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United States Department of State

*Bureau of Oceans and International
Environmental and Scientific Affairs*

Washington, D.C. 20520

March 27, 1991

TO: Distribution

FROM: Martin Prochnik, Director
Office of Cooperative Science
and Technology Programs

SUBJECT: Request for Circular 175 Authority to Negotiate
and Conclude an Agreement between the United
States of America and the Union of Soviet
Socialist Republics on Scientific and Technical
Cooperation in the Field of Fuels and Energy
Development

Attached for your comments and clearance is the request for Circular 175 authority to negotiate and conclude the subject framework agreement. The agreement provides for cooperation in energy data exchange; fossil energy; conservation and end-use efficiency; and renewable energy. The details of cooperation in these areas will be arranged through individual memoranda of cooperation.

Please provide your written comments/clearance no later than COB, April 16, 1991. We will assume clearance if you have not responded by that time. Please direct your clearance/comments to Cathy Campbell, OES/SCT, (202) 647-4662 (phone) or (202) 647-0773 (fax).

Attachment: As stated.

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United States Department of State

*Bureau of Oceans and International
Environmental and Scientific Affairs*

Washington, D.C. 20520

MEMORANDUM

TO: OES - Mr. E. U. Curtis Bohlen

THROUGH: OES/S - John P. Boright

FROM: OES/SCT - Martin Prochnik

SUBJECT: Request for Circular 175 Authority to Negotiate and Conclude an Agreement between the United States of America and the Union of Soviet Socialist Republics on Scientific and Technical Cooperation in the Field of Fuels and Energy Development

ISSUE FOR DECISION

Whether to grant Circular 175 Authority to negotiate and conclude the subject Agreement between the U.S. and the USSR concerning scientific and technical cooperation.

DESCRIPTION OF THE AGREEMENT

Purpose: To establish a framework for cooperation and development of fuels and energy technologies, energy efficiency measures and environmentally safe energy practices. The agreement provides for cooperation in energy data exchange; fossil energy; conservation and end-use efficiency; and renewable energy.

Background: On numerous occasions during the last few years, Soviet officials have proposed reestablishing U.S.-USSR cooperation in non-nuclear energy. The U.S. and USSR previously cooperated in this field under the 1974 Energy Agreement. That agreement was allowed to lapse in 1982 for political reasons, but also because the technical program managers were dissatisfied with the implementation of cooperation in all areas except MHD.

The political and economic events that have taken place in the USSR since the mid-1980's, coupled with the USSR's major role in world energy production, consumption and technology developments, have caused DOE to consider renewed bilateral cooperation in non-nuclear energy fields and reestablishment of an umbrella agreement. The possibility of renewed cooperation was raised at several ministerial level meetings during the past few years. Subsequently, the Department of Energy and the USSR Bureau of Fuels and Energy Complex exchanged fact-finding visits in January and July of 1990 to explore their country's respective R&D programs, energy policies, energy investment priorities and potential commercial ventures of benefit to both sides. The sides agreed to several specific exploratory initiatives including a US-USSR Fossil Energy Workshop, originally scheduled for February 1991 but now tentatively planned for July 1991.

As a result of the fact-finding visits, both sides find possible cooperation on energy programs to be of mutual interest. Potential benefits exist for both sides in enhanced resource development, energy and environmental technology assessments, and energy information and data exchange. Furthermore, cooperation leading to the development of the Soviet energy sector is in the U.S. interest in that a developed energy sector is critical to Soviet internal economic/political stability and increases the availability of oil to the world market at reasonable prices. Cooperation may also lead to increased commercial opportunities for U.S. companies.

The sides have determined that opportunities for joint activities exist in a number of energy fields and with Soviet organizations at the central government, republic, and regional levels. The attached agreement provides a framework for cooperation; cooperation in specific areas will be implemented through subordinate memoranda of cooperation to be submitted for interagency review and negotiated separately.

SOURCE OF FUNDING

Activities under the proposed Agreement are subject to the availability of appropriated funds and personnel. The Department of State commits no funds or personnel to the implementation of this Agreement.

ENVIRONMENTAL CONSIDERATIONS

DOE has determined that activities under the proposed Agreement will have no adverse or significant impact on the environment of the United States, and the preparation of an environmental impact statement under the National Environmental Policy Act (42 U.S.C. 4321 et seq.) is not required. DOE has also determined that activities under the proposed Agreement will not have adverse or significant effects on the environment outside the United States. Therefore, the preparation of an environmental document under E.O. 12114 (January 4, 1979), "Environmental Effects Abroad of Major Federal Actions," is not required.

