

DEPARTMENT OF FOREIGN AFFAIRS AND TRADE
CANBERRA

**Agreement between the Government of Australia and the Government of India on Cooperation in
the Peaceful Uses of Nuclear Energy**

(New Delhi, 5 September 2014)

Not yet in force
[2014] ATNIF 26

The Government of Australia (hereinafter referred to as “Australia”) and the Government of India (hereinafter referred to as “India”), both hereinafter referred to as “the Parties”;

DESIRING to strengthen the friendly relations that exist between the Parties;

NOTING the significance of civilian nuclear energy for meeting growing global energy demands;

DESIRING to establish bilateral cooperation in the use of nuclear energy for peaceful purposes;

RECOGNISING India’s commitment to the development and use of nuclear energy for peaceful purposes with a view to achieving sustainable development and strengthening energy security including fuel reserves and the role that Australia could play as a long-term reliable supplier of uranium to India;

DESIRING in the interest of the Parties to develop such cooperation on the basis of mutual benefit, mutual respect, equality, reciprocity, non-interference in each other’s internal affairs as well as in accordance with their respective nuclear policies and their respective international obligations and commitments;

NOTING that the Parties share common concerns and objectives regarding non-proliferation of nuclear weapons and their means of delivery, including possible linkages to terrorism;

UNDERLINING their shared belief that international cooperation in the use of nuclear energy for peaceful purposes should be consistent with the objectives of non-proliferation of nuclear weapons and with the respective international obligations of states;

AFFIRMING their support for the objectives of the Statute of the International Atomic Energy Agency (hereinafter referred to as “the Agency”);

RECOGNIZING that Australia has concluded the “*Agreement between Australia and the International Atomic Energy Agency for the Application of Safeguards in connection with the Treaty on the Non-Proliferation of Nuclear Weapons of 1 July 1968*” done at Vienna on 10 July 1974 and the Protocol Additional to that agreement, done at Vienna on 23 September 1997;

RECOGNIZING that India has concluded the “*Agreement between the Government of India and the International Atomic Energy Agency for the Application of Safeguards to Civilian Nuclear Facilities*” done at Vienna on 2 February 2009 and the Protocol Additional to that agreement, done at Vienna on 25 February 2009;

RECALLING India’s commitment to identify and separate its civilian and military nuclear facilities and programmes in a phased manner and its sovereign decision to place voluntarily its civilian nuclear facilities under IAEA safeguards;

NOTING their respective commitments to safety and security of the peaceful uses of nuclear energy;

REAFFIRMING their respective commitments to achieve the highest standards of radiation and nuclear safety based on a scientific approach, operating experience and best practices, as well as to ensure that the use of radiation and atomic energy in all its applications is safe for the health of radiation workers, members of the public and the environment;

RECALLING that both India and Australia are Parties to the Convention on Nuclear Safety done at Vienna on 17 June 1994, which entered into force generally on 24 October 1996 (IAEA INFCIRC/449), the Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency, done at Vienna on 26 September 1986 and which entered into force generally on 26 February 1987 (IAEA INFCIRC/336), and the Convention on Early Notification of a Nuclear Accident, done at Vienna on 26 September 1986 and which entered into force generally on 27 October 1986 (IAEA INFCIRC/335).

Have agreed as follows:

ARTICLE I

Definitions

For the purpose of this Agreement:

- (a) “by-products” means any radioactive material (except special fissionable material) yielded in or made radioactive by exposure to the radiation incident to the process of producing special fissionable material or utilizing source material or special fissionable material;
- (b) “component” means a component part of equipment or other item, so designated by mutual determination in writing by the Parties;
- (c) “equipment” means equipment listed in the Annex to this Agreement, or as amended from time to time by mutual determination in writing by the Parties;
- (d) “legal entity” means any natural person or entity subject to the jurisdiction of either Party but does not include the Parties;
- (e) “non-nuclear material” means material listed in the Annex to this Agreement, or as amended from time to time by mutual determination in writing by the Parties;
- (f) “nuclear material” means any “source material” or “special fissionable material” as those terms are defined in Article XX of the Statute of the International Atomic Energy Agency, done at Geneva on 26 October 1956. Any determination by the Board of Governors of the Agency under Article XX of the Statute of the Agency which amends the list of material considered to be “source material” or “special fissionable material” shall only have effect under this Agreement when both Parties have informed each other in writing through diplomatic channels that they accept such amendment;
- (g) “peaceful purposes” means the use of items subject to this agreement in such fields as research, power generation, medicine, agriculture and industry, but does not include use in, research on, or development of any nuclear explosive device, use in munitions such as depleted uranium munitions, or for any other military purpose. Provision of power for a military base drawn from any power network, production of radioisotopes to be used for medical purposes in military environment for diagnostics, therapy and product sterility

