parties of "Subsidiary Arrangements", setting forth in detail the manner in which the safeguards procedures called for in the agreement are to be carried out.



In summary, it is clear that each of the non-nuclear-weapons state members of EURATOM is a party to the NPT, has fulfilled its obligation under Article III(1) of the NPT, and has an agreement in force with the IAEA in accordance with Article III(4) of that treaty under which the IAEA has clear rights, which are being exercised, to apply safeguards in all relevant facilities.

Therefore it is the Executive Branch view that criterion (1) is met with respect to the entire Community.

Prior to the coming into force of the IAEA's agreement with EURATOM and its member non-nuclear weapon states and the implementation by IAEA of that agreement, the US continued to export enriched uranium and other items to the non-nuclear-weapon member states of EURATOM, notwithstanding the obligation undertaken by the US in Article III(2) of the NPT to do so only if the source or special fissionable material processed used or produced shall be subject to IAEA safeguards. The United States did so on the basis of a "rule of reason", which took into account the circumstances that those states were NPT signatories and were conducting negotiations with IAEA of a safeguards agreement in accordance with Article III(1) of the NPT. The application of EURATOM's safeguards within the territories of those states was also taken into account. More recently, the entry into force of the IAEA/EURATOM safeguards agreement, the progressive completion of facility attachments, and the increasing application of ad hoc IAEA inspections as the Agency made resources available to implement the verification agreement, combined with the continued application of EURATOM safeguards in all facilities, allowed the Executive Branch to adopt the view that the equivalent of criterion (1) was met.

We would note that the EURATOM safeguards system, because of its continuing accountancy and materials control function for the EURATOM Community countries, will remain one of the factors relevant to the judgment of the Executive Branch, under Section 126(a)(1), that a proposed export to one of these states will not be inimical to the common defense and security.

Switzerland is a Party to the Treaty on the Non-Proliferation of Nuclear Weapons and deposited its instrument of ratification on March 9, 1977. Switzerland has not yet concluded an NPT safeguards agreement with the IAEA pursuant to INFCIRC/153. IAEA safeguards are applied in Switzerland to all materials or facilities proposed to be exported, as well as to any such material or facilities previously exported pursuant to the U.S.-Switzerland agreement for co-

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operation and to any U.S.-supplied special nuclear material used in or produced through the use thereof under a trilateral U.S.-Switzerland-IAEA safeguards agreement based on INFCIRC/66 Ref./2, which entered into force on February 28, 1972.

Therefore, it is the Executive Branch view that criterion (1) is met with respect to Switzerland.

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Criterion (2)

"No such material, facilities, or sensitive nuclear technology proposed to be exported or previously exported and subject to the applicable Agreement for Cooperation, and no special nuclear material produced through the use of such materials, facilities, or sensitive nuclear technology, will be used for any nuclear explosive device or for research on or development of any nuclear explosive device."

France and the U.K. are nuclear-weapons states (NWS) members of the Community. The proposed export to France, as a NWS member, and any special nuclear material produced through its use, is subject to the continuing applicability of the US-EURATOM Agreements for Cooperation. Article XI(1) and (3) of the November 8, 1958 Joint Program Agreement, as amended, which is incorporated into the Additional Agreement, provide that "no material, including equipment and devices, transferred pursuant to this Agreement" and "no source or special nuclear material utilized in, recovered from, or produced as a result of the use of material, equipment or devices transferred pursuant to this agreement...will be used for atomic weapons, or for research or development of atomic weapons or for any other military purpose." The US--with the support of most other major nuclear supplier states--consistently has taken the position that nuclear explosive devices are "atomic weapons", within the meaning of this guarantee, regardless of the intended end use of such devices. Both the UK and France, as members of the Nuclear Suppliers Group, have agreed as a matter of national policy to authorize the export of trigger list items "only upon formal governmental assurances from recipients explicitly excluding uses which would result in any nuclear explosive device" (underlining supplied) and have each notified the IAEA to this effect. This undertaking, together with other statements and actions, evidences the fact that both nations equate any nuclear explosive device, regardless of function, as essentially equivalent to an "atomic weapon".

Therefore, it is the Executive Branch view that the equivalent of criterion (2) is met with respect to NWS of the Community.

Each non-nuclear-weapons state (NNWS) of the Community is a party to the Nuclear Non-Proliferation Treaty (NPT). As such, it is pledged not to develop nuclear explosive devices for any purposes. This pledge applies to any material, facilities and sensitive nuclear technology previously exported to such state by the US and subject to the US-EURATOM Agreements for Cooperation and to special nuclear material used in or produced through the use thereof.

Since this pledge will apply to the proposed export and to any special nuclear material produced through its use, it is the view of the Executive Branch that criterion (2) is met with respect to the NNWS of the Community.

