104th Congress, 2d Session – – – – – – – – – – – – – House Document 104–188

PROPOSED AGREEMENT FOR COOPERATION BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE ARGENTINE REPUBLIC CONCERNING PEACEFUL USES OF NUCLEAR ENERGY

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE TEXT OF A PROPOSED AGREEMENT FOR COOPERATION BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE ARGENTINE REPUBLIC CONCERNING PEACEFUL USES OF NUCLEAR ENERGY WITH ACCOMPANYING ANNEX AND AGREED MINUTE, PURSUANT TO 42 U.S.C. 2153 (b) AND (d)

MARCH 19, 1996.—Message and accompanying papers referred to the Committee on International Relations and ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

29–011 WASHINGTON : 1996

To the Congress of the United States:

I am pleased to transmit to the Congress, pursuant to sections 123 b. and 123 d. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2153(b), (d)), the text of a proposed Agreement for Cooperation Between the Government of the United States of America and the Government of the Argentine Republic Concerning Peaceful Uses of Nuclear Energy with accompanying annex and agreed minute. I am also pleased to transmit my written approval, authorization, and determination concerning the agreement, and the memorandum of the Director of the United States Arms Control and Disarmament Agency with the Nuclear Proliferation Assessment Statement concerning the agreement. The joint memorandum submitted to me by the Secretary of State and the Secretary of Energy, which includes a summary of the provisions of the agreement and various other attachments, including agency views, is also enclosed.

The proposed agreement with the Argentine Republic has been negotiated in accordance with the Atomic Energy Act of 1954, as amended by the Nuclear Non-Proliferation Act of 1978 (NNPA) and as otherwise amended. In my judgment, the proposed agreement meets all statutory requirements and will advance the non-proliferation and other foreign policy interests of the United States. The agreement provides a comprehensive framework for peaceful nuclear cooperation between the United States and Argentina under appropriate conditions and controls reflecting a strong common commitment to nuclear non-proliferation goals.

The proposed new agreement will replace an existing U.S.-Argentina agreement for peaceful nuclear cooperation that entered into force on July 25, 1969, and by its terms would expire on July 25, 1999. The United States suspended cooperation with Argentina under the 1969 agreement in the late 1970s because Argentina did not satisfy a provision of section 128 of the Atomic Energy Act (added by the NNPA) that required full-scope International Atomic Energy Agency (IAEA) safeguards in nonnuclear weapon states such as Argentina as a condition for continued significant U.S. nuclear exports.

On December 13, 1991, Argentina, together with Brazil, the Argentine-Brazilian Agency for Accounting and Control of Nuclear Materials (ABACC) and the IAEA signed a quadrilateral agreement calling for the application of full-scope IAEA safeguards in Argentina and Brazil. This safeguards agreement was brought into force in March 1994. Resumption of cooperation would be possible under the 1969 U.S.-Argentina agreement for cooperation. However, both the United States and Argentina believe it is preferable to launch a new era of cooperation with a new agreement that reflects, among other things:

An updating of terms and conditions to take account of intervening changes in the respective domestic legal and regulatory frameworks of the parties in the area of peaceful nuclear cooperation;

Reciprocity in the application of the terms and conditions of cooperation between the parties; and

Additional international non-proliferation commitments entered into by the parties since 1969.

Over the past several years Argentina has made a definitive break with earlier ambivalent nuclear policies and has embraced wholeheartedly a series of important steps demonstrating its firm commitment to the exclusively peaceful uses of nuclear energy. In addition to its full-scope safeguards agreement with the IAEA, Argentina has made the following major non-proliferation commitments:

It brought the Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean (Treaty of Tlatelolco) into force for itself on January 18, 1994;

It became a full member of the Nuclear Suppliers Group in April 1994; and

It acceded to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) on February 10, 1995.

Once Argentina's commitment to full-scope IAEA safeguards was clear, and in anticipation of the additional steps subsequently taken by Argentina to adopt responsible policies on nuclear non-proliferation, the United States entered into negotiations with Argentina on a new agreement for peaceful nuclear cooperation and reached ad referendum agreement on a text on September 3, 1992. Further steps to conclude the agreement were interrupted, however, by delays (not all of them attributable to Argentina) in bringing the full-scope IAEA safeguards agreement into force, and by steps, recently completed, to resolve issues relating to Argentina's eligibility under section 129 of the U.S. Atomic Energy Act to receive U.S. nuclear exports. As the agreement text initialed with Argentina in 1992 continues to satisfy current U.S. legal and policy requirements, no revision has been necessary.

The proposed new agreement with Argentina permits the transfer of technology, material, equipment (including reactors), and components for nuclear research and nuclear power production. It provides for U.S. consent rights to retransfers, enrichment, and reprocessing as required by U.S. law. It does not permit transfers of any sensitive nuclear technology, restricted data, or sensitive nuclear facilities or major critical components thereof. In the event of termination, key conditions and controls continue with respect to material and equipment subject to the agreement.

From the U.S. perspective the proposed new agreement improves on the 1969 agreement by the addition of a number of important provisions. These include the provisions for full-scope safeguards; perpetuity of safeguards; a ban on "peaceful" nuclear explosives; a right to require the return of exported nuclear items in certain circumstances; a guarantee of adequate physical protection; and a consent right to enrichment of nuclear material subject to the agreement.

I have considered the views and recommendations of the interested agencies in reviewing the proposed agreement and have determined that its performance will promote, and will not constitute an unreasonable risk to, the common defense and security. Accordingly, I have approved the agreement and authorized its execution and urge that the Congress give it favorable consideration.

Because this agreement meets all applicable requirements of the Atomic Energy Act, as amended, for agreements for peaceful nuclear cooperation, I am transmitting it to the Congress without exempting it from any requirement contained in section 123 a. of that Act. This transmission shall constitute a submittal for purposes of both sections 123 b. and 123 d. of the Atomic Energy Act. The Administration is prepared to begin immediately the consultations with the Senate Foreign Relations and House International Relations Committees as provided in section 123 b. Upon completion of the 30-day continuous session period provided for in section 123 b., the 60-day continuous session period provided for in section 123 d. shall commence.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *March 18, 1996.*

AGREEMENT FOR COOPERATION BETWEEN
THE GOVERNMENT OF THE UNITED STATES OF AMERICA
AND THE
GOVERNMENT OF THE ARGENTINE REPUBLIC
CONCERNING PEACEFUL USES OF NUCLEAR ENERGY

The Government of the United States of America and the Government of the Argentine Republic;

Considering their close cooperation in the development, use and control of peaceful uses of nuclear energy pursuant to their Agreement for Cooperation Concerning Civil Uses of Atomic Energy signed June 25, 1969 (hereinafter referred to as "the Previous Agreement");

Reaffirming their commitment to ensuring that the international development and use of nuclear energy for peaceful purposes are carried out under arrangements which will to the maximum possible extent further the objectives of the Treaty for the Prohibition of Nuclear Weapons in Latin America and its Protocols ("Treaty of Tlatelolco");

Affirming their support of the objectives of the International Atomic Energy Agency ("IAEA") and their desire to promote full implementation of the Treaty of Tlatelolco;

Desiring to cooperate in the development, use and control of peaceful uses of nuclear energy; and

Mindful that peaceful nuclear activities must be undertaken with a view to protecting the international environment from radioactive, chemical and thermal contamination;

Have agreed as follows:

ARTICLE I - DEFINITIONS

For the purposes of this Agreement:

(A) "Byproduct material" means any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material;

(B) "Component" means a component part of equipment or other item, so designated by agreement of the parties;

(C) "Equipment" means any reactor, other than one designed or used primarily for the formation of plutonium or uranium 233, or any other item so designated by agreement of the parties;

(D) "High enriched uranium" means uranium enriched to twenty percent or greater in the isotope 235;

(E) "Low enriched uranium" means uranium enriched to less than twenty percent in the isotope 235;

(F) "Major critical component" means any part or group of parts essential to the operation of a sensitive nuclear facility;

(G) "Material" means source material, special nuclear material, byproduct material, radioisotopes other than byproduct material, moderator material, or any other such substance so designated by agreement of the parties;

(H) "Moderator material" means heavy water or graphite or beryllium of a purity suitable for use in a reactor to slow down high velocity neutrons and increase the likelihood of further fission, or any other such material so designated by agreement of the parties;

(I) "Parties" means the Government of the United States of America and the Government of the Argentine Republic;

(J) "Peaceful purposes" include the use of information, material, equipment and components in such fields as research, power generation, medicine, agriculture and industry but do not include use in, research on or development of any nuclear explosive device, or any military purpose;

(K) "Person" means any individual or any entity subject to the jurisdiction of either party but does not include the parties to this Agreement;

(L) "Reactor" means any apparatus, other than a nuclear weapon or other nuclear explosive device, in which a self-sustaining fission chain reaction is maintained by utilizing uranium, plutonium or thorium or any combination thereof;

(M) "Restricted data" means all data concerning (1) design, manufacture or utilization of nuclear weapons, (2) the production of special nuclear material, or (3) the use of special nuclear material

in the production of energy, but shall not include data of a party which it has declassified or removed from the category of restricted data;

(N) "Sensitive nuclear facility" means any facility designed or used primarily for uranium enrichment, reprocessing of nuclear fuel, heavy water production, or fabrication of nuclear fuel containing plutonium;

(O) "Sensitive nuclear technology" means any information (including information incorporated in equipment or a component) which is not in the public domain and which is important to the design, construction, fabrication, operation or maintenance of any sensitive nuclear facility, or other such information which may be so designated by agreement of the parties;

(P) "Source material" means (1) uranium, thorium, or any other material so designated by agreement of the parties, or (2) ores containing one or more of the foregoing materials in such concentration as the parties may agree from time to time;

(Q) "Special nuclear material" means (1) plutonium, uranium 233, or uranium enriched in the isotope 235, or (2) any other material so designated by agreement of the parties.

ARTICLE 2 - SCOPE OF COOPERATION

1. The parties shall cooperate in the use of nuclear energy for peaceful purposes in accordance with the provisions of this Agreement and their applicable treaties, national laws, regulations and license requirements.

2. Transfer of information, material, equipment and components under this Agreement may be undertaken directly between the parties or through authorized persons. Such transfers shall be subject to this Agreement and to such additional terms and conditions as may be agreed by the parties.

3. Material, equipment and components transferred from the territory of one party to the territory of the other party, whether directly or through a third country, will be regarded as having been transferred pursuant to the Agreement only upon confirmation, by the appropriate government authority of the recipient party to the appropriate government authority of the supplier party, that such material, equipment or components will be subject to the Agreement.

ARTICLE 3 - TRANSFER OF INFORMATION

1. Information concerning the use of nuclear energy for peaceful purposes may be transferred. Transfers of information may be accomplished through various means, including reports, data banks, computer programs, conferences, visits, and assignments of staff to facilities. Fields which may be covered include, but shall not be limited to, the following:

(A) Development, design, construction, operation, maintenance and use of reactors, and reactor experiments.

(B) The use of material in physical and biological research, medicine, agriculture and industry;

(C) Fuel cycle studies of ways to meet future world-wide civil nuclear needs, including multilateral approaches to guaranteeing nuclear fuel supply and appropriate techniques for management of nuclear wastes;

(D) Safeguards and physical protection of materials, equipment, and components;

(E) Radiation protection, including safety and environmental considerations; and

(F) Assessing the role nuclear power may play in national energy plans.

