



Miscellaneous No. 2 (2011)

Agreement

between the Government of the United States of America and the Four Governments of the French Republic, the United Kingdom of Great Britain and Northern Ireland, the Kingdom of the Netherlands, and the Federal Republic of Germany regarding the Establishment, Construction and Operation of Uranium Enrichment Installations using Gas Centrifuge Technology in the United States of America

Paris, 24 February 2011

[The Agreement is not yet in force]

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
March 2011*

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**AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES
OF AMERICA AND THE FOUR GOVERNMENTS OF THE FRENCH
REPUBLIC, THE UNITED KINGDOM OF GREAT BRITAIN AND
NORTHERN IRELAND, THE KINGDOM OF THE NETHERLANDS, AND
THE FEDERAL REPUBLIC OF GERMANY REGARDING THE
ESTABLISHMENT, CONSTRUCTION AND OPERATION OF URANIUM
ENRICHMENT INSTALLATIONS USING GAS CENTRIFUGE
TECHNOLOGY IN THE UNITED STATES OF AMERICA**

The Government of the United States of America (hereinafter referred to as the United States Government), and the Four Governments of the French Republic (hereinafter referred to as the French Government), the United Kingdom of Great Britain and Northern Ireland (hereinafter referred to as the UK Government), the Kingdom of the Netherlands (hereinafter referred to as the Netherlands Government), and the Federal Republic of Germany (hereinafter referred to as the German Government) (hereinafter collectively referred to as the Parties);

Having regard to the Agreement between the United Kingdom of Great Britain and Northern Ireland, the Federal Republic of Germany, and the Kingdom of the Netherlands on Collaboration in the Development and Exploitation of the Gas Centrifuge Process for Producing Enriched Uranium, done at Almelo on 4 March 1970 (the Treaty of Almelo)¹;

Having regard to the Agreement between the Three Governments of the United Kingdom of Great Britain and Northern Ireland, the Federal Republic of Germany and the Kingdom of the Netherlands and the Government of the United States of America regarding the Establishment, Construction and Operation of a Uranium Enrichment Installation in the United States, done at Washington on 24 July 1992 (the Washington Agreement)², and the continuance in force of the Washington Agreement, according to its terms, with respect to the uranium enrichment facility located in Eunice, New Mexico and owned by URENCO;

Having regard to the Agreement between the Governments of the United Kingdom of Great Britain and Northern Ireland, the Kingdom of the Netherlands, the Federal Republic of Germany, and the French Republic Regarding Collaboration In Centrifuge Technology, done at Cardiff on 12 July, 2005 (the Treaty of Cardiff)³;

Noting the joint venture named Enrichment Technology Company Ltd (ETC), established under the laws of the United Kingdom of Great Britain and Northern Ireland to carry out Centrifuge Technology research and development, manufacturing of gas centrifuges and related technology and activities, and owned 50 percent each by URENCO and AREVA, as defined respectively in Article I of this Agreement;

Noting that the Centrifuge Technology originally developed by URENCO has been licensed to ETC, and is available for use by URENCO in accordance with the Treaty

¹ Treaty Series No. 069 (1971) Cmnd 4793

² Treaty Series No. 133 (2000) Cm 5009

³ Treaty Series No. 001 (2007) Cm 7046

of Almelo and the Treaty of Cardiff and by AREVA in accordance with the Treaty of Cardiff;

Noting the intention of URENCO and AREVA to utilize ETC Centrifuge Technology for producing enriched uranium (for purposes other than the production of enriched uranium for the manufacture of nuclear weapons or other nuclear explosive devices), and the intention on the part of URENCO and of AREVA to establish installations in the United States of America (United States) for the enrichment of uranium using ETC Centrifuge Technology;

Desiring to establish an intergovernmental framework for one or more Installations in the United States utilizing ETC Centrifuge Technology for producing enriched uranium for peaceful non-explosive purposes only;

Considering that the French Republic, the Federal Republic of Germany, the Kingdom of the Netherlands and the United Kingdom of Great Britain and Northern Ireland, as parties to the Treaty of Cardiff, have undertaken international obligations concerning the use and handling of information, equipment and source or special fissionable material related to the Centrifuge Technology;

Considering that the Parties have established policies for protection of information on Centrifuge Technology;

