

AGREEMENT
BETWEEN THE GOVERNMENT OF AUSTRALIA
AND THE GOVERNMENT OF THE CZECH REPUBLIC
ON COOPERATION IN PEACEFUL USES OF NUCLEAR ENERGY AND THE
TRANSFER OF NUCLEAR MATERIAL

The Government of Australia and the Government of the Czech Republic (hereinafter referred to as "the Parties"),

Reaffirming their commitment to ensuring that the international development and use of nuclear energy for peaceful purposes are carried out under arrangements which will further the objective of the non-proliferation of nuclear weapons,

Mindful that both Australia and the Czech Republic are non-nuclear weapon States which 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"),

Recognising that Australia and the Czech Republic have under the Treaty undertaken not to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices and that they have concluded agreements with the International Atomic Energy Agency (hereinafter referred to as "the Agency") for the application of safeguards in their countries in connection with the Treaty,

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

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 the Czech Republic for peaceful non-explosive purposes,

Have agreed as follows:

ARTICLE I

The Parties shall cooperate in the peaceful uses of nuclear energy in accordance with the provisions of this Agreement. The cooperation contemplated relates to the peaceful uses of nuclear energy and includes transfers of nuclear material, research and development, exchange of information, technical training, visits by scientists and projects of mutual interest. This cooperation shall be facilitated as may be necessary by specific agreements or arrangements. The Parties may designate governmental authorities and natural or legal persons to undertake such cooperation.

ARTICLE II

For the purposes of this Agreement:

- (a) "appropriate authority" means, in the case of Australia, the Australian Safeguards and Non-Proliferation Office and, in the case of the Czech Republic, the State Office for Nuclear Safety, or such other authority as the Party concerned may from time to time notify the other Party;
- (b) "military purpose" means direct military applications of nuclear energy such as nuclear weapons, military nuclear propulsion, military nuclear rocket engines or military nuclear reactors, and depleted uranium munitions, but does not include indirect uses such as power for a military base drawn from a civil power network, or production of radio-isotopes which might later be used for diagnosis in a military hospital;
- (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 Agency's Statute which amends the list of materials considered to be "source material" or "special fissionable material" shall only have effect under this Agreement when both Parties to this Agreement have informed each other in writing that they accept such amendment;
- (d) "peaceful purposes" means all uses other than use for a military purpose.

ARTICLE III

1. This Agreement shall apply to:
 - (a) nuclear material transferred between Australia and the Czech Republic 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 the nuclear material subject to the Agreement is mixed with other nuclear material, the quantity of nuclear material so prepared shall only be regarded as falling within the scope of this Agreement in the same proportion as the quantity of nuclear material used in its preparation, and which is subject to this Agreement, bears to the total quantity of nuclear material so used; and
 - (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 quantity of nuclear material so produced shall only be regarded as falling within the scope of this Agreement in the same proportion as the quantity of nuclear material which is subject to this Agreement and which, used in its production, contributes to this production.
2. Nuclear material referred to in paragraph 1 of this Article shall be transferred pursuant to this Agreement only to a natural or legal person identified by the appropriate authority of the recipient Party to the appropriate authority of the supplier Party as duly authorised to receive it.

ARTICLE IV

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

- (a) it is no longer usable; or
- (b) it is practicably irrecoverable for processing into a form in which it is usable for any nuclear activity relevant from the point of view of safeguards referred to in Articles VI and VII; or
- (c) it has been transferred beyond the territorial jurisdiction of Australia or beyond the territorial jurisdiction of the Czech Republic in accordance with paragraph 1 (a) 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 usable or is practicably irrecoverable for processing into a form in which it is usable for any nuclear activity relevant from the point of view of the safeguards referred to in Articles VI and VII, 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, depleted uranium munitions, or be used for any military purpose.

ARTICLE VI

1. Where Australia is the recipient, compliance with Article V of this Agreement shall be ensured by a system of safeguards applied by the Agency in accordance with the Agreement between Australia and the International Atomic Energy Agency for the Application of Safeguards in Connection with the Treaty on the Non-Proliferation of Nuclear Weapons of 10 July 1974.