2. This Agreement does not require the transfer of any information which the parties are not permitted under their respective treaties, national laws, and regulations to transfer.

3. Restricted data shall not be transferred under this Agreement.

4. Sensitive nuclear technology shall not be transferred under this Agreement unless provided for by an amendment to this Agreement.

ARTICLE 4 - TRANSFER OF MATERIAL, EQUIPMENT AND COMPONENTS

1. Material, equipment and components may be transferred for applications consistent with this Agreement. Any special nuclear material transferred to the Argentine Republic under this Agreement shall be low enriched uranium, except as provided in paragraphs 4 and 5. Sensitive nuclear facilities and major critical components shall not be transferred under this Agreement unless provided for by an amendment to this Agreement.

2. Low enriched uranium may be transferred for use as fuel in reactor experiments and in reactors, for conversion or fabrication, or for such other purposes as may be agreed by the parties.

3. The quantity of special nuclear material transferred under this Agreement shall not at any time be in excess of that quantity the parties agree is necessary for any of the following purposes: use in reactor experiments or the loading of reactors, the efficient and continuous conduct of such reactor experiments or operation of such reactors, and the accomplishment of other purposes as may be agreed by the parties.

4. Small quantities of special nuclear material may be transferred for use as samples, standards, detectors, targets and for such other purposes as the parties may agree. Transfers pursuant to this paragraph shall not be subject to the quantity limitations in paragraph 3.

5. Special nuclear material other than low enriched uranium and material contemplated under paragraph 4 may, if the parties agree, be transferred for specified applications where technically and economically justified.

ARTICLE 5 - STORAGE AND RETRANSFERS

1. Plutonium and uranium 233 (except as contained in irradiated fuel elements), and high enriched uranium, transferred pursuant to this Agreement or used in or produced through the use of material or equipment so transferred, shall only be stored in a facility to which the parties agree.

2. Material, equipment and components transferred pursuant to this Agreement and any special nuclear material produced through the use of any such material or equipment shall not be transferred to unauthorized persons or, unless the parties agree, beyond the recipient party's territorial jurisdiction.

ARTICLE 6 - REPROCESSING AND ENRICHMENT

1. Material transferred pursuant to this Agreement and material used in or produced through the use of material or equipment so transferred shall not be reprocessed unless the parties agree.

2. Plutonium, uranium 233, high enriched uranium and irradiated source or special nuclear material, transferred pursuant to this Agreement or used in or produced through the use of material or equipment so transferred, shall not be altered in form or content, except by irradiation or further irradiation, unless the parties agree.

3. Uranium transferred pursuant to this Agreement or used in any equipment so transferred shall not be enriched after transfer to twenty percent or greater in the isotope 235 unless the parties agree.

ARTICLE 7 - PHYSICAL PROTECTION

1. Adequate physical protection shall be maintained with respect to source or special nuclear material and equipment transferred pursuant to this Agreement and special nuclear material used in or produced through the use of material or equipment so transferred.

2. The parties agree to the levels for the application of physical protection set forth in the Annex to this Agreement, which may be modified by mutual consent of the parties without amending this Agreement. The parties shall maintain adequate physical protection measures in accordance with these levels. These measures shall as a minimum provide protection comparable to the recommendations set forth in the current version, as agreed to by the parties, of IAEA Document INFCIRC/225.

3. The adequacy of physical protection measures maintained pursuant to this article shall be subject to review and consultations by the parties periodically and whenever either party is of the view that revised measures may be required to maintain adequate physical protection.

4. Each party shall identify those agencies or authorities having responsibility for ensuring that levels of physical protection are adequately met and having responsibility for coordinating

response and recovery operations in the event of unauthorized use or handling of material subject to this article. Each party shall also designate points of contact within its national authorities to cooperate on matters of out-of-country transportation and other matters of mutual concern.

5. The provisions of this article shall be implemented in such a manner as to avoid undue interference in the parties' nuclear activities and so as to be consistent with prudent management practices required for the economic and safe conduct of their nuclear programs.

ARTICLE 8 - NO EXPLOSIVE OR MILITARY APPLICATION

Material, equipment and components transferred pursuant to this Agreement and material used in or produced through the use of any material, equipment or components so transferred shall not be used for any nuclear explosive device, for research on or development of any nuclear explosive device, or for any military purpose.

ARTICLE 9 - SAFEGUARDS

1. Cooperation under this Agreement shall require the application of IAEA safeguards with respect to all nuclear material in all nuclear activities within the territory of the Argentine Republic, under its jurisdiction or carried out under its control anywhere. Implementation of the safeguards agreement between the Argentine Republic, the Federative Republic of Brazil, the Argentine-Brazilian Agency for Accounting and Control of Nuclear Materials, and the IAEA, signed at Vienna December 13, 1991, shall be considered to fulfill this requirement.

2. Source or special nuclear material transferred to the Argentine Republic pursuant to this Agreement and any source or special nuclear material used in or produced through the use of material, equipment or components so transferred shall be subject to safeguards in accordance with the safeguards agreement specified in paragraph 1 of this article.

3. Source or special nuclear material transferred to the United States pursuant to this Agreement and any source or special nuclear material used in or produced through the use of any material, equipment or components so transferred shall be subject to the agreement between the United States of America and the IAEA for the application of safeguards in the United States of America, done at Vienna November 18, 1977, entered into force December 9, 1980.

4. If either party becomes aware of circumstances which demonstrate that the IAEA for any reason is not or will not be applying safeguards in accordance with the agreement as provided for in paragraph 2 or paragraph 3, to ensure effective continuity of safeguards the parties shall immediately enter into arrangements with the IAEA or between themselves which conform with IAEA safeguards principles and procedures and the coverage required by paragraph 2 or paragraph 3, and which provide assurance equivalent to that intended to be secured by the system they replace.

5. Each party shall take such measures as are necessary to maintain and facilitate the application of safeguards provided for under this article.

6. Each party shall ensure the maintenance of a system of accounting for and control of source and special nuclear material transferred pursuant to this Agreement and source and special nuclear material used in or produced through the use of any material, equipment or components so transferred. The procedures for this system shall be comparable to those set forth in IAEA document INFCIRC/153 (corrected), or in any revision of that document agreed to by the parties.

7. Upon the request of either party, the other party shall report or permit the IAEA to report to the requesting party on the status of all inventories of material subject to this Agreement.

8. The provisions of this article shall be implemented in such a manner as to avoid undue interference in the parties' nuclear activities and so as to be consistent with prudent management practices required for the economic and safe conduct of their nuclear programs.

ARTICLE 10 - MULTIPLE SUPPLIER CONTROLS

If any agreement between either party and another nation or group of nations provides such other nation or group of nations rights equivalent to any or all of those set forth under Article 5 or 6 with respect to material, equipment or components subject to this Agreement, the parties may, upon request of either of them, agree that the implementation of any such rights will be accomplished by such other nation or group of nations.

ARTICLE 11 - CESSATION OF COOPERATION

1. If either party at any time following entry into force of this Agreement:

(A) Does not comply with the provisions of Article 5, 6, 7, 8, or 9 or;

(B) Terminates, abrogates or materially violates a safeguards agreement with the IAEA;

The other party shall have the rights to cease further cooperation under this Agreement, suspend this Agreement, or terminate this Agreement and to require the return of any material, equipment and components transferred under this Agreement and any special nuclear material produced through their use.

2. If the Argentine Republic at any time following entry into force of this Agreement detonates a nuclear explosive device, the United States shall have the same rights as specified in paragraph 1.

3. If either party exercises its rights under this Article to require the return of any material, equipment or components, it shall, after removal from the territory of the other party, reimburse the other party for the fair market value of such material, equipment or components.

ARTICLE 12 - TERMINATION OF PREVIOUS AGREEMENT

1. The Previous Agreement shall terminate on the date this Agreement enters into force.

2. Cooperation initiated under the Previous Agreement shall continue in accordance with the provisions of this Agreement. The provisions of this Agreement shall apply to material and equipment subject to the Previous Agreement.

ARTICLE 13 - CONSULTATIONS AND ENVIRONMENTAL PROTECTION

1. The parties undertake to consult at the request of either party regarding the implementation of this Agreement and the development of further cooperation in the field of peaceful uses of nuclear energy.

2. The parties shall consult, with regard to activities under this Agreement, to identify the international environmental implications arising from such activities and shall cooperate in protecting the international environment from radioactive, chemical or thermal contamination arising from peaceful nuclear activities under this Agreement and in related matters of health and safety.

ARTICLE 14 - ENTRY INTO FORCE, DURATION, AND AMENDMENT

1. This Agreement shall enter into force on the date on which the parties exchange diplomatic notes informing each other that they have completed all applicable requirements for its entry into force, and shall remain in force for a period of thirty (30) years. This term may be extended for such additional periods as may be agreed between the parties in accordance with their applicable requirements.

2. Notwithstanding the suspension, termination or expiration of this Agreement or any cooperation hereunder for any reason, Articles 5, 6, 7, 8, 9, and 11 shall continue in effect so long as any material, equipment or components subject to these articles remains in the territory of the party concerned or under its jurisdiction or control anywhere, or until such time as the parties agree that such material, equipment or components are no longer usable for any nuclear activity relevant from the point of view of safeguards.

3. At the request of either party, the parties shall consult on whether to amend this Agreement or to replace it with a new agreement.

IN WITNESS WHEREOF the undersigned, being duly authorized, have signed this Agreement.

DONE at Buenos Aires, this twenty-ninth day of February, 1996, in duplicate, in the English and Spanish languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

Warren Christopher

FOR THE GOVERNMENT OF THE ARGENTINE REPUBLIC:

ANNEX

Pursuant to paragraph 2 of Article 7, the agreed levels of physical protection to be ensured by the competent national authorities in the use, storage and transportation of the materials listed in the attached table shall as a minimum include protection characteristics as below:

Category III

Use and storage within an area to which access is controlled.

Transportation under special precautions including prior arrangements among sender, recipient and carrier, and prior agreement between entities subject to the jurisdiction and regulation of supplier and recipient states, respectively, in case of international transport specifying time, place and procedures for transferring transport responsibility.

Category II

Use and storage within a protected area to which access is controlled, i.e., an area under constant surveillance by guards or electronic devices, surrounded by a physical barrier with a limited number of points of entry under appropriate control, or any area with an equivalent level of physical protection.

Transportation under special precautions including prior arrangements among sender, recipient and carrier, and prior agreement between entities subject to the jurisdiction and regulation of supplier and recipient states, respectively, in case of international transport, specifying time, place and procedures for transferring transport responsibility.

Category I

Material in this category shall be protected with highly reliable systems against unauthorized use as follows:

Use and storage within a highly protected area, i.e., a protected area as defined for category II above, to which, in addition, access is restricted to persons whose trustworthiness has been determined, and which is under surveillance by guards who are in close communication with appropriate response forces. Specific measures taken in this context should have as their objective the detection and prevention of any assault, unauthorized access or unauthorized removal of material.

Transportation under special precautions as identified above for transportation of categories II and III materials and, in addition, under constant surveillance by escorts and under conditions which assure close communication with appropriate response forces.

