



International Atomic Energy Agency
INFORMATION CIRCULAR

INF

INFCIRC/433
May 1994

GENERAL Distr.
Original: ENGLISH

**AGREEMENT WITH THE GOVERNMENT OF INDIA
FOR THE APPLICATION OF SAFEGUARDS TO ALL NUCLEAR MATERIAL
SUBJECT TO AGENCY SAFEGUARDS UNDER INFCIRC/154, PART 1
AND UNDER THE AGREEMENTS BETWEEN INDIA AND THE IAEA CONTAINED
IN EXCHANGES OF LETTERS
DATED 1 OCTOBER AND 1 DECEMBER 1993**

1. The text of the Exchange of Letters and the Attachment, constituting the Agreement with the Government of India for the Application of Safeguards to all nuclear material subject to Agency safeguards under INFCIRC/154, Part 1, and under the Agreements between India and the IAEA contained in Exchanges of Letters dated 1 October and 1 December 1993, is reproduced in this document for the information of all Members. The Agreement was approved by the Agency's Board of Governors on
21 February 1994.

2. The Agreement entered into force, pursuant to the Exchange of Letters, on
1 March 1994.



INTERNATIONAL ATOMIC ENERGY AGENCY
AGENCE INTERNATIONALE DE L'ENERGIE ATOMIQUE
МЕЖДУНАРОДНОЕ АГЕНТСТВО ПО АТОМНОЙ ЭНЕРГИИ
ORGANISMO INTERNACIONAL DE ENERGIA ATOMICA

WAGRAMERSTRASSE 5, P.O. BOX 100, A-1400 VIENNA, AUSTRIA
TELEX: 1-12645. CABLE: INATOM VIENNA, FACSIMILE: (+43 1) 234564, TELEPHONE: (+43 1) 2360

IN REPLY PLEASE REFER TO:
PRIERE DE RAPPELER LA REFERENCE:

250-MA-IND.12.2

DIAL DIRECTLY TO EXTENSION:
COMPOSER DIRECTEMENT LE NUMERO DE POSTE:

16 February 1994

Sir,

I have the honour to refer to the Safeguards Agreement (INFCIRC/154, Part I) concluded between the Government of India, the Government of the United States of America and the International Atomic Energy Agency (IAEA) in connection with the bilateral agreement between India and the United States concerning co-operation in the civil uses of atomic energy (INFCIRC/154, Part II).

On 24 October 1993, the Agreement for Co-operation between India and the United States expired. Accordingly, as provided for in section 27 of the Safeguards Agreement, the Safeguards Agreement also expired on that date.

In a letter of 19 August, 1993, from the Resident Representative of India to the IAEA (a copy of which is attached to GOV/2702 of 1 December 1993), it was explained that "it is proposed to continue operation of TAPS [Tarapur Atomic Power Station] to produce electricity for many more years beyond 24th October, 1993. The technical feasibility has been established for using mixed uranium-plutonium (MOX) fuel for its operation and this would require reprocessing the spent fuel from TAPS to obtain the plutonium required for this MOX fuel, for which there are subsidiary arrangements between the IAEA and the Government of India entered into on 12th August, 1980." The letter also noted that the "Government of India proposes to commence reprocessing of TAPS spent fuel shortly."

In the same letter from the Resident Representative of India, the Government of India expressed its wish to continue voluntarily, on a bilateral basis, the application of safeguards to the nuclear material subject to safeguards under INFCIRC/154, Part I.

H.E. Mr. Kamal Nain Bakshi
Ambassador
Resident Representative of India to the IAEA
Kärntnerring 2/2nd Fl.
1010 Vienna

/2.

Pending conclusion of a new agreement to that effect, the Board of Governors approved on 4 October 1993 and, subsequently on 2 December 1993, as interim measures, Exchanges of Letters whereby India and the Agency agreed to continue to be bound by the provisions of INFCIRC/154, Part I, in so far as they relate to the bilateral relationship between India and the IAEA, as from the date of termination of the trilateral Safeguards Agreement, initially to 31 December 1993 and subsequently to 1 March 1994.

