

DEPARTMENT OF FOREIGN AFFAIRS AND TRADE  
CANBERRA

**Agreement on Scientific and Technological Cooperation between the Government  
of Australia and the Government of the Socialist Republic of Viet Nam**

**(Canberra, 26 June 2013)**

Not yet in force  
[2013] ATNIF 19

The Government of Australia and the Government of the Socialist Republic of Viet Nam (hereinafter referred to as “the Parties”);

REALISING that international cooperation in science and technology will strengthen the bonds of friendship and understanding between their peoples and will advance the state of science and technology to the benefit of both countries, as well as all mankind;

NOTING the Memorandum of Understanding between the Government of Australia and the Government of the Socialist Republic of Viet Nam on Scientific and Technological Cooperation, signed by the Parties at Hanoi on 28 September 1992, which provides for promotion and facilitation of mutually beneficial cooperation in science and technology;

RECOGNISING the Australia - Viet Nam Comprehensive Partnership, signed by the Parties at Canberra on 7 September 2009 which expressed the intent to lay the foundation for collaboration in science and technology research;

DESIRING to make further efforts to strengthen their respective public and private national research and development infrastructures and policies;

CONSIDERING scientific and technological cooperation as an important condition for development of national economies;

INTENDING to strengthen their economic cooperation through specific and advanced technology applications; and

WISHING to establish dynamic and effective international cooperation between the full array of scientific organisations and individual scientists in the two countries;

Have agreed as follows:

## **ARTICLE I**

For the purpose of this Agreement:

1. “Background Material” means Material developed outside the scope of this Agreement or before the commencement of this Agreement which is made available by one of the Cooperating Organisations for use in a Cooperative Activity under this Agreement.
2. “Confidential Information” has the same meaning as “Undisclosed Information” in Article 39.2 of Section 7 of Part II of the *Agreement on Trade-Related Aspects of Intellectual Property Rights*, contained in Annex 1C to the *Marrakesh Agreement Establishing the World Trade Organization*, done at Marrakesh on 15 April 1994, and therefore means information which:

- a. is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;
  - b. has commercial value because it is secret; and
  - c. has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret.
3. “Cooperating Organisation” means any government agency, university, research centre or other institution or enterprise established within the territory of a Party and which is participating in a Cooperative Activity under this Agreement.
  4. “Cooperative Activity” means any activity carried on or supported by the Parties or Cooperating Organisations under this Agreement and pursuant to an Implementing Arrangement.
  5. “Foreground Material” means Material created in, or as a direct result of, a Cooperative Activity under this Agreement.
  6. “Implementing Arrangement” means a written document that evidences the arrangements for the implementation or operation of a Cooperative Activity under this Agreement between the Cooperating Organisations.
  7. “Intellectual Property” refers to all categories of intellectual property that are the subject of Sections 1 through 7 of Part II of the *Agreement on Trade-Related Aspects of Intellectual Property Rights*, contained in Annex 1C to the *Marrakesh Agreement Establishing the World Trade Organization*, done at Marrakesh on 15 April 1994.
  8. “Materials” includes information, research or other material (whether biological or non-biological) used or created in a Cooperative Activity under this Agreement.

## **ARTICLE II**

1. The Parties shall promote cooperation between them in science and technology for the development of science and technology in their respective countries for peaceful purposes.
2. In conformity with the laws and regulations of their respective countries, the Parties shall promote cooperation in the fields of science and technology between their respective countries on the basis of equality and mutual advantage.
3. Without prejudice to the generality of the preceding paragraphs, the Parties shall promote, under the framework of this Agreement, scientific and technological cooperation between their respective Cooperating Organisations.

### **ARTICLE III**

1. With a view to facilitating scientific and technological cooperation, under the framework of this Agreement, the Parties shall encourage and facilitate, where appropriate, the development of joint contacts and cooperation between Cooperating Organisations of their respective countries, and the conclusion of Implementing Arrangements between them for the conduct of Cooperative Activities.
2. The Parties shall endeavour to facilitate the inclusion of provisions for Intellectual Property and Confidential Information within Implementing Arrangements which are developed in accordance with the provisions of Article VII and Annex I of this Agreement.

### **ARTICLE IV**

Scientific and technological cooperation under this Agreement may include, but is not limited to, the following:

- a. Formulation and implementation of joint research and development programs and projects;
- b. Exchange of scientific and technological information, including through making information available to third parties, in accordance with Article VII of this Agreement;
- c. Exchange of scientists and technical experts participating in cooperative programs and projects as well as other activities under this Agreement;
- d. Organisation of scientific conferences, seminars and workshops on topics of mutual interest; and
- e. Other forms of cooperation as may be agreed upon by the Parties.

