



International Atomic Energy Agency

INFORMATION CIRCULAR

INFCIRC/119
31 October 1968

GENERAL Distr.

Original: ENGLISH

THE TEXT OF THE SAFEGUARDS TRANSFER AGREEMENT
RELATING TO THE BILATERAL AGREEMENT BETWEEN JAPAN AND
THE UNITED STATES OF AMERICA

1. The text [1] of the Safeguards Transfer Agreement between the Agency, Japan and the United States of America relating to the agreement between the two Governments concerning co-operation in the promotion and development of the peaceful uses of atomic energy is reproduced in this document for the information of all Members.
2. The Safeguards Transfer Agreement entered into force on 10 July 1968.

[1] The footnotes to the text have been added in the present information circular.

AGREEMENT BETWEEN THE INTERNATIONAL ATOMIC ENERGY AGENCY,
THE GOVERNMENT OF JAPAN AND THE GOVERNMENT OF THE
UNITED STATES OF AMERICA FOR THE APPLICATION OF SAFEGUARDS
BY THE AGENCY TO THE BILATERAL AGREEMENT BETWEEN
THOSE GOVERNMENTS CONCERNING CIVIL USES
OF ATOMIC ENERGY

WHEREAS the Government of the United States of America and the Government of Japan are continuing to co-operate on the civil uses of atomic energy under their Agreement for Co-operation signed on 26 February 1968, which requires that equipment, devices and materials made available to Japan by the United States of America be used solely for peaceful purposes and establishes a system of safeguards to that end;

WHEREAS the Agreement for Co-operation reflects the mutual recognition of the two Governments of the desirability of arranging for the Agency to administer safeguards as soon as practicable;

WHEREAS the Agency is, pursuant to its Statute and the action of its Board of Governors, now in a position to apply safeguards in accordance with the Agency's Safeguards Document and Inspectors Document;

WHEREAS the two Governments have reaffirmed their desire that equipment, devices and materials supplied by the United States of America under the Agreement for Co-operation or produced by their use or otherwise subject to safeguards under that Agreement shall not be used for any military purpose and have requested the Agency to apply safeguards to such materials, equipment and facilities as are covered by this Agreement; and

WHEREAS the Board of Governors of the Agency approved that request on 13 June 1968;

NOW, THEREFORE, the Agency and the two Governments agree as follows:

PART I

Definitions

Section 1. For the purposes of this Agreement:

- (a) "Agency" means the International Atomic Energy Agency;
- (b) "Board" means the Board of Governors of the Agency;
- (c) "Agreement for Co-operation" means the Agreement between the Government of Japan and the Government of the United States of America for Co-operation on the Civil Uses of Atomic Energy signed on 26 February 1968;
- (d) "Inspectors Document" means the Annex to Agency document GC(V)/INF/39, which was placed in effect by the Board on 29 June 1961;
- (e) "Inventory" means either of the lists of material, equipment and facilities described in Section 10;
- (f) "Nuclear material" means any source or special fissionable material as defined in Article XX of the Agency's Statute;

- (g) "Safeguards Document" means Agency document INFCIRC/66/Rev.1 and Annex II thereto, containing provisions for safeguarded nuclear material in conversion plants and fabrication plants, the text of which is set forth in Agency document GC(XII)/INF/99, which was approved by the Board in 13 June 1968.

PART II

Undertakings by the Governments and the Agency

Section 2. The Government of Japan undertakes that it will not use in such a way as to further any military purpose any material, equipment or facility while it is listed in the Inventory for the Government of Japan.

Section 3. The Government of the United States of America undertakes that it will not use in such a way as to further any military purpose any special fissionable material, equipment or facility while it is listed in the Inventory for the Government of the United States of America.

Section 4. The Agency undertakes to apply its safeguards system in accordance with the provisions of this Agreement to materials, equipment and facilities while they are listed in the Inventories to ensure so far as it is able that they will not be used in such a way as to further any military purpose. The application of safeguards by the Agency to such equipment and facilities shall be solely for the purpose of ensuring that nuclear materials produced, used or processed in such equipment or facilities are not used in such a way as to further any military purpose.