The Government of India has expressed its preference for an approach whereby the new safeguards agreement would take the form of an exchange of letters incorporating the agreed provisions of INFCIRC/154, Part I, and detailing the new provisions.

Accordingly, I have the honour to propose that India and the IAEA agree to the provisions set forth in the Attachment to this letter, the Attachment being an integral part of this letter.

Should you accept this proposal, this letter, including the Attachment hereto, and your reply, would, subject to approval by the Board of Governors of the IAEA, constitute the agreement of India and the IAEA, and become effective on 1 March 1994.

Accept, Sir, the assurances of my highest consideration.

A handwritten signature in black ink, appearing to read 'Hans Blix', with a small 'x' mark at the end of the signature.

Hans Blix
Director General

ATTACHMENT

Undertakings by India and the Agency

Section 1. India undertakes that none of the items subject to this Agreement, as specified in the Annex, which constitutes an integral part of this Agreement, shall be used for the manufacture of any nuclear weapon or to further any other military purpose and that such items shall be used exclusively for peaceful purposes and shall not be used for the manufacture of any nuclear explosive device.

Section 2. The Agency undertakes to apply safeguards, in accordance with the terms of this Agreement, to the items subject to this Agreement, as specified in the Annex, so as to ensure so far as it is able that no such item is used for the manufacture of any nuclear weapon or to further any other military purpose and that such items are used exclusively for peaceful purposes and are not used for the manufacture of any nuclear explosive device.

Section 3. India undertakes to co-operate with the Agency in the application of the safeguards provided for in this Agreement.

Establishment and Maintenance of Inventory

Section 4. The Agency shall establish and maintain an Inventory which shall be divided into three parts:

(a) The Main Part of the Inventory shall list:

(i) All nuclear material that was subject to Agency safeguards in accordance with Part I, concluded between the Government of India, the Government of the United States of America and the Agency and the agreements between India and the Agency contained in Exchanges of Letters dated 1993-10-01 and 1993-12-01.

(ii) Any nuclear material, including subsequent generations of special fissionable material, produced, processed or used in or by the use of any item subject to this Agreement.

(iii) Any nuclear material substituted in accordance with Section 11 of this Agreement for nuclear material subject to this Agreement.

(b) The Subsidiary Part of the Inventory shall list:

Any facility while containing, using, processing or

fabricating any nuclear material subject to this Agreement.

(c) The Inactive Part of the Inventory shall list:

Nuclear material exempted from safeguards, or on which safeguards have been suspended, in accordance with the provisions of Sections 14 and 15'of this Agreement.

The Agency shall send a copy of the Inventory to India every twelve months and also at any other times specified by India in a request communicated to the Agency at least two weeks in advance.

Notifications

Section 5.

The Government of India shall notify the Agency of:

(a) Any facility while it is containing, using, fabricating, or processing, any nuclear material subject to this Agreement; and

(b) Any nuclear material, including subsequent generations of special fissionable material, produced, processed or used in or by the use of any item subject to this Agreement.

All notifications under this Section shall include, to the extent relevant, the nuclear and chemical composition, the physical form, and the quantity of the material, the date of shipment, the date of receipt, the date of processing, the date of use, the

identity of the consignor and consignee, and any other relevant information.

Section 6. India shall notify the Agency by means of its reports pursuant to the Safeguards Document of any nuclear material produced, processed or used during the period covered by the report in or by the use of any of the items subject to this Agreement, which shall be subject to this Agreement from the time it is produced, processed or used. The Agency may verify the calculations of the amounts of such material and appropriate adjustments shall be made by agreement between India and the Agency.

Section 7. India shall notify the Agency of any losses of nuclear material subject to this Agreement by means of reports to be specified in the Subsidiary Arrangements.

Section 8. India shall notify the Agency of any transfer of nuclear material subject to this Agreement to a recipient which is not under the jurisdiction of India. Such material may be transferred, and shall thereupon cease to be subject to this Agreement, only after the Agency has confirmed that it has made arrangements to apply safeguards in respect of the nuclear material in question.