As a non-nuclear-weapons state (NNWS) party to the Non-Proliferation Treaty (NPT), Switzerland has pledged not to develop nuclear explosive devices for any purpose. This pledge applies to any material, facilities and sensitive nuclear technology previously exported to Switzerland by the US and subject to the US-Switzerland Agreement for Cooperation and to special nuclear material used in or produced through the use thereof.

Since this pledge will apply to the proposed export and to any special nuclear material produced through its use, it is the view of the Executive Branch that criterion (2) is met with respect to Switzerland.

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Criterion (3)

"Adequate physical security measures will be maintained with respect to such material or facilities proposed to be exported and to any special nuclear material used in or produced through the use thereof. Following the effective date of any regulation promulgated by the Commission pursuant to Section 304(d) of the Nuclear Non-Proliferation Act of 1978, physical security measures shall be deemed adequate if such measures provide a level of protection equivalent to that required by the applicable regulations."

It is the judgment of the Executive Branch that Switzerland and each member state of the Community has established physical security measures which, as a minimum, meet those recommended in the IAEA's INFCIRC/225/Rev.1, "The Physical Protection of Nuclear Material".

In addition, Switzerland and all states in the Community (except Denmark, Ireland and Luxembourg) also are members of the Nuclear Suppliers Group and, as such, have agreed to levels of protection consistent with INFCIRC/225/Rev. 1, to be ensured with respect to nuclear materials and equipment and facilities containing those materials which are detailed in transmissions of the Nuclear Suppliers guidelines to the IAEA.

The French Ministry of Foreign Affairs by note dated September 11, 1978 delivered to U.S. Embassy, Paris, provided the following assurances regarding the maintenance of physical security protection: "The French Government confirms that a level of physical protection at least equal to that defined in Annex B of the Nuclear Supplier Guidelines published by the IAEA under reference INFCIRC/254, will be assured for all nuclear material and installations imported from the United States as well as all nuclear material used or produced by use of such material and installations.

"The French Government can equally confirm that the same level of protection is assured for material and installations already imported from the United States."

The Executive Branch by letter to the Commission dated October 6, 1978 expressed the view that the above-cited French assurance meets the requirements set forth by the Commission under Part 110.43, pursuant to Section 304(d) of the Nuclear Non-Proliferation Act of 1978, in that the levels of protection called for in the Supplier Guidelines were derived directly from INFCIRC/225/Revision 1 and were specifically designed to achieve levels of protection consistent with the physical protection measures in INFCIRC/225/Revision 1.

In practice, the Subsidiary Arrangements consist of a general part and, for each of the facilities and locations in which IAEA safeguards are to be applied to nuclear material pursuant to the agreement, individual "Facility Attachments".

The agreement calls for the parties to make every effort to achieve the entry into force of the "Subsidiary Arrangements" within 90 days of the entry into force of the agreement proper. Extension of that period requires agreement among all the parties.

During the period since February 21, 1977, the parties have been negotiating the Subsidiary Arrangements, including Facility Attachments for the 205 facilities and locations which currently come within the purview of the agreement. The general part of the Subsidiary Arrangements has been completed and is in effect. As of September 15, 1978, approximately 145 of the Facility Attachments had entered into force and serve as the basis for IAEA safeguards activities at such facilities. About 15 others had been agreed at the negotiating level and the remainder were under active discussion. The parties have agreed to several extensions of the period for completion of the Subsidiary Arrangements, in accordance with the agreement. The latest such extension ended June 26, 1979 with the completion of most of the pending Facility Attachments.

The EURATOM/IAEA agreement provides, as does every safeguards agreement with the IAEA pursuant to Article III(1) of the NPT, the right to the IAEA to apply in all non-nuclear weapon states party to such an agreement, the procedures laid down in the agreement, including inspections, as soon as the agreement enters into force, even if the Subsidiary Arrangements are not in force. The agreements do not impose on the IAEA any limitation of access, or frequency, of these inspections prior to completion of Facility Attachments (see e.g.: Articles 71 and 76 of the agreement with EURATOM and its member non-nuclear weapon states, INFCIRC/193). The IAEA has, since the entry into force of the EURATOM/IAEA agreement, increasingly exercised this right to apply procedures and inspections.

The Agency's general approach is to carry out such inspections so as to achieve the same verification goals which they would aim for normally under a Facility Attachment. For example, frequency of visits would be related to timeliness goals. The Agency does, of course, have manpower limitations in this regard, and generally places greater emphasis on facilities involving sensitive material. In some facilities surveillance equipment is employed prior to completion of Facility Attachments, while in other cases inspector presence must be relied upon. In the non-nuclear weapon member states of EURATOM, all facilities with the exception of a few research reactors (LEU-fueled or low power) and other research installations have been inspected by IAEA.