assurance, and other similar purposes as may be mutually agreed by the Parties shall not be regarded as military purpose;

- (h) “technology” means specific information necessary for the development, production or use of nuclear material, non-nuclear material, equipment or components with the exception of basic scientific research and of information that is lawfully in the public domain;
- (i) “transfer” includes a retransfer.

ARTICLE II

Scope of Cooperation

1. The Parties shall cooperate in the peaceful uses of nuclear energy in accordance with the provisions of this Agreement.

2. The cooperation in the peaceful uses of nuclear energy under this Agreement may include the following areas and activities:

- (a) the supply of uranium;
- (b) production and application of radioisotopes and radiation in industry, agriculture, medicine and the environment;
- (c) nuclear safety, radiation and environment protection and management of radioactive waste;
- (d) safe, secure, sustainable and safeguarded use of civil nuclear energy, including regulatory and technological advancements;
- (e) other areas of cooperation, as may be mutually determined in writing by the Parties.

3. The cooperation mentioned in this Article may be undertaken in the following forms:

- (a) supply of items subject to this Agreement set out in Article III;
- (b) exchange and training of personnel;
- (c) organisation of symposia and seminars;

- (d) technology transfer;
- (e) provision of relevant technical assistance and services;
- (f) exchange of scientific and technical information and documentation;
- (g) joint research and/or development projects;
- (h) other forms of cooperation as may be mutually determined in writing by the Parties.

4. Cooperation in a specific field pursuant to this Article may be carried out by virtue of a written arrangement between the Parties, the designated authorities, or legal entities authorised by the designated authorities. These written arrangements shall conform with the Parties' respective legal requirements, and may include provisions dealing with intellectual property rights protection where such rights exist or arise.

5. Nothing in this Agreement shall be interpreted as affecting the rights of the Parties to use for their own purposes nuclear material, non-nuclear material, equipment, components and technology, produced, acquired or developed by them independent of any items subject to this Agreement.

ARTICLE III

Implementing Provisions

1. Items subject to this Agreement are:
 - (a) nuclear material, non-nuclear material, equipment, components and technology transferred between Australia and India, whether directly or through a third State;
 - (b) equipment produced by the application of technology so transferred;
 - (c) nuclear material and non-nuclear material that is produced or processed by the use of any equipment, components or technology subject to this Agreement;
and
 - (d) nuclear material that is produced or processed by the use of any nuclear material or non-nuclear material subject to this Agreement.

2. Nuclear material, non-nuclear material, equipment, components and technology referred to in this Article shall remain subject to the provisions of this Agreement until:

- (a) in the case of nuclear material, it has been determined by the Agency, in accordance with the provisions for the termination of safeguards in the agreement between the Party concerned and the Agency that it has been consumed or diluted in such a way that it is no longer usable for any nuclear activity relevant from the point of view of Agency safeguards, or has become practicably irrecoverable; or
- (b) transferred beyond the territory, jurisdiction or control of Australia or beyond the territory, jurisdiction or control of India in accordance with Article IX of this Agreement; or
- (c) the Parties otherwise mutually determine in writing through diplomatic channels that it should no longer be subject to this Agreement.

3. This Agreement shall be implemented between the Parties through the designated authorities nominated by them. For Australia, the designated authority will be the Australian Safeguards and Non-Proliferation Office. For India, the designated authority will be the Nuclear Controls and Planning Wing of the Department of Atomic Energy. A Party may from time to time notify the other Party in writing through diplomatic channels of a change to the designated authority.