Section 9. Whenever India intends to transfer nuclear material subject to this Agreement to a facility within its jurisdiction which is not listed on the Inventory referred to in

Section 4 of this Agreement, any notification that will be required pursuant to Section 5 should be made to the Agency before the transfer is effected. The Agency shall also be given the opportunity as early as possible in advance of such a transfer to review the design of the facility for the sole purpose of determining that the arrangements provided for in this Agreement can be effectively applied. For purposes of such review, the Agency shall require only a minimum amount of information and data consistent with carrying out such a review. It shall complete the review promptly on receipt of such information. India may make the transfer to the facility after the Agency has confirmed that it has made arrangements to apply safeguards with respect to the facility in question.

Section 10. The notifications referred to in Sections 8 and 9 above shall be made to the Agency sufficiently in advance to enable it to make the arrangements required by those Sections before such a transfer is effected. The Agency shall promptly take any necessary action. The time limits for and the contents of these notifications shall be laid down in the Subsidiary Arrangements referred to in Section 17(b).

Substitution

Section 11. Notwithstanding anything contained in this Agreement, India shall have the right, upon prior notice to the Agency, to remove from the scope of this Agreement quantities of nuclear material provided it has, pursuant to mutually acceptable

measurement arrangements, and in accordance with the provisions in the Safeguards Document, placed agreed equivalent quantities of the same type of nuclear material under the scope of this Agreement.

Section 12. Special reports shall be provided to the Agency in accordance with paragraphs 42 and 43 of the Safeguards Document.

Termination, Exemption and Suspension

Section 13. Safeguards under this Agreement shall be terminated with respect to:

- (a) nuclear material when such material is removed from the scope of this Agreement as provided in Section 11;
- (b) nuclear material transferred pursuant to Section 8; and
- (c) nuclear material with respect to which the Agency has determined that it 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 practicably irrecoverable.

Section 14. 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 Safeguards Document.

Section 15. The conditions for exemption and suspension, and for termination of the provisions of this Agreement on items not covered by Section 13 and 14, shall be decided by mutual agreement.

Safeguards Procedures and Subsidiary Arrangements

Section 16. In applying safeguards, the Agency shall observe the principles set forth in paragraphs 9 through 14 of the Safeguards Document.

Section 17.

- (a) The safeguards procedures to be applied by the Agency are those specified in the Safeguards Document, as well as such additional procedures as may result from technological developments and as may be agreed to between the Agency and India. If nuclear material subject to safeguards under this Agreement is to be transferred to a facility under construction, the Agency shall have the right to obtain in respect of that facility the information referred to in paragraph 41 of the Safeguards Document and to make the inspection(s) referred to in paragraphs 51 and 52 of the Safeguards Document.
- (b) The Agency shall make Subsidiary Arrangements with -India concerning the implementation of the safeguards procedures covering the items subject to this

Agreement. The Subsidiary Arrangements shall also include any necessary arrangements for such containment and surveillance measures as are required for the effective implementation of safeguards. The existing Subsidiary Arrangements in force pursuant to INFCIRC/154, Part I, at the time of entry into force of this Agreement shall be modified as may be mutually agreed to reflect the requirements of this Agreement.

Section 18. Application of safeguards procedures with respect to any facility while containing, using, processing, or fabricating any nuclear material subject to this Agreement shall be governed by the Safeguards Document. If any sub-area of a facility does not contain nuclear material subject to safeguards under this Agreement, that sub-area will not be subject to the safeguards procedures foreseen in this Agreement. The Subsidiary Arrangements will define, for each facility, the sub-areas (accounting sub-areas). India shall notify the Agency in advance if an accounting sub-area of a facility will cease to contain, use, process or fabricate any nuclear material subject to this Agreement, so that the safeguards procedures may, if required, be appropriately adjusted.

Non-Compliance

Section 19. If the Board determines that there has been any non-compliance by India with this Agreement, the Board shall call upon India to remedy such non-compliance forthwith, and

shall make such reports as it deems appropriate. If India fails to take fully corrective action within a reasonable time, the Board may take any other measure provided for in Article XII.C of the Statute. The Agency shall promptly notify India in the event of any determination by the Board pursuant to this Section.