Section 5. The Government of Japan and the Government of the United States of America undertake to facilitate the application of safeguards and to co-operate with the Agency and each other to that end.

Section 6. The Government of the United States of America agrees that its rights under Article XI of the Agreement for Co-operation to apply safeguards to equipment, devices and materials subject to that Agreement will be suspended with respect to material, equipment and facilities while they are listed in the Inventory for the Government of Japan. It is understood that no other rights and obligations of the Government of Japan and the Government of the United States of America between themselves under Article XI and under other provisions of the Agreement for Co-operation will be affected by this Agreement.

Section 7. If the Agency is relieved, pursuant to Section 23(a), of its undertaking in Section 4, or if for any other reason the Board determines that the Agency is unable to ensure that any material, equipment or facility listed in an Inventory is not being used for any military purpose, the material, equipment or facility involved shall thereby automatically be deleted from such Inventory until the Board determines that the Agency is again able to apply safeguards thereto. When, under this Section, an item is deleted from the Inventory for either Government, the Agency may, at the request of the other Government, provide it with information available to the Agency about such material, equipment or facility in order to enable that Government to exercise effectively its rights thereto.

Section 8. The Government of Japan and the Government of the United States of America shall promptly notify the Agency of any amendment to the Agreement for Co-operation and any notice of termination given with respect to that Agreement.

PART III

Inventories and Notifications

Section 9.

- (a) The inventories of materials, equipment and facilities within the jurisdiction of the Government of Japan and the Government of the United States of America which are, at the time this Agreement enters into force, subject to Agency safeguards under the Agreement between the United States of America, Japan and the Agency signed 23 September 1963 shall constitute the Inventories for the respective Governments under this Agreement and the Agency will continue to apply safeguards to such materials, equipment, and facilities.
- (b) Thereafter the Government of Japan and the Government of the United States of America shall jointly notify the Agency of:
 - (i) Any transfer from the United States of America to Japan under their Agreement for Co-operation of materials, equipment or facilities which are subject to safeguards under that Agreement; and
 - (ii) Any transfer from Japan to the United States of America of any special fissionable material which has been included in the Inventory for the Government of Japan pursuant to Section 12.
- (c) Either the Government of Japan or the Government of the United States of America, whichever is concerned, shall also thereafter notify the Agency of any other equipment and facilities which as a consequence of the transfers referred to in paragraph (b) of this Section come within the scope of the category described in Section 10(b) or (e).
- (d) The Agency shall, within 30 days of its receipt of a notification under this Section, advise both Governments either:
 - (i) That the items covered by the notification are listed in the appropriate Inventory as of the date of the Agency's advice; or
 - (ii) That the Agency is unable to apply safeguards to such items, in which case, however, it may indicate at what future time or under which conditions it would be able to apply safeguards thereto if the Governments so desire.

Section 10. The Agency shall establish and maintain the Inventory with respect to each Government which shall be divided into three Categories.

- (a) Category I of the Inventory with respect to the Government of Japan shall list:
 - (i) Equipment and facilities transferred to Japan which are subject to safeguards under the Agreement for Co-operation;
 - (ii) Material transferred to Japan which is subject to safeguards under the Agreement for Co-operation or material substituted therefor in accordance with paragraph 25 or 26(d) of the Safeguards Document;
 - (iii) Special fissionable materials produced in Japan, as specified in Section 12, or any material substituted therefor in accordance with paragraph 25 or 26(d) of the Safeguards Document; and