4. The designated authorities of both Parties shall establish an Administrative Arrangement to facilitate the effective implementation of this Agreement. This Arrangement will include such exchange of information as is mutually determined by the designated authorities to implement and administer the provisions of this Agreement. The Administrative Arrangement established pursuant to this paragraph may be amended with the mutual consent in writing of the designated authorities of both Parties.

5. Each Party shall establish and maintain a system of accounting for and control of items subject to this Agreement.

6. Items subject to this Agreement shall be transferred only to a legal entity of Australia or India which the designated authority of the receiving Party notifies the designated authority of the supplier Party as being duly authorised to receive such items.

ARTICLE IV

Nuclear Trade

1. The Parties shall implement this Agreement to facilitate trade between themselves and those duly authorised by them, and where appropriate, trade between either Party and third States, of items subject to this Agreement for which the other Party is the intended end user.
2. A Party shall not use the provisions of this Agreement for the purpose of securing commercial advantage or for the purpose of interfering with the commercial relations of the other Party.
3. The Parties shall implement this Agreement within the framework of their respective national legislation, regulations and international obligations.

ARTICLE V

Facilitation of Visits

When implementing a written arrangement in accordance with this Agreement, the Parties shall facilitate visits of experts to their territory consistent with applicable national laws and regulations. Parties will facilitate visits of experts to their territory for implementation of the provisions of this Agreement on a reciprocal basis.

ARTICLE VI

Reprocessing and Enrichment

1. The Government of Australia grants consent to the Government of the Republic of India for reprocessing or otherwise altering in form or content nuclear material subject to this Agreement in facilities dedicated to reprocessing safeguarded nuclear material under IAEA safeguards and modalities thereof described in the *Arrangements and Procedures Agreed between the Government of the United States of America and the Government of India pursuant to Article 6(iii) of their Agreement for Cooperation Concerning Peaceful Uses of Nuclear Energy*, done at Washington D.C. on 30 July 2010.

2. The provisions of paragraph 1 shall only apply:
 - (a) as long as the modalities described in paragraph 1 of this Article continue to apply;
 - (b) as long as the India-IAEA Safeguards Agreement remains in force; and
 - (c) where any special fissionable material that may be separated thereby is stored or used only for the purpose of producing nuclear fuel for facilities in India under Agency safeguards to implement India's planned nuclear energy programme.
3. The Government of India shall notify the Government of Australia in writing when it has established a facility described in paragraph 1 of this Article. The notification shall contain the following:
 - (a) such information as is available to the Government of India on the IAEA safeguards approaches for the facility that is not classified as "Safeguards Confidential"; and
 - (b) a confirmation that the physical protection measures required by Article VIII of this Agreement will be applied to the facility.
4. At the request of either Party, the Parties shall consult on the implementation of this Article. If the provisions of paragraph 2(a) no longer apply the Parties shall immediately enter into consultations on the implementation of this Article.
5. Enrichment of nuclear material subject to this agreement may be carried out to less than twenty percent in the isotope 235 of uranium. Enrichment of twenty percent and above in the isotope of uranium 235 shall be undertaken with prior consent of the Supplier Party.

ARTICLE VII

Peaceful Use and IAEA Safeguards

1. The Parties shall ensure that the items subject to this Agreement as well as by-products are used only for peaceful and non-explosive purposes. Both Parties shall comply with the provisions contained in the IAEA document GOV/1999/19/Rev.2 with

regard to by-products subject to this Agreement. With regard to tritium, the Parties shall exchange annually information pertaining to the disposition of tritium for peaceful purposes.

2. IAEA safeguards shall apply to India's civilian nuclear facilities in accordance with the Agreement between India and the International Atomic Energy Agency for the Application of Safeguards to Civilian Nuclear Facilities done at Vienna on 2 February 2009 (IAEA INFCIRC/754).

3. Where items subject to this Agreement are within the territory of Australia, under its jurisdiction or under its control anywhere, they shall remain subject to IAEA safeguards in accordance with the "Agreement between Australia and the International Atomic Energy Agency for the Application of Safeguards in connection with the Treaty on the Non-Proliferation of Nuclear Weapons of 1 July 1968" done at Vienna on 10 July 1974 and the Protocol Additional to that agreement, done at Vienna on 23 September 1997.