2. Where the Czech Republic is the recipient, compliance with Article V of this Agreement shall be ensured by a system of safeguards applied by the Agency in accordance with the Agreement between the Czech Republic and the International Atomic Energy Agency on the Application of Safeguards in Connection with the Treaty on the Non-Proliferation of Nuclear Weapons of 18 September 1996.

ARTICLE VII

1. 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 safeguards referred to in Article VI of this Agreement in the territory of the State of one or the other Party, in which

nuclear material subject to this Agreement is present, the Parties shall immediately consult on other safeguards arrangements to replace those referred to in Article VI of this Agreement.

2. In the first place, the relevant Party shall accept safeguards under a new agreement or agreements to which it and the Agency are parties and which provide safeguards equivalent in scope and effect to those referred to in Article VI of this Agreement. If such agreement or agreements are not possible, the Parties shall enter into an agreement for the application of a multilateral safeguards system, which conforms with the principles and procedures of the Agency's safeguards system and which provides for safeguards equivalent in scope and effect to the Agency safeguards it replaces. If a multilateral system were not immediately available, the Parties shall cooperate in the establishment of such a system, and, in the interim, shall enter into an agreement for the application of mutually agreeable safeguards arrangements for nuclear material subject to this Agreement.

ARTICLE VIII

1. Each Party shall take measures to ensure adequate physical protection of nuclear material within the jurisdiction of its State.

2. In addition to its obligations under the Convention on the Physical Protection of Nuclear Material, each Party shall apply, as a minimum, 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:

- (a) transferred beyond the territorial jurisdiction of the State of the recipient Party; or
- (b) enriched to 20% or greater in the isotope uranium-235; or
- (c) reprocessed;

without the prior written consent of the supplier Party.

2. In applying paragraph 1 of this Article, the supplier Party shall take into account non-proliferation considerations, international nuclear fuel cycle developments and the energy requirements of the recipient Party, in accordance with Annexes A and B of this Agreement.

3. If the supplier Party considers that it may have objections to the recipient Party's carrying out any of the activities referred to in paragraph 1 of this Article, it should advise in writing its consideration to the recipient Party. The supplier Party will provide the other Party with an immediate opportunity for full consultation on the issue.

4. In any event, the supplier Party shall not withhold consent for the purpose of securing commercial advantage.

ARTICLE X

1. The appropriate authorities of both Parties shall establish an administrative arrangement to ensure the effective fulfilment of the obligations of this Agreement. An administrative arrangement established pursuant to this paragraph may be changed with the mutual consent in writing of the appropriate authorities of both Parties.
2. If nuclear material subject to this Agreement is present in the territory of the State 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.
3. The Parties shall take all appropriate precautions to preserve the confidentiality of commercial and industrial secrets and other confidential information received as a result of 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

In the event of non-compliance by the recipient Party with any of the provisions of paragraph 2 of Article III, Articles V to XI inclusive or of Article XIII of this Agreement, or non-compliance with, or rejection of, Agency safeguards arrangements by the recipient Party, which latter non-compliance or rejection shall be determined in consultation with the Agency, the supplier Party shall have the right to suspend or cancel further transfers of nuclear material and to require the recipient Party to take corrective steps. If following consultation between the Parties, such corrective steps are not taken within a reasonable time, the supplier Party shall thereupon have the right to require the return of nuclear material subject to this Agreement. Both Parties agree that detonation of a nuclear explosive device by either Party would constitute non-compliance with the provisions of Article VI of this Agreement.