TABLE: CATEGORIZATION OF NUCLEAR MATERIAL[e]

Material	Form	Category I	Category II	Category III
1. Plutonium[a,f]	Unirradiated[b]	2 kg or more	Less than 2 kg but more than 500 g	500 g or less[c]
2. Uranium-235[d]	Unirradiated[b]			
	– uranium enriched to 20% ^{235}U or more	5 kg or more	Less than 5 kg but more than 1 kg	1 kg or less[c]
	– uranium enriched to 10% ^{235}U but less than 20%	–	10 kg or more	Less than 10 kg[c]
	– uranium enriched above natural, but less than 10% ^{235}U	–	–	10 kg or more
3. Uranium-233	Unirradiated[b]	2 kg or more	Less than 2 kg but more than 500 g	500 g or less[c]

[a] All plutonium except that with isotopic concentration exceeding 80% in plutonium-238.

[b] Material not irradiated in a reactor or material irradiated in a reactor but with a radiation level equal to or less than 100 rads/hour at one meter unshielded.

[c] Less than a radiologically significant quantity should be exempted.

[d] Natural uranium, depleted uranium and thorium and quantities of uranium enriched to less than 10% not falling in Category III should be protected in accordance with prudent management practice.

[e] Irradiated fuel should be protected as Category I, II or III nuclear material depending on the category of the fresh fuel. However, fuel which by virtue of its original fissile material content is included as Category I or II before irradiation should only be reduced one Category level, while the radiation level from the fuel exceeds 100 rads/h at one meter unshielded.

[f] The State's competent authority should determine if there is a credible threat to disperse plutonium malevolently. The State should then apply physical protection requirements for category I, II or III of nuclear material, as it deems appropriate and without regard to the plutonium quantity specified under each category herein, to the plutonium isotopes in those quantities and forms determined by the State to fall within the scope of the credible dispersal threat.

AGREED MINUTE

During the negotiation of the Agreement for Cooperation between the United States of America and the Argentine Republic Concerning Peaceful Uses of Nuclear Energy ("Agreement") signed today, the following understandings, which shall be an integral part of the Agreement, were reached.

Coverage of Agreement

For the purposes of implementing the rights specified in Articles 5 and 6 with respect to special nuclear material produced through the use of nuclear material transferred pursuant to the Agreement and not used in or produced through the use of equipment transferred pursuant to the Agreement, such rights shall in practice be applied to that proportion of special nuclear material produced which represents the ratio of transferred material used in the production of the special nuclear material to the total amount of material so used, and similarly for subsequent generations.

Safeguards

If either party becomes aware of circumstances referred to in paragraph 4 of Article 9, either party shall have the rights listed below, which rights shall be suspended if both parties agree that the need to exercise such rights is being satisfied by the application of IAEA safeguards under arrangements pursuant to paragraph 4 of Article 9:

(1) To review in a timely fashion the design of any equipment transferred pursuant to the Agreement, or of any facility which is to use, fabricate, process, or store any material so transferred or any special nuclear material used in or produced through the use of such material or equipment;

(2) To require the maintenance and production of records and of relevant reports for the purpose of assisting in ensuring accountability for material transferred pursuant to the Agreement and any source material or special nuclear material used in or produced through the use of any material, equipment or components so transferred; and

(3) To designate personnel, in consultation with the other party, who shall have access to all places and data necessary to account for the material in paragraph 2, to inspect any equipment or facility referred to in paragraph 1, and to install any devices and make such independent measurements as may be deemed necessary to account for such material. Such personnel shall, if either party so requests, be accompanied by personnel designated by the other party.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

Warren Christopher

FOR THE GOVERNMENT OF THE ARGENTINE REPUBLIC:

THE WHITE HOUSE

WASHINGTON

February 28, 1996

Presidential Determination
No. 96-12

MEMORANDUM FOR THE SECRETARY OF STATE
THE SECRETARY OF ENERGY

SUBJECT: Presidential Determination on the Proposed Agreement for Cooperation Between the United States of America and the Argentine Republic Concerning Peaceful Uses of Nuclear Energy

I have considered the proposed Agreement for Cooperation Between the United States of America and the Argentine Republic Concerning Peaceful Uses of Nuclear Energy, along with the views, recommendations, and statements of the interested agencies.

I have determined that the performance of the agreement will promote, and will not constitute an unreasonable risk to, the common defense and security. Pursuant to section 123 b. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2153(b)), I hereby approve the proposed agreement and authorize you to arrange for its execution.

The Secretary of State is authorized and directed to publish this determination in the Federal Register.

William J. Clinton

UNITED STATES ARMS CONTROL AND DISARMAMENT AGENCY
Washington, D.C. 20451

THE DIRECTOR

FEB 13 1996

MEMORANDUM FOR THE PRESIDENT

SUBJECT: Views and Recommendations Regarding the Proposed Agreement for Cooperation Between the Government of the United States of America and the Government of the Argentine Republic in Peaceful Uses of Nuclear Energy

Pursuant to Section 123 a. of the Atomic Energy Act of 1954, as amended, I am submitting to you my views and recommendations with respect to the proposed Agreement for Cooperation between the United States and the Argentine Republic. The U.S. Arms Control and Disarmament Agency (ACDA) was consulted throughout the negotiation of this proposed Agreement. The Nuclear Proliferation Assessment Statement required by the Act is being transmitted to you separately. Part II of this statement examines the proposed Agreement in detail to ascertain that the applicable statutory requirements are met. I have concluded that the proposed Agreement does meet all the relevant requirements of the Atomic Energy Act and the Nuclear Non-Proliferation Act of 1978 (NNPA).

The Government of Argentina has made great strides in the last five years to implement an impressive series of comprehensive nuclear nonproliferation policies. Argentina concluded a bilateral safeguards treaty with Brazil in July 1991; brought into force the Treaty on the Prohibition of Nuclear Weapons in Latin America and the Caribbean (The Treaty of Tlatelolco) in January 1994; brought into force a comprehensive IAEA safeguards agreement in March 1994; and became in April 1994 the first Latin American state (indeed, the first newly-industrialized country) to be welcomed as a full member of the Nuclear Suppliers Group. As the capstone to its transformation of its nonproliferation policies, Argentina acceded to the Treaty on the Nonproliferation of Nuclear Weapons (NPT) in February 1995. The scope and depth of the nuclear and other nonproliferation policies that the Government of Argentina has put into effect in the last five years demonstrate Argentina's firm commitment to responsible nonproliferation behavior. Argentina has already become one of the strongest promoters of nonproliferation policies in Latin America.

Conclusion of the proposed Agreement will demonstrate U.S. support for and confidence in the nuclear nonproliferation policies of the Government of Argentina, and will thereby support the deeper institutionalization of responsible nonproliferation attitudes. The proposed Agreement will also increase the scope and intensity of interaction between USG and Argentine nuclear safety, export control, and materials control personnel at all levels. It will increase the transparency of Argentine activities, routinize consultations and cooperation across the full range of nuclear-related issues, and foster the transmission of U.S. non-proliferation norms, procedures and systems of regulation and control.

The proposed Agreement does not provide for transfers of any sensitive nuclear technology or facilities as defined by the NNPA. Transfers of fuel would likely be limited to natural uranium or low enriched uranium, although the proposed Agreement does provide for the transfer of small quantities of high enriched uranium and plutonium for use as samples, targets, standards, detectors, and for other peaceful purposes as the parties may agree. Transfers of high enriched uranium or plutonium as fuel may occur only where "technically and economically justified," which is not currently the case for Argentina, nor likely to be the case for the foreseeable future. Moreover, U.S. policy and law currently would not permit the transfer of more than small quantities of such material to Argentina. Given the nonproliferation policies in effect in Argentina--including the implementation of full-scope IAEA safeguards--ACDA does not believe that any material or equipment transferred under the proposed Agreement will constitute a proliferation risk.

It is my judgment that execution of the proposed Agreement would be compatible with the nonproliferation program, policy and objectives of the United States. Therefore, I recommend that you determine that its performance will promote, and will not constitute an unreasonable risk to, the common defense and security, and that you approve and authorize the execution of the Agreement.

John D. Holum

NUCLEAR PROLIFERATION ASSESSMENT STATEMENT

Pursuant to Section 123 a. of the
Atomic Energy Act of 1954, as amended,
With Respect to the Proposed Agreement for Cooperation
Between the Government of the United States of America
and the Government of the Argentine Republic
Concerning Peaceful Uses of Nuclear Energy

This Nuclear Proliferation Assessment Statement relates to the proposed Agreement for Cooperation between the Government of the United States of America and the Government of the Argentine Republic concerning Peaceful Uses of Nuclear Energy. This agreement for cooperation (which is hereinafter called the "proposed Agreement") is concurrently being submitted to the President for his authorization for execution.

Section 123 a. of the Atomic Energy Act of 1954, as amended ("Atomic Energy Act"), provides that a Nuclear Proliferation Assessment Statement shall "analyze the consistency of the text of the proposed agreement for cooperation with all the requirements of this Act, with specific attention to whether the proposed Agreement is consistent with each of the criteria set forth in this subsection" and address the "adequacy of the safeguards and other control mechanisms and the peaceful use assurances contained in the agreement for cooperation to ensure that any assistance furnished thereunder will not be used to further any military or nuclear explosive purpose." With this statutory mandate in mind, this assessment statement begins with background on the nuclear program and policies of Argentina (Part I); describes the nature and scope of cooperation contemplated in the proposed Agreement (Part II A), and reviews the applicable substantive requirements of the Nuclear Non-Proliferation Act (NNPA) and the Atomic Energy Act and how they are met by the proposed Agreement (Part II B); discusses other nonproliferation policy issues pertinent to this case (Part III); and then sets forth the assessment, conclusions, views and recommendations of the United States Arms Control and Disarmament Agency, as contemplated by Section 123 a. of the Atomic Energy Act (Part IV).

I. BACKGROUND

A. Nuclear Program of Argentina

Argentina has an extensive nuclear infrastructure, encompassing in varying degrees all parts of the natural uranium/heavy water nuclear fuel cycle, from uranium mining and processing to fuel fabrication and reactor design and construction. Argentina began its program in 1950 with the creation of the Comision Nacional de Energia Atomica (CNEA). Under the authority of the executive branch, the nuclear program in the past enjoyed strong financial and political support relative to other sectors of the economy. In recent years, however, the nuclear program has experienced serious shortages of funds, delays in completion of new facilities, and various technical difficulties.

Argentina currently operates two safeguarded, heavy-water moderated, natural uranium-fueled power reactors: the Atucha Nuclear Power Complex, located 100 km northwest of Buenos Aires, and the Embalse-Rio Nuclear Power Station, about 90 km southwest of Cordoba. The 357 MWe Atucha I unit, built by Siemens of West Germany (with one-third Argentine industry participation), was the first power reactor in Latin America when it began operation in 1974. The Embalse unit is a 648 MWe CANDU-type reactor, built by a consortium of Canada's Atomic Energy of Canada, Limited and Italimpianti of Italy, with almost 60% participation by Argentine industry. The Embalse reactor was to be completed in 1980, but financial difficulties delayed the unit's startup until 1983.

Together the reactors comprise 8% of the country's electrical generating capacity. In practice, the two reactors supply between 15 and 20 percent of the total electricity produced, compensating for conventional thermal generation plants that are operating below capacity. The demand for electricity in Argentina is increasing sharply; CNEA has announced that Argentina would require 31,000 megawatts of installed electrical generating capacity by the year 2005, nearly two-and-a-half times the current generation capacity of 13,000 megawatts.