CONGRESSIONAL CONSULTATIONS

H, OES, and DOE have determined that no formal Congressional consultations are necessary due to the routine and technical nature of this agreement.

INTELLECTUAL PROPERTY RIGHTS

The Annex to the Agreement provides for the adequate and effective protection and allocation of intellectual property created or furnished under this Agreement and relevant implementing agreements or annexes.

LEGAL AUTHORITY

On September 18, 1981, pursuant to Circular 175 procedures, the Under Secretary for Security Assistance, Science and Technology reconfirmed the authority of OES to approve the negotiation and conclusion of routine agreements for scientific and technological cooperation with other governments, subject to approval of the final texts by the appropriate regional bureau and L. Legal authority to negotiate and conclude this agreement is derived from the President's Constitutional powers, including those found in Article II, and his authority to represent the nation in foreign affairs, as exercised by the Secretary of State on a day-to-day basis (U.S.C. Section 2656). Additional authority is contained in 22 U.S.C. 2656d, which states that "the Secretary of State ... shall have primary responsibility for coordination and oversight with respect to all major science or science and technology agreements and activities between the United States and foreign countries..."

DOE derives its authority to enter into this international agreement from Section 103(10) of the Energy Reorganization Act of 1974, 42 U.S.C. 5813(10), which provides that DOE may encourage and participate in international cooperation in energy and related environmental research and development, and from Section 107(a) of the same act, 42 U.S.C. 5817(a), which provides that DOE may "make arrangements" for the conduct of research with private or public organizations or persons, including participation in joint or cooperative projects "of a research, developmental, or experimental nature."

RECOMMENDATION

That you grant Circular 175 Authority to negotiate and conclude the subject Agreement between the United States of America and the Union of Soviet Socialist Republics, subject to the concurrence of L, OES, EUR, and other bureaus and agencies, as appropriate, to any changes to the proposed text.

Approve: _____ Disapprove: _____

Date: _____

Attachment:

Tab 1 - Proposed Agreement

Tab 2 - Memorandum to Ambassador Bartholomew

GA
Drafted: OES/SCT:CACampbell/ESayre, 3/27/91
SESCTB 1679

Cleared:

EUR/SOV/SOEX:RFigueroa	L/T:GTaft	OES/EX:JLewis
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FMP/BP:PGArtabane	OMB:JNix	DOD/DTSA:JThomas
USTR:CSuro-Bredie	DOC/ITA:SFox	DOE/IE:HJaffe
DOI/ITA:DSenese	(b)(3)	EPA/OIA:WFreeman
COMEX:JDearlove	DOD/OASACW:KCook	NAS:GWaxmonsky
DOJ:GSchroeder	DOT:VMack	NIH:GHandley
HHS/PHS:PHenry	HUD/OIA:JGeraghty	NRC:EShomaker
NASA:JClapp	NAVY:STuretsky	NSC:EMelby
NIST:GSinnott	NOAA:BMoore	USDA/OICS:RHughes
NSF:GSher	NTIS:RTenney	USGS:PHearn
S/P:CDawson	SMITH:FBerkowitz	TREAS:EMurphy



United States Department of State

*Assistant Secretary of State for Oceans and
International Environmental and Scientific Affairs*

Washington, D.C. 20520

TO: T - Ambassador Bartholomew

FROM: OES - Richard J. Smith, Acting

SUBJECT: Request for Circular 175 Authority to Negotiate
and Conclude an Agreement between the United
States of America and the Union of Soviet
Socialist Republics on Scientific and Technical
Cooperation in the Field of Fuels and Energy
Development

I have granted Circular 175 authority to negotiate and
conclude the subject Agreement. I have attached a copy of this
document for your files.

