

Dept. of State, RPS/IPS, Margaret P. Grafeld, Dir.
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STATE DEPT. DECLASSIFICATION REVIEW
 All Records Classified in part and excise as shown
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 If you have any questions, contact
 PS by R. Gibson Date 6/25/08

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E.O. 11652: GDS

TAGS: MNUC, ENRG, PARM, IR, AS, CA

SUBJECT: PROVISIONS OF US-IRANIAN NUCLEAR COOPERATION AGREEMENT

REF: CANBERRA 7074

1. FOR CANBERRA. REGRET TIME COULD NOT MEET DEADLINE FOR INFORMATION REQUESTED REFTEL BECAUSE OF NEED TO CLEAR MESSAGE WITH PERSONS NOT IN WASHINGTON OVER THE HOLIDAY WEEK-END. IN RESPONSE TO ROY FERNANDEZ'S REQUEST IN REFTEL FOR

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LANGUAGE ON REPROCESSING AND RATIONALE FOR ITS FORMULATION IN US-IRANIAN NUCLEAR COOPERATION AGREEMENT, YOU SHOULD SUPPLY GOA, ON STRICTLY CONFIDENTIAL BASIS, WITH FOLLOWING RELEVANT PROVISIONS FROM AGREEMENT AND FROM ACCOMPANYING EXCHANGE OF NOTES.

2. RELEVANT LANGUAGE IN AGREEMENT ITSELF IS ARTICLE 6, REPROCESSING AND ENRICHMENT. EACH PARTY GUARANTEES THAT MATERIAL TRANSFERRED TO AND UNDER ITS JURISDICTION PURSUANT TO THIS AGREEMENT AND MATERIAL USED IN OR PRODUCED THROUGH THE USE OF ANY MATERIAL OR EQUIPMENT TRANSFERRED TO AND UNDER ITS JURISDICTION PURSUANT TO THIS AGREEMENT WILL NOT BE REPROCESSED UNLESS THE PARTIES AGREE. EACH PARTY GUARANTEES THAT IT WILL NOT, UNLESS THE PARTIES

AGREE, ALTER IN FORM OR CONTENT, EXCEPT BY IRRADIATION OR FURTHER IRRADIATION, ANY PLUTONIUM, URANIUM 233, HIGH-ENRICHED URANIUM OR OTHER IRRADIATED MATERIAL TRANSFERRED TO AND UNDER ITS JURISDICTION PURSUANT TO THIS AGREEMENT, OR PRODUCED THROUGH THE USE OF ANY MATERIAL OR EQUIPMENT TRANSFERRED TO AND UNDER ITS JURISDICTION PURSUANT TO THIS AGREEMENT."

3. RELEVANT LANGUAGE IN EXCHANGE OF NOTES, WHICH CONSTITUTES INTEGRAL PART OF THE AGREEMENT, IS AS FOLLOWS: "THE UNITED STATES NOTES THAT IRAN PLANS TO STORE IRRADIATED FUEL COVERED BY THIS AGREEMENT FOR A PERIOD OF TIME SUFFICIENT FOR APPROPRIATE SUBSEQUENT DISPOSITION, AND TO CONSULT CLOSELY WITH THE UNITED STATES AT SUCH TIME AS IT APPEARS THAT ANY SUCH MATERIAL REQUIRES SUBSEQUENT DISPOSITION. THE SPECIFIC ARRANGEMENTS THAT WOULD BE SELECTED WOULD TAKE INTO ACCOUNT THE REQUIREMENTS AND THE EFFECTIVE AND ECONOMIC OPERATION OF IRAN'S NUCLEAR PROGRAM AND IRAN'S CONTINUED ADHERENCE TO THE NPT AS WELL AS MUTUALLY ACCEPTABLE RECOMMENDATIONS THAT MAY RESULT FROM INTERNATIONAL STUDIES UNDERTAKEN TO FURTHER THE OBJECTIVES OF THE NPT.