On August 7, 1978, U.S. Embassy Bern reported that competent Swiss nuclear security authorities confirmed orally that Swiss policy is to maintain a level of physical security for nuclear activities which either meets or exceeds INFCIRC/225/Rev 1 requirements.

The Swiss Government on November 16, 1978, followed up the oral assurance by a note which stated inter alia: "Swiss policy provides for standards of physical protection for nuclear power plants above those in IAEA document INFCIRC/225/Rev.1, which standards have been reached for power plants presently operational. Nevertheless, improvements will be made on site protective arrangements.

"Improvement plans for nuclear energy research facilities are presently being examined, improvement work has been going on for some time, notably at Federal Institute for Reactor Research where present standard is above that observed during the American delegation visit in April 1976."

The Executive Branch has concluded that the Swiss and French physical protection systems, equipment and procedures for the fixed site facilities, and the procedures and equipment for transportation security adequate to physically protect the material requested in these license applications.

Therefore, it is the view of the Executive Branch that criterion (3) is met.

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Criterion (4)

"No such materials, facilities, or sensitive nuclear technology proposed to be exported, and no special nuclear material produced through the use of such material, will be retransferred to the jurisdiction of any other nation or group of nations unless the prior approval of the United States is obtained for such retransfer. In addition to other requirements of law, the United States may approve such retransfer only if the nation or group of nations designated to receive such retransfer agrees that it shall be subject to the conditions required by this section."

Article XI(2) of the November 8, 1958 Joint Program Agreement, as amended, which is incorporated in the Additional Agreement for Cooperation, as amended, by Article V of the latter Agreement, provides that no material (including equipment and devices) may be transferred beyond the control of the EURATOM Community, unless the United States agrees.

Article 1 bis D of the Additional Agreement for Cooperation, as amended, provides that special nuclear material produced through the use of US-supplied material may be exported to any nation outside the Community or to a group of nations, provided that such nation or group of nations has an appropriate Agreement for Cooperation with the United States or guarantees the peaceful use of the produced material under safeguards acceptable to the Community and the United States. The European Community's interpretation of this language--as set out in an April 15 letter to the Department of State from Fernand Spaak, Head of the Delegation of the Commission of the European Communities--is that the European Community Supply Agency prior to any proposed transfer will consult with the United States to find out whether, in the view of the U.S., the proposed recipient of such produced special nuclear material has an Agreement for Cooperation with the United States which is "appropriate".

During discussions with representatives of the Community held in Washington on November 1, 1978, the European Community confirmed that material subject to Article 1 bis D could not be transferred outside of the Community unless the U.S. agreed that the recipient countries or group of nations had an appropriate Agreement for Cooperation with the U.S. or safeguards acceptable to both parties.

Therefore, it is the Executive Branch view that, with regard to the proposed export and special nuclear material produced through its use, criterion (4) is met.\*

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\* It should be noted that since the US-EURATOM Agreements for Cooperation were authorized in accordance with Section 124 of the Atomic Energy Act, the Commission may continue to issue export licenses until March 10, 1980 pursuant to the authority in the first proviso in Section 126a(2), even if criterion (4) were not met.



With respect to transfers within the Community, it should be noted that the use of the words "group of nations" in criterion (4) makes clear that no retransfer consent right is required within a group of nations under this criteria. With respect to this provision, the Senate report states:

"It should be noted that under the US-EURATOM Agreements, the US does have a right of prior approval on retransfers of certain material outside of the EURATOM Community. It should also be noted that paragraph 4 does not require prior approval with respect to transfers within the EURATOM Community, consistent with US policy of treating that Community as a (single) entity."

The Congressional intent not to require US consent rights for transfers within the Community is also clear in Section 123 a.(5) of the Atomic Energy Act, as amended, since it requires that the US seek a guarantee "by the cooperating party" (which in this case is EURATOM as a whole).

Article IX A. (3) of the 1966 U.S. - Switzerland Agreement for Cooperation, as amended in 1974, stipulates that: "No material, including equipment and devices, transferred to the Government of Switzerland or authorized persons under its jurisdiction pursuant to this Agreement or the superseded Agreement will be transferred to unauthorized persons or beyond the jurisdiction of the Government of Switzerland except as the Commission may agree to such a transfer to the jurisdiction of another nation or group of nations, and then only if, in the opinion of the Commission, the transfer of the material is within the scope of an Agreement for Cooperation between the Government of the United States of America and the other nation or group of nations."

Article VII Bis E. provides that: "No special nuclear material produced through the use of material transferred to the Government of Switzerland or to authorized persons under its jurisdiction, pursuant to this Agreement or the superseded Agreement, will be transferred to the jurisdiction of any other nation or group of nations, except as the Commission may agree to such a transfer."

