

**AGREEMENT BETWEEN AUSTRALIA AND THE
ARGENTINE REPUBLIC CONCERNING COOPERATION IN
PEACEFUL USES OF NUCLEAR ENERGY**

Documents tabled on 7 August 2001:

- **National Interest Analysis**
- **Text of the proposed treaty action**

Agreement between Australia and the Argentine Republic concerning Cooperation in Peaceful Uses of Nuclear Energy

NATIONAL INTEREST ANALYSIS

Proposed binding treaty action

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

Date of proposed binding treaty action

2. The treaty will be signed during the visit of the Argentine Foreign Minister to Australia from 6-10 August. It will enter into force on the date of the last notification by which Australia and Argentina communicate to each other that their constitutional and domestic requirements to give effect to the proposed Agreement have been completed. It is anticipated that Australia will advise Argentina of this as soon as practicable after tabling in Parliament and consideration by JSCOT.

Date of tabling of the proposed treaty action

3. 7 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 establish a broad framework for nuclear cooperation, and an appropriate nuclear safeguards and protection regime, between Australia and Argentina. The proposed Agreement will contribute to developing Australia's ties with Argentina, a state with significant nuclear activity and importance in the international non-proliferation regime. It will facilitate cooperation between nuclear agencies in both countries, contributing to the effective regulation of the replacement research reactor project at Lucas Heights. The replacement reactor is being constructed by an Argentine company. The proposed Agreement will also allow Australian uranium producers to seek contracts to export uranium to Argentina when opportunities arise, and can be expected to facilitate other commercial spin-offs which will bring trade and investment benefits to Australia. Finally, and consistent with Australia's interest in preventing the proliferation of nuclear weapons, the proposed Agreement will ensure that transfers of nuclear material, equipment or technology between Australia and Argentina are subject to nuclear safeguards and appropriate controls. This includes the provision of an appropriately safeguarded option for the conditioning of irradiated fuel from the replacement research reactor at Lucas Heights if required.

Reasons for Australia to take the proposed treaty action

5. The Government considers that the proposed Agreement with Argentina would provide four specific benefits to Australia (outlined in paragraph 4 and elaborated below). It would:

- create a formal framework for cooperation between Australia and Argentina in nuclear science and technology;
- ensure that all transfers of nuclear material, equipment or technology between Australia and Argentina are subject to nuclear safeguards and appropriate controls and are consistent with Australia's policies to prevent the proliferation of nuclear weapons;
- underpin one element of the Government's spent fuel and radioactive waste management strategy; and
- allow the export of Australian uranium to Argentina.

6. More broadly, the proposed Agreement would contribute to developing Australia's ties with Argentina. This is important because Argentina is a state with significant nuclear fuel cycle activity and expertise, and plays an important role in the international regime for preventing the proliferation of nuclear weapons.

Framework for cooperation

7. The conclusion last year of a commercial contract between an Argentine firm, INVAP SE, and the Australian Nuclear Science and Technology Organisation (ANSTO) for the construction of a replacement research reactor at Lucas Heights is expected to lead to significant cooperation between Australia and Argentina in nuclear technology both during the construction phase and in later scientific collaboration. The proposed Agreement would facilitate such cooperation including in the following areas: research reactors and associated components, equipment and materials; nuclear medicine; the safe management of irradiated fuel and radioactive wastes; radiological protection, nuclear safety and regulation; the exploration and exploitation of nuclear ores; and technology for safeguards and physical protection.

8. Cooperation under the proposed Agreement could take place between the government agencies responsible for nuclear activities and/or commercial organisations, although no specific form of cooperation is required by the proposed Agreement. The Agreement explicitly refers to cooperation between ANSTO, the Australian Safeguards and Non-Proliferation Office (ASNO), and the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) on the Australian side, and the National Atomic Energy Commission (CNEA) and the Argentine Nuclear Regulatory Authority (ARN) on the Argentine side.

9. The cooperative framework established by the proposed Agreement would facilitate compliance with the requirements of the *Australian Radiation Protection and Nuclear Safety Act 1998*. The Act applies to Commonwealth entities and contractors of those entities performing work on their behalf at any location, within or outside Australia. A need may arise, under the Act, for ARPANSA to issue licences to Argentine organisations or Australians working in Argentina in connection with the replacement research reactor project.

