



DEPARTMENT OF STATE RECEIVED
U.S. NRC
Washington, D.C. 20520

AUSTRIA
XSNM01428

BUREAU OF OCEANS AND INTERNATIONAL AFFAIRS
ENVIRONMENTAL AND SCIENTIFIC AFFAIRS

JUL 03 1979

EXPORT/IMPORT
RECORDS

XSNM01428
11000358

MEMORANDUM FOR JAMES R. SHEA
NUCLEAR REGULATORY COMMISSION

Enclosed is an Executive Branch analysis covering an application for a license to export highly-enriched uranium to the Federal Republic of Germany for fabrication into fuel assemblies and shipment to Austria. In accordance with P.L. 95-242, the analysis explicitly addresses how the requirements of Section 126 a.(1) of the Atomic Energy Act, as amended, are met, including the specific criteria of Sections 127 and 128, as well as certain additional factors, envisaged by Section 126 a.(1).

The Executive Branch, on the basis of its review of this case, has concluded that the requirements of the Atomic Energy Act, as amended by P.L. 95-242, have been met and that the proposed export would not be inimical to the common defense and security of the United States. Moreover, both Austria and the Community have adhered to the provisions of their Agreements for Cooperation with the United States. Therefore, the Executive Branch recommends issuance of the proposed license.

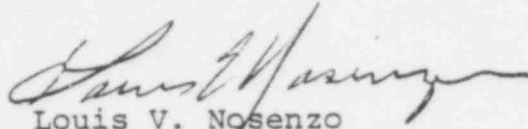
Executive Branch action on this application had been awaiting a response from the Government of Austria to the U.S. invitation to enter into consultations concerning a cooperative Austrian-U.S. effort in which the ASTRA Research Reactor would be used to demonstrate the feasibility of substitution of densified LEU fuel for HEU. The Austrian Government has now agreed to a joint study program and the technical work is underway. As explained in the attached analysis, it has been determined that it will not be possible to provide lower-enriched, higher-density fuel for ASTRA in time for the next scheduled reloading in September 1979. In this regard, expeditious action on this license application by the Commission would be appreciated as a minimum of 3

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months lead time is needed for fuel fabrication by NUKEM in the Federal Republic of Germany before the fuel assemblies can be shipped to Austria for loading in ASTRA. (Normal fuel fabrication time is nine to 12 months but NUKEM will provide "emergency" service in three months for regular customers when necessary.)



Louis V. Nosenzo
Deputy Assistant Secretary

Enclosure
As stated

564 061

XSNM01428

Country: Austria

Transaction: The export of 3.554 kilograms of U-235 contained in 3.810 kilograms of uranium in the form of uranium hexafluoride enriched to a maximum of 93.3 percent U-235

Applicant: Transnuclear, Inc.

Date of Application: December 7, 1978

Purpose of Export

This highly enriched uranium in the form of uranium hexafluoride will be shipped to Nukem, GmbH, Hanau, West Germany for conversion and fabrication into fuel assemblies for the ASTRA Research Reactor at Seibersdorf, Austria. The ASTRA is a U.S.-built, light water moderated, 12 megawatt thermal research reactor which first achieved criticality in 1960. It is owned and operated by the Austrian Studiengesellschaft Fur Atomenergie GmbH.

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Technical and Economic Justification

Because this application is for less than 5 kilograms of HEU, no formal technical and economic justification report has been prepared by Argonne National Laboratory. However, DOE has identified the ASTRA reactor as one which can be converted to use of medium-enriched (MEU) and low-enriched (LEU) fuels. To this end, negotiations have begun between the U.S., Austria and the IAEA to establish the ASTRA conversion as an international demonstration project. The purpose of the project would be to demonstrate that conversion of research reactors to the use of reduced enrichment fuels can be accomplished safely and reliably without high economic penalties or loss of reactor operating capability.

The refueling schedule for ASTRA will not allow enough time for development of high-density lower-enriched fuels to be available for the next reload. Issuance of an export license in mid-1979 for the material covered by the current application would allow refueling by the end of September 1979, assuming the minimum "emergency" 3 month fuel fabrication schedule. According to Austrians, the reactor will have to shut down if fresh fuel is not delivered by the end of September. The high-density fuels are not expected to be commercially available until after mid-1980.

