

Exchange of Notes constituting an Agreement between the Government of Australia and the Government of the United States of America concerning Cooperation on the Application of Non-Proliferation Assurances, done at Washington D.C. on 31 July 2001

NATIONAL INTEREST ANALYSIS

Proposed binding treaty action

1. It is proposed that Australia bring into force an Agreement with the United States to facilitate the sale of Australian uranium to Taiwan. The proposed Agreement is a new treaty and does not replace any existing treaty.

Date of proposed binding treaty action

2. The proposed Exchange of Notes constituting an Agreement between Australia and the Government of the United States of America (the proposed Agreement) will enter into force when Australia notifies the United States through the diplomatic channel that Australia's constitutional and domestic requirements to give effect to the Agreement have been satisfied. It is anticipated that Australia will so advise the United States 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 purpose of the proposed Agreement is to facilitate the sale of Australian uranium for use in nuclear power reactors in Taiwan, under conditions consistent with Australia's longstanding uranium export policy and nuclear 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. Since Australia does not recognise Taiwan as a state, it is not possible to negotiate a bilateral safeguards agreement directly with Taiwan as Australia's uranium export policy usually requires. Nonetheless, Australia recognises that Taiwan has legitimate energy needs and that it has chosen nuclear power as part of its energy supply mix. The proposed Agreement with the United States provides for Australian uranium to be enriched in the United States, after which it would be transferred to Taiwan. In this way, Australian uranium will be covered by nuclear safeguards agreements between Australia and the United States, and between the United States, Taiwan, and the International Atomic Energy Agency. This arrangement is consistent with Australia's non-proliferation commitments and the terms of Australia's recognition of the People's Republic of China in 1972.

Reasons for Australia to take the proposed treaty action

5. Australia has long been a major coal and commodities supplier to Taiwan and there is strong commercial interest amongst Australian uranium producers in supplying uranium to the Taiwan Electric Power Company (Taipower) in competition with other major uranium suppliers. Many of Taipower's existing long-term uranium supply contracts are due to expire over the next few years and Australian uranium suppliers are confident they can secure a portion of the replacement contracts. Over time, suppliers believe they can win up to 20 percent of the market, which would realise export earnings of approximately A\$10 million per year at current prices.

6. The proposed Agreement with the United States would facilitate the sale of uranium by Australian producers for use in nuclear power reactors in Taiwan, consistent with Australia's longstanding uranium export policy and nuclear non-proliferation commitments.

7. 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.

8. The proposed Agreement gives effect to 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 AONM to a third party; any enrichment of AONM by Taiwan; and any reprocessing of AONM; and
- effective physical protection measures.

9. Taiwan's unique status at international law, and the terms of Australia's recognition of the People's Republic of China in 1972, mean that it is not possible for Australia to conclude a bilateral safeguards agreement to cover uranium exports to Taiwan, as would usually be required by Australian policy.

10. To maintain the integrity of Australia's uranium export policy and to ensure that the essential elements of the policy are in place to cover the export of Australian uranium to Taiwan, the proposed Agreement with the United States will replicate the provisions of a bilateral agreement by projecting Australia's uranium export conditions on to all AONM in Taiwan. Under the proposed Agreement, Australian uranium destined for Taiwan would be enriched in the United States and, as a result, become subject to the 'Agreement Between the United States of America and Australia Concerning the Peaceful Uses of Nuclear Energy', signed on 5 July 1979 (the 'Peaceful Uses Agreement'). In addition, under the proposed Agreement, all AONM, while in Taiwan, would be subject to the 'Agreement for Cooperation Between the United States of America and the Republic of China Concerning Civil Uses of Atomic Energy', signed on 4 April 1972 (the '1972 Agreement'). AONM would also be subject to a trilateral safeguards agreement in place between the United States, Taiwan and the IAEA signed on 6 March 1971 under which the IAEA applies safeguards to all of Taiwan's nuclear facilities and activities (the '1971 Trilateral Safeguards Agreement').

11. Taiwan's non-proliferation status is unique. Despite having once signed and ratified the NPT, its unusual legal circumstances preclude it from being recognised as a Party to the NPT. However, through its actions, Taiwan has made clear its strong commitment to nuclear non-proliferation, including through welcoming the indefinite extension of the NPT in 1995. Although unable to sign a safeguards agreement with the IAEA as a sovereign state, Taiwan has nonetheless cooperated fully with the IAEA in the application of safeguards, and has accepted international safeguards on all its nuclear activities - the equivalent of the full scope safeguards required under the NPT. Further, Taiwan was amongst the first to accept implementation by the IAEA of all 'strengthened safeguards' measures, so that the Additional Protocol for strengthened safeguards is effectively in force in Taiwan. IAEA inspectors have access to all parts of Taiwan's nuclear sites, and have access elsewhere in Taiwan, in accordance with the provisions of the Protocol, for applying environmental sampling and other verification measures. Finally, as stated in its *2000 National Defense Report*, Taiwan has publicly stated that its armed forces 'will not own, manufacture, or use nuclear weapons'.