The proposed Agreement would provide a firm basis for cooperation between ARPANSA and ARN in the issuing of such licences, and more generally in regulating the project.

10. The Government also expects and seeks to facilitate commercial spin-offs both in the field of nuclear technology and extending into other areas of science and technology. It is expected that the proposed Agreement will increase cooperation and contact between Australia and Argentina thereby creating more trade and investment opportunities.

Transfers of nuclear materials, equipment and technology

11. The Government's nuclear safeguards policy requires that Australia has in place a document of treaty-status with any country to which nuclear materials will be transferred. The replacement research reactor contract involves transfers of materials, technology and equipment to Australia. There is also a possibility that irradiated fuel may be transferred to Argentina for conditioning and subsequently returned to Australia as waste. While existing policy requires the proposed Agreement to cover only material which is exported from Australia, given the significance of the replacement research reactor project, the Government considers it desirable to put in place a full safeguards agreement covering also material returned to Australia. By doing so, the proposed Agreement will ensure that the project is entirely consistent with the non-proliferation commitments of both Australia and Argentina.

12. At present, Australia has 15 bilateral safeguards agreements in place, covering 25 countries. These agreements complement the International Atomic Energy Agency's (IAEA) safeguards system in order to assure the peaceful non-explosive use of Australian nuclear material and serve our nuclear non-proliferation security interests. These bilateral agreements provide for the application of IAEA safeguards, as provided for under the Treaty on the Non-Proliferation of Nuclear Weapons (NPT), for the full life of Australian Obligated Nuclear Material.

13. The proposed Agreement with Argentina is modelled on our existing nuclear safeguards agreements, and includes all the essential requirements of Australia's policy for the control of nuclear materials. 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.

14. The Australian Government regards these aspects of the proposed Agreement as integral elements of its wider policies to prevent the non-proliferation of nuclear weapons. The Government's White Paper on Australia's Foreign and Trade Policy (1997) noted that prominent among the global security issues which impinge on Australia's national security

and that of its region is the potential for the proliferation of weapons of mass destruction, including nuclear weapons. Into the foreseeable future, a security imperative for Australia is to maintain the multilateral, regional, and bilateral arrangements that work against nuclear proliferation. The proposed Agreement will reinforce Australia's security interests and non-proliferation policies.

Spent fuel management

15. The proposed Agreement contains a provision (Article 12) under which the Argentine Government would make appropriate arrangements, on the request of the Australian Government, for the conditioning of irradiated fuel from the replacement research reactor at Lucas Heights. Consistent with Australian policy, the Australian Government would accept the return of all waste and other byproducts of such conditioning. This Article reflects the intentions of the Australian and Argentine Governments to facilitate any processing of irradiated fuel from the replacement reactor required of INVAP under its contract with ANSTO. It would ensure that this aspect of the Australian Government's strategy for the management of spent fuel, already provided for in commercial arrangements, is supported by obligations at governmental level. Similar (albeit non-treaty level) arrangements exist with France, the United Kingdom and the United States, the three countries which have reprocessed Australian spent fuel previously.

Uranium exports

16. The proposed Agreement would permit Australian uranium producers to export uranium for use in Argentine power and research reactors if they succeed in securing commercial contracts. Australian uranium producers have expressed interest in bidding for contracts in the Argentine market. At present, Argentina imports approximately 120 tonnes of uranium annually, valued at about \$5 million. (The uranium price is currently low, but is expected to recover over the medium term.)

Obligations

17. Article 1(1) obliges the Parties to cooperate in the peaceful uses of nuclear energy, without requiring any specific form of cooperation to take place. Articles 1 to 3 set out the agencies which may cooperate and the areas in which such cooperation may occur.

18. The obligations created by Articles 7 to 11 (discussed in paragraphs 19-22) are consistent with the obligations in Australia's fifteen existing bilateral nuclear safeguards agreements, and with Australia's longstanding policies to control nuclear materials and prevent the proliferation of nuclear weapons.