Austria has an in-country inventory of 21 kilograms of HEU containing 20 kilograms of U-235. Austria has contracted with DOE to return 7 kilograms of irradiated fuel elements to the U.S. There are currently approximately 5 kgs. of HEU in the ASTRA core and 9 kgs. of HEU in storage, including 1.735 kgs. of U-235 in fresh unirradiated fuel elements.

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AUSTRIAN EMBASSY

Ref.No. 4147-A/79

Mr. Louis NOSENZO
Dep. Ass. Secretary
Room 7831
Department of State
Washington, D.C.

Washington, June 29, 1979

Dear Mr. Nosenzo :

The Embassy confirms on behalf of the Austrian Government that physical security measures providing as a minimum a level of protection comparable to that set forth in IAEA-Document INFCIRC/225/Rev/1 will be maintained with respect to 3,81 kg Uranium 93,3 % enriched under export License XSNM 1428 to be transferred from the United States to Astra-Reactor SEIBERSDORF, Austria and to any special nuclear material produced in or by the use thereof.

I should also like to inform you that the question of a generic confirmation is still under consideration of the competent Austrian authorities.

With kind regards,

Helga Kozrad
First Secretary

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POOR ORIGINAL

AUSTRIAN EMBASSY

3745 Massachusetts Ave., N.W.
Washington, D.C. 20535
Tel. (202) 462-4000

Ref.No. 833-A/79

Mr. Vance H. Hudgins
Department of Energy
International Security Affairs
20, Mass. Avenue, Suite 5221
Washington, D.C. 20535

Washington, February 5, 1979

Dear Mr. Hudgins :

Reference is made to your letter of January 10, 1979, concerning an application for a license to export nuclear material to Austria (OESGAE Seibersdorf) under application number KSIM - 1420.

According to instructions received from the competent Austrian authorities the nuclear material identified on the above mentioned license application will be subject to all the terms and conditions of the Agreement for Cooperation between the Republic of Austria and the United States of America concerning civil uses of atomic energy entered into force on January 24, 1970 and as amended on October 8, 1974.

Further more the Embassy wishes to confirm that the ultimate consignee is authorized to receive and possess the material.

Sincerely yours,



Helga Konrad
First Secretary

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DELEGATION OF THE COMMISSION OF THE EUROPEAN COMMUNITIES

January 10, 1979

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

Dear Mr. Hudgins:

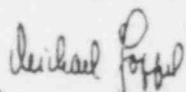
Subject: Transnuclear, Inc. application NUK-257 78-350/01
dated December 7, 1978 for Austria, XSNM-1428
(our ref. Article 75)

We certify that the material mentioned in this application, namely 3.554 kg of U-235 contained in 3.810 kg of U*, 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 NUKEM GmbH, Hanau, West Germany (as converter and possibly also as manufacturer for fuel elements) and CERCA, France (as possible manufacturer for the fuel elements), as intermediate consignee(s), and Transnuklear GmbH, Hessen, West Germany as an additional intermediate consignee, are authorized by EURATOM to receive and possess this material pursuant to the aforementioned Agreement for Cooperation.

The material will be converted at NUKEM and manufactured into fuel elements at either NUKEM or CERCA for subsequent transfer to the Osterreichische Studiengesellschaft für Atomenergie Ges.m.b.H. of Vienna, Austria for use as fuel for the ASTRA reactor at Seibersdorf, Austria.

Sincerely,


P.F. Spaak
Head of Delegation

JM/ajs

cc: Mr. Robert DeLabarre, State Department
Ms. Betty Wright, NRC
Ms. Vicki Matson, Transnuclear, Inc.

* HEU - enriched to a maximum of 93.3 % U-235.

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EXPORT LICENSE APPLICATION ANALYSIS

1. Applicable Agreement for Cooperation

The material covered by the export license application is subject to all of the terms and conditions of the Agreement for Cooperation Between the United States and Austria as amended. This fact has been confirmed by letter from the Embassy of Austria, a copy of which follows the description of the transaction. The Agreement, as amended, entered into force on January 24, 1970.

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

The intermediate transfer of uranium to the Federal Republic of Germany for the manufacture of fuel elements 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 has been 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."

