

Agreement between the Government of Australia and the Government of the Czech Republic on Cooperation in Peaceful Uses of Nuclear Energy and the Transfer of Nuclear Material, done at Prague on 27 July 2001

NATIONAL INTEREST ANALYSIS

Proposed binding treaty action

1. It is proposed that Australia bring into force a nuclear cooperation Agreement with the Czech Republic. The proposed Agreement is a new treaty and does not replace any existing treaty.

Date of proposed binding treaty action

2. The proposed Agreement between Australia and the Czech Republic on Cooperation in Peaceful uses of Nuclear Energy and the Transfer of Nuclear Material (the proposed Agreement) will enter into force on the date on which Australia and the Czech Republic exchange diplomatic notes confirming that they have completed their necessary domestic and constitutional requirements for entry into force (Article XVI). It is anticipated that Australia will advise the Czech Republic of this as soon as practicable after tabling in Parliament.

Date of tabling of the proposed treaty action

3. 21 August 2001

Purpose of the proposed treaty action and why it is in the national interest

4. The primary purpose of the proposed Agreement is to facilitate the sale of Australian uranium for use in the Czech Republic, consistent with Australia's longstanding uranium export policy and non-proliferation commitments. Australia's uranium export policy provides assurances that exported uranium and its derivatives are used solely for peaceful purposes and cannot be diverted to nuclear weapon or other military programs. It does this through a network of bilateral safeguards applied by the Australian Safeguards and Non-Proliferation Office which supplements International Atomic Energy Agency safeguards. The proposed Agreement closely resembles the fifteen bilateral safeguards agreements already in place and contains all elements of Australia's uranium export policy. When the Agreement enters into force, Australian uranium producers will be able to seek new contracts in the Czech Republic. The producers consider that they can win approximately 20 per cent of the Czech market, resulting in new exports worth A\$10 million at current prices. The proposed Agreement will also create a framework for cooperation in the peaceful uses of nuclear science and technology between Australia and the Czech Republic, and contribute to developing Australia's relations with the Czech Republic.

Reasons for Australia to take the proposed treaty action

5. The proposed Agreement will facilitate the sale of Australian uranium for use in the Czech Republic, consistent with Australia's uranium export policy and non-proliferation commitments. The proposed Agreement was negotiated due to the interest of Energy Resources of Australia Ltd and WMC (Olympic Dam Corporation) Pty Ltd, Australia's two largest uranium producers, in selling uranium for use in Czech nuclear power reactors. The producers believe that they could win up to 20 percent of the uranium market in the Czech Republic realising new export earnings of approximately \$A10 million per year at current prices.

6. Australia's uranium export policy, first enunciated by the Fraser Government in 1977, provides assurances that exported uranium and its derivatives are used solely for peaceful purposes and cannot be diverted to nuclear weapons or other military programs. At present, Australia has fifteen bilateral safeguards agreements covering the transfer of Australian Obligated Nuclear Material (AONM) to 25 countries. These agreements complement the International Atomic Energy Agency (IAEA) safeguards system in order to assure the peaceful non-explosive use of AONM consistent with our security interests in the non-proliferation of nuclear weapons. The Australian Safeguards and Non-Proliferation Office (ASNO) implements the terms of Australia's bilateral safeguards agreements by tracking AONM through the nuclear fuel cycle.

7. The proposed Agreement, in common with the fifteen bilateral nuclear safeguards agreements already in place, contains all the essential requirements of Australia's uranium export policy. These include:

- coverage of transfers of nuclear material by IAEA safeguards from the time they leave Australia;
- continuation of coverage of IAEA safeguards for the full life of the material or until it is legitimately removed from safeguards;
- fallback safeguards in the event that IAEA safeguards no longer apply for any reason;
- prior Australian consent for: any transfer of Australian Obligated Nuclear Material to a third party; any enrichment to 20 per cent or more in the isotope uranium-235; and reprocessing of Australian Obligated Nuclear Material; and
- adequate and effective physical protection measures.

8. The proposed Agreement is consistent with Australia's non-proliferation commitments, including those contained in the Treaty on the Non-Proliferation of Nuclear Weapons (NPT). The Czech Republic is a party to the NPT and a member in good standing of international non-proliferation regimes. All of the Czech Republic's nuclear activities are subject to fullscope safeguards applied by the IAEA. In addition, the Czech Republic has signed an Additional Protocol for the implementation of the IAEA's strengthened safeguards system, and is working towards bringing it into force.