- (iv) Nuclear materials, other than those which are listed under (ii) or (iii) above, which are processed or used in any of the materials, equipment or facilities listed under (i), (ii) or (iii) above, or any material substituted therefor in accordance with paragraph 25 or 26(d) of the Safeguards Document.
- (b) Category II of the Inventory with respect to the Government of Japan shall list:
- (i) Any facility while it incorporates any equipment listed in Category I of the Inventory for the Government of Japan; and
 - (ii) Any equipment or facility while it is containing, using, fabricating or processing any material listed in Category I of the Inventory for the Government of Japan.
- (c) Category III of the Inventory with respect to the Government of Japan shall list any nuclear material which would normally be listed in Category I of the Inventory for the Government of Japan but which is not so listed because:
- (i) It is exempt from safeguards in accordance with the provisions of paragraph 21, 22 or 23 of the Safeguards Document; or
 - (ii) Safeguards thereon are suspended in accordance with the provisions of paragraph 24 or 25 of the Safeguards Document.
- (d) Category I of the Inventory with respect to the Government of the United States of America shall list:
- (i) Special fissionable material of whose transfer from Japan the Agency has been notified pursuant to Section 9(b)(ii) or material substituted therefor in accordance with paragraph 25 or 26(d) of the Safeguards Document; or
 - (ii) Special fissionable material produced in the United States of America, as specified in Section 12, or any material substituted therefor, in accordance with paragraph 25 or 26(d) of the Safeguards Document.
- (e) Category II of the Inventory with respect to the Government of the United States of America shall list any equipment or facility while it is containing, using, fabricating or processing any material listed in Category I of the Inventory for the Government of the United States of America.
- (f) Category III of the Inventory with respect to the Government of the United States of America shall list any material which would normally be listed in Category I of the Inventory for the Government of the United States of America but which is not so listed because:
- (i) It is exempt from safeguards in accordance with the provisions of paragraph 21, 22 or 23 of the Safeguards Document; or
 - (ii) Safeguards thereon are suspended in accordance with the provisions of paragraph 24 or 25 of the Safeguards Document.

The Agency shall send copies of both Inventories to both Governments every twelve months and also at any other times specified by either Government in a request communicated to the Agency at least two weeks in advance.

Section 11. The notification by the two Governments provided for in Section 9(b)(i) shall normally be sent to the Agency not more than two weeks after the material, equipment or facility arrives in Japan, except that shipments of source material in quantities not exceeding one metric ton shall not be subject to the two-week notification requirement but shall be reported to the Agency at intervals not exceeding three months. All notifications under Section 9 shall include, to the extent relevant, the nuclear and chemical composition, the physical form, and the quantity of the material and/or the type and capacity of the equipment or facility involved, the date of shipment, the date of receipt, the name and address of the end user and any other relevant information. The two Governments also undertake to give the Agency as much advance notice as possible of the transfer of large quantities of nuclear materials or major equipment or facilities.

Section 12. Each Government shall notify the Agency, by means of its reports pursuant to the Safeguards Document, of any special fissionable material it has produced, during the period covered by the report, in or by the use of any of the materials, equipment or facilities described in Section 10(a), 10(b)(i) or 10(d). Upon receipt by the Agency of the notification, such produced special fissionable material shall be listed in Category I of the Inventory, provided that any material so produced shall be deemed to be listed and therefore shall be subject to safeguards by the Agency from the time it is produced. The Agency may verify the calculations of the amounts of such materials; appropriate adjustment in the Inventory shall be made by agreement of the Parties; pending final agreement of the Parties, the Agency's calculations shall govern.

Section 13. The Government of Japan shall notify the Agency, by means of its reports pursuant to the Safeguards Document, of any nuclear materials required to be listed in Category I of its Inventory pursuant to Section 10(a)(iv). Upon receipt by the Agency of the notification, such nuclear material shall be listed in Category I of the Inventory, provided that any material processed or used as specified in Section 10(a)(iv) shall be deemed to be listed and therefore shall be subject to safeguards by the Agency from the time it is processed or used.

Section 14. The two Governments shall jointly notify the Agency of the transfer to the United States of America of any materials, equipment or facilities listed in the Inventory for the Government of Japan. Upon receipt thereof by the United States of America:

- (a) Materials described in Section 9(b)(ii) shall be transferred from the Inventory for the Government of Japan to Category I of the Inventory for the Government of the United States of America;
- (b) Other materials, and equipment or facilities shall be deleted from the Inventory.