"IN LIGHT OF THESE CONSIDERATIONS, THE GOVERNMENT OF THE UNITED STATES IS PLEASED TO INFORM THE GOVERNMENT OF IRAN THAT IN THE EVENT IRAN WISHES TO ENTER INTO ARRANGEMENTS FOR SUBSEQUENT DISPOSITION OF IRRADIATED SPECIAL NUCLEAR MATERIAL RESULTING FROM MATERIAL WHICH HAS BEEN TRANS-

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FERRED FROM THE UNITED STATES TO IRAN OR WHICH HAS BEEN USED IN EQUIPMENT SUPPLIED BY THE UNITED STATES, THE UNITED STATES WOULD AGREE THAT IRAN WOULD BE FREE TO CHOOSE FROM THE FOLLOWING ALTERNATIVES:

"A. STORAGE OF SPENT FUEL IN IRAN;

"B. STORAGE OF SPENT FUEL IN THE UNITED STATES FOR A FIXED FEE WITH REIMBURSEMENT TO IRAN OF NET FUEL VALUE IF SUCH FUEL VALUE IS EXTRACTED (FUEL EQUIVALENT OR FINANCIAL COMPENSATION LESS PROCESSING COSTS);

"C. STORAGE, PROCESSING OR OTHER DISPOSITION OF SPENT FUEL IN ACCORDANCE WITH INTERNATIONALLY ACCEPTED ARRANGEMENTS TO WHICH BOTH IRAN AND THE UNITED STATES SUBSCRIBE. THIS ALTERNATIVE WOULD INCLUDE THE PROCESSING OF SPENT FUEL IN THE UNITED KINGDOM, FRANCE OR OTHER MUTUALLY AGREED STATES AND RETURN OF RECOVERED PLUTONIUM IN THE FORM OF FABRICATED FUEL TO IRAN, UNDER ARRANGEMENTS WHICH ARE DEEMED TO BE MORE PROLIFERATION RESISTANT

THAN THOSE WHICH CURRENTLY EXIST UTILIZING EXISTING TECHNOLOGY AND TO WHICH BOTH IRAN AND THE UNITED STATES SUBSCRIBE.

"WITH RESPECT TO THE FOREGOING, THE GOVERNMENT OF THE UNITED STATES RECOGNIZES THAT AT THE TIME WHEN IRAN MAY WISH TO ENTER INTO ARRANGEMENTS FOR DISPOSITION OF SPENT FUEL, CONDITIONS, SUCH AS TECHNICAL, ECONOMIC OR POLITICAL, COULD BE SUCH THAT IRAN FINDS IT IMPRACTICABLE TO PROVIDE STORAGE IN IRAN. MOREOVER, NO INTERNATIONALLY ACCEPTED ARRANGEMENTS FOR STORAGE, PROCESSING OR OTHER DISPOSITION TO WHICH BOTH IRAN AND THE UNITED STATES SUBSCRIBE MAY BE AVAILABLE. FURTHERMORE, AT THAT POINT IN TIME, CONDITIONS, SUCH AS TECHNICAL, ECONOMIC OR POLITICAL, COULD BE SUCH THAT THE PARTIES ALSO FIND IT IMPRACTICABLE TO PROVIDE STORAGE OF SUCH SPENT FUEL IN THE UNITED STATES. UNDER THESE CIRCUMSTANCES, THE GOVERNMENT OF THE UNITED STATES WOULD APPROVE THE REPROCESSING OF SUCH MATERIAL IN THE UNITED KINGDOM, FRANCE, OR OTHER MUTUALLY AGREED STATES UTILIZING EXISTING TECHNOLOGY, WITH DISPOSITION OF ANY RESULTING SEPARATED PLUTONIUM SUBJECT TO FUTURE AGREEMENT OF THE PARTIES IN LIGHT OF THE REQUIRE-

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MENTS OF IRAN'S NUCLEAR ENERGY PROGRAM. WITH SPECIFIC REFERENCE TO IRANIAN PLUTONIUM REQUIREMENTS FOR ADVANCED REACTOR FUELS AS CONTEMPLATED, AMONG OTHER THINGS, BY PARAGRAPH 3 OF ARTICLE 4 OF THE AGREEMENT, THE GOVERNMENT OF THE UNITED STATES IS PREPARED TO CONSULT WITH THE GOVERNMENT OF IRAN IN ORDER TO MEET IRAN'S NEEDS.

