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THE TEXT OF A SAFEGUARDS TRANSFER AGREEMENT RELATING TO THE BILATERAL AGREEMENT BETWEEN FRANCE AND JAPAN

1. The text^[1] of a Safeguards Transfer Agreement between the Agency, France and Japan relating to the agreement of 26 February 1972 between the two Governments for co-operation in the peaceful uses of nuclear energy is reproduced in this document for the information of all Members.
2. The Safeguards Transfer Agreement entered into force on 22 September 1972 pursuant to Section 34.

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

AGREEMENT BETWEEN THE INTERNATIONAL ATOMIC ENERGY AGENCY,
THE GOVERNMENT OF THE FRENCH REPUBLIC AND THE GOVERNMENT
OF JAPAN FOR THE APPLICATION OF SAFEGUARDS
[IN RESPECT OF THE AGREEMENT FOR CO-OPERATION BETWEEN
THOSE GOVERNMENTS IN THE PEACEFUL USES OF NUCLEAR ENERGY

WHEREAS the Government of the French Republic (hereinafter referred to as "France") and the Government of Japan (hereinafter referred to as "Japan") signed an Agreement for Co-operation in the Peaceful Uses of Nuclear Energy on 26 February 1972, which required that certain nuclear materials, equipment and facilities be subjected to the International Atomic Energy Agency (hereinafter referred to as "the Agency") safeguards to ensure that they are used only for peaceful purposes;

WHEREAS France and Japan have requested the Agency to enter into an Agreement to apply Agency safeguards; and

WHEREAS the Board of Governors of the Agency (hereinafter referred to as "the Board") has acceded to that request on 21 June 1972;

NOW, THEREFORE, the Agency, France and Japan have agreed as follows:

U n d e r t a k i n g s b y t h e G o v e r n m e n t s a n d t h e A g e n c y

S e c t i o n 1. Japan undertakes that it will use only for peaceful purposes any nuclear materials, equipment or facilities required to be listed in the Inventory for Japan.

S e c t i o n 2. France undertakes that it will use only for peaceful purposes any nuclear materials, equipment or facilities required to be listed in the Inventory for France.

S e c t i o n 3. The Agency undertakes to apply its safeguards, in accordance with the provisions of this Agreement, to nuclear materials, equipment and facilities while they are listed in either Inventory to ensure as far as it is able that they will be used only for peaceful purposes.

S e c t i o n 4. France and Japan undertake to facilitate the application of such safeguards and to co-operate with the Agency and each other to that end.

S e c t i o n 5. The respective rights and obligations of the two Governments under Articles IV and I.X. 2 of the Agreement for Co-operation shall not be regarded as operative:

- (a) In relation to nuclear materials, equipment and facilities, while they are listed in the appropriate Inventory; or
- (b) In relation to nuclear materials, equipment and facilities, when safeguards with respect to them have been terminated in accordance with Section 20 or 21.

If the Board determines, pursuant to Section 25, that the Agency is unable to apply safeguards to any such nuclear material, equipment or facility, it shall be removed from

The Inventory for the Government concerned until the Board determines that the Agency is able to apply safeguards to it. In such case, the Agency may, at the request of the other Government, provide it with information available to the Agency about such nuclear material, equipment or facility in order to enable that Government to exercise effectively any rights it may have thereto pursuant to the Agreement for Co-operation.

S e c t i o n 6. The two Governments shall promptly notify the Agency of any amendment to the Agreement for Co-operation and of any notice of termination given with regard to that Agreement.

A p p l i c a t i o n o f S a f e g u a r d s b y t h e A g e n c y

S e c t i o n 7. The Agency shall establish and maintain two Inventories in accordance with Sections 8 and 9. The Inventories shall be maintained on the basis of the reports and notifications received from the Governments pursuant to the procedures provided for in Sections 11 to 21 and any other arrangements made pursuant to this Agreement.

S e c t i o n 8. The following shall be listed in the Inventory for Japan:

(a) **Part I - Main**

- (i) Equipment and facilities transferred to Japan and subject to safeguards under the Agreement for Co-operation;
- (ii) Nuclear materials transferred to Japan and subject to safeguards under the Agreement for Co-operation, or any nuclear material substituted therefor in accordance with paragraph 25 or 26(d) of the Safeguards Document;
- (iii) Special fissionable materials produced in Japan in or by the use of any of the nuclear materials, equipment or facilities required to be listed under (i) or (ii) above, or any nuclear material substituted therefor in accordance with paragraph 25 or 26(d) of the Safeguards Document; and
- (iv) Other nuclear materials while they are contained or when they have been improved in any of the nuclear materials, equipment or facilities required to be listed under (i), (ii) or (iii) above, or any nuclear material substituted therefor in accordance with paragraph 25 or 26(d) of the Safeguards Document.

