



International Atomic Energy Agency

## INFORMATION CIRCULAR

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### THE TEXTS OF THREE AGREEMENTS FOR THE SUPPLY OF MATERIALS TO THE AGENCY

#### A Second Amendment to the Agreement for Co-operation between the Agency and the United States of America

The text<sup>1/</sup> of a Second Amendment to the Agreement for Co-operation between the Agency and the United States of America<sup>2/</sup> is reproduced herein for the information of all Members. The Amendment entered into force on 6 May 1980 in accordance with Article III thereof, upon receipt by the Agency of written notification from the United States that it has complied with all requirements for such entry into force.

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

2/ The texts of the Agreement and a First Amendment thereto are reproduced in documents INFCIRC/5, part III, and INFCIRC/5/Mod.1 respectively.

SECOND AMENDMENT TO THE AGREEMENT FOR CO-OPERATION BETWEEN  
THE INTERNATIONAL ATOMIC ENERGY AGENCY AND THE  
UNITED STATES OF AMERICA

The International Atomic Energy Agency and the United States of America,

DESIRING to amend the Agreement for Co-operation between the International Atomic Energy Agency and the United States of America, signed at Vienna on 11 May 1959, as amended on 12 February 1974 (hereinafter referred to as the "Agreement for Co-operation"),

AGREE as follows:

ARTICLE I

Article IV of the Agreement for Co-operation is amended by the addition of the following sentences:

"The applicable laws, regulations and licence requirements of the United States include criteria for the arrangements for transfer and export and the performance of services referred to in the foregoing sentence, as set forth in the Annex and the Appendix thereto. The Appendix may be modified by mutual consent of the Parties, without amendment of this Agreement. For the purpose of implementing the arrangements set forth in the Annex, the Agency may act as an intermediary at the request of a Member State or group of Member States."

ARTICLE II

1. Sub-paragraphs (a) and (b) of Article V of the Agreement for Co-operation are amended as follows:

"(a) Safeguards in accordance with the Agency's Statute and the Agency's safeguards system<sup>[3]</sup> shall be maintained and implemented by the Agency with respect to all Agency activities in which material, equipment or facilities made available pursuant to this Agreement are used. Small quantities of source material and special nuclear material subject to this Agreement may be transferred to Member States by the Agency for safeguards related purposes. Any such material so transferred may be deemed to be exempt from the application of safeguards, provided that the total quantity of such material shall not at any time exceed in quantity one effective kilogram, as defined in the Agency's safeguards system. Any such material shall remain subject to this Agreement regardless of its physical location until the Parties agree that any such material has been consumed, or has been diluted in such a way that it is no longer usable for any nuclear activity relevant from the point of view of safeguards, or has become practically irrecoverable."

"(b) Material, equipment or facilities transferred pursuant to this Agreement, and material used in or produced through the use of any such material, equipment or facilities, shall not be used for nuclear weapons or any other nuclear explosive device, for research on or development of any nuclear explosive device, or for any other military purpose."

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[3] Set forth in document INFCIRC/66/Rev. 2.

2. Sub-paragraph (c) of Article V of the Agreement for Co-operation is amended by the addition of the following sentence:

"In cases where the United States transfers material, equipment or facilities in accordance with this Agreement for the Agency's own use, such material, equipment or facilities and any special nuclear material used in or produced through the use of such material, equipment or facilities may be transferred by the Agency only upon agreement by the United States."

### ARTICLE III

This Amendment shall enter into force on the date on which the Agency receives from the United States written notification that it has complied with all requirements for such entry into force.

IN WITNESS WHEREOF, the undersigned representatives have signed this Amendment pursuant to duly constituted authority.

DONE at Vienna, this fourteenth day of January 1980, in duplicate in the English language.

For the UNITED STATES OF  
AMERICA:

(signed) Roger KIRK

For the INTERNATIONAL ATOMIC  
ENERGY AGENCY:

(signed) Sigvard EKLUND

## ANNEX

### UNITED STATES CRITERIA FOR TRANSFER AND EXPORT ARRANGEMENTS

Section A. Material, equipment or facilities made available to the Agency pursuant to the Agreement for Co-operation in connection with a "supply agreement" shall not be used in any Agency activities in a non-nuclear-weapon Member State or group of Member States unless, at the date of transfer, the Member State or group of Member States has entered into an agreement or agreements with the Agency for the application of safeguards and such safeguards are being maintained and implemented in accordance with the Agency's Statute and the Agency's safeguards system with respect to all nuclear activities being carried out within its territory, under its jurisdiction or under its control anywhere. For the purposes of this Annex, a "supply agreement" means:

- (1) Any agreement entered into with the United States after the entry into force of the Second Amendment to the Agreement for Co-operation for supply under the latter Agreement; or
- (2) Any other agreement as mutually agreed and to the extent applicable.

