

DEPARTMENT OF FOREIGN AFFAIRS AND TRADE
CANBERRA

AGREEMENT BETWEEN
THE GOVERNMENT OF AUSTRALIA
AND
THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA
ON THE TRANSFER OF NUCLEAR MATERIAL

Canberra, 3 April 2006

Not yet in force
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AGREEMENT BETWEEN THE GOVERNMENT OF AUSTRALIA AND THE
GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA ON THE TRANSFER
OF NUCLEAR MATERIAL

The Government of Australia (hereinafter referred to as "Australia") and the Government of the People's Republic of China (hereinafter referred to as "China"), both hereinafter referred to as "the Parties";

Desiring to continue and expand their existing friendly relationship;

Reaffirming their commitment to ensure that the international development and use of nuclear energy for peaceful purposes furthers the objective of the non-proliferation of nuclear weapons;

Mindful that both Australia and China are Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, done at London, Moscow and Washington on 1 July 1968 (hereinafter referred to as "the Treaty");

Recognizing that Australia, a non-nuclear-weapon State, has, under the Treaty, undertaken not to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices, and that it concluded an agreement with the International Atomic Energy Agency (hereinafter referred to as "the Agency") on 10 July 1974 for the application of safeguards in connection with the Treaty;

Recognizing that China is a nuclear-weapon State as defined by the Treaty, and that it concluded a safeguards agreement with the Agency on 20 September 1988 for the application of safeguards in China;

Affirming their support for the objectives and provisions of the Treaty and their desire to promote universal adherence to the Treaty;

Affirming their support for the Agency safeguards system and their desire to work together to ensure its continued effectiveness;

Confirming the desire of the Parties to cooperate in the development and application of nuclear energy for peaceful purposes;

Desiring to establish conditions consistent with their commitment to non-proliferation under which nuclear material can be transferred between Australia and China for peaceful non-explosive purposes;

Have agreed as follows:

ARTICLE I

Within this Agreement:

- (a) “military purpose” means, for the purposes of this Agreement only, direct military applications of nuclear energy or nuclear material such as nuclear weapons or military nuclear reactors, but does not include indirect uses such as power for a military base drawn from a civil power network, or production of radioisotopes to be used for diagnosis in a military hospital;
- (b) “peaceful purposes” means all uses other than use for a military purpose;
- (c) “nuclear material” means any “source material” or “special fissionable material” as those terms are defined in Article XX of the Statute of the Agency. 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 that they accept such amendment.

ARTICLE II

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 China, the designated

authority will be the China Atomic Energy Authority. A Party may from time to time notify the other Party in writing of a change to the designated authority.

ARTICLE III

This Agreement shall apply to:

- (a) nuclear material transferred between Australia and China for peaceful non-explosive purposes, whether directly or through a third country;
- (b) all forms of nuclear material prepared by chemical or physical processes or isotopic separation from nuclear material subject to the Agreement; if nuclear material subject to the Agreement is mixed with other nuclear material, the quantity of nuclear material so prepared which falls within the scope of this Agreement shall be an amount equivalent to the proportion which the nuclear material subject to this Agreement bears to the total quantity of nuclear material;
- (c) all generations of nuclear material produced by neutron irradiation of nuclear material subject to the Agreement; if nuclear material subject to the Agreement is irradiated together with other nuclear material, the proportion of nuclear material so produced which falls within the scope of this Agreement shall be equal to the proportion of the nuclear material irradiated that is subject to this Agreement;
- (d) nuclear material produced, processed or used in, or produced through the direct and major contribution of material, equipment, components or technology transferred between Australia and China, in accordance with the provisions of the Agreement between the Government of the People's Republic of China and the Government of Australia for Cooperation in the

Peaceful Uses of Nuclear Energy (hereinafter referred to as “the Nuclear Cooperation Agreement”).

ARTICLE IV

1. Nuclear material referred to in Article III shall remain subject to the provisions of this Agreement until:

- (a) it has been consumed or diluted in such a way that it is no longer useable for any nuclear activity; or
- (b) it is practicably irrecoverable for processing into a form in which it is useable for any nuclear activity; or
- (c) it has been transferred beyond the territorial jurisdiction of Australia or beyond the territorial jurisdiction of China in accordance with paragraph 1 of Article IX of this Agreement; or
- (d) the Parties otherwise agree.