(b) **Part II - Subsidiary**

- (i) Any other facility while it incorporates any equipment listed in Part I; and
- (ii) Any other facility while it is containing any nuclear material listed in Part I.

(c) **Part III - Inactive**

Any nuclear material which would normally be listed in Part I, but is not so listed because:

- (i) It has been exempted from safeguards pursuant to Section 19; or
- (ii) Safeguards thereon have been suspended pursuant to Section 19.

S e c t i o n 9. The following shall be listed in the Inventory for France:

(a) Part I - Main

- (i) Equipment and facilities transferred to France and subject to safeguards under the Agreement for Co-operation;
- (ii) Nuclear materials transferred to France and subject to safeguards under the Agreement for Co-operation, or any nuclear material substituted therefor in accordance with paragraph 25 or 26(d) of the Safeguards Document;
- (iii) Special fissionable materials produced in France in or by the use of any of the nuclear materials, equipment or facilities required to be listed under (i) or (ii) above, or any nuclear material substituted therefor in accordance with paragraph 25 or 26(d) of the Safeguards Document; and
- (iv) Other nuclear materials while they are contained or when they have been improved in any of the nuclear materials, equipment or facilities required to be listed under (i), (ii) or (iii) above, or any nuclear material substituted therefor in accordance with paragraph 25 or 26(d) of the Safeguards Document.

(b) Part II - Subsidiary

- (i) Any other facility while it incorporates any equipment listed in Part I; and
- (ii) Any other facility while it is containing any nuclear material listed in Part I.

(c) Part III - Inactive

Any nuclear material which would normally be listed in Part I, but is not so listed because:

- (i) It has been exempted from safeguards pursuant to Section 19; or
- (ii) Safeguards thereon have been suspended pursuant to Section 19.

S e c t i o n 10.

- (a) Nuclear materials, equipment or facilities covered by this Agreement shall not be listed in the Inventory established pursuant to Section 8 or 9 above while they are listed in any Inventory for France or Japan established pursuant to another safeguards agreement with the Agency.[2]
- (b) Each Government shall notify the Agency of any nuclear materials, equipment and facilities which, pursuant to paragraph (a) above, should be deleted from its Inventory and of any nuclear materials, equipment and facilities that should again be listed in that Inventory if the conditions specified in paragraph (a) cease to apply.

[2] In relation to this provision, see the agreements with Japan reproduced in documents INFCIRC/85, 119 and Corr.1, 125 and 170 respectively.

Section 11.

- (a) (i) France and Japan shall jointly notify the Agency of any transfer from one country to the other under the Agreement for Co-operation, of nuclear materials, equipment or facilities which are subject to safeguards under that Agreement.
- (ii) Either France or Japan shall individually notify the Agency of any other facilities which are required to be listed in Part II of the appropriate Inventory.
- (b) The Agency shall, within thirty days of its receipt of a notification under sub-paragraph (i) or (ii) of paragraph (a) above, advise both Governments that:
 - (i) The items covered by the notification are listed in the appropriate Inventory as from the date of the Agency's advice; or
 - (ii) The items covered by the notification are no longer listed in either Inventory as a result of the operation of the provisions of Section 15; or
 - (iii) The Agency is unable to apply safeguards to such items, in which case, however, it may indicate at what future time or under what conditions it would be able to apply safeguards to them.

Section 12. Each Government shall notify the Agency, by means of reports in accordance with the Safeguards Document, of any special fissionable material produced during the period covered by the report and required to be listed in Part I (iii) of its Inventory. Upon receipt by the Agency of the notification, such special fissionable material shall be so listed, provided that it shall be deemed to have been listed from the moment it was produced. The Agency may verify the calculations of the amount of such special fissionable material. Appropriate adjustments in the amounts appearing in the Inventory may be made by agreement between the Parties, but, pending such agreement, the Agency's calculations shall govern.

Section 13. Each Government shall notify the Agency, by means of reports in accordance with the Safeguards Document, of any nuclear material required to be listed in Part I (iv) of its Inventory. Upon receipt by the Agency of the notification, such nuclear material shall be so listed, provided that it shall be deemed to have been listed from the time it is contained or has been improved in any of the nuclear materials, equipment or facilities concerned.