"NOTWITHSTANDING THE PREVIOUS PARAGRAPHS, WHEN THE NEED ARISES FOR IRAN TO ARRANGE FOR DISPOSITION OF ITS SPENT FUEL, IF THE UNITED STATES HAS, SUBSEQUENT TO THE DATE OF ENTRY INTO FORCE OF THIS AGREEMENT, APPROVED THE REPROCESSING OF ANY OTHER COOPERATING STATE'S SPENT FUEL TO ACCOMMODATE THAT STATE'S FUEL CYCLE MANAGEMENT, THE UNITED STATES WOULD APPROVE REPROCESSING OF IRANIAN SPENT FUEL TO MEET COMPARABLE IRANIAN NEEDS, IN THE UNITED KINGDOM, FRANCE OR OTHER MUTUALLY AGREED STATES UNDER ARRANGEMENTS WHICH PROVIDE IRAN WITH BENEFITS COMPARABLE TO THOSE PROVIDED TO SUCH OTHER STATE AND UNDER TERMS AND CONDITIONS NO LESS FAVORABLE THAN THOSE APPLICABLE TO SUCH OTHER STATE.

"THE PARTIES SHALL REVIEW THE UNDERSTANDINGS SET FORTH ABOVE CONCERNING THE DISPOSITION OF PLUTONIUM AND IR- RADIATED SPECIAL NUCLEAR MATERIAL WITH A VIEW TO MAKING ANY MUTUALLY AGREEABLE MODIFICATIONS. THE PARTIES AGREE TO MEET WHENEVER NEW DEVELOPMENTS CALL FOR ADJUSTMENT IN THE TERMS OF THEIR COOPERATION IN LIGHT OF THE UNDERLYING PRINCIPLE OF THIS NOTE."

4. WITH REGARD TO RATIONALE FOR ABOVE OPTIONS IN EXCHANGE OF NOTES, IT ATTEMPTS TO SATISFY IRANIAN NEEDS CONSISTENT WITH OVERALL US POLICY BY:

A. PROVIDING IRAN WITH SPECIFIC OPTIONS FOR DISPOSITION OF FUEL (I.E., STORAGE IN IRAN OR STORAGE IN US, IF PRACTICABLE);

B. PROVIDING IRAN WITH GENERIC OPTION THAT WOULD NOT FORECLOSE ANY FUTURE ARRANGEMENTS, INCLUDING THOSE FLOWING FROM INFCE OR INTERNATIONAL AGREEMENT (I.E., PROCESSING, STORAGE, OR OTHER DISPOSITION UNDER ARRANGEMENTS TO WHICH BOTH PARTIES SUBSCRIBE); AND,

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C. PROVIDING AN OPTION OF LAST RESORT (I.E., REPROCESSING IN THE UK OR FRANCE OR MUTUALLY AGREED STATE) IF ALL OTHER OPTIONS DO NOT PROVE PRACTICABLE.