19. Article 7 obliges the Parties not to use any nuclear material, equipment or technology subject to the proposed Agreement for nuclear explosive purposes or related research, or any other military purpose. The proposed Agreement specifically proscribes the use of such nuclear material, equipment or technology for nuclear propulsion in military vessels or for depleted uranium munitions. Article 8 requires that the obligation under Article 7 will be assured by the application of safeguards by the IAEA.

20. Article 9 obliges the Parties to cooperate in support of the NPT and the IAEA's safeguards activities. This article also obliges the Parties to put in place alternative safeguards arrangements should IAEA safeguards cease to apply for any reason.

21. Article 10 obliges the Parties to ensure that adequate physical protection measures which are consistent with the current international standard cover nuclear material within their jurisdiction. The international standard is already applied in both Australia and Argentina.

22. Article 11 requires Australia and Argentina to obtain permission from the other Party before transferring nuclear material supplied by it to a third country. Further, the Article obliges the Parties to refrain from enriching nuclear material supplied by the other Party to a level of 20 per cent or more in the isotope uranium-235, and from reprocessing nuclear material supplied by the other Party, without the prior written consent of the supplier Party. These provisions are included in all of Australia's safeguards agreements to provide additional checks on these proliferation sensitive activities.

23. Article 12 obliges the Argentine Government to make appropriate arrangements, on the request of the Australian Government, for the processing of irradiated fuel from the replacement reactor at Lucas Heights. While the Government's spent fuel and waste management strategy provides for all irradiated fuel to be reprocessed in France under ANSTO's contract with COGEMA, processing facilities in Argentina might be utilised in the event that reprocessing in France was unavailable. Australia is obliged to permit the return to Australia of all waste and other by-products resulting from conditioning or reprocessing under this Article. This obligation is consistent with the Government's policy that wastes resulting from the conditioning or reprocessing of spent fuel should be returned for permanent storage to the country where the fuel was irradiated. Similar (albeit non-treaty level) arrangements exist with France, the United Kingdom and the United States, the three countries which have reprocessed Australian spent fuel to date.

24. The proposed Agreement stipulates notification requirements on the enrichment and quantity of Australian nuclear material in Argentina and provides for an Administrative Arrangement to be put in place to facilitate effective implementation of the Agreement (Article 13). The Administrative Arrangement (of less than treaty status) between ARN and ASNO would parallel the Administrative Arrangements concluded under Australia's other bilateral safeguards agreements. The Administrative Arrangement would specify reporting, material accounting and other implementation details.

25. The proposed Agreement also provides for consultations, at the request of either Party, to ensure the effectiveness of the Agreement, and specifies a mechanism for dispute resolution (Articles 14, 15 and 17). The mechanism for dispute resolution consists of provisions for the appointment of a three-member arbitral tribunal, the decisions of which will be binding on the Parties. These provisions, and those referred to in paragraph 24, reflect those in our other safeguards agreements.

Implementation

26. 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 the 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*. However, it will be necessary to amend the Act to add the proposed Agreement to the list of ‘prescribed agreements’ under the Act. This amendment is done by regulation.

Costs

27. No additional costs are anticipated as a consequence of this treaty action.

Consultation

28. The proposed Agreement was notified to the States and Territories through the Standing Committee on Treaties’ Schedule of Treaty Action.

29. On initialling the proposed Agreement on 26 March 2001, the Minister for Foreign Affairs issued a media release providing details of the proposed Agreement. To date there have been three requests for further information in response to the media release, to which the Department has responded by letter and telephone. In addition, an interested non-government organisation called on the Department to discuss the Agreement.

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

30. Article 18 provides that the proposed Agreement may be amended or revised by agreement between the Parties. Such amendments would require domestic approval before entering into force.

31. No future legally binding instruments connected with the proposed Agreement are envisaged at this stage. As noted at paragraph 24 above, the treaty 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 where bilateral safeguards agreements are in place.

Withdrawal or denunciation

32. Article 20 of the proposed Agreement provides that it will remain in force indefinitely, unless the Parties agree to terminate the Agreement. Any decision to terminate the treaty would be subject to domestic approval.

Contact details

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