ARTICLE XIII

Any dispute arising out of the interpretation or application of this Agreement which is not settled by negotiation shall, at the request of either Party, be submitted to an arbitral tribunal which shall be composed of three arbitrators appointed in accordance with the provisions of this Article. Each Party shall designate one arbitrator who may be its national and the two arbitrators so designated shall appoint a third, a national of a third State, who shall be the Chairman. If, within 30 days of the request for arbitration, either Party has not designated an arbitrator, either Party to the dispute may request the President of the International Court of Justice to appoint an arbitrator. The same procedure shall apply if, within 30 days of the designation or appointment of the second arbitrator, the third arbitrator has not been appointed. A majority of the members of the tribunal shall constitute a quorum. All decisions shall be made by majority vote of all the members of the arbitral tribunal. The arbitral procedure shall be fixed by the tribunal. All decisions and rulings of the tribunal shall be binding on the Parties and shall be implemented by them.

ARTICLE XIV

1. This Agreement may be amended or revised by written agreement between the Parties.
2. Any amendment or revision shall enter into force on the date on which the Parties exchange diplomatic notes informing each other that they have completed their domestic and constitutional requirements for its entry into force.

ARTICLE XV

The Annexes A and B form an integral part of this Agreement.

ARTICLE XVI

1. This Agreement shall enter into force on the date on which the Parties exchange diplomatic notes informing each other that they have completed their domestic and constitutional requirements for its entry into force, and shall remain in force for an initial period of 30 years. If neither Party has notified the other Party at least 180 days prior to the expiry of such period, the present Agreement shall continue in force thereafter until 180 days after notice of termination has been given by either Party to the other Party. Provided, however, that 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 referred to in paragraph 1 of Article III of this Agreement which remains usable or practicably recoverable for processing into a form in which it is usable for any nuclear activity relevant from the point of view of safeguards in accordance with Article IV of the Agreement. The obligations in Articles IV, V, VI, VII, VIII, IX, X, XI, XII and XIII shall continue in effect in relation to such nuclear material.

2. In the event that the Czech Republic becomes a member of the European Union, this Agreement shall be regarded as complementary to the Agreement between the Government of Australia and the European Atomic Energy Community concerning Transfers of Nuclear Material from Australia to the European Atomic Energy Community of 21 September 1981 ("the Euratom Agreement"), and the Parties shall consult regarding the conditions under

which it would be appropriate for provisions of this Agreement to be superseded by the Euratom Agreement.

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

Done at _____ this _____ day of _____ two thousand one, in duplicate in the English and the Czech languages, both texts having equal validity.

For the Government of Australia

For the Government of the Czech
Republic

ANNEX A

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

- (a) Transfers of nuclear material subject to the Agreement from the Czech Republic to third countries which have an agreement in force with Australia concerning nuclear transfers, in relation to which agreement the Australian Government has not advised the Government of the Czech Republic 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 and fuel fabrication.
- (b) The appropriate authority of the Czech Republic shall promptly notify the appropriate authority of Australia, in accordance with procedures set out in the Administrative Arrangement, of such transfers.
- (c) The appropriate authority of Australia shall provide the appropriate authority of the Czech Republic with, and keep up to date, the list of countries to which transfers may be made in accordance with subparagraph (a) above.

ANNEX B

1. Australia recognises the interest of the Czech Republic in the practical and efficient operation of its nuclear facilities. It is the intention of Australia that the provisions of paragraphs 1(b) and 1(c) of Article IX should operate to this effect and that they shall be implemented so as to avoid raising practical difficulties unrelated to non-proliferation objectives.
2. As to reprocessing, Australia has, in some cases, concluded arrangements with safeguards treaty partners, under which generic and long term consent has been given for reprocessing, when this has been necessary to meet the nuclear fuel cycle requirements of those partners. Australia will be prepared to discuss such an arrangement with the Czech Republic, if fuel cycle plans encompass reprocessing.
3. As to enrichment to 20% or greater in the isotope uranium-235, it is the understanding of Australia that Australian supplied nuclear material would be employed in the nuclear power program of the Czech Republic for the generation of electricity. Use of such material for research purposes is not currently envisaged. Australia, however, confirms its willingness to discuss this matter further in the light of the requirements of the nuclear program of the Czech Republic.