At one time, CNEA planned to construct five more reactors by the year 2000, relying to an increasing degree on Argentine industry to construct the new plants. To this end, Argentina contracted with a Siemens subsidiary to build Atucha II, a 745 MWe version of Atucha I, with two-thirds participation by Argentine industry; subsequent reactors were to be built wholly by

Argentina. However, financial and technical difficulties have delayed initial operation of Atucha II far beyond its planned 1987 startup. The unit is 80-90% complete, but is not expected to enter service before 1997 at the earliest; some $900 million is required to complete the reactor, with total construction costs as high as $2.5 billion. CNEA claims that a fourth reactor must be built by the year 2000 to adequately address the country's energy needs.

Argentina fabricates its own fuel elements for its operating reactors. Natural uranium is mined, milled, converted and processed at various Argentine facilities into fuel pellets and sealed in zirconium tubing at the Ezeiza Atomic Research Center, near Buenos Aires. The fuel elements for Atucha I and Embalse are produced in different production lines; a third production line is planned for Atucha II fuel. Fuel cladding rods are also manufactured at the site from French-supplied zirconium sponge. Plans to construct a zirconium sponge production plant have been suspended, and a pilot zirconium facility at the Bariloche research center cannot produce sufficient amounts to meet fuel demands.

Prior to the entry-into-force of Argentina's comprehensive safeguards agreement with the IAEA in March 1994 (the so-called Quadripartite Agreement between Argentina, Brazil, the IAEA, and the Brazilian-Argentine Agency for Accounting and Control of Nuclear Materials, or "ABACC"), the Ezeiza fuel fabrication plant was safeguarded under an IAEA INFCIRC/66-type agreement. Safeguards were applied to the facility only when fuel material passed through a German-supplied furnace at the Cordoba uranium conversion plant (thereby making that material safeguards-accountable) or when the plant used safeguarded uranium or zirconium tubes. The facility, as well as all other facilities in which nuclear-related activities occur, is now subject both to the Argentina-Brazil bilateral safeguards regime (see section I.C) and IAEA full-scope safeguards.

The power reactors' requirement for large amounts of heavy water (D_20) as a moderator have been met by imports from the U.S., Canada, the former Soviet Union, and Germany. Argentina has operated a 2 ton/year pilot heavy water plant and has recently inaugurated an ammonia-based, commercial-scale heavy-water production facility. Originally scheduled for completion in 1984 by the Swiss company Sulzer Brothers, the Arroyito commercial heavy-water production plant has still not begun full operations; the plant is not likely to achieve its maximum design capacity of 250 tons per year for some time. Arroyito was originally intended to supply the additional reactors planned by CNEA without resort to foreign sources. Given the uncertain outlook for the new reactors, however, the plant will probably operate at below capacity; any surplus might be exported, although it has not yet been determined if the ammonia-based process (even when fully operational) can successfully produce heavy water at internationally competitive prices nor is it clear that there is a market large enough to justify full plant operations.

Like other facilities, the Arroyito plant was covered by a separate IAEA safeguards agreement before implementation of full-scope safeguards. Under the standard terms of the comprehensive IAEA safeguards agreement, which covers all nuclear material in all peaceful nuclear activities, the heavy-water plant itself will not be subject to IAEA safeguards. Any heavy-water exports from the facility, however, would remain subject to the requirements of the agreement that safeguards be applied as a condition of supply. In addition, Argentine membership in the Nuclear Suppliers Group (NSG) and the new Argentine export decree (see section I.C) ensures that such material will only be exported to countries that maintain full-scope safeguards on all their nuclear activities.

Argentina also constructed an indigenously designed gaseous diffusion uranium enrichment plant in Rio Negro. The Pilcaniyeu enrichment facility, begun in 1978 by the Argentine military, was publicly revealed in 1983. In 1988, the Argentine Government claimed to have enriched uranium to 20% U_{235}. However, the facility has been plagued by financial and technical difficulties and has operated only intermittently. CNEA now plans for the Pilcaniyeu facility to produce slightly-enriched fuel for Atucha I (in a program to upgrade the efficiency of that reactor), and 3-4% enrichment for the planned low-power, modular CAREM reactor under development that Argentina hopes to export. Formerly subject to safeguards only when safeguarded feed material was used, the plant is now subject to Argentina's IAEA full-scope safeguards agreement and ABACC safeguards regardless of the origin of the feed material.

Argentina is also constructing a pilot-scale reprocessing facility at Ezeiza, which reportedly will be able to extract some 15 kgs of plutonium from spent fuel annually. While not necessary for a once-through natural uranium fuel cycle, the facility could be used for the study of spent fuel treatment prior to disposal, or for a plutonium-uranium mixed-oxide fuel program for the power reactors. The facility remains incomplete; if and when it becomes operational, any nuclear activity at the laboratory would be subject to IAEA and ABACC inspections.

The Government of Argentina has been discussing the partial or complete privatization of CNEA and its nuclear facilities for several years, in order to improve the cost-effectiveness of its nuclear activities. The power reactors have operated at a huge loss for several years. The Argentine press reports that $900 million is invested annually in the nuclear energy program, but only $300 million is recovered in the sale of electricity.

Consequently, the Argentine Government announced in August 1994 that all reactors, including the long-delayed Atucha II, are to be privatized; indeed, it is hoped that privatization of Atucha II might facilitate its completion. CNEA itself has been split into four separate holding companies for power generation, fuel cycle operations, radioisotope production and R&D. Privatization of these nuclear assets will also increase the transparency of Argentina's nuclear activities to international scrutiny.

Argentina has been an active exporter of nuclear-related equipment, material and services over the last two decades. It traditionally has required that safeguards be applied for significant nuclear items. Under its NSG commitments, Argentina now requires full-scope safeguards as a condition of significant nuclear supply. Argentina has agreements for cooperation with over 18 countries, and provides products and services ranging from research reactors to low-enriched fuel to medical radioisotopes and training. For example, in Peru, Argentine companies built an experimental critical assembly fueled with U.S.-origin enriched uranium; a 10 MW pool-type, German-fueled research reactor for the production of radioisotopes; and a Cobalt-60 food irradiation facility. Argentina has also supplied Cobalt-60 to the U.S., Chile, Mexico, its own domestic market, and France, breaking into the European market for the first time. Finally, CNEA provides extensive civil training opportunities to Third World nuclear scientists at Argentine facilities.

Argentina is in the process of fulfilling an IAEA-approved contract with Iran to replace the U.S.-built Tehran Research Reactor's highly enriched uranium fuel with low-enriched fuel plates. The Argentine Government canceled two other contracts for Iran for fuel fabrication and uranium conversion plants on the grounds that the contracts constituted an unacceptable proliferation risk. Argentina and Turkey were reportedly considering cooperating in the development of the 25 MW modular pressurized-water CAREM reactor, with the first unit to be built on Turkish soil. Argentina provided Algeria with a 500 KW research reactor (similar to its own RA-6 reactor) that was placed under IAEA safeguards. An Argentine-supplied fuel fabrication plant for the Algerian reactor is still under construction. Finally, Egypt has announced it will purchase a 22 MW research reactor from Argentina for research, radioisotope production, and training purposes.

B. Nuclear Cooperation with the United States

Argentina signed a cooperation agreement in 1955 with the United States, enabling it to construct its first research reactor (the RA-1) in 1958 using a U.S. design. A more extensive agreement for cooperation was concluded in 1969 and is still operative, although significant nuclear supply was prohibited by the U.S. Nuclear Non-Proliferation Act (NNPA) of 1978 in the absence of full-scope safeguards. The U.S. provided enriched uranium fuel assemblies for Argentine research reactors until 1978, heavy water for Atucha I and Embalse (both directly and through consent for third-party retransfer), and zircalloy stock and tubing for fuel rod fabrication for the power reactors.

Argentina has been an active participant in the Reduced Enrichment for Research and Test Reactors (RERTR) program to change its research reactors from using highly enriched uranium to low-enriched uranium fuel and hosted the 1987 international RERTR meeting in

Buenos Aires. As part of this effort, the Government of Argentina and the U.S. Argonne National Laboratory cooperated during the mid-1980's on a program to manufacture lower-enriched fuel plates for Argentine reactors.

In November 1990, the U.S. Nuclear Regulatory Commission signed a five-year Memorandum of Understanding for exchanges of technical and regulatory information. NRC provides CNEA with a range of safety documents, focusing in particular on the specific area of civil nuclear power and research reactor safety cooperation, but not including broader areas of nuclear regulatory safety (e.g., fuel cycle).

The U.S. Government has held discussions with many Argentine government and industry officials in the last four years on a broad range of matters including nuclear export policy, technology and safeguards, control of radioactive sources in industrial and medical applications, and possible areas of joint research and development. Argentine and U.S. experts have been engaged for over three years in a joint project to devise and implement a safeguards system for the Argentine gaseous diffusion enrichment plant; reciprocal visits and experiments have taken place at the Portsmouth and Oak Ridge enrichment plant and at the Pilcaniyeu facility. Both governments seek to expand the scope of consultations to assist Argentina in the implementation of effective safeguards and export and materials control policies. U.S. and Argentine nuclear industry have also begun taking the first steps toward joint development and export ventures.

C. Nuclear Nonproliferation Policy of Argentina

The Government of Argentina has made great strides in the last four years to implement an impressive series of comprehensive nuclear nonproliferation policies. President Menem and Brazil's President Collor declared in November 1990 that both countries would create a bilateral nuclear safeguards inspections regime, conclude a comprehensive international safeguards agreement, and bring the Treaty on the Prohibition of Nuclear Weapons in Latin America and the Caribbean (The Treaty of Tlatelolco) into force for their territories. With the Argentine-Brazilian bilateral safeguards treaty (July 1991) and the entry-into-force of the Treaty of Tlatelolco (January 1994) and the Quadripartite Safeguards Agreement (March 1994), Argentina has now accomplished all of these goals. As the capstone to its transformation of its nonproliferation policies, Argentina acceded to the Treaty on the Nonproliferation of Nuclear Weapons (NPT) in February 1995.

In 1980 Argentina began a process of confidence-building and transparency with Brazil on nuclear issues. Beginning in that year with an agreement to pursue mutual research and training, Argentina's subsequent civilian governments expanded the relationship to include tours

of highly classified facilities for high-ranking Brazilian officials, the creation of a bilateral experts commission to foster further cooperation, and agreement on bilateral reporting system of accounting and control. The Alfonsin and Menem governments also placed the nation's nuclear activities firmly under civilian control and ended the nuclear program's hitherto privileged budgetary status, forcing it to compete with other national projects for limited financial resources.

By February 1991, both countries had given the other an accounting of their nuclear materials and facilities. In July 1991, Argentina and Brazil signed an Agreement for the Exclusively Peaceful Use of Nuclear Energy (the Treaty of Guadalajara). This agreement created a bilaterally-staffed and -financed, legally-independent safeguards and inspections organization, the Brazilian-Argentine Agency of Accounting and Control of Nuclear Materials (ABACC). Argentina and Brazil committed themselves to "submit all the nuclear materials in all nuclear activities carried out in their territories or anywhere under their jurisdiction or control" to the Common System of Accounting and Control administered by the new organization.

Both countries also used the Agreement to renounce their previous position that parties to the Treaty of Tlatelolco retained the prerogative to conduct peaceful nuclear explosions, in terms similar to the declaration made by the United States in its ratification of Protocol II of that treaty. Argentina and Brazil agreed in the Treaty of Guadalajara that:

> Bearing in mind that at present no technical distinction can be made between nuclear devices for peaceful purposes and those for military purposes, the Parties also undertake to prohibit and prevent in their respective territories, and to abstain from carrying out, promoting or authorizing, directly or indirectly, or from participating in any way in, the testing, use, manufacture, production or acquisition by any means of any nuclear explosive device while the above-mentioned technical limitation exists.

