

NUCLEAR ENERGY

**Agreement Between the
UNITED STATES OF AMERICA
and AUSTRALIA**

Effected by Exchange of Notes at
Washington July 31, 2001

Entered into Force May 17, 2002



NOTE BY THE DEPARTMENT OF STATE

Pursuant to Public Law 89—497, approved July 8, 1966
(80 Stat. 271; 1 U.S.C. 113)—

“ . . .the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence . . . of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof.”



NOTE No.134/01

The Embassy of Australia presents its compliments to the Department of State and has the honour to refer to discussions between officials of the Governments of the United States of America and Australia concerning cooperation between Australia and the United States of America on the application of non-proliferation assurances relating to Australian uranium to be transferred to the United States of America, either directly or through a third party, for enrichment and thereafter retransferred to Taiwan for use in nuclear reactors for the generation of electricity on Taiwan. Pursuant to these discussions, the Government of Australia proposes that the provisions set forth in the Annex to this Note govern that cooperation.

The Embassy has the honour to propose that this Note with its Annex, and the Department of State's reply expressing that the foregoing is acceptable to the Government of the United States of America, shall constitute an Agreement between the Government of the United States of America and the Government of Australia which shall enter into force on the date on which the Government of Australia notifies the Government of the United States through the diplomatic channel that its constitutional and domestic requirements for the entry into force of the Agreement in Australia have been satisfied and shall remain in force indefinitely, unless terminated by either Party upon six months' notice to the other Party. The Annex shall constitute an integral part of this Agreement.

The Embassy wishes to note that nothing in this Agreement shall be construed in any way to affect the provisions of the Joint Communiqué of the Australian Government and the People's Republic of China concerning the establishment of diplomatic relations between Australia and China issued in Paris on 21 December 1972.

The Embassy of Australia avails itself of this opportunity to renew to the Department of State the assurances of its highest consideration.



WASHINGTON, DC
31 July 2001

ANNEX

Recognising that Australia and the United States of America have a common desire to ensure that source material and special nuclear material transferred to Taiwan for use in peaceful nuclear activities and any special nuclear material produced therefrom are not used to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices;

Recognising that Australia seeks to ensure that Australian uranium (as defined in paragraph 2 below) and special nuclear material produced therefrom be subject on Taiwan to nuclear non-proliferation assurances consistent with Australian non-proliferation policy;

Recognising that uranium transferred from Australia to the United States for retransfer to Taiwan will be subject to the Agreement Between the United States of America and Australia Concerning Peaceful Uses of Nuclear Energy, signed on July 5, 1979, (hereinafter referred to as the "Peaceful Uses Agreement");

Recognising that Article 5.2 of the Peaceful Uses Agreement provides, inter alia, that material, the definition of which includes source material, special nuclear material or byproduct material, transferred pursuant to the agreement and special nuclear material produced through the use of such material, over which the recipient party has jurisdiction, shall not be retransferred:

- (a) to any unauthorised persons within its jurisdiction; or
- (b) beyond its territorial jurisdiction unless the parties agree.

Recognising that the International Atomic Energy Agency applies safeguards under INFCIRC/158 to all the nuclear facilities in Taiwan.

Mindful that both Australia and the United States are members of the Nuclear Suppliers Group, whose members adhere to a policy that suppliers should not authorise the transfer of trigger list items or related technology to a non-nuclear weapon State or entity unless the recipient authority has brought into force an agreement with the IAEA requiring the application of safeguards on all source and special fissionable material in its current and future peaceful nuclear activities.

1. This agreement sets out conditions which shall be applied for transfers of Australian uranium to the United States, either directly or through a third party, for subsequent retransfer to Taiwan for use in nuclear reactors for the generation of electricity on Taiwan.
2. Australia shall notify the United States at the earliest practical date when uranium subject to the Peaceful Uses Agreement is intended, following enrichment, for retransfer to Taiwan for use in nuclear reactors for the generation of electricity.

Uranium that has been the subject of this notification and has been retransferred from the United States of America to Taiwan is referred to in this Agreement as "Australian uranium".

3. Australia agrees that the United States of America may retransfer to Taiwan uranium that has been the subject of notification pursuant to paragraph 2 above where that uranium has

been enriched in the United States of America in the isotope U-235 to enrichment levels normally required for the generation of electricity (e.g., up to 6 percent in the isotope U-235).