4. Where items subject to this Agreement are within the territory of India, under its jurisdiction or under its control anywhere, they shall remain subject to IAEA safeguards in accordance with the "Agreement between the Government of India and the International Atomic Energy Agency for the Application of Safeguards to Civilian Nuclear Facilities" done at Vienna on 2 February 2009 and the Protocol Additional to that agreement done at Vienna on 25 February 2009.

5. Safeguards, as applicable, shall be maintained with respect to all items subject to this Agreement, so long as the items remain under the jurisdiction or control of a Party. If the IAEA decides that the application of IAEA safeguards is not possible, the Parties shall consult and agree on appropriate verification measures.

ARTICLE VIII
Physical Protection

1. Each Party shall ensure that adequate physical protection measures are applied to items subject to this Agreement. The responsibility of a Party for ensuring the application of such physical protection measures extends to the international transport thereof, until that responsibility is properly transferred to another State.
2. In addition to its obligations under the Convention on the Physical Protection of Nuclear Material, done at Vienna on 3 March 1980 and as amended and in force for each Party from time to time, each Party shall apply the recommendations of the Agency document INFCIRC/225/Rev.5 entitled, “Nuclear Security Recommendations on Physical Protection of Nuclear Material and Nuclear Facilities”, as updated from time to time, or any subsequent document replacing INFCIRC/225/Rev.5. Any alteration to or replacement of document INFCIRC/225/Rev.5 shall have effect under this Agreement only when the Parties have informed each other in writing through diplomatic channels that they accept such alteration or replacement.

ARTICLE IX
Retransfers

1. Items subject to this Agreement shall not be transferred beyond the territory, jurisdiction or control of the recipient Party without the prior written consent of the supplier Party, except in accordance with this Article.
2. Items subject to this Agreement shall not be transferred by the recipient Party to a third State except when the recipient Party has obtained assurances from the third State of peaceful use, of implementation of the Agency’s safeguards and of adequate measures of physical protection comparable to Article VIII of this Agreement.
3. The Parties shall exchange and keep up to date lists of third States to which transfers by the other Party pursuant to paragraph 1 of this Article are authorised and the nuclear fuel cycle processes that may apply in each third State to the nuclear material transferred.

4. The designated authority of the recipient Party shall promptly notify the designated authority of the supplier Party, in accordance with procedures set out in the Administrative Arrangement established pursuant to paragraph 4 of Article III of this Agreement, of transfers by the recipient Party pursuant to paragraph 1 of this Article.

ARTICLE X

Confidentiality

The Parties shall take reasonable measures, consistent with the Parties' respective legislation as well as international treaties and conventions, against unauthorized use or disclosure of information and technology exchanged under this Agreement.

ARTICLE XI

Consultations

The Parties shall consult regularly, or at any time at the request of either Party, in order to ensure the effective implementation of this Agreement, or to review any matters relating to cooperation in the peaceful uses of nuclear energy. Such consultations may also take the form of an exchange of correspondence or annual meetings, as appropriate.

ARTICLE XII

Dispute resolution

If any dispute between the Parties arises relating to the interpretation or application of this Agreement, the Parties shall settle the dispute by negotiation.

ARTICLE XIII

Amendments

The terms of this Agreement may be amended at any time by written agreement between the Parties. Such amendment shall enter into force on the last date on which the Parties have notified each other in writing that their respective internal procedures necessary for its entry into force have been completed.

ARTICLE XIV

Entry into Force, Duration and Termination

1. This Agreement shall enter into force on the last date upon which the Parties notify each other in writing that all domestic requirements for entry into force of this Agreement have been completed. The Agreement shall remain in force for a period of forty years and it shall be automatically renewed for periods of twenty years. A Party that does not wish to renew this Agreement shall notify the other Party by giving at least six months' written notice before a renewal.

2. Either Party may terminate this Agreement by giving one year's written notice to the other Party. A Party giving notice of termination under this paragraph shall provide the reasons for seeking such termination. Both Parties consider it extremely unlikely that actions would be taken by either Party which would cause the other Party to terminate this Agreement. If a Party seeking termination cites a violation of the Agreement as the reason for notice for seeking termination, Parties shall consider whether the action was caused inadvertently or otherwise and whether the violation could be considered as material. This Agreement shall terminate one year from the date of the written notice, unless the notice has been withdrawn by the providing Party in writing prior to the date of termination. The Party seeking termination may cease further cooperation under this Agreement if it determines that a mutually acceptable resolution of outstanding issues has not been possible or cannot be achieved through consultations.