Considering the adherence of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons of 1 July 1968 (NPT)⁴, and to the Statute of the International Atomic Energy Agency (IAEA)⁵ and considering the fact that the Parties have each entered into safeguards agreements with the IAEA and have concluded Additional Protocols to their safeguards agreements with the IAEA;

Considering that the French Republic, the Federal Republic of Germany, the Kingdom of the Netherlands and the United Kingdom of Great Britain and Northern Ireland, are parties to the Treaty Establishing the European Atomic Energy Community, done at Rome on 25 March 1957⁶;

Intending to ensure that all future activities of Installations in the United States shall be consistent with the policies of the Parties in relation to the non-proliferation of nuclear weapons and their international obligations in this field;

Have agreed as follows:

⁴ Treaty Series No. 088 (1970) Cmnd 4474

⁵ Treaty Series No. 019 (1958) Cmnd 450

⁶ Treaty Series No. 001 (1973) Cmnd 5779

ARTICLE I

Definitions

For purposes of this Agreement, except as otherwise specified herein,

- a) “AREVA” means AREVA SA, including its affiliates, subsidiaries and the possible legal successors of any of them, but excluding ETC;
- b) “Centrifuge Technology” means gas centrifuge and associated technology including information and know-how, and such information incorporated in the design of (and produced by) gas centrifuge equipment or components;
- c) “Classified Information” means any information required to be protected against unauthorized disclosure in accordance with domestic laws and regulations pertaining to classified information. It includes documents, information or material containing classified information and such information incorporated in centrifuge equipment and components, however communicated;
- d) “ETC” means Enrichment Technology Company Ltd, a joint venture established between URENCO and AREVA to carry out Centrifuge Technology research and development, manufacturing of gas centrifuges and related technology and activities, and includes its subsidiaries and their legal successors;
- e) “ETC Centrifuge Technology” means Centrifuge Technology as defined in subparagraph b) above licensed to ETC by URENCO, owned or held by ETC, or deriving or arising from the operations of ETC or from the use of ETC Centrifuge Technology by Licensees of ETC and licensed to ETC;
- f) “Four Governments” means the French Government, the UK Government, the Netherlands Government and the German Government;
- g) “Installation” means a uranium enrichment facility using ETC Centrifuge Technology to be built in the United States and owned by URENCO or AREVA (but not including the uranium enrichment facility located at Eunice, New Mexico and owned by URENCO);
- h) “Licensee(s)” means an operating enrichment subsidiary of AREVA or URENCO, which holds a valid license from ETC for the use of ETC Centrifuge Technology outside the United States;
- i) “NSG” means the Nuclear Suppliers Group, a group of nuclear supplier countries which seeks to contribute to the non-proliferation of nuclear

weapons through the implementation of two sets of guidelines for nuclear exports and nuclear-related dual-use exports;

- j) “Nuclear Material” means (i) “source material”, namely uranium containing the mixture of isotopes occurring in nature and uranium depleted in the isotope U-235, and (ii) “special nuclear material”, namely plutonium, uranium-233, and uranium enriched in the isotopes U-233 or U-235;
- k) “Operator” means the holder of the license issued by the United States Agency in relation to the Installation;
- l) “Operations Technology” means Operator or Licensee-owned Centrifuge Technology used in or deriving from the establishment, construction and operation of an Installation;
- m) “Quadripartite Agency” means the agency created under the Treaty of Cardiff that acts in turn on behalf of the agencies designated respectively by the Four Governments in accordance with Article VIII of the Treaty of Cardiff, responsible for ensuring the implementation of a common security and classifications policy under that Treaty;
- n) “Restricted Data” means Restricted Data as defined in the United States Atomic Energy Act of 1954, as amended;
- o) “Three Governments” means the UK Government, the Netherlands Government and the German Government;
- p) “United States Agency” means the United States Nuclear Regulatory Commission;
- q) “United States National Security Information” means information classified by the United States Government under the authority of Executive Order 13526, as amended from time to time, or any successor executive order;
- r) “United Kingdom” or “UK” means the United Kingdom of Great Britain and Northern Ireland; and
- s) “URENCO” means the joint industrial enterprise established under the Treaty of Almelo, including its affiliates, subsidiaries and the possible legal successors of any of them, but excluding ETC.