2. For the purpose of determining when nuclear material subject to this Agreement is no longer useable or is practicably irrecoverable for processing into a form in which it is useable for any nuclear activity, both Parties shall accept a determination made by the Agency. For the purpose of this Agreement such determination shall be made by the Agency in accordance with the provisions for the termination of safeguards of the relevant safeguards agreement between the Party concerned and the Agency.

ARTICLE V

Nuclear material subject to this Agreement shall not be used for, or diverted to, the manufacture of nuclear weapons or other nuclear explosive devices, research on or

development of nuclear weapons or other nuclear explosive devices, or be used for any military purpose.

ARTICLE VI

1. Where nuclear material subject to this Agreement is within the territory of Australia, compliance with Article V of this Agreement shall be ensured by a system of safeguards in accordance with the Safeguards Agreement concluded on 10 July 1974 between Australia and the Agency in connection with the Treaty.

2. Where nuclear material subject to this Agreement is within the territory of China, compliance with Article V of this Agreement shall be ensured by a system of safeguards in accordance with the Safeguards Agreement concluded on 20 September 1988 between China and the Agency for the application of safeguards in China.

ARTICLE VII

If, notwithstanding the efforts of both Parties to support the Treaty and the Agency, the Agency, for whatever reason at any time, is not administering the safeguards referred to in Article VI of this Agreement in the territory of one or the other Party in which nuclear material subject to this Agreement is present, the Parties shall forthwith arrange for the application of safeguards satisfactory to both Parties which conform with Agency safeguards principles and procedures and which provide reassurance equivalent to that intended to be secured by the safeguards system they replace. The Parties shall consult and assist each other in the application of such a safeguards system.

ARTICLE VIII

1. Each Party shall ensure that adequate physical protection measures are applied to nuclear material subject to this Agreement. The responsibility of a Party for ensuring the nuclear material is adequately protected extends to the international transport thereof, until that responsibility is properly transferred to another state, as appropriate.

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 from time to time, each Party shall apply, insofar as they are reasonable and practicable, the recommendations of Agency document INFCIRC/225/Rev.4 entitled, "The Physical Protection of Nuclear Material and Nuclear Facilities", as updated from time to time, or any subsequent document replacing INFCIRC/225/Rev.4. Any alteration to or replacement of document INFCIRC/225/Rev.4 shall have effect under this Agreement only when the Parties have informed each other in writing that they accept such alteration or replacement.

ARTICLE IX

1. Nuclear material subject to this Agreement shall not be transferred beyond the territorial jurisdiction of the recipient Party without the prior written consent of the supplier Party, except in accordance with Annex A.

2. Nuclear material subject to this Agreement shall not be:
 - (a) enriched to 20% or greater in the isotope uranium 235; or
 - (b) reprocessed;without the prior written consent of the supplier Party.

3. Nuclear material subject to this Agreement in China shall be subject to the safeguards referred to in paragraph 2 of Article VI and shall be processed or used:
 - (a) only within the Delineated Chinese Nuclear Fuel Cycle Program defined in accordance with Annex B; or
 - (b) in accordance with the procedures referred to in paragraph 1 of Annex B.

4. The supplier Party shall not withhold consent for the purpose of securing commercial advantage.

ARTICLE X

1. Each Party shall establish and maintain a system of accounting for and control of all nuclear material subject to this Agreement.

2. The designated authorities of both Parties shall establish an Administrative Arrangement to ensure the effective fulfilment of the obligations of this Agreement. The Administrative Arrangement established pursuant to this paragraph may be changed with the mutual consent in writing of the designated authorities of both Parties.

3. Nuclear material subject to this Agreement shall be transferred pursuant to this Agreement only to a natural or legal person identified by the recipient Party to the supplier Party as duly authorised to receive it.

4. If nuclear material subject to this Agreement is present in the territory of a Party, that Party shall, upon the request of the other Party, provide the other Party in writing with the overall conclusions which the Agency has drawn from its verification activities, insofar as they relate to nuclear material subject to this Agreement.

5. The Parties shall take adequate measures to ensure protection of any trade secrets acquired through the operation of this Agreement.

ARTICLE XI

1. 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 matters relating to the peaceful uses of nuclear energy.

