

No. 7122

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**UNITED STATES OF AMERICA, JAPAN and  
INTERNATIONAL ATOMIC ENERGY AGENCY**

**Agreement (with annexes) for the application of safeguards  
by the Agency to the Bilateral Agreement between those  
Governments concerning civil uses of atomic energy.  
Signed at Vienna, on 23 September 1963**

*Official text: English.*

*Registered by the United States of America on 7 February 1964.*

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**ÉTATS-UNIS D'AMÉRIQUE, JAPON et  
AGENCE INTERNATIONALE DE L'ÉNERGIE ATOMIQUE**

**Accord (avec annexes) pour l'application de garanties par  
l'Agence à l'Accord bilatéral entre ces Gouvernements  
concernant l'utilisation de l'énergie atomique à des  
fins civiles. Signé à Vienne, le 23 septembre 1963**

*Texte officiel anglais.*

*Enregistré par les États-Unis d'Amérique le 7 février 1964.*

No. 7122. AGREEMENT<sup>1</sup> BETWEEN THE INTERNATIONAL ATOMIC ENERGY AGENCY, THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF JAPAN FOR THE APPLICATION OF SAFEGUARDS BY THE AGENCY TO THE BILATERAL AGREEMENT BETWEEN THOSE GOVERNMENTS CONCERNING CIVIL USES OF ATOMIC ENERGY.<sup>2</sup> SIGNED AT VIENNA, ON 23 SEPTEMBER 1963

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WHEREAS the Government of the United States of America (hereinafter called the "United States") and the Government of Japan (hereinafter called "Japan") have been co-operating on the civil uses of atomic energy under their Agreement for Cooperation of 16 June 1958, as amended<sup>3</sup> (hereinafter called the "Agreement for Cooperation"), which requires that equipment, devices and materials made available to Japan by the United States be used solely for peaceful purposes and establishes a system of safeguards to that end ; and

WHEREAS the Agreement for Cooperation reflects the mutual recognition by the two Governments of the desirability of arranging for the International Atomic Energy Agency (hereinafter called the "Agency") to administer such safeguards as soon as practicable ; and

WHEREAS the Agency is, pursuant to its Statute<sup>3</sup> and the action of its Board of Governors, now in a position to apply safeguards to certain equipment, devices and materials covered by an existing agreement between Member States in accordance with the Agency's safeguards procedures set forth in Agency document INFCIRC/26, approved by the Board on 31 January 1961 (hereinafter called the "Safeguards Document") ; and

WHEREAS the two Governments have reaffirmed their desire that equipment, devices and materials supplied by the United States under the Agreement for Cooperation or produced by the use of such equipment, devices and materials or otherwise subject to that Agreement shall not be used for any military purpose and, accordingly, have requested the Agency to apply the Agency's safeguards to such equipment, devices and materials as hereinafter set forth insofar as the Agency has appropriate provisions to do so ; and

<sup>1</sup> Came into force on 1 November 1963, in accordance with the provisions of article VIII, Section 25.

<sup>2</sup> United Nations, *Treaty Series*, Vol. 325, p. 143, and Vol. 340, p. 414.

<sup>3</sup> See footnote 1, p. 32 of this volume.

WHEREAS the Board of Governors of the Agency has acted favourably upon that request ;

NOW, THEREFORE, the two Governments and the Agency agree as follows :

### *Article I*

#### USE OF EQUIPMENT, DEVICES AND MATERIALS FOR PEACEFUL PURPOSES

Section 1. Japan hereby undertakes that, during the term of this Agreement, it will not use in such a way as to further any military purpose, any equipment, devices or materials which are subject to the Agreement for Cooperation and for which the Agency has established safeguards procedures. The equipment, devices and materials are to be listed in the inventory provided for in Annex A.<sup>1</sup>

Section 2. The United States hereby undertakes that, during the term of this Agreement, it will not use in such a way as to further any military purpose, any special fissionable material which is produced in or by the use of the equipment, devices or materials referred to in Section 1, which has been received by the United States and which, accordingly, is listed in the inventory provided for in Annex A.