ARTICLE II

Scope

- (1) This Agreement sets forth the conditions under which:
 - a) The Four Governments shall, to the extent permitted by applicable treaties and their respective laws and regulations, provide for the transfer into and use in the United States of ETC Centrifuge Technology and of Operations Technology to establish, construct and operate one or more Installations;
 - b) The United States Government shall, to the extent permitted by applicable treaties and United States laws and regulations, provide for the transfer into and use in the United States of ETC Centrifuge Technology and of Operations Technology to establish, construct and operate one or more Installations;
 - c) The Four Governments and ETC and, as appropriate, URENCO and AREVA, under the supervision of the Four Governments shall be permitted to have access, subject to paragraph (2) of this Article and in accordance with the procedure set out in the Annex, to data generated at an Installation that is designated Restricted Data. The Annex forms an integral part of this Agreement;
 - d) The Four Governments and ETC and, as appropriate, URENCO and AREVA, under the supervision of the Four Governments, shall be permitted to have access, as appropriate, and subject to applicable international agreements and United States laws, regulations and practices, to United States National Security Information (not including Restricted Data) applicable to an Installation, which is related to its safeguards and security systems.
- (2) There shall be no communication of Restricted Data from the United States pursuant to section 144a of the United States Atomic Energy Act of 1954, as amended, under this Agreement. It is understood that the access provided for in paragraph (1), subparagraph c) of this Article, will not constitute the communication of Restricted Data from the United States pursuant to section 144a of the Act.
- (3) Nothing in this Agreement shall impede the execution of the Treaty of Almelo as between the parties thereto when they are operating within the framework of that Treaty.
- (4) Nothing in this Agreement shall impede the execution of the Treaty of Cardiff as between the Four Governments, as parties to that Treaty, when they are operating within the framework of that Treaty.
- (5) This Agreement shall not apply to the uranium enrichment facility located in Eunice, New Mexico, and owned by URENCO, and nothing in this Agreement shall

impede the execution of the Washington Agreement as between the parties to that Agreement, when they are operating within the framework of that Agreement.

ARTICLE III

Peaceful Use

Any ETC Centrifuge Technology, Operations Technology, equipment and components transferred into the United States subject to this Agreement, each Installation, any Nuclear material in an Installation, any special nuclear material produced through the use of such technology, any special nuclear material produced through the use of such special nuclear material, and any data generated at an Installation that is designated Restricted Data while such data is under the jurisdiction of the United States Government or any of the Four Governments shall only be used for peaceful, non-explosive purposes.

ARTICLE IV

Application of International Safeguards

(1) Nuclear Material to which the peaceful use undertaking in Article III applies and which is within the territory of the United States shall be subject to the application of international safeguards. In this respect, implementation of the Agreement between the United States of America and the IAEA for the application of safeguards in the United States, done at Vienna on 18 November 1977 (INFCIRC/288) (hereinafter, the "U.S.-IAEA Safeguards Agreement") shall be considered as fulfilling this requirement.

(2) The United States Government shall, pursuant to the U.S.-IAEA Safeguards Agreement, add the Installations to the list of facilities eligible for the application of safeguards of the IAEA.

(3) The Four Governments and the United States Government consider that the Installations should be placed and remain under safeguards of the IAEA equivalent to those applied at the commercial gas centrifuge uranium enrichment facilities under the jurisdiction of the Four Governments, to the extent consistent with the application of safeguards in the United States under the U.S.-IAEA Safeguards Agreement and the Additional Protocol thereto (INFCIRC/288/Add.1).

ARTICLE V

Physical Protection

Each Installation and the Nuclear Material covered by Article III shall be subject at all times to physical protection measures providing at least the level of protection recommended by the IAEA (IAEA Document INFCIRC/225/Rev.4 (Corrected), The Physical Protection of Nuclear Material and Nuclear Facilities, or subsequent revisions thereto as may be accepted by the United States Government and the Four Governments), or at such other levels of physical protection as may be agreed by the Parties.

ARTICLE VI

Transfers

(1) The Nuclear Material covered by Article III shall not be exported from the United States unless the United States Government has obtained governmental assurances from the recipient at least equivalent to the provisions of Article III, the first sentence of Article IV, paragraph (1), Article V and this Article. In any case of exports to non-nuclear weapon states (within the meaning of the NPT), the United States Government shall apply i) the principles laid down in the NSG Guidelines For Nuclear Transfers and the annexes thereto as included in IAEA document INFCIRC/254/Rev.9/Part 1 or subsequent revisions thereto, and ii) any relevant decisions adopted by consensus by the NSG.