Attachment:
As stated.

cc: E - Ambassador McCormack

2/25/91

AGREEMENT BETWEEN
THE UNITED STATES OF AMERICA
AND
THE UNION OF SOVIET SOCIALIST REPUBLICS
ON
SCIENTIFIC AND TECHNICAL COOPERATION IN THE FIELD OF
FUELS AND ENERGY DEVELOPMENT

The United States of America and the Union of Soviet Socialist Republics (hereinafter referred to as "The Parties"):

Attaching great importance to the problem of satisfying the growing energy demands in both countries as well as in other countries of the world;

Desiring to cooperate toward the solution of this problem through the development and utilization of conventional and renewable energy resources on a highly efficient and environmentally sound basis;

Recognizing that solutions to this problem may be found in further development of fuels and energy technologies, energy efficiency measures and environmentally safe energy practices;

Noting with satisfaction the successful results of previous cooperation between the Parties in energy related fields;

Wishing to maintain a stable and long-term basis for cooperation in the field of fuels and energy development for the benefit of both their people and of all mankind;

Bearing also in mind the General Agreement between the Government of the United States and the Government of the Union of Soviet Socialist Republics on Contacts, Exchanges, and Cooperation in Scientific, Technical, Educational, Cultural and Other Fields, signed on November 21, 1985;

Have agreed as follows:

ARTICLE I

The Parties will cooperate in personnel and information and data exchange; technology assessments; research and development; and regular policy consultations on non-nuclear fuels and energy development, and processing, and utilization. This cooperation will be carried out on the basis of mutual benefit, equality and reciprocity.

ARTICLE II

1. Cooperation will be concentrated in the following areas:

a. Energy Data Exchange

Cooperation in this area will be directed toward development and exchange of statistical data on energy production, processing and utilization, and bibliographical information on energy technology research and development in support of energy policy and investment determinations. Activities may include collection, evaluation and analysis of energy data or information, and dissemination of such information or data through joint reports, studies, data compilations and periodicals.

b. Fossil Energy

Cooperation in this area will be directed toward establishment of joint activities which may include personnel and information exchange, energy technology assessments, cooperation on technology research and development, and on the formulation of technology strategies aimed at recovering, converting and/or utilizing fossil fuels (oil, gas, shale, coal) in a clean, efficient and cost effective manner.

c. Conservation and End-Use Efficiency

Cooperation in this area will be directed toward reducing energy demand for conventional energy resources, and improving the efficiency and fuel flexibility of energy use in buildings, transportation, and industry and in community-based energy systems through site-specific analysis of energy use, development of energy use models, technology assessment, and research and development.

d. Renewable Energy

Cooperation in these areas will include personnel and information exchange, analysis, research and development and monitoring of renewable and alternative energy resource and conversion technologies and of potential applications to meet energy demand. Resources of major interest include wind, solar, hydro-power and geothermal energy and biofuels.

2. Further details of cooperation in each of these areas will be arranged through individual memoranda of cooperation.
3. Other areas of cooperation may be added by mutual written agreement.

ARTICLE III

1. Cooperation under this Agreement may include, but is not limited to, the following forms:
 - a. Seminars, conferences, bilateral consultations and other meetings on topics of mutual interest in the field of non-nuclear fuels and

energy development and utilization. Meetings on each topic normally will be held alternately in the United States and in the U.S.S.R., unless otherwise mutually agreed.

- b. Joint energy projects of mutual benefit in which the Parties contribute agreed upon support. Each such joint project shall be the subject of separate written arrangements under appropriate memoranda of cooperation pursuant to Article IV of this Agreement.
 - c. Exchange of technical experts, scientists, engineers, and other specialists for participation in agreed assessments, research, development, analysis, design and experimental activities conducted in research centers, laboratories, engineering offices, and other facilities and enterprises of the Parties, their contractor, institutions, or participating independent organizations, for agreed periods.
 - d. Regular exchange of current information on energy policy and investment priorities, management systems, energy data, scientific and technical information, and results and methods of research and development.
 - e. Exchange of samples, materials, instruments and components for testing.
 - f. Actions to stimulate and facilitate cooperation between U.S. private sector interests and energy related organizations in the U.S.S.R.
2. Other specific forms of cooperation may be added by mutual written agreement of the Parties.

ARTICLE IV

In furtherance of the aims of this Agreement, the Parties will, as appropriate, encourage, facilitate, and monitor the development of cooperation and direct contacts between organizations and institutions of the two countries in the fields of cooperation delineated under Article III, including the conclusion, where mutually agreed, of implementing memoranda of cooperation for carrying out cooperative activities.

ARTICLE V

All cooperation under this Agreement will be governed by the applicable implementing memoranda of cooperation and within the framework of projects jointly approved by the Parties. Cooperation will be subject to national laws and regulations of each Party and will be within the limits of available funds and personnel.