2. The Parties may jointly invite the Agency to participate in such consultations.

ARTICLE XII

1. The supplier Party has the right to suspend or cancel further transfers of nuclear material and to require the recipient Party to take corrective steps if the recipient Party:

- (a) does not comply with any provisions of Article III to XI or Article XIII of this Agreement; or
- (b) does not comply with, or rejects, Agency safeguards arrangements.

2. The supplier Party has the right to require the return of nuclear material subject to this Agreement if corrective steps are not taken by the recipient Party within a reasonable time.

3. Nothing in this Article shall preclude recourse to dispute settlement under Article XIII.

ARTICLE XIII

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

2. If the Parties fail to reach a settlement of the said dispute within twelve months, the Parties may settle such dispute through diplomatic channels or through arbitration.

3. Within a period of sixty days from the date of receipt by either Party from the other Party of a note through the diplomatic channel requesting arbitration of the dispute by a tribunal, each Party shall nominate an arbitrator. Within a period of sixty days from the nomination of the arbitrators, the two arbitrators shall appoint a president of the tribunal who shall be a national of a third state. If within sixty days after one of the Parties has nominated its arbitrator, the other Party has not nominated its own or, if within sixty days following the nomination of the second arbitrator, both arbitrators have not agreed on the appointment of the president, either Party may request the President of the International Court of Justice to appoint an arbitrator or arbitrators as the case requires.

4. Except as otherwise determined by the Parties or prescribed by the tribunal established pursuant to paragraph 3 of this Article, each Party shall submit a memorandum within forty-five days after the tribunal is fully constituted. Replies shall

be due sixty days later. The tribunal shall hold a hearing at the request of either Party, or at its discretion, within thirty days after replies are due.

5. The tribunal shall attempt to give a written decision within thirty days after completion of the hearing, or, if no hearing is held, after the date both replies are submitted. The decision shall be taken by a majority vote.

6. The Parties may submit requests for clarification of the decision within fifteen days after it is received and such clarification shall be issued within fifteen days of such request.

7. The Parties undertake to comply with any arbitration decision given under this Article.

8. The expenses of arbitration under this Article shall be shared equally between the Parties.

9. If and for as long as either Party fails to comply with a decision under paragraph 5 of this Article, the other Party may limit, suspend or revoke any rights or privileges which it has granted by virtue of this Agreement to the Party in default.

ARTICLE XIV

The terms of this Agreement may be amended at any time by agreement between the Parties. Such amendment shall enter into force on the 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 XV

1. This Agreement shall enter into force after each Party has notified the other in writing that all domestic requirements for entry into force for this Agreement and the

Nuclear Cooperation Agreement have been completed. The date of entry into force of this Agreement shall be thirty days after the date of the last notification.

2. The Agreement shall remain in force for an initial period of thirty years. The Agreement shall terminate:

(a) if either Party notifies the other Party at least 180 days prior to the expiry of the initial thirty year period, or 180 days after notice of termination thereafter; or

(b) upon the termination of the Nuclear Cooperation Agreement;

whichever is the sooner.

3. Unless otherwise agreed in writing between the Parties, termination, suspension or expiration of this Agreement or any cooperation under it for any reason shall not release the Parties from obligations under this Agreement in respect of nuclear material transferred while the Agreement was in force.

4. The Annexes to this Agreement form 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 in English and Chinese, both texts having equal validity, at Canberra on third day of April 2006

**FOR THE GOVERNMENT OF
AUSTRALIA**

**FOR THE GOVERNMENT OF THE
PEOPLE'S REPUBLIC OF CHINA**

Alexander Downer
Minister for Foreign Affairs

Li Zhaoxing
Minister of Foreign Affairs

ANNEX A

CONSENT TO CERTAIN RETRANSFERS

Both Parties agree that the provisions of paragraph 1 of Article IX of this Agreement will apply in accordance with the following conditions:

1. Transfers of nuclear material subject to this Agreement from China to third countries which have an Agreement in force with Australia concerning nuclear transfers, in relation to which Agreement Australia has not advised China that it has found it necessary to suspend, cancel or refrain from making nuclear transfers, can take place for conversion, enrichment below 20% in the isotope uranium 235, fuel fabrication and, where applicable, use in a reactor.
2. China shall promptly notify Australia, in accordance with procedures set out in the Administrative Arrangement pursuant to paragraph 2 of Article X of this Agreement, of such transfers.
3. Australia shall provide China with, and keep up to date, the list of countries to which transfers may be made in accordance with paragraph 1 above.