Section 3. The Agency hereby undertakes, in order to ascertain whether the undertakings of each Government are being fulfilled, to apply Agency safeguards during the term of and in accordance with the provisions of this Agreement, to equipment, devices and materials for which the Agency has established safeguards procedures, and during the time they are listed in the inventory provided for in Annex A in accordance with Section 1 and 2, provided that there need be no application of safeguards to :

(a) Nuclear materials unless the quantity of PN material of that type in the State, including that listed in the inventory provided for in Annex A, is in excess of :

- (i) In the case of natural uranium or depleted uranium with a uranium-235 content of 0.5 per cent or greater—10 metric tons ;
- (ii) In the case of depleted uranium with a uranium-235 content of less than 0.5 per cent—20 metric tons ;
- (iii) In the case of thorium—20 metric tons ;
- (iv) In the case of special fissionable material : plutonium, uranium-233 or fully enriched uranium or its equivalent in the case of partially enriched uranium\*—200 grams ;

(b) Reactors specified by Japan and determined by the Agency to have a maximum calculated power for continuous operation of less than three megawatts, provided

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\* Equivalent amounts can be determined from the equation in the Appendix to the Safeguards Document. The equivalent amounts of plutonium and uranium-233 are the same as for fully enriched uranium.

<sup>1</sup> See p. 116 of this volume.

that the total such power of the reactors thus specified may not exceed 6 thermal megawatts ;

(c) Mines, mining equipment or ore-processing plants.

Such inventory shall be kept current in accordance with the agreements of the parties with respect thereto and the procedures specified hereinafter.

Section 4. Japan and the United States undertake to facilitate the application of such safeguards and to co-operate with the Agency and each other to that end.

Section 5. The United States agrees that the rights provided to it by Article IX of the Agreement for Cooperation will be suspended with respect to any equipment, devices and materials while they are listed in the inventory provided for in Annex A.

## Article II

### APPLICATION OF AGENCY SAFEGUARDS

Section 6. Japan and the United States shall jointly notify the Agency of :

(a) Any transfer from the United States to Japan of any equipment, devices or materials to be included in the inventory provided for in Annex A ; and

(b) Any transfer from Japan to the United States of any material to be included in the inventory provided for in Annex A.

Such equipment, devices and materials shall be listed in that inventory unless within thirty days of receipt of such notification the Agency notifies the two Governments that it is unable to apply safeguards thereto, for unforeseeable reasons that may emerge.

Section 7. The notification by the two Governments provided for in Section 6 shall normally be sent to the Agency not more than two weeks after the equipment, devices or materials have arrived in the recipient country, except that shipments of natural uranium, depleted uranium or thorium in quantities not exceeding one ton shall not be subject to the two week notification requirement but shall be notified to the Agency at quarterly intervals. Such notification shall include the type, form and quantity of the material or the type and capacity of the equipment and devices involved, the date of shipment and the date of receipt, an identification of the recipient, and any other relevant information.

Section 8. Japan shall notify the Agency, by means of the routine reports required by Annex B,<sup>1</sup> of any special fissionable material it produces, during the period covered by the report, in or by the use of any of the equipment, devices or materials listed in the inventory provided for in Annex A. Upon receipt by the Agency of the notification, such materials shall be so listed, provided that any material so produced shall be deemed to be subject to the Agency's safeguards provided for by this Agreement from the time it is produced. The Agency may verify the calculations of the amounts of such materials ; appropriate adjustment in the inventory provided for in Annex A will be made by agreement of the Parties concerned.

<sup>1</sup> See p. 116 of this volume.

Section 9. Japan and the United States shall jointly notify the Agency of the return to the United States of any equipment, devices or materials listed in the inventory provided for in Annex A other than materials covered by Section 8. When the United States notifies the Agency of its receipt thereof, such equipment, devices and materials will be deleted from such inventory.