Argentina subsequently negotiated a full-scope safeguards agreement with the IAEA, Brazil, and ABACC, granting the IAEA authority to inspect independently (and in conjunction with ABACC, where possible) both countries' nuclear facilities. According to Article 2(a) of the Agreement, the IAEA:

> ...shall have the right and the obligation to ensure that safeguards will be applied, in accordance with the terms of this agreement, on all nuclear material in all nuclear activities within the territories of the State Parties, under their jurisdiction or carried out under their control

anywhere, for the exclusive purpose of verifying that such material is not diverted to nuclear weapons or other nuclear explosive devices.

This accord was approved by the IAEA Board of Governors in December 1991 and signed by all four parties shortly thereafter. Argentina, while preferring to wait until Brazil also approved the agreement, nevertheless ratified the accord in August 1992; Brazil completed its ratification in February 1994, and both countries brought the Quadripartite Safeguards Agreement into force in early March 1994. The IAEA is in the process of implementing the agreement.

In August 1992 Argentina, Brazil, Chile, and Mexico proposed amendments to the Treaty of Tlatelolco to address Argentine and Brazilian concerns over the protection of commercial information and to designate the IAEA as having sole responsibility to conduct special inspections. The Organization for the Prohibition of Nuclear Weapons in Latin America (OPANAL), the Treaty's implementing organization, retained the authority to ask the IAEA to conduct a special inspection, upon the request of a Treaty member. The amendments were unanimously adopted at a special general conference of all the Contracting Parties to the Treaty.

Argentina, Brazil, and Chile announced at the Conference their intention to ratify the amendments and waive the Treaty into force for their territories simultaneously. However, the Brazilian political crises delayed Brazilian legislative approval of the amendments. Argentina preferred to wait to bring Tlatelolco into force until Brazil completed ratification of the amendments; ultimately, however, Argentina and Chile brought Tlatelolco into force at an OPANAL special general conference on January 18, 1994. Brazil followed suit on May 30, 1994. Argentina, as well as Brazil and Chile, have now assumed an international legal commitment not to test, use, manufacture, produce or acquire nuclear weapons; and not to permit the storage, installation, or deployment of <u>any</u> nuclear weapons within their territorial jurisdictions.

The revolutionary significance of the change in Argentina's nuclear policies was dramatically underscored in December 1993, when President Menem announced that Argentina would accede to the NPT before the 1995 NPT Conference. Argentina had historically refused to join the NPT, citing its allegedly "discriminatory" character. As noted earlier, Argentina joined the NPT on February 10, 1995 and was a strong supporter of the successful effort to achieve the indefinite extension of the NPT at the April-May 1995 NPT Review and Extension Conference in New York.

Regarding nuclear exports, Argentina required its customers to apply safeguards to its significant nuclear exports, such as research reactors transferred to Algeria and Peru in the

1980's. In April 1992, the Government of Argentina promulgated a far-reaching executive decree establishing strict control and licensing requirements for the export of nuclear, chemical, missile, biological and nuclear dual-use materials, equipment and technology, including requiring full-scope safeguards as a condition of supply for significant nuclear exports. In keeping with its commitment to an internationally responsible export policy, Argentina suspended, then canceled, two lucrative contracts with Iran for facilities that the Government of Argentina concluded posed an unacceptable proliferation risk.

In April 1994, Argentina became the first Latin American state (indeed, the first newly-industrialized country) to be welcomed as a full member of the Nuclear Suppliers Group. Argentina has also joined the Australia Group for the control of chemical weapons and the Missile Technology Control Regime.

II. COMPLIANCE WITH STATUTORY REQUIREMENTS

As will be shown below, the proposed Agreement meets the applicable requirements of the Atomic Energy Act, as amended, (hereinafter the Act) and the Nuclear Non-Proliferation Act (hereinafter the NNPA). Section 123 a. of the Act, as amended by Section 401 of the NNPA, requires new or amended agreements for cooperation to include the terms, conditions, duration, nature and scope of the cooperation.

The nature and scope of the cooperation authorized by the proposed Agreement is described in Section A below. The most pertinent terms and conditions of the cooperation authorized by the proposed Agreement are discussed in Sections B, C, D, and E below.

The duration of the proposed Agreement is thirty years from the date of its entry into force and is extendable by agreement of the parties.

A. Nature and Scope of Cooperation

(1) Permitted Cooperation

Article 2 of the proposed Agreement describes in general terms the kinds of cooperative activity envisaged: the use of nuclear energy for peaceful purposes and the transfer of information, material, equipment and components. Such cooperation is to be in accordance with the proposed Agreement and the applicable treaties, national laws, regulations and license requirements of the parties. Article 4, Paragraph 1 of the proposed Agreement provides that material, equipment and components may be transferred for applications consistent with the proposed Agreement. Sensitive nuclear facilities and major critical components, however, may not be transferred unless provided for by an amendment to the Agreement. Paragraph 4 of article 4 provides that small quantities of special nuclear material, such as plutonium and high enriched uranium, may be transferred for use as samples, standards, detectors, targets and for such other purposes as the parties may agree. In addition, article 4, paragraph 5 provides that special nuclear material other than low enriched uranium and the material contemplated under paragraph 4 may be transferred for specified applications where technically and economically justified.

Article 8 of the proposed Agreement requires that material, equipment and components transferred pursuant to the proposed Agreement, as well as material used in or produced through the use of any material, equipment or components so transferred, shall not be used for any nuclear explosive device, for research on or development of any nuclear explosive device, or for any military purpose. Article 9 of the proposed Agreement provides that cooperation under the proposed Agreement shall require the application of International Atomic Energy Agency (hereinafter IAEA) safeguards with respect to all nuclear activities within the territory of the Argentine Republic, under its jurisdiction or carried out under its control anywhere,

while stipulating that this requirement shall be deemed fulfilled by implementation of the Safeguards Agreement between the Argentine Republic, the Federative Republic of Brazil, ABACC, and the IAEA.

(2) Types of Cooperation Not Authorized

The proposed Agreement excludes certain types of cooperation from its scope and provides that amendment of the proposed Agreement would be required for certain other types of cooperation. Thus:

Article 3, Paragraph 3, of the proposed Agreement provides that restricted data, as defined in Article 1(M) of the proposed Agreement, shall not be transferred under the proposed Agreement. (In addition, Article 3, Paragraph 2, provides that neither party is required to transfer any information which it is not permitted to transfer.)

Article 3, Paragraph 4, of the proposed Agreement provides that sensitive nuclear technology, as defined in Article 1(O) of the proposed Agreement, shall not be transferred under this agreement unless provided for by an amendment to this agreement.

Article 4, Paragraph 1, of the proposed Agreement provides that neither party shall transfer sensitive nuclear facilities, as defined in Article 1(N) of the proposed Agreement, and major critical components thereof, as defined in Article 1(F), unless the agreement is amended to permit such transfer.

B. Specific Requirements for Agreements for Cooperation

Section 123 a. of the Atomic Energy Act sets forth nine specific requirements which must be met in an agreement for cooperation. These are set forth below, with a description and explanation of the provisions of the proposed Agreement which address each requirement.

(1) Duration of Safeguards

Subparagraph (1) of Section 123 a. of the Act requires:

> a guaranty by the cooperating party that safeguards as set forth in the agreement for cooperation will be maintained with respect to all nuclear materials and equipment transferred pursuant thereto, and with respect to all special nuclear material used in or produced through the use of such nuclear materials and equipment, so long as

the material or equipment remains under the jurisdiction or control of the cooperating party, irrespective of the duration of other provisions in the agreement or whether the agreement is terminated or suspended for any reason.

This provision is designed to require the application of safeguards with respect to items subject to the proposed Agreement and to provide protection against any termination of such safeguards. Article 9 of the proposed Agreement and the Agreed Minute appended to the proposed Agreement satisfy this requirement.

Article 9, Paragraph 2 of the proposed Agreement provides that "source or special nuclear material transferred to the Argentine Republic pursuant to this Agreement and any source or special nuclear material used in or produced through the use of material, equipment or components so transferred shall be subject to safeguards in accordance with the safeguards agreement specified in paragraph 1 of this article."

Article 9, Paragraph 4 of the proposed Agreement provides further assurance of the continued applicability of safeguards by requiring that "if either party becomes aware of circumstances which demonstrate that the IAEA for any reason is not or will not be applying safeguards in accordance with the agreement as provided for in paragraph 2 or 3, to ensure effective continuity of safeguards the parties shall consult and immediately enter into arrangements with the IAEA or between themselves which conform with IAEA safeguards principles and procedures, which provide assurance equivalent to that intended to be secured by the system they replace, and which conform with the coverage required by paragraph 2 or 3, and which provide assurance equivalent to that intended to be secured by the system they replace."

Also, the "Safeguards" paragraph of the Agreed Minute appended to the proposed Agreement provides that "if either party becomes aware of circumstances referred to in paragraph 4 of Article 9, either party shall have the rights listed below, which rights shall be suspended if both parties agree that the need to exercise such rights is being satisfied by the application of IAEA safeguards under arrangements pursuant to paragraph 4 of Article 9:

(1) To review in a timely fashion the design of any equipment transferred pursuant to the Agreement, or of any facility which is to use, fabricate, process, or store any material so transferred or any special nuclear material used in or produced through the use of such material or equipment;

(2) To require the maintenance and production of records and of relevant reports for the purpose of assisting in ensuring accountability for material transferred pursuant to the Agreement and

any source material or special nuclear material used in or produced through the use of any material, equipment or components so transferred; and

(3) To designate personnel, in consultation with the other party, who shall have access to all places and data necessary to account for the material in paragraph 2, to inspect any equipment or facility referred to in paragraph 1, and to install any devices and make such independent measurements as may be deemed necessary to account for such material. Such personnel shall, if either party so requests, be accompanied by personnel designated by the other party.

Article 9, Paragraph 5 of the proposed Agreement reinforces all of this by providing that "each party shall take such measures as are necessary to maintain and facilitate the application of safeguards provided for under this Article."

With respect to continuation of safeguards, Article 14, Paragraph 2 of the proposed Agreement states that "notwithstanding the termination or expiration of this agreement or any cessation of cooperation hereunder for any reason, Articles 5, 6, 7, 8, 9 and 11 shall continue in effect so long as any material, equipment or components subject to these articles remains in the territory of the party concerned or under its jurisdiction or control anywhere, or until such time as the parties agree that such material, equipment, or components are no longer usable for any nuclear activity relevant from the point of view of safeguards."

Article 9, Paragraphs 6 and 7, also require each Party to maintain an accounting and control system for nuclear material and to provide, or allow the IAEA to provide upon request of the other Party, status reports on inventories of material subject to the proposed Agreement.

(2) Full-Scope Safeguards

Subparagraph (2) of Section 123 a. of the Act requires:

in the case of non-nuclear-weapon states, a requirement, as a condition of continued United States nuclear supply under the agreement for cooperation, that IAEA safeguards be maintained with respect to all nuclear materials in all peaceful nuclear activities within the territory of such state, under its jurisdiction, or carried out under its control anywhere.