3. Unless otherwise mutually determined in writing between the Parties, termination or suspension of this Agreement or any cooperation under it for any reason shall not release the Parties from obligations under Articles III, VI, VII, VIII, IX and X of this Agreement in respect of nuclear material, non-nuclear material, equipment, components and technology transferred while the Agreement was in force.

4. The Annex is an integral part of this Agreement.

IN WITNESS WHEREOF, the undersigned, being duly authorised thereto by their respective Governments have signed this Agreement.

Done in duplicate at New Delhi on 5 September 2014, in English and Hindi, each text being equally authentic. Should any dispute concerning the interpretation of Articles of the Agreement arise, the English version shall prevail.

**FOR THE GOVERNMENT
OF AUSTRALIA**

Patrick Suckling
Ambassador

**FOR THE GOVERNMENT OF
INDIA**

Ratan Kumar Sinha
Secretary, Department of Atomic Energy

ANNEX

1. Nuclear Reactors and Equipment for Reactors

- 1.1 **Complete nuclear reactors:** Nuclear reactors capable of operation so as to maintain a controlled self- sustaining fission chain reaction.
- 1.2 **Reactor pressure vessels:** Metal vessels, as complete units or as major shop-fabricated parts therefor, which are especially designed or prepared to contain the core of a nuclear reactor as defined in paragraph 1.1 above and are capable of withstanding the operating pressure of the primary coolant.
- 1.3 **Reactor fuel charging and discharging machines:** Manipulative equipment especially designed or prepared for inserting or removing fuel in a nuclear reactor as defined in paragraph 1.1 above capable of on-load operation or employing technically sophisticated positioning or alignment features to allow complex off-load fuelling operations such as those in which direct viewing of or access to the fuel is not normally available.
- 1.4 **Reactor control rods:** Rods especially designed or prepared for the control of the reaction rate in a nuclear reactor as defined in paragraph 1.1 above.
- 1.5 **Reactor pressure tubes:** Tubes which are especially designed or prepared to contain fuel elements and the primary coolant in a reactor as defined in paragraph 1.1 above at an operating pressure in excess of 5.1 MPa.
- 1.6 **Zirconium tubes:** Zirconium metal and alloys in the form of tubes or assemblies of tubes, and in quantities exceeding 500 kg in any period of 12 months, especially designed or prepared for use in a reactor as defined in paragraph 1.1 above, and in which the relation of hafnium to zirconium is less than 1:500 parts by weight.
- 1.7 **Primary coolant pumps:** Pumps especially designed or prepared for circulating the primary coolant for nuclear reactors as defined in paragraph 1.1 above.
- 1.8 **Nuclear reactor internals:** Support columns and plates for the core and other vessel internals, control rod guide tubes, thermal shields, baffles, core grid plates, diffuser plates etc.
- 2.0 **Non-nuclear materials for reactors:**
 - 2.1 **Deuterium and heavy water:** Deuterium, heavy water (deuterium oxide) and any other deuterium compound in which the ratio of deuterium to hydrogen atoms exceeds 1:5000 for use in a nuclear reactor as defined in paragraph 1.1 above in quantities exceeding 200 kg of deuterium atoms in any period of 12 months.
 - 2.2 **Nuclear grade graphite:** Graphite having a purity level better than 5 parts per million boron equivalent and with a density greater than 1.50 g/cm^3 for use in

a nuclear reactor as defined in paragraph 1.1 above in quantities exceeding 30 metric tons in any period of 12 months.

- 3 Plants for the reprocessing of irradiated fuel elements, and equipment especially designed or prepared therefor.
- 4 Plants for the fabrication of fuel elements, and equipment especially designed or prepared therefor.
- 5 Plants for the separation of isotopes of natural uranium, depleted uranium or special fissionable material and equipment, other than analytical instruments, especially designed or prepared therefor.
- 6 Plants for the production or concentration of heavy water, deuterium and deuterium compounds and equipment especially designed or prepared therefor.
- 7 Plants for the conversion of uranium and plutonium and equipment especially designed or prepared therefor.