4. The United States of America shall ensure that "Australian uranium" and special nuclear material produced therefrom are, while on Taiwan, subject to all provisions of the Agreement for Cooperation Between the United States of America and the Republic of China Concerning Civil Uses of Atomic Energy, signed April 4, 1972, as amended (hereinafter referred to as the 1972 Agreement), while the 1972 Agreement is in force or, in the event that the 1972 Agreement is replaced, to the provisions of any succeeding agreement while such succeeding agreement is in force. It is understood that "Australian uranium" and special nuclear material produced therefrom shall, while on Taiwan, always be subject to the 1972 Agreement or to a succeeding agreement. The United States of America shall consult with Australia about the amendment, replacement, suspension or termination of the 1972 Agreement or of any succeeding agreement.
5. Except as provided in paragraph 9, below, the United States of America shall ensure that "Australian uranium" and special nuclear material produced therefrom are, while on Taiwan, subject to the Safeguards Transfer Agreement, signed December 6, 1971, under which the International Atomic Energy Agency applies safeguards in Taiwan (reproduced in International Atomic Energy Agency document INFCIRC/158 of March 8, 1972 and hereinafter referred to as the Safeguards Agreement), while the Safeguards Agreement is in force or, in the event that the Safeguards Agreement is replaced, to the provisions of any succeeding agreement while such succeeding agreement is in force. The United States of America shall consult with Australia about the amendment, replacement, suspension or termination of the Safeguards Agreement or of any succeeding agreement.
6. The United States of America shall inform Australia of the isotopic composition and the total mass of each retransfer from the United States to Taiwan of uranium that has been the subject of notification pursuant to paragraph 2.
7. For each transfer of uranium notified pursuant to paragraph 2 above, from the United States of America to Taiwan, the United States of America shall, through appropriate channels, identify such uranium to Taiwan as Australian.
8. Neither the United States of America nor Australia shall exercise any rights it has to approve the retransfer or enrichment to twenty percent or greater in the isotope uranium 235 by Taiwan of "Australian uranium" and shall not exercise any rights it has to approve the retransfer or reprocessing of irradiated fuel elements containing special nuclear material produced through the use of "Australian uranium," unless the parties shall agree. This obligation applies only where the party whose approval has been sought has been notified that the other party has such rights of approval or their equivalent.
9. If for any reason or at any time, the International Atomic Energy Agency is not applying safeguards pursuant to the Safeguards Agreement, or (in the event that such Agreement is replaced) pursuant to the provisions of any succeeding agreement, the United States shall consult Australia to reach agreement on the application of fallback safeguards to "Australian uranium" and special nuclear material produced therefrom. Fallback safeguards may include the invocation by the United States of America of its existing rights under the 1972 Agreement with a view to ensuring that the safeguards provided for in the 1972 Agreement are applied to "Australian uranium" or special nuclear material produced therefrom. If the United States of America exercises its rights under the 1972 Agreement to require the return from Taiwan of material subject to that Agreement, "Australian uranium"

or special nuclear material produced therefrom that is returned shall, unless otherwise agreed, become subject to the Peaceful Uses Agreement upon leaving Taiwan.

10. The United States of America shall maintain an inventory of the "Australian uranium" on Taiwan and, based on information received through appropriate channels from Taiwan, of special nuclear material on Taiwan produced therefrom. The United States of America shall provide this inventory to Australia annually.

11. The United States of America shall, to the extent permitted by United States law, consult Australia if it has reason to believe:

- i that it has not been advised that a request for consent to retransfer from Taiwan, to reprocess in Taiwan, or enrich to twenty percent or more in the isotope U-235 on Taiwan "Australian uranium" or special nuclear material in Taiwan produced therefrom in fact involves "Australian uranium" or special nuclear material produced therefrom, or
- ii that "Australian uranium" or special nuclear material produced therefrom is not being identified as Australian while on Taiwan.

In the case of i or ii, the United States and Australia shall seek to reach an agreement on measures that the United States and/or Australia will take to rectify the problem.

12. Australia and the United States of America shall consult at any time at the request of either Party to ensure the effective implementation of this agreement.

13. The appropriate government authorities shall ensure that administrative arrangements are in place to facilitate the effective implementation of this agreement. They shall consult annually or at any other time at the request of the authorities of either government. Such consultations may take the form of an exchange of correspondence.

14. Australia and the United States of America shall seek to resolve any dispute concerning the interpretation or application of this Agreement by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, or other peaceful means as they may mutually agree.

15. The United States confirms that in accordance with an October 26, 1978 letter of assurance from the "Embassy of the Republic of China" to the United States Department of Energy, "Australian uranium" and special fissionable material produced therefrom shall be subject to measures of physical protection in accordance with the criteria set out in Annex C of the Guidelines for Nuclear Transfers as promulgated by the International Atomic Energy Agency in the Appendix to INFCIRC/254/Rev.1/Part 1.

Australia and the United States of America shall consult at the request of either concerning matters relating to physical protection, including the application, for the purposes of the preceding paragraph, of the recommendations that may be made from time to time by international expert groups.

16. Notwithstanding the suspension or termination of this agreement, paragraphs 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, and 15 shall remain in force:

- (i) while any source material or special nuclear material subject to these provisions is on Taiwan, or
- (ii) until such time as Australia and the United States of America agree that source material or special nuclear material subject to these provisions is no longer useable for any nuclear activity relevant from the point of view of safeguards.

The Department of State has the honor to refer to discussions between officials of the Governments of Australia and the United States of America concerning cooperation between Australia and the United States of America on the application of non-proliferation assurances to Australian uranium to be transferred to the United States of America, either directly or through a third party, for enrichment and thereafter retransferred to Taiwan for use in nuclear reactors for the generation of electricity on Taiwan and to the Embassy's Note No. 134/01 dated July 31, 2001. Pursuant to these discussions, the Government of Australia proposed the provisions set forth in the Annex to that Note to govern that cooperation.

The Department of State has the honor to confirm that the proposals set forth in the Embassy's Note are acceptable to the Government of the United States of America and that the Embassy's Note and this reply shall constitute an Agreement between the Government of the United States of America and the Government of Australia which shall enter into force on the date on which the Government of Australia notifies the Government of the United States of America through the diplomatic channel that its

DIPLOMATIC NOTE

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constitutional and domestic requirements for the entry into force of the Agreement in Australia have been satisfied and shall remain in force indefinitely, unless terminated by either Party upon six months' notice to the other Party. The Annex shall constitute an integral part of this Agreement.

Department of State,

Washington, July 31, 2001.

A handwritten signature in black ink, appearing to be "R. J. W. S.", with a horizontal line underneath the name.