

December 12, 1978

UNITED STATES
NUCLEAR REGULATORY COMMISSION

SECY-78-641

INFORMATION REPORT

Hdqtrs. PDR

For: The Commissioners

From: James R. Shea, Director
Office of International Programs

Thru: Executive Director for Operations *[Signature]*

Subject: EXECUTIVE BRANCH RESPONSE ON PENDING EXPORT LICENSE
APPLICATION (HEU TO NETHERLANDS - XSNM 01238)

Purpose: To inform the Commission of the above subject.

Discussion: Enclosed for the information of the Commission are
copies of the Executive Branch response on a pending
export license application. Copies of the Executive
Branch comments have been placed in the Public
Document Room. A Commission Action Paper will be
forwarded soon.

Commissioners are requested to advise the staff of
any particular issues or information which they can
identify at this stage and which they wish included
in the staff's analysis.

James R. Shea, Director
Office of International Programs

Enclosure:
Letter dtd 12/8/78
(XSNM01238, Export of
HEU to the Netherlands
for the Petten HFR Reactor)

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DEPARTMENT OF STATE

Washington, D.C. 20520

BUREAU OF OCEANS AND INTERNATIONAL
ENVIRONMENTAL AND SCIENTIFIC AFFAIRS

FILE
XSNM-1241; FILE
XSNM-1232;

NETHERLANDS
XSNM-1212 & XSNM-1238

XSNM 01238
70-2761

DEC 08 1978

MEMORANDUM FOR JAMES R. SHEA
NUCLEAR REGULATORY COMMISSION

Enclosed is an Executive Branch analysis covering a number of license applications for the export of highly enriched uranium to members of the European Atomic Energy Community (EURATOM). 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 Sections 127 and 128 are met, as well as certain additional factors envisaged by Section 126 a.(1).

The Executive Branch, on the basis of its review of these applications, has concluded that the requirements of the Atomic Energy Act and P.L. 95-242 have been met and it is the Executive Branch judgment that the proposed exports would not be inimical to the common defense and security of the United States. Moreover, the members of EURATOM have adhered to the provisions of the Additional Agreement for Cooperation, as amended. Therefore, the Executive Branch recommends issuance of the requested export licenses.

The President has approved the enclosed HEU requests, all of which involve projects and facilities previously supplied by the United States with HEU. Therefore, no new U.S. commitments to supply HEU would be created by their approval. In general, in conformance with policy direction to minimize unirradiated inventories of HEU, the quantity under each export request is limited to that expected to be sufficient for not more than two and one-half years of reactor operation from the time of export, which is considered a reasonable period to allow for export, transportation and fabrication of fuel and maintenance of a fresh fuel reserve sufficient to assure the continuous and economic operation of the reactor.

RECEIVED
U.S. NSC

Louis V. Nosenzo
Louis V. Nosenzo
Deputy Assistant Secretary

Enclosure: 373 DEC 8 PM 2 41
As stated.

EXPORT/IMPORT
AND
INTERNAT'L SECUR

XSNM-1212

Country: Netherlands

Transaction: The export of 18.47 kilograms of U-235 contained in 19.8 kilograms of uranium enriched to 93.3 percent in the form of U_3O_8

Applicant: Transnuclear, Inc.

Applicant Reference No: NUK 193 77-356/01

Date of Application: October 13, 1977

XSNM-1238

Country: Netherlands

Transaction: The export of 18.707 kilograms of U-235 contained in 20.050 kilograms of uranium enriched to 93.3 percent in the form of uranium hexafluoride

Applicant: Transnuclear, Inc.

Applicant Reference No: NUK 202 UES/EU 77-402/01

Date of Application: December 1, 1977

Purpose of Exports

This highly enriched uranium, part in the form of U_3O_8 and part in the form of UF_6 , will be shipped to Nukem, GmbH, Hanau, Federal Republic of Germany, for conversion and fabrication into fuel elements for the Petten High Flux Reactor (HFR) in the Netherlands.

Justification of Need for HEU at This Time

This materials testing reactor was put into operation in 1961 and has been owned by the European Atomic Energy Community (EURATOM) since 1962. The US has continuously supplied the highly-enriched uranium for its operation since that time. Highly-enriched uranium was required in order to maintain the operating characteristics for which the reactor was designed and which are necessary for the research and testing programs being conducted therein.

Steps Taken to Determine the Possibility of Converting the Facility To Use of Fuel of Lower Enrichment

The facility operator has provided information indicating that the additional HEU requested is required at this time in order to conduct ongoing research and development work. The operator has studied the possibility of converting the reactor to less than 93% enriched uranium fuel and has concluded that, since they are already using a high density fuel, the reactor cannot be converted to the use of fuel of a lower enrichment. An independent assessment of need conducted by DOE's Argonne National Laboratory has concluded that while the Petten High Flux Reactor is a candidate for possible future conversion to fuels of less than 93% enrichment, such conversion will not be possible through use of current fuel fabrication technology. In addition, there currently are no commercial fabricators of research reactor fuel of the required type containing less than 93% U-235, and such fuel has not yet been demonstrated.

The DOE is hopeful of completing development of high-density fuel which would be suitable for converting this facility to approximately 45% enriched uranium within a few years. In the interim, we plan to hold discussions with the facility operator and fuel fabricators involved with the aim of enlisting their cooperation in a conversion program.