(2) ETC Centrifuge Technology and Operations Technology transferred into the United States under this Agreement shall only be retransferred from the United States to Parties to this Agreement, as provided below. Additionally, without prejudice to the provisions of subparagraphs a) and b) below, data generated at an Installation that is designated Restricted Data shall not be transferred to a country not party to this Agreement.

- a) ETC Centrifuge Technology and Operations Technology transferred into the United States under this Agreement may be retransferred from the United States to either one, or more of the United Kingdom, the Federal Republic of Germany and the Kingdom of the Netherlands, if originally transferred into the United States from one of those countries, or to the French Republic, if originally transferred into the United States from the French Republic: provided that the provisions of Article II, paragraph (2) of this Agreement have been complied with.
- b) Data generated at an Installation which is designated Restricted Data may only be transferred from the United States to the United Kingdom, the French Republic, the Federal Republic of Germany or the Kingdom of the Netherlands or their nationals, in compliance with the provisions of Article II, paragraph (2), and the Annex to this Agreement, and shall not

be retransferred by any of them to any country other than the United States without the prior written consent of the United States Government. The United States Government hereby consents to such retransfers among the United Kingdom, the Federal Republic of Germany, the Kingdom of the Netherlands, and the French Republic, to the extent that the provisions of Article II, paragraph (2), and the Annex to this Agreement have been complied with.

ARTICLE VII

Responsible Agencies

- (1) The United States Government shall be represented by the United States Agency and the Four Governments shall be represented by the Quadripartite Agency for the purposes of implementing Articles VIII through X of this Agreement.
- (2) Consultations shall take place as necessary between the United States Agency and the Quadripartite Agency on any matter regarding the implementation of Articles VIII through X of this Agreement.

ARTICLE VIII

Security Classifications and Transfer of Classified Information

- (1) The United States Agency and the Quadripartite Agency shall use, within the framework of their respective laws and regulations, agreed common principles and procedures regarding security classifications and transfer of Classified Information pursuant to this Agreement.
- (2) Classified Information transferred into the United States pursuant to this Agreement shall bear security classifications in accordance with Annex II of the Treaty of Cardiff. Unless otherwise agreed by the Parties, such Classified Information shall be initially transferred to the United States Agency, which shall give it a United States security classification and shall afford it a degree of protection at least equivalent to that afforded it by the Quadripartite Agency within the framework of United States laws and regulations and in accordance with the common principles and procedures referred to in paragraph (1) of this Article for use in implementation of such protection. The United States classification levels shall not be lowered below that required for a level of protection equivalent to that afforded by the Quadripartite Agency or removed without the consent of the Quadripartite Agency. Such information may also be accorded additional protection in the United States as required by United States laws and regulations.
- (3) Where such Classified Information is returned to the Four Governments, or to ETC, or URENCO or AREVA as appropriate under the supervision of the Four Governments, and bears a higher classification than that which applied when it was

transferred into the United States, the information may be reclassified in accordance with Annex II of the Treaty of Cardiff so as to afford such level of protection as the Quadripartite Agency considers appropriate. For handling of Classified Information generated in the United States and transferred to the Four Governments that bears a higher level of classification than similar information held by the Four Governments, the United States Agency and the Quadripartite Agency will establish agreed upon rules for reclassification consistent with good information protection practices.

(4) All Classified Information transferred into or out of the United States pursuant to this Agreement shall be transferred by diplomatic bag, approved encrypted electronic means, or such other secure means as may be agreed between the Four Governments and the United States Government.

ARTICLE IX

Protection of Classified Information

(1) The United States Government and the Four Governments shall take appropriate measures for the protection of any Classified Information transferred under this Agreement (hereinafter "Transferred Classified Information") and Classified Information arising from the application of Transferred Classified information (hereinafter "Derived Classified information"). Such security measures shall include ensuring that the information is properly protected and that access to such information is provided, subject to the provisions of Article VI, paragraph (2), of this Agreement, only to individuals authorized by their national authorities to have access to Classified Information of at least the corresponding security grading (but not less than 'Confidential') in their own country and whose access to the Classified Information has been approved by the United States Agency or by the Quadripartite Agency. Notwithstanding the foregoing, no individual who is not a United States national or a national of the country of one of the Four Governments shall be given access to any Classified Information that has been generated in the United States and designated as Restricted Data without the prior written consent of the United States Government and the Four Governments.