### **ARTICLE V**

Scientists, technical experts, governmental agencies and institutions of third countries or international organisations may, in appropriate cases, be invited by the Parties to participate in projects and programs being carried out under this Agreement.

### **ARTICLE VI**

The Parties shall implement this Agreement in accordance with the prevailing laws and regulations of the Parties and the availability of appropriated funds in each country.

## **ARTICLE VII**

1. The Parties agree that it is the sole responsibility of Cooperating Organisations undertaking a Cooperative Activity under this Agreement to take all necessary steps, including obtaining expert professional advice, to ensure that their legal and commercial positions are adequately and effectively protected, and to ensure adequate legal and physical protection for Background Material including related Intellectual Property rights, and Foreground Material including related Intellectual Property rights and Confidential Information.
2. The Parties agree that matters relating to the protection and ownership of Intellectual Property rights which are created and dealt with by Cooperating Organisations under this Agreement shall be the responsibility of, and agreed by, the affected Cooperating Organisations. The Parties shall endeavour to facilitate the conclusion of Implementing Arrangements between the Cooperating Organisations of their respective countries in accordance with Annex I.
3. The Parties shall endeavour to facilitate the dissemination of scientific and technological information of a non-proprietary nature derived from Cooperative Activities under this Agreement, unless otherwise jointly decided by the Cooperating Organisations in accordance with Implementing Arrangements established in accordance with Article III, to any third party in accordance with the normal policies and procedures of the Cooperating Organisations.
4. The termination or expiration of this Agreement shall not affect the rights and obligations under any Implementing Arrangement concluded prior to the date of termination or expiration of this Agreement.

## **ARTICLE VIII**

1. Each Party shall use its best efforts to facilitate, consistent with its applicable laws and regulations, the entry into and exit from its territory of scientific and technical personnel involved in Cooperative Activities under this Agreement.
2. Each Party shall use its best efforts to facilitate, consistent with its applicable laws and regulations, the entry into and exit from its territory of equipment and Materials to be utilised in Cooperative Activities under this Agreement.

## **ARTICLE IX**

1. The Parties shall establish a Joint Australia – Viet Nam Committee on Scientific and Technical Cooperation composed of representatives designated by the two Parties.
2. The tasks of the Joint Committee shall be to:

- (i) Discuss and review matters of importance in the field of science and technology, particularly issues related to the overall science and technology relationship between the two Parties; and
  - (ii) Review progress made in the areas of cooperation envisaged under the Agreement and make recommendations concerning the enhancement of such cooperation.
3. The Joint Committee on Scientific and Technological Cooperation shall meet alternately in Viet Nam and in Australia every two years or on such dates as are mutually determined by the Parties.

#### **ARTICLE X**

This Agreement shall not affect the rights and obligations of a Party under other international agreements to which it is a party.

#### **ARTICLE XI**

Any dispute between the Parties arising out of the interpretation or implementation of this Agreement shall be settled amicably through consultation or negotiation between the Parties.

#### **ARTICLE XII**

This Agreement shall enter into force on the date of receipt of the last notification whereby the Parties inform each other, through diplomatic channels, that their respective domestic procedures necessary for the Agreement's entry into force have been completed.

#### **ARTICLE XIII**

This Agreement, including the Annex, may be amended by mutual written agreement of the Parties. Such amendments shall enter into force on the date of receipt of the last notification whereby the Parties inform each other, through diplomatic channels, that their respective domestic procedures necessary for the amendment's entry into force have been completed.

#### ARTICLE XIV

1. This Agreement shall remain in force indefinitely unless terminated by either Party giving the other Party written notice through the diplomatic channel of its intention to terminate the Agreement. The termination shall take effect six weeks after the date of receipt of the notification.
2. Cooperative Activities under this Agreement which have been commenced as at the date of receipt of a notification to terminate this Agreement shall be fully executed after the termination has taken effect, unless the Parties agree otherwise.

IN WITNESS WHEREOF, the undersigned, being duly authorised by their respective Governments, have signed and sealed this Agreement.

Done at Canberra on this 26th day of June two thousand and thirteen in duplicate in the English and Vietnamese languages, all texts being equally authentic.