For the purposes of this Section, the implementation of an agreement with the Agency pursuant to Article III, 4 of the Treaty on the Non-Proliferation of Nuclear Weapons[4] or of an equivalent safeguards agreement, for example, an agreement with the Agency pursuant to Article 13 of the Treaty for the Prohibition of Nuclear Weapons in Latin America[5], acceptable to the United States, shall be considered to fulfil the conditions stated in the first sentence of this Section.

Section B. Any supply agreement shall include inter alia:

- (1) Provisions assuring that the rights and obligations of the parties under the supply agreement continue to apply in connection with the supplied material, equipment or facilities and with any special nuclear material used in or produced through the use of such material, equipment or facilities, including subsequent generations of special nuclear material, until such time as the Agency has terminated the application of safeguards thereto in accordance with the Agency's safeguards system; and
- (2) Provisions according to which the recipient Member State or group of Member States shall, upon the request of the United States, inform or permit the Agency to inform the United States of the status of all inventories of source or special nuclear materials subject to Agency safeguards pursuant to all agreements with such State or States; however, in the case of a recipient Member State or group of Member States party to a safeguards agreement pursuant to the Treaty on the Non-Proliferation of Nuclear Weapons or to an equivalent safeguards agreement, for example, an agreement pursuant to the Treaty for the Prohibition of Nuclear Weapons in Latin America, acceptable to the United States, the United States needs be informed only with respect to the status of inventories of source or special nuclear materials which are subject to the provisions of the supply agreement.

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[4] Reproduced in document INFCIRC/140.

[5] United Nations Treaty Series, Vol. 634, No. 9068.

Section C. Material transferred pursuant to any supply agreement and material used in or produced through the use of any material, equipment or facilities so transferred may be stored by the Agency or the recipient Member State or group of Member States to the extent consistent with the Agency's Statute: provided that plutonium or uranium-233 (other than that contained in irradiated fuel elements) or uranium enriched to twenty per cent or more in the isotope 235 shall be stored only in facilities agreed to in advance by the United States.

Section D. Material transferred pursuant to any supply agreement and material used in or produced through the use of any material, equipment or facilities so transferred shall not be reprocessed or, in the case of plutonium, uranium-233, uranium enriched to twenty per cent or more in the isotope 235, or irradiated source or special nuclear material, otherwise altered in form or content unless the United States agrees.

Section E. Uranium transferred pursuant to any supply agreement and uranium used in any material, equipment or facilities so transferred may be enriched after transfer up to twenty per cent in the isotope 235 only if the United States agrees. Such uranium shall not be enriched after transfer to twenty per cent or more in the isotope 235 unless specifically provided for by the supply agreement or by an amendment thereto.

Section F. Adequate physical protection shall be maintained with respect to any material, equipment or facilities transferred pursuant to any supply agreement or used in or produced through the use of any material, equipment or facilities so transferred. Prior to any such transfer the recipient Member State or group of Member States shall agree to the levels for the application of physical protection set forth in the Appendix to the Annex, and to the maintenance of adequate physical protection measures in accordance with such levels. The physical protection measures to be maintained by the recipient Member State or group of Member States shall as a minimum provide protection comparable to that set forth in document INFCIRC/225/Rev. 1, published by the Agency and entitled: "The Physical Protection of Nuclear Material", or in any revision of that document agreed to by the United States and the recipient Member State or group of Member States.

Section G. No sensitive nuclear technology may be transferred pursuant to any supply agreement unless specifically provided for by such agreement or by an amendment thereto. "Sensitive nuclear technology" means any information (including information incorporated in equipment or facilities) which is not available to the public and which is important to the design, construction, fabrication, operation or maintenance of any facility designed or used primarily for uranium enrichment, reprocessing of nuclear fuel, heavy water production or fabrication of nuclear fuel containing plutonium, or such other information as the United States may designate prior to transfer of the information.

Section H. Material, equipment or facilities transferred pursuant to any supply agreement and any special nuclear material used in or produced through the use of such material, equipment or facilities may be transferred by the recipient Member State or group of Member States only upon agreement by the United States.

Section I. Any arrangements entered into by the United States with a non-nuclear-weapon Member State or group of Member States in connection with any supply agreement shall provide that in the event the Agency is, for any reason, unable to continue to apply its safeguards with respect to the material, equipment or facilities referred to in Section H above, United States safeguards, or other appropriate safeguards measures as the Governments may agree, shall be applied in that Member State or group of Member States with respect to such material equipment or facilities.