Section 15. The two Governments shall jointly notify the Agency of any transfer of materials, equipment or facilities listed in Category I of the Inventory to a recipient which is not under the jurisdiction of either of the two Governments. Such materials, equipment or facilities shall not be transferred unless;

- (a) Arrangements have been made by the Agency to safeguard such materials, equipment or facilities; or
- (b) The materials, equipment or facilities will be subject to safeguards other than those of the Agency but generally consistent with such safeguards and accepted by the Agency. Such materials, equipment or facilities shall upon transfer be deleted from the Inventory.

Section 16. Whenever either Government intends to transfer material or equipment, listed in Category I of its Inventory, to a principal nuclear facility within its jurisdiction which the Agency has not previously accepted for listing in that Government's Inventory, the Government concerned shall notify the Agency of the facility pursuant to Section 9(c) before such transfer is effected. The Government may make the transfer to that facility only after the Agency has accepted that notification.

Section 17. The notifications provided for in Sections 14, 15 and 16 shall, unless otherwise agreed with the Agency, be sent to the Agency at least two weeks before the material, equipment or facility is to be transferred. The contents of these notifications shall conform, as far as appropriate, to the requirements of Section 11.

PART IV

Exemption, Suspension and Termination

Section 18. The Agency shall exempt from safeguards nuclear material under the conditions specified in paragraph 21, 22 or 23 of the Safeguards Document and shall suspend safeguards with respect to nuclear material under the conditions specified in paragraph 24 or 25 of the Document.

Section 19. The Agency shall terminate safeguards under this Agreement with respect to those items deleted from an Inventory as provided in Sections 14(b) and 15. Safeguards on nuclear material other than that covered by the preceding sentence shall be terminated as provided in paragraph 26 of the Safeguards Document and nuclear material for which safeguards are so terminated shall thereupon be deleted from the Inventory.

Section 20. The two Governments and the Agency shall agree on the conditions for exemption, suspension or termination of safeguards on items not covered by Sections 18 and 19.

PART V

Safeguards Procedures

Section 21. In applying safeguards, the Agency shall observe the principles set forth in paragraphs 9 through 14 of the Safeguards Document.

Section 22. The safeguards to be applied by the Agency to the items listed in the Inventories are those procedures specified in the Safeguards Document. The Agency shall make subsidiary arrangements with each Government concerning the implementation of safeguards procedures and for the application of safeguards to any materials and equipment subject to safeguards under the Agreement for Co-operation. The Agency shall have the right to request the information referred to in paragraph 41 of the Safeguards Document and to make the inspections referred to in paragraphs 51 and 52 of the Safeguards Document.

Section 23. If the Board determines that there has been any non-compliance with this Agreement, the Board shall call upon the Government concerned to remedy such non-compliance forthwith, and shall make such reports as it deems appropriate. If the Government fails to take fully corrective action within a reasonable time:

- (a) The Agency shall be relieved of its undertaking to apply safeguards under Section 4 for such time as the Board determines that the Agency cannot effectively apply the safeguards provided for in this Agreement; and
- (b) The Board may take any measures provided for in Article XII. C of the Statute.

The Agency shall promptly notify both Governments in the event of any determination by the Board pursuant to this Section.

PART VI

Agency Inspectors

Section 24. Agency inspectors performing functions pursuant to this Agreement shall be governed by paragraphs 1 through 7 and 9, 10, 12 and 14 of the Inspectors Document. However, paragraph 4 of the Inspectors Document shall not apply with regard to any facility or to nuclear material to which the Agency has access at all times. The actual procedures to implement paragraph 50 of the Safeguards Document in the United States of America and in Japan shall be agreed between the Agency and the Government concerned before the facility or material is listed in the Inventory.