FOR THE GOVERNMENT OF  
AUSTRALIA

FOR THE GOVERNMENT OF THE  
SOCIALIST REPUBLIC OF VIET NAM

Don Farrell  
Minister for Science and Research

Nguyen Quan  
Minister of Science and Technology

## ANNEX I

### PROTECTION, OWNERSHIP AND ALLOCATION OF INTELLECTUAL PROPERTY RIGHTS AND CONFIDENTIAL INFORMATION

1. This Annex provides an indication of the Intellectual Property issues that should be addressed by Cooperating Organisations in their Implementing Arrangements.
2. Cooperating Organisations undertaking a Cooperative Activity under this Agreement should include, in each Implementing Arrangement, mutually determined provisions dealing with the acquisition, protection, sharing, transfer, licensing and enforcement, of Intellectual Property, including the protection of Intellectual Property related to Background Material and Foreground Material, and the handling of Confidential Information, prior to the commencement of the Cooperative Activity.
3. Cooperating Organisations should include, in each Implementing Arrangement, mutually determined provisions for identifying and protecting against the infringement of Intellectual Property of third parties, prior to the commencement of a Cooperative Activity. In particular, each Implementing Arrangement should specify appropriate procedures for identifying third party Intellectual Property that might:
  - a. be infringed by the Cooperating Organisation while carrying out Cooperative Activities under the Agreement; or
  - b. infringe Intellectual Property arising under the Implementing Arrangement.
4. Cooperating Organisations undertaking a Cooperative Activity under this Agreement should ensure that Intellectual Property in any Foreground Material is apportioned between the Cooperating Organisations in accordance with the provisions specified in the Implementing Arrangement, taking into account:
  - a. the intellectual contributions of each Cooperating Organisation;
  - b. the financial contributions of each Cooperating Organisation;
  - c. the contributions of Background Material, research effort and preparatory work of each Cooperating Organisation;
  - d. the value of the contribution of Materials of each Cooperating Organisation;
  - e. the facilities provided by each Cooperating Organisation;
  - f. interests of each Cooperating Organisation as the Cooperating Organisations may mutually decide upon;
  - g. relevant legal considerations; and
  - h. such other relevant considerations as the Cooperating Organisations may mutually decide upon.
5. In particular, Cooperating Organisations undertaking a Cooperative Activity under this Agreement should mutually determine in each Implementing Arrangement provisions that:
  - a. identify each Cooperating Organisation's Background Material and:
    - i. the nature of the protection that has been, or needs to be, accorded to that Background Material; and
    - ii. the nature of any third party rights restricting the use of Background Material;



- b. specify appropriate procedures for:
    - i. identifying;
    - ii. determining ownership of; and
    - iii. protecting Foreground Material;
  - c. specify appropriate procedures for determining the conditions on which each Cooperating Organisation may be licensed to use Foreground Material for its own non-commercial purposes and for commercial purposes (which include manufacturing);
  - d. specify appropriate clauses facilitating the licensing by a Cooperating Organisation of another Cooperating Organisation's Background Material, for example when it is reasonably necessary for the commercial use of Foreground Material;
  - e. specify appropriate procedures for licensing third parties to use Foreground Material, including where such use requires access to another Cooperating Organisation's Background Material and the conditions upon which a licence to the Background Material shall be granted;
  - f. specify measures for ensuring confidentiality and appropriate procedures for prior approval by all the Cooperating Organisations participating in a Cooperative Activity under this Agreement, of the public disclosure of information through publications, seminars or any other means;
  - g. specify the rights and obligations of visiting researchers involved in the Cooperative Activity under this Agreement and particularly in relation to Materials created by them during their work in the Cooperative Activity;
  - h. if Cooperating Organisations wish to give effect to the terms of the Implementing Arrangement in domestic law through a contract, nominate the governing law of, and the applicable forum for settling disputes, under that Implementing Arrangement; and
  - i. specify appropriate procedures for the resolution of disputes, including international commercial arbitration.
6. Cooperating Organisations should mutually determine the value of Materials used in a Cooperative Activity under this Agreement by taking into account the following factors:
- a. the specificity and/or scarcity of those Materials; and
  - b. the potential commercial value of the results of the joint research.
7. Cooperating Organisations undertaking a Cooperative Activity under this Agreement should include in each Implementing Arrangement provisions specifying that on the expiration or termination of the Implementing Arrangement, the rights and obligations of the Cooperating Organisations under the Implementing Arrangement in respect of Intellectual Property and Confidential Information that exist at the time of such expiration or termination, will remain active unless otherwise mutually decided by the Cooperating Organisations.