Section J. Any arrangements referred to in Section I above shall further provide that if at any time a non-nuclear-weapon Member State or group of Member States in which there is an Agency activity involving material, equipment or facilities transferred pursuant to any supply agreement:

- (1) Carries out any nuclear activity with respect to which the application of Agency safeguards is not then provided for in an agreement in force with the Agency as contemplated in Section A of this Annex;
- (2) Does not permit the Agency to apply safeguards, in accordance with the Agency's safeguards system, to any nuclear activity carried out within its territory, under its jurisdiction or under its control anywhere;
- (3) Does not comply with any provision of a supply agreement referred to in Section A of this Annex;
- (4) Detonates a nuclear explosive device; or
- (5) Is in material non-compliance with an Agency safeguards agreement;

the United States shall have the right to:

- (a) Cease further co-operation with the Member State or group of Member States under the Agreement for Co-operation; and
- (b) Require the return of any material, equipment or facilities which are subject in such State or States to the provisions of the supply agreement.

## APPENDIX

### Levels of physical protection

Pursuant to Section F of the Annex, the agreed levels of physical protection to be ensured by the competent national authorities in the use, storage and transportation of the materials listed in the attached table shall as a minimum include protection characteristics as follows.

#### CATEGORY III

Use and storage within an area to which access is controlled.

Transportation under special precautions including prior arrangement between sender, recipient and carrier, and prior agreement between entities subject to the jurisdiction and regulation of the supplier State and the recipient State, respectively, in case of international transport, specifying time, place and procedures for transferring transport responsibility.

#### CATEGORY II

Use and storage within a protected area to which access is controlled, i.e. an area under constant surveillance by guards or electronic devices, surrounded by a physical barrier with a limited number of points of entry under appropriate control, or any area with an equivalent level of physical protection.

Transportation under special precautions including prior arrangements between sender, recipient and carrier, and prior agreement between entities subject to the jurisdiction and regulation of the supplier State and the recipient State, respectively, in case of international transport, specifying time, place and procedures for transferring transport responsibility.

#### CATEGORY I

Materials in this category shall be protected with highly reliable systems against unauthorized use as follows.

Use and storage within a highly protected area, i.e. a protected area as defined for Category II above, to which, in addition, access is restricted to persons whose trustworthiness has been determined, and which is under surveillance by guards who are in close communication with appropriate response forces. Specific measures taken in this context should have as their objective the detection and prevention of any assault, unauthorized access or unauthorized removal of material.

Transportation under special precautions as identified above for transportation of Category II and III materials and, in addition, under constant surveillance by escorts and under conditions which assure close communication with appropriate response forces.

### CATEGORIZATION OF NUCLEAR MATERIAL<sup>e</sup>

Material	Form	Category		
		I	II	III
1. Plutonium <sup>a,f</sup>	Unirradiated <sup>b</sup>	2 kg or more	Less than 2 kg but more than 500 g	500 g or less <sup>c</sup>
2. Uranium-235 <sup>d</sup>	Unirradiated <sup>b</sup>	5 kg or more	Less than 5 kg but more than 1 kg	1 kg or less <sup>c</sup>
	– uranium enriched to 20% <sup>235</sup> U or more			
	– uranium enriched to 10% <sup>235</sup> U but less than 20%			
	– uranium enriched above natural, but less than 10% <sup>235</sup> U	–	–	Less than 10 kg <sup>c</sup>
		–		10 kg or more
3. Uranium-233	Unirradiated <sup>b</sup>	2 kg or more	Less than 2 kg but more than 500 g	500 g or less <sup>c</sup>

<sup>a</sup> All plutonium except that with isotopic concentration exceeding 80% in plutonium-238.

<sup>b</sup> Material not irradiated in a reactor or material irradiated in a reactor but with a radiation level equal to or less than 100 rads/hour at one meter unshielded.

<sup>c</sup> Less than a radiologically significant quantity should be exempted.

<sup>d</sup> Natural uranium, depleted uranium and thorium and quantities of uranium enriched to less than 10% not falling in Category III should be protected in accordance with prudent management practice.

<sup>e</sup> Irradiated fuel should be protected as Category I, II or III nuclear material depending on the category of the fresh fuel. However, fuel which by virtue of its original fissile material content is included as Category I or II before irradiation should only be reduced one Category level, while the radiation level from the fuel exceeds 100 rads/h at one meter unshielded.

<sup>f</sup> The State's competent authority should determine if there is a credible threat to disperse plutonium malevolently. The State should then apply physical protection requirements for category I, II or III of nuclear material, as it deems appropriate and without regard to the plutonium quantity specified under each category herein, to the plutonium isotopes in those quantities and forms determined by the State to fall within the scope of the credible dispersal threat.