Article 9, Paragraph 1 of the proposed Agreement meets this requirement by providing that cooperation under the proposed Agreement shall require the application of IAEA safeguards "with respect to all nuclear activities within the territory of the Argentine Republic,

under its jurisdiction or carried out under its control anywhere. Implementation of the safeguards agreement between the Argentine Republic, the Federative Republic of Brazil, the Brazilian-Argentine Agency for Accounting and Control of Nuclear Materials, and the IAEA, signed at Vienna December 13, 1991, shall be considered to fulfill this requirement."

(3) No Military or Explosive Use

Subparagraph (3) of Section 123 a. of the Act requires:

> ...a guaranty by the cooperating party that no nuclear materials and equipment or sensitive nuclear technology to be transferred pursuant to such agreement, and no special nuclear material produced through the use of any nuclear materials and equipment or sensitive nuclear technology transferred pursuant to such agreement, will be used for any nuclear explosive device, or for research on or development of any nuclear explosive device, or for any other military purpose.

Article 8 and Article 3, Paragraph 4 of the proposed Agreement, respectively, satisfy this requirement by requiring that:

> material, equipment and components transferred pursuant to this agreement and material used in or produced through the use of any material, equipment or components so transferred shall not be used for any nuclear explosive device, for research on or development of any nuclear explosive device, or for any military purpose.
>
> Sensitive nuclear technology shall not be transferred under this Agreement unless provided for by an amendment to this Agreement.

(4) Right of Return

Subparagraph (4) of Section 123 a. of the Act requires:

> ...a stipulation that the United States shall have the right to require the return of any nuclear materials and equipment transferred pursuant thereto and any special nuclear material produced through the use thereof if the cooperating party detonates a nuclear explosive device or terminates or abrogates an agreement providing for IAEA safeguards.

Article 11 of the proposed Agreement meets this requirement by providing:

1. If either party at any time following entry into force of this agreement:

* * *

(b) terminates, abrogates or materially violates a safeguards agreement with the IAEA;

the other party shall have the rights to cease further cooperation under this Agreement and to require the return of any material, equipment and components transferred under this Agreement and any special nuclear material produced through their use.

2. If the Argentine Republic at any time following entry into force of this Agreement detonates a nuclear explosive device, the United States shall have the same rights as specified in paragraph 1.

3. If either party exercises its rights under this Article to require the return of any material, equipment or components, it shall, after removal from the territory of the other party, reimburse the other party for the fair market value of such material, equipment or components.

(5) Retransfer

Subparagraph (5) of Section 123 a. of the Act requires:

a guaranty by the cooperating party that any material or any Restricted Data transferred pursuant to the agreement for cooperation and...any production or utilization facility transferred pursuant to the agreement for cooperation or any special nuclear material produced through the use of any such facility or through the use of any material transferred pursuant to the agreement, will not be transferred to unauthorized persons or beyond the jurisdiction or control of the cooperating party without the consent of the United States.

Section 109 of the Act, as amended by Section 309 of the NNPA, requires that recipient nations also agree to obtain United States approval before retransferring any components, items and substances exported from the United States which the Nuclear Regulatory Commission (NRC) has found to be "significant for nuclear explosive purposes." The NRC has identified a

series of such components, items and substances in regulations set forth in 10 CFR Part 110 which are subject to this retransfer requirement.

Article 5, Paragraph 2 and Article 3, Paragraph 3 of the proposed Agreement, respectively, satisfy the requirements of Sections 123 a. and 109 of the Act by providing that:

> Material, equipment and components transferred pursuant to this Agreement and any special nuclear material produced through the use of any such material or equipment shall not be transferred to unauthorized persons or, unless the parties agree, beyond the recipient party's territorial jurisdiction.
>
> Restricted data shall not be transferred under this agreement.

The exercise of this particular United States control with respect to "special nuclear material produced through the use of nuclear material transferred pursuant to the proposed Agreement and not used in or produced through the use of equipment transferred pursuant to the proposed Agreement" is limited by the rule of proportionality set out under "Coverage of the Agreement" in the Agreed Minute appended to the proposed Agreement. That section confirms that the retransfer requirements of Article 5 shall be applied to "that proportion of special nuclear material produced which represents the ratio of transferred material used in the production of the special nuclear material to the total amount of material so used, and similarly for subsequent generations."

(6) Physical Security

Subparagraph (6) of Section 123 a. of the Act requires:

> a guaranty by the cooperating party that adequate physical security will be maintained with respect to any nuclear material transferred pursuant to such agreement and with respect to any special nuclear material used in or produced through the use of any material, production facility, or utilization facility transferred pursuant to such agreement.

Article 7, Paragraph 1 of the proposed Agreement satisfies this requirement by requiring that:

> Adequate physical protection shall be maintained with respect to source or special nuclear material and equipment transferred pursuant to this Agreement and special nuclear material used in or produced through the use of material or equipment so transferred.

With respect to the meaning of "adequate," Section 127 (3) of the Act provides that physical security measures shall be deemed adequate if they provide a level of protection equivalent to that required by regulations promulgated by the NRC establishing levels of physical protection. (See NNPA Section 304 (d); 10 CFR 110.43.)

Article 7, Paragraph 2 of the proposed Agreement satisfies this test by providing that:

> The parties agree to the levels for the application of physical protection set forth in the Annex to this Agreement, which may be modified by mutual consent of the parties without amending this Agreement. The parties shall maintain adequate physical protection measures in accordance with these levels. These measures shall as a minimum provide protection comparable to the recommendations set forth in the current version as agreed by the parties, of IAEA Document INFCIRC/225.

(7) Reprocessing, Enrichment or Other Alteration

Subparagraph (7) of Section 123 a. of the Act requires:

> ...a guaranty by the cooperating party that no material transferred pursuant to the agreement for cooperation and no material used in or produced through the use of any material, production facility, or utilization facility transferred pursuant to the agreement for cooperation will be reprocessed, enriched or (in the case of plutonium, uranium 233, or uranium enriched to greater than twenty percent in the isotope 235, or other nuclear materials which have been irradiated) otherwise altered in form or content without the prior approval of the United States.

Article 6 of the proposed Agreement satisfies these requirements by providing the following:

> 1. Material transferred pursuant to this agreement and material used in or produced through the use of material or equipment so transferred shall not be reprocessed unless the parties agree.
>
> 2. Plutonium, uranium 233, high enriched uranium and irradiated source or special nuclear material, transferred pursuant to this agreement or used in or produced through the use of material or equipment so transferred, shall not be altered in form or content, except by irradiation or further irradiation, unless the parties agree.

> 3. Uranium transferred pursuant to this Agreement or used in any equipment so transferred shall not be enriched after transfer to greater than twenty percent of the isotope 235 unless the parties agree.

The controls in Article 6 of the proposed Agreement are subject to the proportionality provision in the Agreed Minute appended to the proposed Agreement.

(8) Storage

Subparagraph (8) of Section 123 a. of the Act requires:

> ...a guaranty by the cooperating party that no plutonium, no uranium 233, and no uranium enriched to greater than twenty percent in the isotope 235, transferred pursuant to the agreement for cooperation, or recovered from any source or special nuclear material so transferred or from any source or special nuclear material used in any production facility or utilization facility transferred pursuant to the agreement for cooperation, will be stored in any facility that has not been approved in advance by the United States.

Article 5, Paragraph 1 of the proposed Agreement fulfills this requirement by providing that:

> Plutonium and uranium 233 (except as contained in irradiated fuel elements), and high enriched uranium, transferred pursuant to this Agreement or used in or produced through the use of material or equipment so transferred shall only be stored in a facility to which the parties agree.

The storage control provided for in Article 5, Paragraph 1, of the proposed Agreement is subject to the proportionality provision in the Agreed Minute appended to the proposed Agreement.

(9) Sensitive Nuclear Technology

Subparagraph (9) of Section 123 a. of the Act requires:

> a guaranty by the cooperating party that any special nuclear material, production facility, or utilization facility produced or constructed under the jurisdiction of the cooperating party by or through the use of any sensitive nuclear technology

> transferred pursuant to such agreement for cooperation will be subject to all the requirements specified in this subsection.

Article 3, Paragraph 4 of the proposed Agreement satisfies this requirement by precluding transfers of sensitive nuclear technology unless provided for by an amendment to the proposed Agreement.

C. NNPA Section 402 -- Additional Requirements

Section 402(a) of the NNPA requires that:

> Except as specifically provided in any agreement for cooperation, no source or special nuclear material hereinafter exported from the United States may be enriched after export without the prior approval of the United States for such enrichment.

As discussed earlier, Article 6, Paragraph 3 of the proposed Agreement satisfies this restriction by providing that "uranium transferred pursuant to this Agreement or used in any equipment so transferred shall not be enriched after transfer to twenty percent or greater in the isotope 235 unless the parties agree."

Section 402 (b) of the NNPA requires that:

> In addition to other requirements of law, no major critical component of any uranium enrichment, nuclear fuel reprocessing, or heavy water production facility shall be exported under any agreement for cooperation...unless such agreement for cooperation specifically designates such components as items to be exported pursuant to the agreement for cooperation.

Article 4, Paragraph 1 of the proposed Agreement satisfies this provision by requiring that "...sensitive nuclear facilities and major critical components shall not be transferred under this Agreement unless provided for by an amendment to this Agreement." The definition of "sensitive nuclear facility" in Article I (N) of the proposed Agreement encompasses the facilities described in Section 402 (b) of the NNPA.

D. NNPA Section 307 -- Conduct Resulting in Termination of Nuclear Exports

Section 307 of the NNPA added Section 129 to the Atomic Energy Act, which prohibits exports of nuclear materials and equipment or sensitive nuclear technology to

countries that engage in proscribed activities. The activities in Section 129(1) include weapons-development activities, violation or termination of safeguards or an agreement for cooperation with the United States, or engaging in activities involving source or special nuclear material having direct significance for the manufacture or acquisition of nuclear explosive devices and having failed to take steps in the judgment of the President representing sufficient progress toward terminating such activities. Argentina's policies, behavior, and commitments are adequate to satisfy the requirements of Section 129(1) pursuant to the proposed Agreement.

Section 129 also states that:

> No nuclear materials and equipment or sensitive nuclear technology shall be exported to...any nation or group of nations that is found by the President to have, at any time after the effective date of this section...entered into an agreement...for the transfer of reprocessing equipment, materials, or technology to the sovereign control of a non-nuclear-weapon state except in connection with an international fuel cycle evaluation in which the United States is a participant or pursuant to a subsequent agreement or understanding to which the United States subscribes...(129(2)(c)).

Building upon a technical cooperation agreement signed in 1990, Argentina and Brazil decided to cooperate in a "tandem fuel cycle" project to tie together the fuel cycles of both countries. Spent fuel from Brazil's Angra pressurized water reactor would have been transferred to Argentina to be reprocessed (what the two nuclear agencies referred to as "coprocessing," which the U.S. considers functionally indistinguishable from reprocessing) with the resultant plutonium to be fabricated into mixed-oxide fuel for Argentina's CANDU-type power reactors.

This joint project had been pursued openly by both countries, with no evidence of non-peaceful intent. However, the U.S. was concerned that such cooperation would ultimately trigger sanctions under Section 129(2)(c) that would prohibit U.S. civil nuclear exports to Argentina. The U.S. expressed this concern to both Argentina and Brazil in 1994, and received high-level assurances from both governments that such cooperation would cease. In addition to these assurances, the U.S. has reason to believe that such cooperation has indeed ceased.