Section 14. The joint notifications provided for in Section 11(a) (i) shall normally be made not more than a month after the nuclear material, equipment or facility arrives in France or Japan as the case may be, except that shipment of source material in quantities not exceeding one metric ton may be notified to the Agency at intervals not exceeding three months. All notifications under Section 11 shall include, to the extent relevant, the nuclear and chemical composition, the physical form and the quantity of the nuclear material and the type and capacity of the equipment or facility involved, the date of shipment, the date of receipt, the name of the consignee 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 15. Notifications of re-transfers to the supplying country of nuclear materials, equipment or facilities which are listed in Part I (i) or (ii) of the Inventory of the re-transferring Government shall be made in accordance with Section 11(a)(i), and shall include a statement to the effect that the items covered by the notifications are being returned to the country of origin. On the receipt of such a notification the Agency shall, in accordance with paragraph 26 of the Safeguards Document, remove the items concerned from the Inventory of the re-transferring Government and, except in the case of improved nuclear material, shall not include them on the Inventory of the receiving Government.

Section 16.

- (a) The two Governments shall jointly notify the Agency of any intended transfer of nuclear materials, listed in Part I of either Inventory, to a recipient which is not under the jurisdiction of either of the two Governments. Such nuclear materials shall not be transferred unless:
 - (i) Arrangements have been made by the Agency to safeguard such nuclear materials; or
 - (ii) The nuclear materials will be subject to safeguards other than those of the Agency but generally consistent with such safeguards and accepted by the Agency.
- (b) Nuclear materials, equipment or facilities listed in Part I of either Inventory that are transferred to a recipient which is not under the jurisdiction of either of the two Governments shall upon transfer be deleted from the Inventory.

Section 17. Whenever either Government intends to transfer nuclear materials or equipment, listed in Part I of its Inventory, to a principal nuclear facility within its jurisdiction which is not subject to Agency safeguards under this Agreement or any other agreement between that Government and the Agency, such transfer shall not be effected before the notification required by Section 11(a)(ii) has been accepted by the Agency.

Section 18. The notifications provided for in Sections 16 and 17 shall, unless otherwise agreed with the Agency, be made at least two weeks in advance of any intended transfer. The contents of these notifications shall conform, as far as appropriate, to the requirements of Section 14.

Section 19. The Agency shall exempt nuclear material, listed in Part I of either Inventory, from safeguards under the conditions specified in paragraphs 21, 22 and 23 of the Safeguards Document and shall suspend safeguards with respect to nuclear material under the conditions specified in paragraphs 24 and 25 of that Document, and shall thereupon transfer the listing of the items concerned to Part III of the Inventory in question.

Section 20. The Agency shall terminate safeguards under this Agreement with respect to those items deleted from either Inventory as provided in Sections 15 and 16. Safeguards on nuclear material other than that covered by the preceding sentence shall be terminated under the conditions specified in paragraphs 26 and 27 of the Safeguards Document and the nuclear material for which safeguards are so terminated shall thereupon be deleted from the Inventory in question.

Section 21. The two Governments and the Agency shall agree on the conditions for exemption, suspension or termination of safeguards on items not covered by Sections 19 and 20.

S e c t i o n 22. The Agency shall send copies of both Inventories to both Governments every twelve months and also at any times specified by either Government in a request communicated to the Agency at least two weeks in advance.

S a f e g u a r d s P r o c e d u r e s

S e c t i o n 23. In applying safeguards, the Agency shall observe the principles set forth in paragraphs 9 to 14 of the Safeguards Document.

S e c t i o n 24. 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 such procedures. 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.

S e c t i o n 25. If the Board determines, in accordance with Article XII. C of the Agency's Statute, 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 thinks appropriate. In the event of failure by such Government to take fully corrective action within a reasonable time:

- (a) The Agency shall be relieved of its responsibility to apply safeguards under this Agreement 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 other measures provided for in Article XII. C of the Statute.

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

A g e n c y I n s p e c t o r s

S e c t i o n 26. The provisions of paragraphs 1 to 10 and 12 to 14 of the Inspectors Document shall apply to Agency inspectors performing functions pursuant to this Agreement. However, paragraph 4 of the Inspectors Document shall not apply with regard to any principal nuclear 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 France and Japan shall be agreed between the Agency and the Government concerned before the principal nuclear facility or the nuclear material is listed in the Inventory.

S e c t i o n 27. France and Japan shall apply the relevant provisions of the Agreement on the Privileges and Immunities of the Agency^[3] to the Agency, to its inspectors performing functions under this Agreement and to any property of the Agency used by them.