EUROPEAN COMMUNITY (EURATOM) 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 Additional Agreement for Cooperation Between the United States and the European Atomic Energy Commission (EURATOM), as amended. This fact has been confirmed by letter from the Delegation of the Commission of the European Communities, a copy of which follows the description of the transaction. The Additional Agreement entered into force on July 25, 1960.

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

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."

The Federal Republic of Germany, the six other 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 prac-

tice, 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 February 20, 1979.

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 pres-

ence 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.

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 the basis of a "rule of reason", which took into account the circumstance 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 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 GOV/1875, which came into force on February 13, 1978. 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.

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."

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, 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 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.

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 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, 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.

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.

The Community provided on September 29, 1978 the following note to the U.S. Mission to the Community in Brussels: "The Commission of the European Communities presents its compliments to the United States Mission to the European Communities and has the honour to refer to the Aide-Memoire of the United States Mission to the European Communities of July 28, 1978, on criteria for levels of physical protection.

"The Commission confirms that, in accordance with the relevant national provisions of the host countries, 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 nuclear materials and facilities exported to the Community's joint research centres from the United States and with respect to nuclear material used in or produced through the use of such material and facilities."

As reported to the Commission by Department of State letter dated October 26, 1978, the Government of the Federal Republic of Germany on October 17, 1978 provided the following generic assurance in the form of an Aide Memoire to the U.S. Embassy at Bonn:

"The Federal Government confirms it will -- as in the past -- protect all deliveries of nuclear materials and installations supplied by the United States as well as all materials which are utilized or produced in connection with the exploitation of these materials or installations by physical safeguarding standards at least equalling those published in IAEA INFCIRC/254. This physical safeguarding will be carried out pursuant to the London guidelines."

As 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, it is the judgment of the Executive Branch that this assurance meets the requirements set forth by the Commission under 10 CFR Section 110.43, established pursuant to Section 304(d) of the Nuclear Non-Proliferation Act of 1978.

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

During May 1975, a team of U.S. Government experts visited the FRG for an exchange of views on physical security, including visits to those facilities at which the highly enriched uranium requested in this license application is to be processed, stored and utilized. The fixed site reviews included: (1) security forces, (2) barriers, (3) detection and alarm apparatus, (4) communication and response capabilities, (5) access and exit controls, (6) accountability and reporting procedures, and (7) physical security organization. In the area of transportation, procedures and equipment for protecting nuclear materials while in transit were examined.

The U.S. team judged the FRG's physical protection system, procedures and equipment for transportation security adequate to physically protect the material at fixed sites, in transit and the material requested in this license application.

Subsequent to the U.S. team visit, in May 1975 FRG technical personnel met in the United States with U.S. Government representatives (including those of the NRC). At this time, views were exchanged on technical aspects of the respective physical security systems of the two countries, both as they now exist and with regard to future plans including physical security research and development. This exchange provided significant and valuable insights into the FRG's physical security program.

During both of these exchanges, German authorities stated that their physical security program will be kept in force and described long-term plans and development work to improve its effectiveness.

During May 1975, a team of U.S. Government experts visited the Netherlands for an exchange of views on physical security, including visits to those facilities at which this highly enriched uranium will be processed, stored and utilized. The fixed site reviews included: (1) security forces, (2) physical barriers, (3) detection and alarm apparatus, (4) communication and response capabilities, (5) access and exit controls, (6) accountability and reporting procedures, and (7) physical security organization. In the area of transportation, procedures and equipment for protecting nuclear materials while in transit were examined.

The team judged the Netherlands' physical protection system equipment and procedures for the fixed site facilities, and the procedures and equipment for transportation security adequate to physically protect the material at the facilities, in transit and the material requested in this license application.

The U.S. Government has thoroughly familiarized itself with the physical security arrangements which will be in effect within France during the period of use of the U.S.-supplied highly enriched uranium to assure that they are adequate to deal with threats of subnational diversion.

During 1975, a team of U.S. Government experts visited France for exchanges of views on physical security. The organizational structures and national regulations of France, as they relate to the physical security of significant quantities of nuclear weapons material, were thoroughly reviewed. Visits were made to a number of major governmental and industrial sites handling such materials. The U.S. team visited the Cadarache Nuclear Research Center and the Marcoule Reactor Facility. In April 1977 the CERCA fabricating facility was revisited by a U.S. representative for review of all physical security measures.

On the basis of these visits, and other exchanges of information regarding physical security at French reactor facilities, the U.S. team concluded that the French physical security program was adequate to deter, prevent or respond to potential attempts to divert material subject to this license application.

Officials of France have clearly stated their intention to keep a vigorous physical security program in force and to make it more effective through ongoing research and development efforts.

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.*

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).

* 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.

Criterion (5)

"No such material proposed to be exported and no special nuclear material produced through the use of such material will be processed, 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."

EURATOM is expressly exempted from Criterion (5) by virtue of Section 126(a) 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.

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 exports do not involve the transfer of sensitive nuclear technology. Criterion (6) is, therefore, not applicable.

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."

It should be noted that this criterion only applies to exports to take place after March 10, 1980 or pursuant to an application submitted after September 10, 1979. We anticipate that the recommended exports will occur before March 10, 1980. In any case, as Parties to the NPT, 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 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.

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.

4. Inimicality Judgment

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