Austria is a party to the Nuclear Non-Proliferation Treaty (NPT). A safeguard agreement between Austria and the IAEA pursuant to the NPT entered into force on January 24, 1978 and under that agreement safeguards are being applied.

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

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.

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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 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 has 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 runs until June 26, 1979 and it is expected that virtually all facility attachments will be completed by that date.

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,

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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 (LFU-fueled or low power) and other research installations have been inspected by IAEA.

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.

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

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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.

As a nuclear-weapons-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 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.

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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.

France has signed voluntary agreements with EURATOM and the IAEA on July 27, 1978, which will enter into force one month after the agency has received notification from both France and EURATOM that their respective internal requirements for entry into force have been met. France will notify the IAEA of the nuclear material and facilities to be covered by the agreement.

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.

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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."

As a non-nuclear-weapons state (NNWS) party to the Nuclear Non-Proliferation Treaty (NPT), Austria 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 Austria by the US and subject to the US-Austria 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 Austria.

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 purpose. 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.

With regard to the two nuclear-weapons states (NWS) of the Community, the UK and France, the proposed export and any special nuclear material produced through its use, if transferred to a NWS member, is subject to the continuing applicability of the US-EURATOM Agreements for Cooperation. Article XI(1) and (3) of the November 8,

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1958 Joint Program Agreement, as amended, which is incorporated into the Additional Agreement for Cooperation by virtue of Article V of 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 United States 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. The Community, which includes the United Kingdom and France, have confirmed this interpretation. Moreover, the United Kingdom and France, as members of the Nuclear Suppliers Group, have agreed as a matter of national policy to authorize the export of so called "trigger" list items only upon formal governmental assurances from recipients explicitly excluding uses which would result in any nuclear explosive device and have notified the IAEA to this effect."

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

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 regulations 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 Austria and each member state of the Community have 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".

Austria, EURATOM (for jointly operated research facilities) and all its member states have provided written physical security assurances which in the judgment of the Executive Branch should be deemed to meet the requirements of Section 127(3) of the Atomic Energy Act, as amended, by providing assurance of a level of protection equivalent to that set forth by the Commission in section 110.43 pursuant to section 304(d) of the Nuclear Non-Proliferation Act of 1978.

In addition, 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 these materials, which are detailed in transmissions of the Nuclear Suppliers Guidelines to the IAEA.

In March-April 1976 a U.S. physical security review team, including an NRC member, visited Austria to review physical security measures for the protection of nuclear facilities and materials. During the visit the team held discussions with concerned Austrian officials and visited Austrian nuclear sites including the Austrian Research Center in Seibersdorf where the ASTRA Reactor is located. The team concluded that physical security protection measures in Austria were satisfactory.

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 (3) of the U.S.-Austria Agreement for Cooperation, as amended, provides that: "No material, including equipment and devices, transferred to the Government of the Republic of Austria or to 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 the Republic of Austria except as the Commission may agree to such a transfer to 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 IX H. of the Agreement provides that: "No special nuclear material produced through the use of material transferred to the Government of the Republic of Austria or to authorized persons under its jurisdiction pursuant to this Agreement, or the superseded Agreement, will be transferred to any other nation or group of nations, except as the Commission may agree to such a transfer."

As these two articles give the United States the right of approval over retransfers of U.S.-exported materials and facilities, as well as material produced through their use, it is the Executive Branch view that criterion (4) is met with respect to Austria.

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

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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 retransfer and special nuclear material produced through its use, criterion (4) is met.*

* 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.

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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).

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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 IX F. of the U.S.-Austria Agreement for Cooperation provides that: "When any special nuclear material received from the United States of America pursuant to this or the superseded Agreement requires reprocessing, or any irradiated fuel elements containing fuel material received from the United States of America pursuant to this or the superseded Agreement 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 of the Parties that the provisions of Article XII may be effectively applied."

As no joint determination under Article IX F. 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 judgment of the Executive Branch that criterion (5) is met with respect to Austria.

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."

Austria and the non-nuclear weapons state members of the European Atomic Energy Community are Parties to the NPT and, thus, have agreed to accept IAEA safeguards with respect to all their peaceful nuclear activities. All peaceful nuclear activities of these countries are currently subject to IAEA or EURATOM safeguards.

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

As France and the UK are nuclear weapons states, this criterion does not apply 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

None.

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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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