Agency Inspectors

Section 20. Personnel designated by the Agency performing functions under this Agreement shall be governed by paragraphs 1 to 3, 5 to 10 and 12 to 14 of the Inspectors Document.

Section 21. India shall apply the relevant provisions of the Agreement on the Privileges and Immunities of the Agency to the Agency, to Agency personnel performing functions under this Agreement and to any property of the Agency used by them.

Physical Protection

Section 22. India shall take suitable measures for the physical protection of nuclear material subject to this Agreement, taking into account the recommendations made in Agency document INFCIRC/225/Rev.3.

Finance

Section 23. India and the Agency shall each bear any expense incurred in the implementation of their responsibilities

under this Agreement. The Agency shall reimburse India for any special expenses, including those referred to in paragraph 6 of the Inspectors Document, incurred by India or persons under its jurisdiction at the written request of the Agency, if India notified the Agency before the expense was incurred that reimbursement would be required. These provisions shall not prejudice the allocation of expenses attributable to a failure by either India or the Agency to comply with this Agreement.

Section 24. India shall ensure that any protection against third-party liability, including any insurance or other financial security, in respect of a nuclear incident occurring in a nuclear installation under its jurisdiction shall apply to the Agency and its inspectors when carrying out their functions under this Agreement as that protection applies to nationals of India.

Interpretation and Settlement of Disputes

Section 25. At the request of either India or the Agency there shall be consultations about any question arising out of the interpretation or application of this Agreement.

Section 26.

- (a) India and the Agency shall endeavour to settle by negotiation any dispute arising from the Interpretation or application of this Agreement.

- (b) Any dispute arising out of the interpretation or application of this Agreement which is not settled by consultations or negotiation or as may otherwise be agreed to by India and the Agency shall on the request of either India or the Agency be submitted to an arbitral tribunal composed of three persons as follows: India and the Agency shall each designate one arbitrator and the two arbitrators so designated shall elect a third arbitrator, who shall be the Chairperson. If within thirty days of the request for arbitration either party has not designated an arbitrator, the other party may request the President of the International Court of Justice to appoint such 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.
- (c) Two members of the arbitral tribunal shall constitute a quorum, and all decisions shall require the concurrence of at least two members. 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 India and the Agency, shall be binding on India and the Agency. The remuneration of the arbitrators shall be determined on the same basis as that for ad hoc judges of the International Court of

Justice.

Section 27. Decisions of the Board concerning the implementation of this Agreement, except those relating only to Sections 23 and 24, shall, if they so provide, be given effect immediately by India and the Agency, pending the final settlement of any dispute.

Amendment, Modification, Entry into Force and Duration

Section 28. If the Board modifies the Safeguards System as contained in Agency document INFCIRC/66/Rev.2, or the Inspectors Document, or modifies the general nature of its safeguards agreements, this Agreement shall be amended, if India so requests, to take account of any or all such modifications. The parties shall, at the request of either of them, consult about amending this Agreement.

Section 29. This Agreement shall remain in force until, in accordance with its provisions, safeguards have been terminated on all items referred to in Section 4, or until terminated by mutual agreement of the parties to this Agreement.

Definitions

Section 30. 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) "Facility" shall mean:
 - (i) A principal nuclear facility as defined in paragraph 78 of the Safeguards Document as well as a critical facility or a separate storage installation;
 - (ii) Any location where nuclear material in amount greater than one effective kilogram is customarily used;
- (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) "Nuclear material" means any source material or special fissionable material as defined in Article XX of the Statute of the Agency;
- (f) "Produced, processed or used" shall mean any utilization or any alteration of the physical or chemical form or composition, including any change of the isotopic composition, of nuclear material;
- (g) "Safeguards Document" shall mean Agency document INFCIRC/66/Rev.2.

