

June 10, 1998

For: The Commissioners

From: Carlton R. Stoiber, Director /s/
Office of International Programs

SUBJECT: PROPOSED SUBSEQUENT ARRANGEMENT UNDER THE U.S.-EURATOM AGREEMENT FOR COOPERATION TO GIVE ADVANCE CONSENT TO RETRANSFERS OF U.S.-OBLIGATED PLUTONIUM TO SWITZERLAND

PURPOSE:

To obtain the Commission's approval of a proposed response to the Department of Energy (DOE).

BACKGROUND

DOE has forwarded for review a proposed Subsequent Arrangement (Attachment 1) under the 1996 U.S.-EURATOM Agreement for Cooperation. The Subsequent Arrangement would provide U.S. advance consent to retransfers of U.S.-obligated plutonium from EURATOM to Switzerland. The U.S. has previously approved such retransfers, and others between Switzerland and EURATOM (Swiss spent fuel to EURATOM for reprocessing, plutonium recovery, and MOX fuel fabrication), on a case-by-case basis over the past 20 years. However, the 1996 U.S.-EURATOM and pending 1998 U.S.-Switzerland Agreements for Cooperation include provisions for the U.S. to give long-term prior approval of these retransfers.

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The U.S.-Switzerland Agreement is expected to enter into force in late June 1998, when its 60-day Congressional review period is completed.

DISCUSSION:

In SECY-97-085, the staff described to the Commission the provisions of the proposed U.S.-Switzerland Agreement for Cooperation which, in combination with provisions of the 1996 U.S.-EURATOM Agreement (SECY-95-210), would give advance U.S. approval to retransfers of U.S.-obligated nuclear material between Switzerland and EURATOM as required to reprocess Swiss power reactor spent fuel in EURATOM, to fabricate MOX fuel using the recovered plutonium, and to deliver the MOX fuel to Switzerland for use in its power reactor program.

In SECY-97-085, the staff noted that the advanced approval provision of the new U.S.-Switzerland Agreement would eliminate the delays experienced by Switzerland under the old agreement in obtaining case-by-case retransfer approvals from the U.S. and that the provision is similar to provisions in the U.S.-Japan and U.S.-EURATOM Agreements. The staff explained that facilities within EURATOM to which the U.S.-obligated material may be transferred for reprocessing and alteration in form and content are specified in an attachment to the Agreed Minute to the U.S.-Switzerland Agreement. Additional facilities may be added to this list only with U.S. agreement.

The staff outlined controls contained in the U.S.-EURATOM Agreement and referenced a side letter presented by the U.S. to the European Commission confirming that the U.S. was then negotiating a new agreement with Switzerland which contained the following commitment:

The U.S. is also prepared ... to offer long-term prior consent to EURATOM to the retransfer of Swiss plutonium, including such plutonium contained in MOX fuel elements, subject to the U.S.-EURATOM Agreement, to Switzerland for use in that country's peaceful nuclear program. The staff cited the Agreed Minute to the Proposed U.S.-Switzerland Agreement in respect to the following obligatory language:

In the case of irradiated nuclear material, subject to the Agreement, retransferred by Switzerland, the U.S. hereby agrees to give its consent, under the applicable agreement for cooperation, to the return to Switzerland of nuclear material recovered from that nuclear material so transferred.

The staff reported it was the intention of the U.S., simultaneous with entry into force of the new Agreement with Switzerland, to give EURATOM its long-term prior consent to retransfer to Switzerland, U.S.-obligated plutonium recovered from Swiss spent fuel. It is that step which DOE is now proposing to take in the form of a Subsequent Arrangement under the 1996 Agreement.

COORDINATION:

EDO concurs in this paper. OGC has no legal objection.

RECOMMENDATION:

That the Commission approve the response to DOE at Attachment 2, indicating no objection to the proposed authorization.

Carlton R. Stoiber, Director
Office of International Programs

Attachments: 1. DOE Draft Federal Register Notice
2. Proposed Response to DOE

ATTACHMENT 2

DRAFT

Ms. Cherie P. Fitzgerald
Director
International Policy and Analysis Division, NN-42
Office of Arms Control and Nonproliferation
Department of Energy
Washington, D.C. 20585

Dear Ms. Fitzgerald:

The Nuclear Regulatory Commission has reviewed and does not object to the Department of Energy entering into a Subsequent Arrangement under the 1996 U.S.-EURATOM Agreement to provide long-term prior consent for retransfers of U.S.-obligated nuclear materials from EURATOM to Switzerland.

Sincerely,
Ronald D. Hauber, Director
Nonproliferation, Exports and Multilateral Relations
Office of International Programs