5. THROUGHOUT THE NEGOTIATION, HOWEVER, IRAN PRESSED TO HAVE EQUAL CHOICE OF REPROCESSING OPTION IN UK OR FRANCE RATHER THAN AS OPTION OF LAST RESORT. THEY WERE PARTICULARLY CONCERNED THAT US WOULD STRIKE A DEAL WITH OTHERS TO ALLOW COMMERCIAL-SCALE REPROCESSING SUBSEQUENT TO US-IRAN AGREEMENT AND WISHED TO ENSURE NON-DISCRIMINATORY TREATMENT. PARAGRAPH PROMISING SUCH TREATMENT WAS MOST DIFFICULT TO NEGOTIATE WITH US WISHING TO LIMIT SUCH TREATMENT TO ARRANGEMENTS IN THE SAME TIME FRAME AS WHEN IRAN MAY NEED TO HAVE ITS SPENT FUEL REPROCESSED. IRAN, ON THE OTHER HAND, REFUSED THIS, ARGUING THAT THIS INHERENTLY PENALIZED THEM BECAUSE OF THEIR LATE START IN DEVELOPING NUCLEAR ENERGY. US CONCERN WAS TO ENSURE THAT NEAR-TERM APPROVALS DESIGNED TO ACHIEVE LONGER-TERM US NON-PROLIFERATION OBJECTIVES (E.G., TOKAI) WOULD NOT BE USED BY IRAN AS BASIS FOR DEMANDING EQUAL TREATMENT IN 1990S. COMPROMISE REACHED WAS THAT NON-DISCRIMINATORY TREATMENT WOULD BE WITH REGARD TO APPROVAL TO MEET FUEL CYCLE MANAGEMENT NEEDS (I.E., IMPLYING LARGE-SCALE PROGRAM NEEDS) AND WHERE IRAN HAD COMPARABLE NEEDS WITH COMPARABILITY TO BE JOINTLY DETERMINED. FINALLY, BOTH NOTE AND AGREEMENT MAKE ALL ARRANGEMENTS INCLUDING NON-DISCRIMINATORY TREATMENT SUBJECT TO US LAW WHICH INCLUDES DETERMINATION OF NO SIGNIFICANT INCREASE IN THE RISK OF PROLIFERATION ASSOCIATED WITH APPROVALS FOR REPROCESSING (SECTION 303 B. OF THE NUCLEAR NON-PROLIFERATION ACT OF 1978).

6. IN PASSING ABOVE TO FERNANDEZ, YOU SHOULD INDICATE THAT WHILE AGREEMENT HAS BEEN INITIALED, WE ARE STILL IN PROCESS OF SUBMITTING TO PRESIDENT FOR HIS APPROVAL, AND, THEREFORE, ABOVE SHOULD BE TREATED ON HIGHLY-CONFIDENTIAL BASIS. ALSO, YOU SHOULD NOTE THAT NON-DISCRIMINATORY TREATMENT ON REPROCESSING PROVISION HAS RAISED SOME CONCERN, IN ADMINISTRATION AND CONGRESS, BOTH WITH REGARD TO ITS LINKING IMPLEMENTATION OF US AGREEMENTS FOR COOPERATION AND THE PRECEDENT IT MAY SET FOR OTHER SUPPLIERS.

7. FOR OTTAWA. IN PREVIOUS DISCUSSIONS WITH EXTERNAL

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AFFAIRS (LABERGE AND NOBLE), THEY HAVE REQUESTED SIMILAR INFORMATION ON US LANGUAGE ON REPROCESSING. YOU MAY CONVEY ABOVE, DRAWING ON ABOVE PARAS 2-6, TO APPROPRIATE GOC OFFICIALS, STRONGLY EMPHASIZING CONFIDENTIALITY, AS PER PARA 6, OF THE ABOVE PENDING PRESIDENTIAL REVIEW. REFTEL HAS BEEN REPEATED TO OTTAWA.

8. FOR CANBERRA AND OTTAWA. YOU MAY ALSO INFORM HOST GOVERNMENTS THAT POSSIBLE TIMETABLE FOR APPROVAL AND BRINGING US-IRANIAN AGREEMENT INTO FORCE DIFFICULT TO PREDICT. HOWEVER, WE ANTICIPATE FORWARDING TO THE PRESIDENT WITHIN NEXT FEW WEEKS AND, ASSUMING HE APPROVES, THE AGREEMENT WILL BE SIGNED SHORTLY THEREAFTER. AGREEMENT MUST THEN BE SUBMITTED TO CONGRESS FOR 60 DAYS OF CONTINUOUS SESSION. SINCE THERE IS INSUFFICIENT TIME REMAINING THIS YEAR FOR CONGRESSIONAL REVIEW, WE ANTICIPATE AGREEMENT WILL COME INTO FORCE 60 DAYS AFTER BEGINNING OF NEXT YEAR'S SESSION. CHRISTOPHER

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