UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555

OFFICE OF THE
CHAIRMAN

March 14, 1980

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The Honorable Frank Church
Chairman, Committee on Foreign Relations
United States Senate
Washington, D.C. 20510

Dear Chairman Church:

In your letter of February 21, 1980, you inquired about the basis for the Commission's concurrence in the amended agreement between the U.S. and the International Atomic Energy Agency (IAEA), and in this connection you requested more detailed statements of the Commission's views concerning several specific safeguards related questions pertaining to the above agreement. We are pleased to provide the following comments in response to your questions.

You asked whether and why NRC feels this amendment provides an adequate framework to assure that exports will not be inimical to the common defense and security.

After reviewing in detail the proposed text of the amendment to the US/IAEA agreement, the Commission concluded that the amended agreement meets all statutory requirements as well as serves to support U.S. non-proliferation and other foreign policy interests -- such as the ability to promote IAEA assistance to countries engaged in peaceful nuclear activities. The amendment formalizes requirements for IAEA application of criteria similar to those the U.S. applies to exports subject to a bilateral Agreement for Cooperation. As drafted, the amended agreement ensures that no U.S. transferred material, equipment and facilities, and material used in or produced through the use of any such material, equipment or facilities will be used for nuclear explosive or weapons purposes. This is accomplished by setting forth the controls and consents required under U.S. law, including full scope safeguards, perpetual safeguards on U.S. supplied or derived material, levels of physical security, and consent rights relating to storage, enrichment, reprocessing and retransfers.

The amended agreement establishes specific circumstances which would trigger U.S. rights. These include: (1) detonation of a nuclear explosive device; (2) major non-compliance with IAEA safeguards; and (3) non-compliance with a pertinent supply agreement.

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The Commission believes that this amendment clearly maintains the standards of U.S. non-proliferation policy to promote peaceful nuclear cooperation, strengthens the International Atomic Energy Agency and provides continued assurance that U.S. nuclear material and equipment will be used in a manner that does not present unreasonable risk to the common defense and security. In summary, this amendment incorporates into the US/IAEA Agreement for Cooperation the export criteria consistent with those mandated by the NNPA.

You further inquired how NRC expects to fullfill its safeguards responsibilities. In this regard we wish to point out that in performing its own independent review of each export case for which an Executive Branch judgment has been received, the NRC attempts to ascertain that the export complies with all requirements mandated by the Atomic Energy Act, as amended by the NNPA, and that all the appropriate assurances have been received from the recipient, as required by law. In practice this includes assessing any information we have on the effectiveness of IAEA safeguards in the recipient country and the adequacy of physical protection, as well as requiring written assurance from the recipient country that physical security arrangements in force in that country shall, as a minimum, provide protection comparable to that set forth in document INFCIRC/225/Rev. 1.

The NRC also verifies in the case of each supply agreement through the Agency that the agreement contains a fall-back safeguards provision which provides that in the event the IAEA is, for any reason, unable to continue to apply its safeguards with respect to exported material, equipment or facilities, U.S. safeguards, or other appropriate safeguards measures as the parties may agree, shall be applied in the recipient's country with respect to all exported U.S.-origin material, equipment or facilities.

Your last question refers to the degree to which provisions for multiple controls and comingling of U.S. materials and equipment with those from non-U.S. sources would apply to such supply agreements.

The Commission notes that the amended agreement does not contain special provisions on multiple controls or comingling.

Sincerely,

John F. Ahearne

John F. Ahearne
Chairman

cc: Jacob K. Javits