12. The proposed Agreement with the United States provides an assurance that the arrangements which will be implemented are consistent with Australia's uranium export policy and international obligations including those contained in the NPT and the South Pacific Nuclear Free Zone Treaty (SPNFZ). The system of legal arrangements established by the proposed Agreement mirrors that which has been put in place by Canada, and under which it exports uranium to Taiwan.

Obligations

13. The proposed Agreement sets out the conditions under which Australian uranium can be transferred to the United States, either directly or indirectly, for enrichment and subsequent retransfer to Taiwan for use in nuclear reactors for the generation of electricity. These conditions are specified in an Annex attached to the exchange of letters, which forms an integral part of the Agreement.

14. The Annex recognises that uranium transferred from Australia to the United States for retransfer to Taiwan will be subject to the Peaceful Uses Agreement between the United States and Australia. The Annex also recognises that the IAEA applies safeguards to all nuclear facilities in Taiwan.

15. Under the Annex (paragraph 2), Australia is obliged to provide prior notification to the United States of transfers to the United States of uranium intended, following enrichment, for use in Taiwan in nuclear reactors for electricity generation.

16. The Annex (paragraph 3) provides Australia's agreement for the retransfer of Australian uranium to Taiwan and stipulates the conditions under which this can occur. Under the Annex (paragraph 5), all Australian uranium enriched in the United States and destined for Taiwan will become subject to the 1971 Trilateral Safeguards Agreement, thus imposing IAEA safeguards on Australian uranium. In addition, the Annex (paragraph 4) provides for the 1972 Agreement) between the United States and Taiwan to apply to Australian uranium in Taiwan. The Annex (paragraph 15) also provides for Australian uranium to be subject to IAEA physical protection guidelines.

17. Under the provisions of the Annex (paragraphs 8 and 9) neither the United States nor Australia is permitted to unilaterally consent to the retransfer, reprocessing or enrichment by Taiwan of Australian uranium, unless both Parties agree. This will ensure that prior Australian consent is always required if Taiwan wishes to re-export, enrich or reprocess Australian uranium. The United States is also required under the Annex (paragraph 11) to consult with Australia if it has reason to believe that AONM is not being identified as Australian while in Taiwan.

18. The Annex (paragraphs 6, 7 and 10) requires notification of the quantity and enrichment of Australian uranium transferred to Taiwan, and the maintenance of an inventory of Australian obligated nuclear material in Taiwan. It requires (paragraph 13) administrative arrangements to be put in place to facilitate effective implementation of the proposed Agreement. To fulfil this requirement, an Administrative Arrangement will be put in place between the Australian Safeguards and Non-Proliferation Office (ASNO) and its U.S. counterpart, the Department of Energy, which parallels the administrative arrangements concluded under Australia's bilateral safeguards agreements. Administrative arrangements specify reporting, material accounting and other implementation details. This Administrative Arrangement will be complemented by an Administrative Arrangement between the Australian Commerce and Industry Office, Taipei, and the Taipei Economic and Cultural Office, Australia, covering accounting and reporting matters.

19. Finally, the Annex (paragraph 12) obliges the Parties to consult at any time, at the request of either, to ensure the effective implementation of the proposed Agreement, and (paragraph 14) to resolve any dispute relating to the proposed Agreement by such peaceful means as may be mutually agreed.

Implementation

20. No new legislation is required to implement the proposed Agreement. No State and Territory action is involved and no changes to the existing roles of the Commonwealth and the States and Territories are required to implement this treaty. The safeguards and physical protection obligations placed upon Australia under the terms of the treaty are the same as those required under Australia's other nuclear safeguards agreements, which are implemented under the *Nuclear Non-Proliferation (Safeguards) Act 1987*. It is not necessary to prescribe the proposed Agreement under this Act or the *Australian Radiation Protection and Nuclear Safety Act 1998* because nuclear material transferred under the proposed Agreement will be subject to the Peaceful Uses Agreement, which is already scheduled to those Acts.

Costs

21. For Australia, the costs associated with the proposed Agreement are limited to travel to Taiwan by officers of the Australian Safeguards and Non-Proliferation Office to undertake appropriate verification activities pursuant to Paragraph 1 of the Embassy of Australia's Note, and Paragraph 13 of the Annex attached therein, to the U.S. State Department of 31 July 2001, and resources needed to account for Australian uranium covered by this 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

22. 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 13 August 2001. To date there have been no requests for further information.

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

23. No future legally binding instruments connected with the proposed Agreement are envisaged at this stage. As noted above, it contains provision for the conclusion of a non-treaty level Administrative Arrangement, to deal with the details of implementing the proposed Agreement. This provision, and the conclusion of such an Arrangement, is standard Australian practice.

Withdrawal or denunciation

24. The proposed Agreement provides that it will remain in force indefinitely, unless either Party gives six months notice to terminate the proposed Agreement. Notwithstanding any termination of the proposed Agreement, certain provisions would remain in force while Australian nuclear material remains in Taiwan in useable form (paragraph 16).

Contact details

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