(2) Within the framework of their respective laws and regulations, the Four Governments shall provide or arrange for the provision of such information and assistance as is necessary to enable United States Government authorities to meet United States legal and regulatory requirements so that the Classified Information referred to in paragraph (1) can be protected under United States laws and regulations.

ARTICLE X

Loss of Classified Information

(1) If Transferred Classified Information or Derived Classified Information is lost after its transfer or is disclosed without authorization or if there is reasonable suspicion of such unauthorised disclosure, the United States Agency, if the loss occurs in the United States, or the Quadripartite Agency, if the loss occurs outside the United States, shall inform the other Agency without delay. The Quadripartite Agency, however, shall not be obligated to inform the United States Agency about the loss or unauthorized disclosure of Classified Information not originating from the United States - i.e., that was not created in the United States or derived from Classified Information created in the United States.

(2) Investigation of any case falling within the terms of paragraph (1) of this Article as to whether such an occurrence constitutes a violation of laws or regulations of the United States or of the United Kingdom of Great Britain and Northern Ireland, the Federal Republic of Germany, the Kingdom of the Netherlands or the French Republic, as the case may be, and the prosecution of such a violation lie entirely within the competence of the country in which such violation occurred, in accordance with its laws and regulations. Nevertheless, except in circumstances covered by the exception in the last sentence of paragraph (1) above, the Party in whose country the alleged violation occurred shall use its best efforts to provide an opportunity to the United States Agency or the Quadripartite Agency, as the case may be, to lay before the appropriate government prosecutorial or regulatory authorities any information relevant to the institution of proceedings in respect of such facts. The Four Governments or the United States Government, as appropriate, shall be informed in due course of whether such proceedings have been instituted or not, and of their outcome.

ARTICLE XI

Protection of Proprietary Information

(1) When the United States Government obtains any information transferred under this Agreement, the United States Government shall not use it for any purpose, including but not limited to commercial purposes, other than as provided for in this Agreement, without the prior written consent of the Four Governments.

(2) Transferred information or information generated at an Installation in the United States, which constitutes proprietary information under United States laws and regulations, including trade secrets and commercial information, shall be handled and protected under United States laws and regulations. The United States Government shall accordingly respect such proprietary information's privileged nature.

(3) Specifically, for information transferred under this Agreement for the United States Agency's licensing and regulatory purposes, such information shall, as

appropriate, be treated and protected as proprietary pursuant to the United States law and the United States Agency's regulations applicable generally to United States domestic source proprietary information.

(4) If the United States Government expects to become unable to protect transferred information as proprietary under United States laws and regulations, appropriate notification shall be provided immediately by the United States Agency. The United States Government and the Four Governments shall thereafter consult on an appropriate course of action for achieving the purposes of this Article.

ARTICLE XII

Treaty establishing the European Atomic Energy Community

The obligations herein set out are without prejudice to obligations of the Four Governments under the Treaty establishing the European Atomic Energy Community.

ARTICLE XIII

Consultations

The United States Government and the Four Governments shall consult as necessary on issues regarding interpretation or implementation of this Agreement.

ARTICLE XIV

Entry into Force and Duration

(1) This Agreement shall enter into force on the date of the receipt of the final note to the Depositary from the Parties to this Agreement confirming that all legal requirements for entry into force have been fulfilled. The French Government shall be the Depositary of this Agreement, including its Annex and Agreed Minute. In this framework, the French Government shall send a diplomatic note to the other Parties informing them of the notifications from the Parties, as referred to in this paragraph, and of the date of entry into force, and keep custody of the original text of this Agreement. This Agreement shall remain in force for a period of thirty years. This term shall be extended automatically for additional periods of fifteen years each unless the United States Government, the French Government or each of the Three Governments notifies the Depositary not less than one year in advance of the date on which the Agreement would otherwise be automatically extended of its desire not to extend the Agreement. The Depositary shall send a diplomatic note to the other Parties informing them of any such notice or notices. Should such a notice or notices be provided, this Agreement shall expire on the date on which it would otherwise have been automatically extended, provided, however, that, if the notice is given by

any Party other than the United States Government, the Agreement shall not terminate with respect to the remaining Parties if they agree in writing to continue it.