F i n a n c e

S e c t i o n 28. 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 France nor Japan shall be required to bear any expense for equipment, accommodation, or transport furnished pursuant to the provisions of paragraph 6 of the Inspectors Document. These provisions shall not prejudice the allocation of expenses which are reasonably attributable to a failure by a Party to comply with this Agreement.

[3] INFCIRC/9/Rev.2.

S e t t l e m e n t o f D i s p u t e s

S e c t i o n 29. 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 submitted 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 30 days of the request for arbitration either Party has not designated an arbitrator, the other 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 30 days of the designation or appointment of the second arbitrator, the third arbitrator has not been elected;
- (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 30 days of the request for arbitration any Party has not designated an arbitrator, any other 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 30 days of designation or appointment of the third arbitrator, the Chairman or the fifth arbitrator has not been elected.

A majority of the members of the tribunal shall constitute a quorum, and all decisions shall be made by a majority vote. The arbitral procedure shall be fixed by the tribunal. The remuneration of the arbitrators shall be determined on the same basis as that of ad hoc judges of the International Court of Justice under paragraph 4 of Article 32 of the Statute of the Court.

S e c t i o n 30. If necessary to ensure that this Agreement continues to function effectively pending a final decision on the dispute, the arbitral tribunal shall, upon request by any Party, be empowered to decide on interim measures; such decisions shall not restrict the powers of the Board under Section 25.

S e c t i o n 31. All decisions of the tribunal, including rulings concerning its constitution, procedure, jurisdiction, the division of the expenses of the arbitration between the Parties and decisions on interim measures, shall be binding on all Parties and shall be implemented by them, in accordance with their respective constitutional procedures.

A m e n d m e n t a n d D e f i n i t i o n s

S e c t i o n 32. 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 jointly 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 jointly so request to take account of any or all such modifications.

S e c t i o n 33. For the purposes of this Agreement:

- (a) "Agreement for Co-operation" means the Agreement for Co-operation between the Government of the French Republic and the Government of Japan in the Peaceful Uses of Nuclear Energy signed on 26 February 1972, as may be amended from time to time;
- (b) "Improved" means, with respect to nuclear material, that either:
 - (i) The concentration of fissionable isotopes in it has been increased; or
 - (ii) The amount of chemically separable fissionable isotopes in it has been increased; or
 - (iii) Its chemical or physical form has been changed so as to facilitate further use or processing;
- (c) "Inspectors Document" means the Annex to Agency document GC(V)/INF/39, which was placed in effect by the Board on 29 June 1961;
- (d) "Nuclear material" means any source or special fissionable material as defined in Article VIII of the Agreement for Co-operation. Any amendment to Article VIII, paragraph (e) or (f) of the Agreement for Co-operation and any agreement between the Parties thereto on the specification of other substances in addition to those already specified in these paragraphs shall have effect under this Agreement only upon acceptance by the Agency;
- (e) "Principal nuclear facility" means a reactor, a plant for processing nuclear material irradiated in a reactor, a plant for separating the isotopes of a nuclear material, a plant for processing or fabricating nuclear material (excepting a mine or ore-processing plant) or a facility or plant of such other type as may be designated by the Board from time to time, including associated storage facilities;
- (f) "Safeguards Document" means Agency document INFCIRC/66/Rev. 2;
- (g) The terms "equipment" and "facilities" have the same meaning as in the Agreement for Co-operation.

E n t r y I n t o F o r c e a n d D u r a t i o n

S e c t i o n 34. This Agreement shall enter into force upon signature by or for the Director General of the Agency and by the authorized representatives of France and Japan.

S e c t i o n 35. This Agreement shall remain in force for the duration of the Agreement for Co-operation, unless terminated sooner by any Party upon six months' notice to the other Parties or as may otherwise be agreed.

S e c t i o n 36. If either Government concludes with the Agency the agreement referred to in Article III, paragraph 4 of the Treaty on the Non-Proliferation of Nuclear Weapons[4] or any similar agreement acceptable to the other Government, such agreement shall, so long as it remains in effect, suspend the application of safeguards under this Agreement, in so far as that Government is concerned.

DONE in Mexico City, this 22nd day of September 1972, in triplicate in the English and French languages, the texts of both languages being equally authentic.

[4] Reproduced in document INFCIRC/140.

For the INTERNATIONAL ATOMIC ENERGY AGENCY:

(signed) Sigvard Eklund

For the GOVERNMENT OF THE FRENCH REPUBLIC:

(signed) Bertrand L. Goldschmidt

For the GOVERNMENT OF JAPAN:

(signed) Tadao Kato