These articles give the U.S. an unqualified approval right over the retransfer of material from Switzerland supplied by the U.S. or produced through the use of such material and allow retransfers only

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if it is determined to be within the scope of an agreement for cooperation with the recipient country. This right would apply to irradiated fuel because it contains U.S.-supplied material.

Therefore, it is the Executive Branch view that, in regard to U.S.-supplied material and material produced through use of U.S. material, criterion (4) is met with respect to Switzerland.

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Criterion (5)

"No such material proposed to be exported and no special nuclear material produced through the use of such material will be reprocessed, and no irradiated fuel elements containing such material removed from a reactor shall be altered in form or content, unless the prior approval of the United States is obtained for such reprocessing or alteration."

Article VII Bis C. of the U.S. Switzerland Agreement for Cooperation provides that: "When any special nuclear material received from the United States of America requires reprocessing, or any irradiated fuel elements containing fuel material received from the United States of America are to be removed from a reactor and are to be altered in form or content, such reprocessing or alteration shall be performed in facilities acceptable to both Parties upon a joint determination that the provisions of Article X may be effectively applied."

As no joint determination under Article VII Bis C. can be made without the agreement of the United States, and since the facilities to be used must be acceptable to the U.S. as one of the Parties, it is the view of the Executive Branch that criterion (5) is met with respect to Switzerland.

EURATOM is expressly exempted from Criterion (5) by virtue of Section 126 (a)2 of the Act for a period of two years from March 10, 1978, since the Department of State notified the Nuclear Regulatory Commission on July 20, 1978, that EURATOM has agreed to negotiations with the United States as called for in Section 404(a) of the Nuclear Non-Proliferation Act of 1978. However, this exemption in no way derogates from the rights which the United States has under the US-EURATOM Agreements for Cooperation.

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Criterion (6)

"No such sensitive nuclear technology shall be exported unless the foregoing conditions shall be applied to any nuclear material or equipment which is produced or constructed under the jurisdiction of the recipient nation or group of nations by or through the use of any such exported sensitive nuclear technology."

The proposed export does not involve the transfer of sensitive nuclear technology. Criterion (6) is, therefore, not applicable.

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B. Section 128 Criterion

Section 128 a.(1) of the Atomic Energy Act establishes the following additional criterion: "As a condition of continued United States export of source material, special nuclear material, production or utilization facilities, and any sensitive nuclear technology to non-nuclear-weapon states, no such export shall be made unless IAEA safeguards are maintained with respect to all peaceful nuclear activities in, under the jurisdiction of, or carried out under the control of such state at the time of the export."

As Parties to the NPT, Switzerland and all non-nuclear-weapon states that are members of the European Atomic Energy Community have agreed to accept IAEA safeguards on all their nuclear activities.

Therefore it is the Executive Branch view that this criterion is met with respect to Switzerland and the non-nuclear-weapon member states of the European Community.

As France and the United Kingdom are nuclear weapons states, this criterion is not applicable to them.

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### 3. Additional Factors

#### A. Safeguards Implementation

The IAEA Secretariat has noted in its Special Safeguards Implementation Report that with regard to nuclear material subject to IAEA safeguards, while some deficiencies exist in the system, no diversion of a significant quantity of nuclear material was detected in any of the 45 states in which inspections were carried out. Although recognizing the need to correct existing deficiencies in safeguards implementation, the Executive Branch has no reason to believe that the IAEA Secretariat's report is not valid. In the light of this and other factors associated with the proposed export, the Executive Branch believes the framework of commitments, assurances, and safeguards is adequate for the purpose of this export.

#### B. Special Non-Proliferation and Other Foreign Policy Considerations

It is the judgment of the Executive Branch that the proposed export of natural uranium to France, for low enrichment for subsequent use in the Swiss Kaiseraugst power reactor after fabrication in the United States, would be in the interest of the United States Government in promoting a constructive atmosphere with respect to the ongoing U.S. EURATOM renegotiation of the Additional Agreement for Cooperation. It would also be an encouraging gesture toward Switzerland, the ultimate recipient, a country which shares U.S. non-proliferation goals.

As it is the judgment of the Executive Branch that this initial export for enrichment may take place pursuant to the present U.S.-EURATOM Additional Agreement for Cooperation, pending conclusion of negotiations to amend the current Agreement, the Commission is requested to consider the proposed export to France and subsequent export of low-enriched uranium from the United States to Switzerland after fabrication in this country, concurrently with Department of Energy approval and publication in the Federal Register of the subsequent arrangement under Section 402 (a) of the Act, as amended, and transfer under 10 CFR 810.

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4. Inimicality Judgment

Based on review of the proposed export it is the judgment of the Executive Branch that the proposed export will not be inimical to the common defense and security, and that the license should be issued.

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