ANNEX

The items subject to this Agreement are as follows:

I. Nuclear Material

- (a) All nuclear material that was subject to Agency safeguards in accordance with document INFCIRC/154, Part I, concluded between the Government of India, the Government of the United States of America and the Agency and the agreements between India and the Agency contained in Exchanges of Letters dated 1993-10-01 and 1993-12-01;
- (b) Any nuclear material, including subsequent generations of special fissionable material, produced, processed or used in or by the use of any item subject to this Agreement;
- (c) Any nuclear material substituted in accordance with Section 11 of this Agreement for nuclear material subject to this Agreement;
- (d) Nuclear material exempted from safeguards, or on which safeguards have been suspended, in accordance with the provisions of Sections 14 and 15 of this Agreement.

II. Facilities

Any facility while containing, using, processing or fabricating any nuclear material subject to this Agreement.



भारत का राजदूत, वियाना
AMBASSADOR OF INDIA, VIENNA

No. VIEN/110/13/93

16 February 1994

Sir,

I have the honour to acknowledge the receipt of your letter dated February 16, 1994, together with its Attachment.

2. Your letter dated February 16, 1994, omitting its formal parts reads:

Quote

I have the honour to refer to the Safeguards Agreement (INFCIRC/154, Part I) concluded between the Government of India, the Government of the United States of America and the International Atomic Energy Agency (IAEA) in connection with the bilateral agreement between India and the United States concerning co-operation in the civil uses of atomic energy (INFCIRC/154, Part II).

On 24 October 1993, the Agreement for Co-operation between India and the United States expired. Accordingly, as provided for in section 27 of the Safeguards Agreement, the Safeguards Agreement also expired on that date.

In a letter of 19 August, 1993, from the Resident Representative of India to the IAEA (a copy of which is attached to GOV/2702 of 1 December 1993), it was explained that "it is proposed to continue operation of TAPS [Tarapur Atomic Power Station] to produce electricity for many more years beyond 24th October, 1993. The technical feasibility has been established for using mixed uranium plutonium (MOX) fuel for its operation and this would require reprocessing the spent fuel from TAPS to obtain the plutonium required for this MOX fuel, for which there are subsidiary arrangements between the IAEA and the Government of India entered into on 12th August, 1980." The letter also noted that the "Government of India proposes to commence reprocessing of TAPS spent fuel shortly."

In the same letter from the Resident Representative of India, the Government of India expressed its wish to continue voluntarily, on a bilateral basis, the application of safeguards to the nuclear material subject to safeguards under INFCIRC/154, Part I.

Pending conclusion of a new agreement to that effect, the Board of Governors approved on 4 October 1993 and, subsequently on 2 December 1993, as interim measures, Exchanges of Letters whereby India and the Agency agreed to continue to be bound by the provisions of INFCIRC/154, Part I, in so far as they relate to the bilateral relationship between India and the IAEA,

as from the date of termination of the trilateral Safeguards Agreement, initially to 31 December 1993 and subsequently to 1 March 1994.

The Government of India has expressed its preference for an approach whereby the new safeguards agreement would take the form of an exchange of letters incorporating the agreed provisions of INFCIRC/154, Part I, and detailing the new provisions.

Accordingly, I have the honour to propose that India and the IAEA agree to the provisions set forth in the Attachment to this letter, the Attachment being an integral part of this letter.

Should you accept this proposal, this letter, including the Attachment hereto, and your reply, would, subject to approval by the Board of Governors of IAEA, constitute the agreement of India and the IAEA, and become effective on 1 March 1994.

Unquote

3. The Government of India agrees to the provisions set forth in the Attachment to your letter dated February 16, 1994, to implement Government of India's voluntary offer for a bilateral Agreement with the IAEA.

4. Your letter dated February 16, 1994, including the Attachment thereto and this letter subject to approval by the Board of Governors of IAEA would constitute the agreement between India and the IAEA, and become effective on 1 March 1994.

Accept, Sir, the assurances of my highest consideration.



(K.N. Bakshi)
Ambassador of India

His Excellency Dr. Hans Blix,
Director General,
International Atomic Energy Agency,
Vienna