Section 25. The Government of Japan shall apply the relevant provisions of the Agreement on the the Privileges and Immunities of the Agency [2] to Agency inspectors performing functions under this Agreement and to any property of the Agency used by them.

Section 26. The provisions of the International Organizations Immunities Act of the United States of America [3] shall apply to Agency inspectors performing functions in the United States of America under this Agreement and to any property of the Agency used by them.

PART VII

Finance

Section 27. In connection with the implementation of this Agreement all expenses incurred by, or at the request or direction of the Agency, its inspectors or other officials will be borne by the Agency and neither the Government of Japan nor the Government of the United States of America shall be required to bear any expense for equipment, accommodation, or transport furnished pursuant to provisions of paragraph 6 of the Inspectors Document.

[2] INFCIRC/9/Rev. 2.

[3] Statutes of the United States of America, Vol. 59, page 669 (Public Law 291, approved 1945).

PART VIII

Settlement of Disputes

Section 28. Any dispute arising out of the interpretation or application of this Agreement which is not settled by negotiation or as may otherwise be agreed by the Parties concerned shall on the request of any Party be transmitted to an arbitral tribunal composed as follows;

- (a) If the dispute involves only two of the Parties to this Agreement, all three Parties agreeing that the third is not concerned, the two Parties involved shall each designate one arbitrator, and the two arbitrators so designated shall elect a third, who shall be the Chairman. If within thirty days of the request for arbitration either Party has not designated an arbitrator, either Party to the dispute may request the President of the International Court of Justice to appoint an arbitrator. The same procedure shall apply if, within thirty days of the designation or appointment of the second arbitrator, the third arbitrator has not been elected; or
- (b) If the dispute involves all three Parties to this Agreement, each Party shall designate one arbitrator, and the three arbitrators so designated shall by unanimous decision elect a fourth arbitrator, who shall be the Chairman, and a fifth arbitrator. If within thirty days of the request for arbitration any Party has not designated an arbitrator, any Party may request the President of the International Court of Justice to appoint the necessary number of arbitrators. The same procedure shall apply if, within thirty days of the designation or appointment of the third of the first three arbitrators, the Chairman or the fifth arbitrator has not been elected.

A majority of the members of the arbitral tribunal shall constitute a quorum, and all decisions shall be made by majority vote. The arbitral procedure shall be fixed by the tribunal. The decisions of the tribunal, including all rulings concerning its constitution, procedure, jurisdiction and the division of the expenses of arbitration between the Parties, shall be binding on all Parties and shall be implemented by them, in accordance with their respective constitutional procedures. The remuneration of the arbitrators shall be determined on the same basis as that of ad hoc judges of the International Court of Justice.

Section 29. Decisions of the Board concerning the implementation of this Agreement, except such as relate only to Part VII, shall, if they so provide, be given effect immediately by the Parties, pending the final settlement of any dispute.

PART IX

Amendment, Modifications, Entry into Force and Duration

Section 30. The Parties shall, at the request of any one of them, consult about amending this Agreement. If the Board modifies the Safeguards Document, or the scope of the safeguards system, this Agreement shall be amended if the Governments so request to take account of any or all such modifications. If the Board modifies the Inspectors Document, this Agreement shall be amended if the Governments so request to take account of any or all such modifications.

Section 31. This Agreement shall enter into force upon signature by or for the Director General of the Agency and by the authorized representatives of the Government of Japan and of the Government of the United States of America.

Section 32. This Agreement shall remain in force during the term of the Agreement for Co-operation unless terminated by any Party upon six months notice to the other Parties or as may otherwise be agreed.

DONE in Vienna, on the tenth day of July 1968, in triplicate in the English language.

For the INTERNATIONAL ATOMIC ENERGY AGENCY:

(signed) John A. Hall

For the GOVERNMENT OF JAPAN:

(signed) Kinya Niiseki

For the GOVERNMENT OF THE UNITED STATES OF AMERICA:

(signed) Jack Vanderryn