ARTICLE VI

1. To oversee the implementation of this Agreement, there shall be established a U.S.-U.S.S.R. Joint Committee on Cooperation in Fuels and Energy Development. Meetings will be convened once a year, alternately in the United States and the Soviet Union, unless otherwise mutually agreed.
2. The Joint Committee shall take such action as is necessary for effective implementation of this Agreement including, but not limited to, approval of specific projects and programs of cooperation proposed through the applicable implementing memoranda of cooperation;

designation of participating organizations and institutions responsible for carrying out cooperative activities; and making recommendations, as appropriate, to the Governments of the two Parties.

3. The Executive Agents of this Agreement shall be, for the United States of America, the United States Department of Energy, and for the Union of Soviet Socialist Republics, the Bureau of Fuels and Energy Complex of the Council of Ministers of the U.S.S.R. The Executive Agents, on their respective sides, shall be responsible for the operation of the Joint Committee and shall coordinate and supervise the development and implementation of cooperative activities conducted under this Agreement.

ARTICLE VII

Protection of intellectual property and rights thereto shall be set forth in the Annex, which constitutes an integral part of this Agreement.

ARTICLE VIII

Nothing in this Agreement shall be interpreted to prejudice other agreements concluded between the Parties.

ARTICLE IX

1. This Agreement shall enter into force upon signature, will remain in force for five (5) years, and is subject to extension of additional five (5) year terms by written agreement of the Parties following joint review at the end of each five-year period. It also may be modified by mutual agreement of the Parties.

2. Either Party may at any time give notice in writing to the other Party of its intention to terminate this Agreement, in which case this Agreement will terminate six months from the date notice is received.
3. Expiration of this Agreement will not affect the implementation of any cooperative activity undertaken pursuant to the Agreement and not fully executed before expiration occurs.

Done at this day of 1991, in duplicate, in the
English and Russian languages, both texts being equally authentic.

FOR THE UNITED STATES
OF AMERICA:

FOR THE UNION OF SOVIET
SOCIALIST REPUBLICS:

ANNEX
INTELLECTUAL PROPERTY

Pursuant to Article 7 of this Agreement:

I. GENERAL

- A. For purpose of this Agreement, "intellectual property" is understood to have the meaning found in Article 2 of the Convention Establishing the World Intellectual Property Organization, done at Stockholm July 14, 1967.
- B. The Parties shall ensure adequate and effective protection for intellectual property created or furnished under this Agreement and relevant implementing arrangements thereunder. Joint groups of experts may be set up to prepare appropriate agreements between the Parties for settling questions of legal protection and rights in intellectual property which are not addressed in this Annex.

II. COPYRIGHTS

The Parties and their cooperating agents shall, as appropriate, take steps to secure copyright to works created under this Agreement in accordance with their respective national laws, except as specifically provided otherwise in an applicable implementing arrangement. Rights to works created under this Agreement shall be determined in the applicable implementing arrangement.

III. INVENTIONS

- A. For purposes of this Annex, "invention" means any invention made in the course of cooperation under this Agreement or implementing arrangements thereunder which is or may be patentable or otherwise protectable under the laws of the United States of America, the Union of Soviet Socialist Republics, or any third country. An invention "made" means one conceived or first actually reduced to practice.
- B. Between a Party and its nationals, the ownership of rights and interests in inventions will be determined in accordance with that Party's national laws and practices.
- C. As between the Parties, unless otherwise specifically provided in an applicable implementing arrangement, the Parties and their cooperating agents shall take appropriate steps to secure rights to implement the following:
 - 1. If the invention is made as a result of cooperation that involves only the transfer or exchange of information between the Parties, such as by joint meetings, seminars, or the exchange of technical reports or papers, unless provided otherwise, is an applicable implementing arrangement;
 - a. The Party whose personnel makes the invention ("the Inventing Party") has the right to obtain all rights and interests in the invention in all countries;
 - b. In any country where the Inventing Party decides not to obtain such rights and interests, the other Party has the right to do so.