(2) Notwithstanding the termination or expiration of this Agreement, Articles III through VI and Articles VIII through XI shall continue in effect so long as any technology, material, equipment or components subject to these Articles remain in the United States or under its jurisdiction or control anywhere, or until such time as the United States Government and the Four Governments agree that such material, equipment, or components are no longer useable for any nuclear activity relevant to international safeguards.

In witness whereof, the undersigned, duly authorized by their respective Governments, have signed this Agreement.

Done at Paris, this twenty-fourth day of February, 2011, in one original in the French, English, Dutch and German languages, each text being equally authentic. The Depositary will provide the Parties with certified true copies.

ANNEX

PROCEDURE FOR THE MONITORING AND REVIEW OF DATA GENERATED AT AN INSTALLATION THAT IS DESIGNATED RESTRICTED DATA AND SUBSEQUENT RELEASE PROCEDURE FOR ETC, URENCO AND AREVA

1. This procedure shall be employed to monitor and review the data generated at an Installation that is designated Restricted Data to confirm that it conveys only information that is not new to ETC or, as appropriate, URENCO or AREVA, i.e., information the technological content of which is of a type that is already familiar and available to ETC or, as appropriate, URENCO or AREVA, from their respective operations outside the United States.

This procedure shall be utilized to identify and guard against transfer, considered to be a remote possibility, to the United Kingdom, the Kingdom of the Netherlands, the Federal Republic of Germany, the French Republic, or their nationals, of data generated at an Installation that is designated Restricted Data and that would be new to ETC, or as appropriate, URENCO or AREVA. The procedure shall be implemented in two parts; first, a derivative classifier (who must be a United States citizen) approved by the United States Agency and employed by, or under contract to, the Installation must review to the extent practicable data generated at an Installation which is designated Restricted Data to which UK, German or Netherlands nationals, or French nationals, as the case may be, may have access⁷; and, second, United States Agency personnel⁸ must conduct annual or other periodically scheduled audits of the data generated at the Installation and transmitted during the preceding period to UK, German, Netherlands or French nationals. This procedure would allow for the following:

- (a) The identification of whether any data generated is Restricted Data (hereinafter referred to in this Annex as “U.S.-origin Restricted Data”);
- (b) The identification of U.S.-origin Restricted Data that are new to ETC, URENCO or AREVA (based on experience gained outside the United States as evidenced by the Technology Guides as defined below);
- (c) If U.S.-origin Restricted Data new to ETC, URENCO or AREVA are identified, immediate consultation between the United States Government and the appropriate one or more of the Four Governments and/or ETC and, as appropriate, URENCO or AREVA, including an assessment of the likelihood of recurrence of aberrational data and the future possibility and practicability of either screening out such data or concluding an

⁷ Data generated at an Installation that is designated Restricted Data transmitted outside the United States will be sent through the United States Agency as provided in the Security and Classification Handbook regarding that Installation.

⁸ This function could also be performed by other appropriately cleared individuals acting on behalf of the United States Government, e.g., security-cleared Government or contractor personnel.

agreement under section 123 of the United States Atomic Energy Act of 1954, as amended, to authorize its return;

- (d) Subject to Article VI, paragraph (2), and Article IX, paragraph (1), U.S.-origin Restricted Data determined by the procedure established herein not to be new to URENCO may be transferred or retransferred to URENCO and to authorized nationals of the United Kingdom, the Federal Republic of Germany, or the Kingdom of the Netherlands; and U.S.-origin Restricted Data determined by the procedure established herein not to be new to AREVA may be transferred or retransferred to AREVA and authorized nationals of the French Republic;
- (e) Subject to Article VI, paragraph (2), and Article IX, paragraph (1), U.S.-origin Restricted Data determined by the procedure established herein not to be new to ETC may be transferred or retransferred to ETC; provided, however, that, access to U.S.-origin Restricted Data transferred or retransferred to ETC shall not be provided (i) to nationals of the French Republic if the data is determined by the procedure established herein to be new to AREVA, or (ii) to nationals of the United Kingdom, the Federal Republic of Germany or the Kingdom of the Netherlands if the data is determined by the procedure established herein to be new to URENCO.