The President made a determination on October 27, 1995, that Argentina had entered into a reprocessing agreement as stipulated in Section 129(2)(c). However, the President also made the determination, according to the provisions and procedures for Congressional concurrence under Section 129, that cessation of such exports would be seriously prejudicial to the achievement of United States nonproliferation objectives or otherwise jeopardize the common defense and security..." Argentina's nonproliferation

policies and behavior over the last five years and assurances provided by the Argentine Government that such cooperation would cease provides a basis for the President to waive Section 129 sanctions in this circumstance. There are no outstanding issues regarding this section of law.

E. NNPA Section 309 -- Components, Items, and Substances

Section 309 of the NNPA amended Section 109 of the Act to empower the Nuclear Regulatory Commission (NRC) to designate certain component parts, items and substances which, because of their significance for nuclear explosive purposes, should be subject to its licensing authority. Such licenses would be granted only upon a finding that (a) IAEA safeguards will be applied to such component, substance or item, (b) the component, substance or item(s) will not be used for any nuclear explosive device or for research on or development of any nuclear explosive device, and (c) that no such component, substances or item will be retransferred without U.S. consent.

The NRC in its regulations (10 CFR Part 110) has identified certain reactor components and two substances--heavy water and nuclear grade graphite--as subject to these criteria. In the case of the Argentine Republic, the first two criteria are both met because of the language in Articles 8 and 9 of the proposed Agreement. The third criterion (retransfer) can be met by having components and moderator material identified as being exported under the proposed Agreement, in which case Article 5, paragraph 2 of the proposed Agreement would apply. Alternatively, the U.S. could seek separate assurances from the Argentine Republic.

The Atomic Energy Act does not require that such exports be transferred under an agreement for cooperation. However, they may be so transferred and thus be subject to all the relevant provisions of the agreement.

III. OTHER NONPROLIFERATION POLICY ISSUES

Any decision by the United States to engage in nuclear cooperation with a given nation involves a number of nonproliferation policy considerations in addition to the legal rights, guarantees, and safeguards contained in the applicable agreement for cooperation. These considerations could relate in a given case to such matters as scope and terms of the cooperation envisaged under such an agreement, the precedential implications of particular provisions of such an agreement, the degree to which extending nuclear cooperation may foster other nonproliferation efforts, the general role of the state concerned in nonproliferation efforts, and a number of other issues. These issues will vary from case to case. This section of the assessment statement addresses policy issues of this kind that relate to the proposed Agreement.

A. Scope of Cooperation/Weapons-Usable Material

The scope of cooperation permitted by the proposed Agreement extends to the transfer of nuclear material, equipment (including reactors), and components for both nuclear research and nuclear power production. The proposed Agreement does not provide for transfers of any sensitive nuclear technology or facilities as defined by the NNPA. It provides for the transfer of potentially large quantities of low-enriched uranium if the parties agree it is necessary for the purposes set forth in the agreement, although Argentina has the indigenous capability to provide for most of its uranium needs. Small quantities (i.e., grams) of plutonium or highly enriched uranium may be transferred for use as samples, standards, detectors, targets, and for other peaceful purposes as the parties may agree.

The proposed Agreement does not prohibit the transfer of large quantities of plutonium and highly enriched uranium, but does specify that any such transfers must be economically and technically justified. ACDA does not believe there are any current or foreseeable civil nuclear projects in Argentina where the supply of more than gram quantities of plutonium or highly enriched uranium would be justified on such grounds. Moreover, the United States does not encourage the civil use of plutonium, and U.S. law now virtually prohibits the export of highly enriched uranium as fuel for reactors.

The proposed Agreement therefore does not contemplate the transfer of any material that would assist a nuclear-weapons development program. ACDA is satisfied with the scope of the proposed Agreement. Given fifteen years of Argentine-Brazilian peaceful cooperation and confidence-building, the formation of a bilateral nuclear

inspection agency with Brazil, the entry-into-force of a comprehensive safeguards agreement that opens all Argentine facilities to IAEA inspection, the entry-into-force of the Treaty of Tlatelolco for Argentina, and Argentina's accession to the NPT, ACDA concludes that Argentina does not now nor will in the foreseeable future have any motivation or significant capability to engage in a clandestine nuclear weapon development program.

B. Tlatelolco and NPT Considerations

Preventing the further spread of nuclear weapons is a major U.S. national security and foreign policy goal, and the NPT continues to play a unique and irreplaceable role in international efforts to erect legal and political barriers to such nuclear weapons proliferation. The Treaty of Tlatelolco serves a similar function in that it establishes a regional nuclear weapon-free zone in Latin America, enjoining parties:

> ...to use exclusively for peaceful purposes the nuclear material and facilities which are under their jurisdiction, and to prohibit and prevent in their respective territories...the testing, use, manufacture, production or acquisition by any means whatsoever of any nuclear weapons...directly or indirectly, on behalf of anyone else or in any other way, and...the receipt, storage, installation, deployment and any form of possession of any nuclear weapons, directly or indirectly...by anyone on their behalf or in any other way.

The Treaty of Tlatelolco also requires Parties to institute full-scope safeguards in their territories to verify their commitments. The U.S. Government considers these commitments under the Treaty of Tlatelolco to be the equivalent of those assumed by NPT non-nuclear-weapon state parties.

Argentina was a participant in the drafting of the Treaty of Tlatelolco and signed the Treaty in 1967. However, Argentina refused for many years to ratify the Treaty. As for the NPT, Argentina had long criticized the NPT as discriminatory against the interests of Third World nations seeking the fullest development of nuclear energy for peaceful purposes.

In the last several years, however, the civilian governments of Argentina have sought to distance themselves from the policies and rhetoric of the 1960's and 1970's. The current government has pursued a "full-steam-ahead" approach to instituting responsible nonproliferation policies. In assessing the depth of Argentina's political commitment to nonproliferation, it is worth recalling that President Menem, when a candidate, was

expected to slow or reverse course on nonproliferation; instead, President Menem and his officials have accelerated Argentina's drive towards comprehensive safeguards and export control regimes. This "new thinking" has become institutionalized. The political landscape has changed so much that there was little political dissent to these changes.

As noted earlier, the Government of Argentina has ratified and brought into force the Treaty of Tlatelolco; acceded to the NPT; and instituted a comprehensive safeguard regime under the supervision of the International Atomic Energy Agency. The proposed Agreement, to the extent that it will further institutionalize the norms of nuclear nonproliferation and demonstrate the benefits of responsible nonproliferation policies, is supportive of this trend in Argentine politics. Moreover, it has long been U.S. policy, as affirmed in Article IV of the NPT, to offer the widest possible benefits in peaceful nuclear cooperation to non-nuclear-weapon states that undertake credible and comprehensive nuclear nonproliferation obligations. Argentina has undertaken such obligations, and it is highly appropriate for the Untied States to respond by concluding the proposed Agreement.

C. Safeguards Considerations

The Government of Argentina has signed, ratified, and brought into force a bilateral and an international nuclear safeguards regime. All of Argentina's nuclear activities are now subject to the bilateral inspection regime administered by ABACC and to comprehensive IAEA safeguards. The Quadripartite Safeguards Agreement was modeled on the IAEA-Euratom agreement. Under both agreements, the IAEA has an obligation to make independent judgments regarding safeguards compliance.

Given the independent authority of the IAEA and the Argentine commitment to effective nonproliferation policies, ACDA believes that full-scope safeguards can be effectively maintained in Argentina. ACDA therefore concludes that the system of safeguards now being implemented in Argentina will satisfy both the requirements for full-scope safeguards in the proposed Agreement for Cooperation and other U.S. statutory requirements for cooperation.

D. Other Considerations

When assessing nonproliferation factors in connection with a civil nuclear cooperation agreement, it is appropriate to go beyond the specific terms of such an agreement to consider a country's general commitment to nonproliferation. It is true that Argentina has in the past not fully shared Western perspectives and standards for responsible nonproliferation behavior. Argentina was firmly determined to maintain the independence of its nuclear activities from outside scrutiny and for many years resisted the

full application of safeguards to its activities, resulting in situations where safeguards applied only to portions of certain facilities at certain times.

However, it is also true that the Government of Argentina has made great strides to transform its nuclear policies and has fully embraced global norms of responsible nonproliferation behavior. ACDA believes that the scope and depth of the nuclear and other nonproliferation policies that the Government of Argentina has put into effect in the last five years demonstrate Argentina's firm commitment to responsible nonproliferation behavior.

Argentina has clearly identified itself by word and deed with Western international norms, policies and institutions and has actively distanced itself from the Non-Aligned states in international fora. Argentina has actively supported Western and U.S. foreign policies, ranging from U.N. issues to the Persian Gulf war. It is clear that this orientation has widespread popular support. Argentina has firmly concluded that adherence to international nonproliferation norms and values of near-universal ascription is in the country's short- and long-term interests, and ACDA expects that Argentina will continue to be one of the strongest promoters of general nonproliferation policies in Latin America.

ACDA believes that the proposed Agreement will support these developments in Argentine politics. The Agreement will increase the scope and intensity of interaction between U.S. Government and Argentine nuclear safety, export control, and materials control personnel at all levels. It will thereby increase the transparency of Argentine activities, routinize consultations and cooperation across the full range of nuclear-related issues, and foster the transmission of U.S. nonproliferation norms, procedures and systems of regulation and control.

IV. Conclusion

On the basis of the analysis in this assessment statement and all pertinent information of which the Agency is aware, the United States Arms Control and Disarmament Agency has arrived at the following assessment, conclusions, views and recommendations:

1. The safeguards and other control mechanisms and the peaceful use assurances contained in the proposed Agreement are adequate to ensure that any assistance furnished thereunder will not be used to further any military or nuclear explosive purpose.

2. The proposed Agreement meets all the substantive requirements of the Atomic Energy Act and the NNPA.

3. Execution of the proposed Agreement would be compatible with the nonproliferation program, policy and objectives of the United States.

4. It is recommended that the President determine that the performance of the proposed Agreement will promote, and will not constitute an unreasonable risk to, the common defense and security; and that the President approve and authorize the execution of the proposed Agreement.

S/S 9602098

THE SECRETARY OF STATE
WASHINGTON

February 17, 1996

MEMORANDUM FOR: THE PRESIDENT

FROM: Warren Christopher
Hazel R. O'Leary

SUBJECT: Proposed Agreement for Cooperation Between the United States of America and the Argentine Republic Concerning Peaceful Uses of Nuclear Energy

We have negotiated a new, updated agreement for peaceful nuclear cooperation with Argentina. This memorandum recommends that you sign the determination, approval and authorization at Attachment 1, which, pursuant to section 123 b. of the Atomic Energy Act of 1954, as amended, sets forth: (1) your approval of the proposed agreement; (2) your determination that performance of the proposed agreement will promote, and will not constitute an unreasonable risk to, the common defense and security; and (3) your authorization for execution of the agreement.

If you authorize execution of the agreement, it will be signed by representatives of the United States and Argentina. Afterward, in accordance with section 123 b. and d. of the Act, it will be submitted to both Houses of Congress. A draft letter of transmittal to the Congress is at Attachment 2 for your signature. (This letter will be held until after the agreement is signed.) The agreement must lie before Congress for 90 days of continuous session. Unless a joint resolution of disapproval is enacted, the agreement may thereafter be brought into force.

The text of the proposed agreement is at Attachment 3. It includes an agreed minute, which is an integral part of the agreement. A summary of basic provisions is at Attachment 4. The proposed agreement provides a comprehensive framework for peaceful nuclear cooperation between the United States and Argentina under appropriate conditions and controls reflecting a strong common commitment to nuclear non-proliferation. The agreement has an initial term of 30 years and may be extended by agreement of the parties in accordance with their applicable requirements.