2. If the Invention is made by an Inventor of a Party ("the Assigning Party") while assigned to another Party ("the Receiving Party") in the course of programs of a cooperative activity that involve only the visit or exchange of scientists and engineers, and;
 - a. In the case where the Receiving Party is expected to make a major and substantial contribution to the programs of the cooperative activity:
 - i. The Receiving Party has the right to obtain all rights and interests in the Invention in all countries, and;
 - ii. In any country where the Receiving Party decides not to obtain such rights and interests, the Assigning Party or the Inventor has the right to do so;
 - b. In the case where the provision in subparagraph a. above is not satisfied:
 - i. The Receiving Party has the right to obtain all rights and interests in the Invention in its own country and in third countries,
 - ii. The Assigning Party or the Inventor has the right to obtain all rights and interests in the Invention in its own country, and;
 - iii. In any country where the Receiving Party decided not to obtain such rights and interests, the Assigning Party or the Inventor has the right to do so.

- D. Specific agreements involving other forms of cooperation, such as joint research projects with an agreed scope of work, shall provide for the mutually agreed upon disposition of rights to an invention made as a result of such activity on an equitable basis. Except as otherwise specifically agreed, each Party has the right to obtain all rights and interests in the invention in its own country, whereas the right to secure legal protection of that invention in third countries, as well as the right to license or transfer such rights and interests in third countries, shall be allocated by mutual written agreement.
- E. Notwithstanding the foregoing, if an invention is of a type for which exclusive rights are available under the laws of one Party but not of the other Party, the Party whose laws provide for exclusive rights shall be entitled to all rights to such invention worldwide.
- F. The Party whose personnel make an invention shall disclose the invention to the other Party and furnish any documentation and information necessary to enable the other Party to establish any rights to which it may be entitled. The Inventing Party may ask the other Party in writing to delay publication or public disclosure of such documentation or information for the purpose of protecting its rights related to inventions. Unless otherwise agreed in writing, such restriction shall not exceed a period of six months from the date of communication of such information.

Communication shall be through the competent Government agencies or as otherwise designated in the implementing arrangements. Questions of the disposition of rights in inventions in third countries shall be resolved before the end of the priority period according to Article 4 of the Paris Convention for the Protection of Industrial Property.

IV. BUSINESS-CONFIDENTIAL INFORMATION

- A. The Parties shall have the right to use, duplicate, and disclose information first produced under this Agreement.
- B. The Parties do not expect to furnish or use or have their cooperating agents furnish or use business-confidential information in the course of cooperation under this Agreement. However, in the event that such information is furnished or used or the Parties agree to furnish such information, the Parties and their cooperating agents shall give full protection to any such information so marked in accordance with their respective laws, regulations, and administrative practices.
- C. For purposes of this Annex, "business-confidential information" means information developed outside this Agreement of a confidential nature which meets all of the following conditions:
 - 1. It is of a type customarily held in confidence for commercial reasons;
 - 2. It is not generally known or publicly available from other sources;

3. It has not been previously made available by the owner to others without an obligation concerning its confidentiality; and;
 4. It is not already in the possession of the recipient Party or cooperating agent without an obligation concerning its confidentiality.
- D. Any information to be protected as "business confidential information" shall be appropriately marked by the Party or cooperating agent furnishing such information or asserting that it is to be protected, except as otherwise provided in the Parties' laws, regulations, and administrative practices.

V. OTHER FORMS OF INTELLECTUAL PROPERTY

Rights to other forms of intellectual property created under this Agreement shall be determined in the applicable implementing arrangement. If such other form of intellectual property is of a type for which protection is available under the intellectual property laws of one Party but not of the other Party, the Party whose laws provide for such protection shall be entitled to all such rights worldwide.

VI. MISCELLANEOUS

- A. Each Party and its Executive Agent shall take all necessary and appropriate steps to provide for the cooperation of its authors, inventors, and discoverers which is required to carry out the provisions of this Annex.

- B. Each Party shall assume the responsibility to pay to its nationals such awards or compensation as may be in accordance with its laws and regulations. This Annex does not create any entitlement or prejudice any right or interest of the author or inventor to an award or compensation for his or her work or invention.
- C. Intellectual property disputes arising under this Agreement should be resolved, if possible, through discussions between the affected cooperating agents. If cooperating agents cannot resolve such disagreements, such disagreements, shall be settled through consultations between the Parties or their designees.

VII. EFFECT OF TERMINATION OF EXPIRATION

Termination or expiration of this Agreement shall not affect rights or obligations under this Annex.

VIII. APPLICABILITY

This Annex is applicable to this Agreement, and any implementing arrangements or cooperation thereunder, except as otherwise specifically provided for an individual implementing arrangements.