

No. 26978

**UNITED STATES OF AMERICA
and
FEDERAL REPUBLIC OF GERMANY**

Exchange of letters constituting an agreement concerning the listing of reactors supplied by the Federal Republic of Germany to the Taiwan Power Company on the inventory of the International Atomic Energy Agency Safeguards Agreement of 6 December 1971. Washington, 5 November 1981

Authentic text: English.

Registered by the United States of America on 19 December 1989.

**ÉTATS-UNIS D'AMÉRIQUE
et
RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE**

Échange de lettres constituant un accord relatif à l'inscription de réacteurs fournis par la République fédérale d'Allemagne à la « Taiwan Power Company » à l'inventaire de l'Accord avec l'Agence internationale de l'énergie atomique pour l'application de garanties du 6 décembre 1971. Washington, 5 novembre 1981

Texte authentique : anglais.

Enregistré par les États-Unis d'Amérique le 19 décembre 1989.

EXCHANGE OF LETTERS CONSTITUTING AN AGREEMENT¹ BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY CONCERNING THE LISTING OF REACTORS SUPPLIED BY THE FEDERAL REPUBLIC OF GERMANY TO THE TAIWAN POWER COMPANY ON THE INVENTORY OF THE INTERNATIONAL ATOMIC ENERGY AGENCY SAFEGUARDS AGREEMENT OF 6 DECEMBER 1971²

I

THE AMBASSADOR
OF THE FEDERAL REPUBLIC OF GERMANY

Washington, November 5, 1981

Dear Mr. Kennedy,

My Government has taken note that upon its request the Government of the United States of America is prepared to bring materials and equipment which may be supplied by Kraftwerk Union AG (KWU) for the Taiwan Power Company's nuclear reactor units 7 and 8, including the required fuel assemblies for these units and a fuel fabrication facility, within the scope of the U.S.-Taiwan Bilateral Agreement signed at Washington, D.C., on April 4, 1972, as amended March 15, 1974,³ thereby adding them to the inventory of the U.S.-Taiwan-IAEA Trilateral Agreement done at Vienna on December 6, 1971, provided that the following conditions are met, and in view of the separate agreement of our two Governments on conditions relating to financing of such supply:

¹ Came into force on 5 November 1981 by the exchange of the said letters.

² United Nations, *Treaty Series*, vol. 850, p. 47.

³ *Ibid.*, vol. 952, p. 287.

I.1. Fallback safeguards:

KWU, together with Kernforschungszentrum Karlsruhe GmbH (KFK), will establish under German law a private corporation (the Entity), the mandate of which shall be as defined in this letter. KWU must prove to the Government of the Federal Republic of Germany in a legally binding form that in case the International Atomic Energy Agency (IAEA) for any reason is not or will not be applying safeguards in accordance with the existing safeguards agreements the Entity shall have the following legal rights with respect to material or equipment supplied by KWU or special nuclear material produced through such supply:

- a) to review in a timely fashion the design of any such equipment, or of any facility which is to use, fabricate, process, or store any such material or equipment;
- b) to require the maintenance and production of records and of relevant reports for the purpose of assisting in ensuring accountability for such material and any source material or special nuclear material used in or produced through the use of any such material or equipment; and
- c) to designate personnel who shall have access to all places and data necessary to account for the material referred to in subparagraph (b), to inspect any equipment or facility referred to in subparagraph (a), and to install any devices and make such independent measurements as may be deemed necessary to account for such material.

This proof of rights must include a satisfactory assurance that the Entity is entitled to exercise the above mentioned rights without reservation or restriction. The Government of the Federal Republic of Germany will consult with the Government of the United States of America as necessary to ensure that the action taken by the Entity is parallel to that taken under Article XI.B. of the U.S.-Taiwan Bilateral Agreement or related provisions or arrangements.

The export license will be granted to KWU under the reservation that the license would be withdrawn in case the Entity should be hampered in the exercise of fallback safeguards in Taiwan. Such a withdrawal would become effective at the time of its notification to KWU.

2. Right to require return of materials and equipment:

KWU must prove to the Government of the Federal Republic of Germany that in those cases which under existing safeguard agreements and arrangements may trigger the right to require the return of any materials and equipment transferred to Taiwan and of any special nuclear material produced through their use, the Entity to be established by KWU has the same right with regard to supplies of KWU to Taiwan Power Company, and in such a case will take all steps legally possible to ensure the return of materials and equipment. Before the Entity exercises the right to require the return of materials and equipment, the Government of the Federal Republic of Germany will consult with the Government of the United States of America as necessary to ensure that the action taken by the Entity is parallel to that taken under Article XI.B.5 of the U.S.-Taiwan Bilateral Agreement or related provisions or arrangements. The issue of payment for return of materials

and equipment will not serve as an obstacle to exercise of the right to require the return of materials and equipment.

The Government of the Federal Republic of Germany shall ensure that all necessary steps are taken to effect such return, implement fallback safeguards and enforce other critical elements of the arrangements contained in the contract between the Entity and Taiwan Power Company.

- II. As to the handling of spent fuel elements derived from KWU supplies, the Government of the Federal Republic of Germany is in a position to assure the Government of the United States of America that it is prepared at any time to consult on mutually acceptable conditions for the handling of such spent fuel elements. It is the understanding of the Government of the Federal Republic of Germany that these consultations shall be exercised only between it and the Government of the United States of America.

The Government of the Federal Republic of Germany will require assurance from KWU that it will assist Taiwan Power Company in identifying and using possible avenues for the safe disposal of spent fuel and will assist KWU in these efforts as necessary.

- III. Following any termination of U.S. nuclear exports to Taiwan in accordance with U.S. law, the Government of the Federal Republic of Germany would be prepared to consult with the Government of the United States of America prior to any continuation or initiation under other arrangements by German companies of nuclear cooperation with Taiwan.

On behalf of my Government, I have the honour to inform the Government of the United States of America that these conditions will be met. The conditions concerning KWU or the Entity stated above will be embodied, as an integral part, into the relevant export licenses.

This arrangement shall also apply to Land Berlin, provided that the Government of the Federal Republic of Germany does not make a contrary declaration to the Government of the United States of America within three months from the date of this letter.

I would be pleased to receive written confirmation that the understanding as set forth in this letter is correct and satisfactory to the Government of the United States of America.

Yours sincerely,

[Signed — Signé]¹

The Honorable Richard T. Kennedy
Under Secretary for Management
Department of State
Washington, D.C.

¹ Signed by Peter Hermes — Signé par Peter Hermes.

II

UNDER SECRETARY OF STATE
FOR MANAGEMENT
WASHINGTON

November 5, 1981

Dear Mr. Ambassador:

Thank you for your letter of November 5, 1981, setting forth the understanding of your Government with respect to the terms and conditions under which the Government of the United States is prepared to bring materials and equipment which may be supplied by Kraftwerk Union AG (KWU) for the Taiwan Power Company's nuclear units 7 and 8, including the required fuel assemblies for these units and a fuel fabrication facility, within the scope of the U.S.-Taiwan Bilateral Agreement signed at Washington, D.C., on April 4, 1972, as amended March 15, 1974, and thereby adding them to the inventory of the U.S.-Taiwan-IAEA Trilateral Agreement, done at Vienna on December 6, 1971.

I am pleased to confirm to you that the understanding of your Government as set forth in that letter is correct and satisfactory to the Government of the United States.

Sincerely,

[Signed]

RICHARD T. KENNEDY

His Excellency Peter Hermes
Ambassador of the Federal Republic of Germany