2. Specifically, the procedure involves the following elements:

- a) The Four Governments through ETC and, as appropriate, URENCO or AREVA, shall provide a guide for each Installation (hereinafter referred to as the Technology Guide), subject to United States Government review and acceptance, for Installation and United States Agency use, which describes the classified data they expect, on the basis of the experience of facilities utilizing ETC Centrifuge Technology and Operations Technology, to be generated at the Installation. Depending on the extent of actual experience, each Technology Guide should describe (with respect to the ETC Centrifuge Technology and Operations Technology to be used at the Installation):
 - (i) the types of classified data (e.g., descriptions of numerical operating conditions and performance, and descriptive performance information); a comprehensive range of possible performance parameters within each category (e.g., the maximum and minimum numerical data and descriptions of categories of equipment malfunctions and defects);
 - (ii) an indication within the comprehensive range of a range of average operational performance with as inclusive a description as possible of the nature of divergences from the average range to the outer limits of the comprehensive range;

- (iii) any other possible performance parameters of the essential plant equipment incorporating information designated Restricted Data (e.g., centrifuges) so as to demonstrate the familiarity of ETC, URENCO or AREVA, as the case may be, with all data likely to be generated at the Installation, including information contained in failed centrifuges; and
- (iv) any other data which could be designated Restricted Data under the Joint U.S. Nuclear Regulatory Commission/Department of Energy Classification Guide for the Installation.

These Technology Guides will be supported by documentation of data generated at other facilities utilizing ETC Centrifuge Technology and Operations Technology, including that relating to the most extreme and infrequent incidents experienced at such facilities. Performance parameters may also be supported by data from prototypes and computer models appropriate to a proven technology. The Technology Guides may be updated at any time by the respective Governments, ETC and, as appropriate, URENCO or AREVA, subject to United States Government review and acceptance, to reflect additional experience in operations outside the United States, with the updated topics applying only to data generated thereafter.

- (b) Before data are transmitted to nationals of any of the Four Governments, a derivative classifier (who must be a United States citizen) approved by the United States Agency and employed by, or under contract to, the Installation will assess the data in a good faith effort to confirm that it falls within the parameters of the relevant Technology Guide. It is expressly recognized that this requirement is subject to limitations based on the presence of personnel of ETC or, as appropriate, personnel of URENCO or of AREVA, providing technical support at the Installation.
- (c) If the assessment by the derivative classifier reveals dissimilarity between specific data generated at the Installation which is designated Restricted Data and the relevant Technology Guide's parameters of anticipated data, the specific data shall not be transmitted and shall instead be submitted, through the United States Agency, for United States Government assessment. If the United States Government concludes that the data may be new, it shall consult with the appropriate one or more of the Four Governments, without disclosing the data itself, to allow them to demonstrate, if possible, that such divergence from the parameters would communicate nothing that would be new to ETC or, as appropriate, URENCO or AREVA.
- (d) The United States Agency shall have access to all data generated at the Installations that is designated Restricted Data and that is transferred to nationals of any of the Four Governments and shall perform an audit, either annually or at some other interval. At that audit, the United States Agency shall compare a broad random sampling of the data generated at

the Installation which is designated Restricted Data with the Technology Guides. If the United States Agency finds dissimilarity between specific data generated at the Installation that is designated Restricted Data and the parameters of data anticipated in the Technology Guides, the United States Government shall make an assessment as to whether such data may be new. If it concludes that specific data may be new, immediate consultations shall be commenced between the United States Government and one or more of the appropriate Governments to allow them to demonstrate, if possible, that the data in question communicates nothing that is new to ETC, or, as appropriate. URENCO or AREVA, as the case may be.

- (e) If, after consultations in either of the two cases above, the data is determined to be new, it shall be withheld from ETC, URENCO or AREVA, as appropriate. Consultations shall be conducted between the United States Government and one or more of the appropriate Four Governments to assess also whether the occurrence of aberrant data suggests a likelihood of unanticipated incidents that would generate further data that would be designated Restricted Data and that would be new within the meaning of paragraph 1 above.

(1) If this assessment concludes that there is such a likelihood, then the United States Government shall either (i) determine, in consultation with one or more of the appropriate Four Governments, whether there are practicable means of preventing the transfer of the specific new data and any other new data generated at the Installation which is designated Restricted Data, or (ii) seek to conclude an agreement under section 123 of the United States Atomic Energy Act of 1954, as amended.



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