

Exchange of Notes constituting an Agreement between Australia and Japan to replace the Delineated and Recorded Japanese Nuclear Fuel Cycle Program

Introduction

- 4.1 The *Exchange of Notes constituting an Agreement between the Government of Australia and the Government of Japan to replace the Delineated and Recorded Japanese Nuclear Fuel Cycle Program* (the Agreement) involves the addition of two facilities at which Japan may undertake mixed oxide (MOX) fuel fabrication. These are Sellafield MOX Plant (located in the United Kingdom) and Rokkasho MOX Fuel Fabrication Plant (to be located in Japan).¹

Background

- 4.2 The Delineated and Recorded Japanese Nuclear Fuel Cycle Program, referred to as 'the Capsule' at the working level, is attached to a treaty level Implementing Arrangement between the Government of Australia and the Government of Japan.² The Implementing

1 National Interest Analysis (NIA), para. 5.

2 NIA, para. 1.

Arrangement was entered into as part of the Australia-Japan Nuclear Safeguards Agreement 1982³ and sets out how the Australia-Japan Nuclear Safeguards Agreement is to operate in practice.⁴ The Australia-Japan Nuclear Safeguards Agreement commits Japan to using Australian Obligated Nuclear Material (AONM) only for peaceful, non-military purposes.

- 4.3 Australia ensures that Japan meets its obligations under the Australia-Japan Nuclear Safeguards Agreement through an established system of safeguards, including a permanent office of between 20 and 30 International Atomic Energy Agency inspectors in Japan who are able to conduct inspections of nuclear facilities with only two hours notice⁵, and through the reconciliation of accounts:

... whereby we check the data that they give to us concerning the use of material and we also hold at least annual bilateral consultations with our equivalent agency.⁶

- 4.4 Representatives from the Australian Safeguards and Non-Proliferation Office (ASNO) informed the Committee that:

We are satisfied that the agreements give Australia the appropriate level of confidence that Australian obligated nuclear material is used solely for peaceful purposes and remains exclusively in peaceful use.⁷

- 4.5 In 2005, Japan was Australia's second largest uranium export market, accounting for 25% of the total uranium exported from Australia.⁸ The Committee was also informed that 'Japan operates 55 nuclear power reactors, providing approximately 30 per cent of its electricity needs.'⁹

3 *Agreement between the Government of Australia and the Government of Japan for Cooperation in the Peaceful Uses of Nuclear Energy 1982.*

4 NIA, para. 1.

5 Mr Andrew Leask, *Transcript of Evidence*, 14 August 2006, pp. 21 and 22.

6 Mr Andrew Leask, *Transcript of Evidence*, 14 August 2006, p. 21.

7 Mr Andrew Leask, *Transcript of Evidence*, 14 August 2006, p. 22.

8 NIA, para. 10; Mr Andrew Leask, *Transcript of Evidence*, 14 August 2006, p. 20.

9 Mr Andrew Leask, *Transcript of Evidence*, 14 August 2006, p. 20.

The Agreement

- 4.6 The Capsule lists those facilities at which Japan may process, use, or reprocess AONM in connection with Japan's peaceful uses of nuclear energy. The facilities listed in the Capsule include power plants and conversion, enrichment, fuel fabrication and reprocessing plants.
- 4.7 ASNO informed the Committee that:
- At present the capsule lists 121 facilities, including conversion enrichment, fuel fabrication and reprocessing facilities both in Japan and around the world, as well as 70 Japanese nuclear power reactors.¹⁰
- 4.8 The addition of two facilities at which Japan may undertake MOX fuel fabrication would be specified in sub-paragraph 1(a)(i) of the Implementing Arrangement.
- 4.9 The Agreement will allow Japan to use AONM in these facilities without seeking the Government of Australia's approval on a case by case basis.¹¹
- 4.10 MOX fuel is an integral part of Japan's nuclear fuel program.¹² The Committee heard evidence that the use of MOX fuel can increase the energy derived from the original uranium by 10 to 20 per cent, 'essentially increasing the useful life of the original uranium'.¹³ There are currently four MOX fuel fabrication plants listed in the Capsule.¹⁴
- 4.11 Japan would be obliged to notify Australia of transfers of AONM to the Sellafield MOX facility. Any such transfers, once within the jurisdiction of the United Kingdom, would be subject to the Australia-United Kingdom Safeguards Agreement.¹⁵
- 4.12 The addition and deletion of facilities to the Capsule are a necessary element of updating the Australia-Japan Nuclear Safeguards

10 Mr Andrew Leask, *Transcript of Evidence*, 14 August 2006, p. 21.

11 NIA, para. 5.

12 NIA, para. 5.

13 Mr Andrew Leask, *Transcript of Evidence*, 14 August 2006, p. 21.

14 NIA, para. 5.

15 *Agreement between the Government of Australia and the Government of the United Kingdom of Great Britain and Northern Ireland concerning Nuclear Transfers between Australia and the United Kingdom*, done at London 1979.

Agreement to reflect changes in the operation of Japan's nuclear fuel cycle program.¹⁶

- 4.13 The Committee was informed that some amendments to the Capsule require a treaty-level agreement while others do not:

While additions and deletions to the facility list are purely mechanical in nature and are made from time to time to reflect changes in Japan's contracts and arrangements supporting its nuclear power industry, the types of facilities new to a listed country, including Japan, must be affected through a treaty level exchange of notes.¹⁷

- 4.14 Pursuant to the amendment provisions of the Implementing Arrangement, several of these previous changes have not required a treaty-level amendment while others have (such as amendments in 1990, 1999 and 2000 to add facilities to the Capsule).¹⁸ The two additions to the Capsule which are contemplated by the proposed replacement Capsule are of a nature which, according to the Implementing Arrangement, must be made by a treaty-level agreement between the Government of Australia and the Government of Japan.¹⁹

Entry into force

- 4.15 The Agreement will enter into force on the date on which the Government of Australia advises the Government of Japan through the diplomatic channel that Australia's constitutional and domestic requirements for entry into force have been satisfied.²⁰

16 NIA, para. 11.

17 Mr Andrew Leask, *Transcript of Evidence*, 14 August 2006, pp. 20-21.

18 NIA, para. 12.

19 NIA, para. 12.

20 NIA, para. 2.

Implementation and costs

- 4.16 No new legislation is required to give effect to the Agreement and there are no additional costs to ASNO associated with the Agreement.²¹

Consultation

- 4.17 The Agreement was discussed at the Commonwealth-State/Territory Standing Committee on Treaties meeting on 17 May 2006. No other consultations were thought to be necessary given the administrative nature of the Agreement.²²

Recommendation 3

The Committee supports the *Exchange of Notes constituting an Agreement between the Government of Australia and the Government of Japan to replace the Delineated and Recorded Japanese Nuclear Fuel Cycle Program* and recommends that binding treaty action be taken.

21 NIA, paras 17 and 18.

22 NIA, Consultation Annex, paras 1 and 2.