9. The Government expects that the proposed Agreement will lead to more substantive cooperation between Australia and the Czech Republic in nuclear science and technology and

international nuclear non-proliferation matters. Such cooperation and the expansion of bilateral trade will contribute towards enhancing Australia's relations with the Czech Republic.

Obligations

10. The proposed Agreement allows for the transfer of uranium from Australia to the Czech Republic for peaceful nuclear purposes, either directly or through a third party. The proposed Agreement is based on Australia's fifteen other nuclear safeguards agreements, and does not contain any significant variations from them.

11. The key broad obligations on both Parties are to cooperate in the peaceful uses of nuclear energy (Article I) and to ensure that no nuclear material transferred under the proposed Agreement is ever used for, or diverted to, any military purpose including nuclear weapons, explosive devices or depleted uranium munitions (Article V).

12. There are obligations on both Parties relating to the transfer of nuclear material, although in practice these obligations apply to the Czech Republic, since the only transfers presently envisaged under the proposed Agreement are from Australia to the Czech Republic. These obligations contained in the proposed Agreement require that IAEA safeguards or their equivalent are applicable at all times in relation to all nuclear material transferred under the proposed Agreement (Articles VI and VII), and that this material shall not be transferred beyond the territorial jurisdiction of the recipient Party without the supplier Party's prior written consent (Article IX).

13. The proposed Agreement requires the conclusion of an Administrative Arrangement between the Australian Safeguards and Non-Proliferation Office and its counterpart agency in the Czech Republic, to establish and implement the nuclear material accountancy and reporting requirements applying to nuclear material subject to the proposed Agreement.

14. Both Parties are also obliged to ensure adequate physical protection of nuclear material within their respective jurisdictions, and to apply as a minimum the recommendations contained in IAEA document INFCIRC/225/Rev.4 entitled, 'The Physical Protection of Nuclear Material and Nuclear Facilities', or any subsequent document replacing this one (Article VIII).

15. The proposed Agreement obliges both Australia and the Czech Republic to consult regularly to ensure the effective implementation of the proposed Agreement (Article XI) and to take all precautions to preserve the confidentiality of commercial and industrial secrets received as a result of the operation of the proposed Agreement (Article X.3).

16. Article XII of the proposed Agreement provides that where there is non-compliance by the recipient Party with the main obligations of the proposed Agreement, the other Party may cancel or suspend transfers of uranium. Article XIII provides that disputes arising out of the interpretation or application of the proposed Agreement are to be settled by consultation and negotiation where possible. However, if this process fails to resolve the dispute, then either Party can request that the dispute be submitted to an arbitral tribunal. The decision of the arbitral tribunal is binding on both Parties.

Implementation

17. No new legislation is required to give effect to the terms of the proposed Agreement. However, it will be necessary to promulgate regulations pursuant to the *Nuclear Non-Proliferation (Safeguards) Act 1987* to add the proposed Agreement to the list of 'prescribed agreements' under the Act, and to take similar action under the *Australian Radiation Protection and Nuclear Safety Act 1998*. No changes to the existing roles of the Commonwealth or the States and Territories will arise as a consequence of implementing the proposed Agreement.

Costs

18. For Australia, the costs associated with the proposed Agreement are limited to travel to the Czech Republic by officers of the Australian Safeguards and Non-Proliferation Office to undertake appropriate verification activities pursuant to Article V, and resources needed to account for Australian uranium covered by the proposed Agreement. ASNO, which is located within the Foreign Affairs and Trade portfolio, is Australia's national safeguards authority. ASNO will absorb these costs within its existing budget.

Consultation

19. The proposed Agreement was notified to the States and Territories through the Standing Committee on Treaties' Schedule of Treaty Action. The Minister for Foreign Affairs issued a media release about the proposed Agreement on 28 July 2001. To date there have been no requests for further information.

Future treaty action: amendments, protocols, annexes or other legally binding instruments

20. No future legally-binding instruments connected with the proposed Agreement are envisaged. As is usual in all safeguards agreements, and mentioned in paragraph 13 above, the proposed Agreement provides for an associated Administrative Arrangement between ASNO and its counterpart agency in the Czech Republic. This instrument will be of less than treaty status.

Withdrawal or Denunciation

21. The proposed Agreement may be terminated by either Party upon at least 180 days' written notice. Should the proposed Agreement be terminated in this way, uranium which has been transferred subject to the proposed Agreement and which remains useable or practically recoverable for relevant nuclear purposes shall remain bound by the proposed Agreement's terms and obligations (Article XVI).

Contact Details

Nuclear Trade and Security Section
International Security Division
Department of Foreign Affairs and Trade