The proposed agreement permits the transfer of technology, material (including low enriched uranium), equipment (including reactors), and components for both nuclear research and nuclear power purposes. It does not permit transfers of any sensitive nuclear technology or facilities. In our judgment the proposed agreement meets all requirements for new agreements for peaceful nuclear cooperation set forth in section 123 a. of the Atomic Energy Act of 1954, as amended by the Nuclear Non-Proliferation Act (NNPA) of 1978.

The agreed minute contains certain important understandings relating to implementation of the agreement, including provisions regarding the implementation of safeguards and U.S. fallback safeguards rights.

Section 407 of the NNPA directs that the United States seek to include in agreements for peaceful nuclear cooperation provisions for identifying environmental implications and protection of the international environment. Article 13 of the proposed agreement satisfies these provisions.

In accordance with the provisions of section 123 of the Atomic Energy Act, the proposed agreement was negotiated by the Department of State, with the technical assistance and concurrence of the Department of Energy and in consultation with the Arms Control and Disarmament Agency (ACDA). The views and recommendations of the Director of ACDA are at Attachment 5. A Nuclear Proliferation Assessment Statement concerning the proposed agreement is being submitted to you separately by the Director of ACDA. The proposed agreement has also been reviewed by the members of the Nuclear Regulatory Commission. Their views are at Attachment 6.

The proposed agreement with Argentina would replace and update an existing agreement that entered into force in 1969. U.S. cooperation with Argentina under the 1969 agreement was suspended in the late 1970s owing to Argentina's inability to satisfy a requirement of U.S. law that non-nuclear weapon state cooperating partners such as Argentina accept IAEA safeguards on all their nuclear activities ("full-scope safeguards") as a condition for continued significant U.S. nuclear supply. Argentina has now brought into force and is implementing a full-scope safeguards agreement with the IAEA.

Resumption of cooperation under the existing U.S.-Argentina agreement for cooperation would be possible, but both the United States and Argentina believe it is preferable to have a new agreement completely satisfying, as the proposed agreement does, the current legal and policy criteria of both parties.

The moment is appropriate to conclude a new agreement and resume peaceful nuclear cooperation with Argentina because in recent years the Argentine Government has taken dramatic steps to improve its approach to nuclear non-proliferation, both in terms of its own nuclear program and in terms of a new and highly responsible approach to nuclear export control. In addition to its agreement with the IAEA for full-scope safeguards, Argentina:

-- Brought the Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean (Treaty of Tlatelolco) into force for itself on January 18, 1994;

-- Became a full member of the Nuclear Suppliers Group in April 1994; and

-- Acceded to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) on February 10, 1995.

A more detailed discussion of these and other significant actions that Argentina has taken to demonstrate its break with past ambivalent nuclear policies and its firm commitment to nuclear non-proliferation is provided in ACDA's Nuclear Proliferation Assessment Statement.

The proposed agreement text was initialed in Buenos Aires on September 3, 1992, in anticipation of Argentina's bringing its full-scope IAEA safeguards agreement into force and with an expectation (subsequently fulfilled) that Argentina would take additional measures to affirm its commitment to the exclusively peaceful uses of nuclear energy. Further actions to conclude the agreement were interrupted, however, by delays (not all of them attributable to Argentina) in bringing the full-scope IAEA safeguards agreement into force, and by the need for steps, which you recently took, to resolve issues relating to Argentina's eligibility under section 129 of the U.S. Atomic Energy Act to receive U.S. nuclear exports.

In our judgment, the agreement text as negotiated in 1992 meets all statutory requirements and will serve important U.S. non-proliferation and other foreign policy interests. Despite the passage of three years, no revisions are required. We recommend, therefore, that you determine, pursuant to section 123 b. of the Atomic Energy Act of 1954, as amended, that performance of the agreement will promote, and will not constitute an unreasonable risk to, the common defense and security; and that you approve the agreement and authorize its execution.

RECOMMENDATION

That you sign the determination, approval and authorization at Attachment 1 and the transmittal to Congress at Attachment 2. (The transmittal will be held until the agreement itself is signed.)

ATTACHMENTS

1. Draft Determination, Approval and Authorization
2. Draft Transmittal to the Congress (To be held until after the agreement is signed)
3. Proposed Agreement for Cooperation Between the Government of the United States of America and the Government of the Argentine Republic Concerning Peaceful Uses of Nuclear Energy
4. Summary of Basic Provisions of the Agreement
5. Views and Recommendations of the Director of the Arms Control and Disarmament Agency
6. Views of the Members of the Nuclear Regulatory Commission

SUMMARY OF BASIC PROVISIONS OF THE
AGREEMENT FOR COOPERATION BETWEEN
THE GOVERNMENT OF THE UNITED STATES OF AMERICA
AND THE GOVERNMENT OF THE ARGENTINE REPUBLIC
CONCERNING PEACEFUL USES OF NUCLEAR ENERGY,
WITH ANNEX AND AGREED MINUTE

Article 1 contains definitions.

Article 2 sets forth the scope of cooperation in the use of nuclear energy for peaceful purposes. It provides that transfers of information, material, equipment and components may be undertaken subject to the agreement and to such additional terms and conditions as may be agreed by the parties. The agreed minute provides that material, equipment or components transferred between the parties for peaceful purposes will be regarded as having been transferred pursuant to the agreement only upon confirmation by the recipient party that such item or items are to be subject to the terms of the agreement.

Article 3 provides for the transfer of information in a variety of fields involving the peaceful uses of nuclear energy. Restricted data and sensitive nuclear technology may not be transferred under the agreement.

Article 4 provides the basic enabling framework for the transfer of material, equipment and components. With some stated exceptions, including small quantities for use as

samples, standards, detectors, targets and such other purposes as may be agreed, transfers of special nuclear material to Argentina will be limited to low enriched uranium, which may be transferred for use as fuel in reactors or reactor experiments, for conversion or fabrication or for such other purposes as may be agreed. No sensitive nuclear facilities or major critical components of such facilities may be transferred. This article further provides that the quantity of special nuclear material transferred shall not at any time be in excess of quantities that the parties agree are necessary for specified purposes. Transfers of small quantities of special nuclear material are not subject to this limitation.

Article 5 requires the parties' agreement (1) on facilities for the storage of plutonium and uranium 233 (except in irradiated fuel elements) or high enriched uranium transferred pursuant to the agreement or used in or produced through the use of material or equipment so transferred; and (2) for the retransfer of any material, equipment or components so transferred and special nuclear material produced through the use of material or equipment so transferred. The agreed minute states that the consent rights specified in article 5 with

respect to special nuclear material produced through the use of nuclear material transferred, and not used in or produced through the use of equipment transferred, shall in practice be applied to that proportion of produced special nuclear material which represents the ratio of transferred material used in its production to the total amount of material so used.

Article 6 requires the parties' agreement (1) for the reprocessing of material transferred pursuant to the agreement and material used in or produced through the use of any material or equipment so transferred; (2) for the alteration in form or content, except by irradiation or further irradiation, of plutonium, uranium 233, high enriched uranium or irradiated source or special nuclear material so transferred or produced; and (3) for the enrichment to 20 percent U-235 or more of uranium so transferred or used in any equipment so transferred. The agreed minute states that the consent rights specified in article 6 with respect to special nuclear material produced through the use of nuclear material transferred, and not used in or produced through the use of equipment transferred, shall in practice be applied to that proportion of produced special nuclear material which represents the ratio of transferred material used in its production to the total amount of material so used.

Article 7 requires each party to maintain adequate physical protection measures, in accordance with levels of protection set forth in the Annex to the agreement, with respect to all material and equipment subject to the agreement. The measures applied shall, as a minimum, provide protection comparable to that set forth in the current version of IAEA document INFCIRC/225 concerning the physical protection of nuclear material as agreed to by the parties. The Annex describes physical security levels applicable with respect to the use, storage and transport of nuclear materials classified as categories I (requiring the most stringent levels of protection), II and III. The parties agree to consult concerning the adequacy of these physical security measures and to identify agencies or authorities responsible for physical security. The provisions of this article shall be implemented in such a way as to avoid undue interference in the parties' nuclear activities and to be consistent with prudent management.

Article 8 contains a guarantee by each party that no material, equipment or components subject to the agreement will be used for any nuclear explosive device, for research on or development of any nuclear explosive device, or for any military purpose.

Article 9 requires application of IAEA safeguards with respect to all nuclear activities within the territory of Argentina, under its jurisdiction or carried out under its control anywhere. This article further requires source or special nuclear material transferred pursuant to the Agreement and source or special nuclear material used in or produced through the use of material, equipment or components so transferred to be subject to the two parties' respective safeguards agreements with the IAEA. This article also contains provisions for fall-back safeguards. The agreed minute sets forth certain rights each party will have in the event IAEA safeguards are not being applied. Article 9 also requires each party to take measures to maintain and facilitate the application of safeguards. This article requires each party to maintain a material accounting and control system, the details of which shall be comparable to those set forth in IAEA document INFCIRC/153 (corrected). Upon the request of either party, the other party shall report or permit the IAEA to report on the status of all inventories of material subject to the agreement. The article's provisions, finally, are to be implemented so as to avoid undue interference in the parties' nuclear activities and consistent with prudent management.

Article 10 provides that if an agreement between either party and another nation or group of nations provides such other nation or group of nations rights equivalent to any or all those set forth under articles 5 or 6 with respect to material, equipment or components subject to the agreement, the parties may, upon the request of either, agree that implementation of such rights will be accomplished by the other nation or group of nations.

Article 11 accords each party the right to cease cooperation and to require the return of any material, equipment or components transferred under the agreement and any special nuclear material produced through their use if the other party does not comply with article 5, 6, 7, 8, or 9, or terminates, abrogates or materially violates a safeguards agreement with the IAEA. The United States shall have the same right if Argentina detonates a nuclear explosive device. In the event a return is required by one party, the other party shall be reimbursed for fair market value.

Article 12 provides for termination of the previous agreement and application of the provisions of the new agreement to material and equipment subject to the previous agreement.

Article 13 provides for consultations at the request of either party regarding the implementation of the agreement and the development of further cooperation in the peaceful uses of nuclear energy. It also provides that the parties shall consult on the environmental implications of activities under the agreement, and cooperate in protecting the international environment from radioactive, chemical or thermal contamination arising from such activities and in related matters of health and safety.

Article 14 establishes a 30 year term for the agreement, which may be extended by agreement of the parties in accordance with their applicable requirements. In the event of termination or expiration of the agreement, articles 5, 6, 7, 8, 9 and 11 shall continue in effect so long as items subject to the agreement remain in the territory, under the jurisdiction or under the control of the party concerned, or until the parties agree that such items are no longer usable for any nuclear activity relevant from the point of view of safeguards. This article also provides for consultations on amendment or replacement of the agreement.

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

CHAIRMAN

August 28, 1995

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

In accordance with the provisions of Section 123 of the Atomic Energy Act, as amended, the Nuclear Regulatory Commission has reviewed the proposed Agreement for Cooperation with Argentina forwarded by the Department of State on June 20, 1995. It is the view of the Commission that the proposed Agreement includes all the provisions required by Section 123 of the Atomic Energy Act, as amended. The Commission therefore recommends that you make the requisite statutory determination, approve the Agreement, and authorize its execution.

Respectfully,

Shirley Ann Jackson

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