ANNEX B

DELINEATED CHINESE NUCLEAR FUEL CYCLE PROGRAM

1. Uranium ore concentrates transferred to China under this Agreement shall be substituted by an equivalent quantity of converted natural uranium in the form of uranium hexafluoride in accordance with procedures set out in the Administrative Arrangement established pursuant to Article X of this Agreement.
2. Following conversion to uranium hexafluoride in accordance with paragraph 1 above, nuclear material subject to this Agreement in China shall be processed and used only in those facilities specified in the Delineated Chinese Nuclear Fuel Cycle Program.
3. The facilities specified in the Delineated Chinese Nuclear Fuel Cycle Program shall be determined by mutual decision of the designated authorities. These facilities shall be included in the List of facilities designated by China in accordance with the provisions of the safeguards agreement referred to in paragraph 2 of Article VI of this Agreement.
4. The facilities in the Delineated Chinese Nuclear Fuel Cycle Program shall be specified under the following headings:
 1. Facilities for enrichment;
 2. Facilities for conversion to UO₂;
 3. Facilities for fuel fabrication;
 4. Reactors;
 5. Development and demonstration projects;
 6. Storage;
 7. Others.

Facilities may be added to or deleted from the Delineated Chinese Nuclear Fuel Cycle Program by mutual decision of the designated authorities.

ANNEX C

REPROCESSING OF NUCLEAR MATERIAL SUBJECT TO THIS AGREEMENT

Paragraph 2 of Article IX of this Agreement provides that nuclear material subject to the Agreement shall not be reprocessed without the prior written consent of the supplier Party.

The Parties acknowledge that the separation, storage, transportation and use of plutonium require particular measures to reduce the risk of nuclear proliferation.

Australia recognises the interest of China in reprocessing as part of its civil nuclear energy program in order to ensure efficient energy use and management of substances contained in spent fuel.

Australia also recognises the interest of China in predictable and practical implementation of consent rights under the Agreement, taking into account the shared non-proliferation objectives of the Parties and the long-term needs of China's nuclear fuel cycle program.

Australia shall provide consent on a long term basis to reprocessing under paragraph 2 of Article IX of this Agreement, on the following understandings:

- (a) long term consent shall be given for reprocessing for exclusively peaceful purposes under Agency safeguards referred to in paragraph 2 of Article VI, in accordance with the Delineated Chinese Nuclear Fuel Cycle Program referred to in Annex B of this Agreement, amended as necessary by mutual decision of the designated authorities; and
- (b) the separated plutonium shall be stored and used, under Agency safeguards referred to in paragraph 2 of Article VI, in accordance with the Delineated Chinese Nuclear Fuel Cycle Program.

Australia shall provide consent as outlined above at such time that China's plans for reprocessing are sufficiently advanced to nominate the facilities, reactors and other facilities concerned for inclusion in the Delineated Chinese Nuclear Fuel Cycle Program.

ANNEX D

NUCLEAR MATERIAL CONTAINED IN ORES AND ORE CONCENTRATES TRANSFERRED BETWEEN AUSTRALIA AND CHINA

1. This Annex applies to ores or concentrates containing nuclear material, other than uranium ore concentrates, which are transferred from Australia to China directly or through a third country, and which transfer has been notified by the designated authority of Australia to the designated authority of China.
2. China agrees not to extract nuclear material for nuclear use from such ores or concentrates. If there is any change in China's intentions in this regard, nuclear material shall not be extracted until the Parties have consulted and agreed safeguards measures to apply to such nuclear material.
3. The Administrative Arrangement established pursuant to Article X of this Agreement shall include procedures for Australia to notify China of transfers of ores and ore concentrates pursuant to paragraph 1 of this Annex.

ANNEX E

INTERPRETATION OF THE SCOPE OF THE TERM “MILITARY PURPOSE”

The following records the interpretation given by the Parties regarding the scope of the definition of the term “military purpose” contained in paragraph (a) of Article I of this Agreement. The Parties agree that nuclear material subject to this Agreement shall not be used: for the production of tritium for military purposes; for military nuclear propulsion; or for direct military non-nuclear applications, such as munitions, including depleted uranium munitions.