Section 10. Japan and the United States shall jointly notify the Agency of any equipment, devices or materials listed in the inventory provided for in Annex A which Japan and the United States have authorized to be transferred beyond the jurisdiction of Japan and the United States. Upon such notification and transfer, the equipment, devices or materials will be deleted from such inventory, provided that :

(a) Agency safeguards continue to apply to such equipment, devices or materials ; or

(b) Such transfer of equipment, devices or materials takes place under other safeguards, generally consistent with Agency safeguards, acceptable to Japan and the United States.

Section 11. Agency safeguards applied to nuclear material pursuant to this Agreement will be suspended while such material is transferred to any other State or group of States or to an international organization, solely for the purpose of processing, reprocessing or testing, under an agreement between the parties concerned, approved by the Agency, and within the scope of the Agreement for Cooperation, or to a facility within the United States to which safeguards are not applied under an arrangement approved by the Agency, provided that :

(a) The agreement or the arrangement requires that a party thereto place under Agency safeguards, at a time to be agreed and with due allowance for processing losses, an amount of nuclear material at least equal to such transferred material and not otherwise subject to safeguards ; or

(b) The quantities of such transferred material are not at any time in excess of :

- (i) In the case of natural uranium or depleted uranium with a uranium-235 content of 0.5 per cent or greater—10 metric tons ;
- (ii) In the case of depleted uranium with a uranium-235 content of less than 0.5 per cent—20 metric tons ;
- (iii) In the case of thorium—20 metric tons ;
- (iv) In the case of special fissionable material : plutonium, uranium-233 or fully enriched uranium or its equivalent in the case of partially enriched uranium\* —1,000 grams.

\* See footnote \*, p. 102 of this volume.

Section 12. The application of safeguards suspended pursuant to Section 11 above will remain suspended for as long as the equivalent material placed under Agency safeguards as provided for in Section 11 (a) remains subject to Agency safeguards, as well as for quantities which do not exceed the limits as specified in Section 11 (b).

Section 13. The procedures for the application of Agency safeguards are specified in Annex B.

Section 14. If the Board determines, in accordance with Article XII.C of the Statute, that there has been any non-compliance with this Agreement, the Board shall call upon the State concerned to remedy forthwith such non-compliance. In the event of failure by such State to take fully corrective action within a reasonable time :

(a) If the Board determines that the Agency is unable to apply its safeguards to certain equipment, devices or materials, the application of Agency safeguards thereto shall be suspended together with the undertaking of the Agency provided for in Section 3 with respect to such equipment, devices and materials ; such suspension shall continue until the Board has determined that the Agency is able to apply its safeguards ;

(b) If the Board determines that any equipment, devices or materials to which Agency safeguards are applied pursuant to this Agreement is being used in violation of the undertaking not to use the safeguarded equipment, devices and materials for any military purpose, the Board shall make the reports required by Article XII.C of the Statute and may take one or both of the following measures : Direct curtailment or suspension of any assistance being provided and call for the supplying State to call for the return of the equipment, devices and materials which have been made available to the recipient State. The Agency may also suspend the non-complying State from exercising its privileges and rights of membership in the Agency in accordance with Article XIX of the Statute.

The Agency shall promptly notify the Parties in the event of any such non-compliance and/or suspension for non-compliance.

### *Article III*

#### AGENCY INSPECTORS

Section 15. Agency inspectors performing functions pursuant to this Agreement shall be governed by paragraphs 1 through 7, and paragraphs 9, 10, 12 and 14 of the Agency's Inspectors Document (GC(V)/INF/39, Annex) and paragraph 41 of the Safeguards Document. It is understood by the Parties that the United States may avail itself of the provisions of Section 11 (a) hereof with respect to any material of the type specified in Section 8 hereof upon its transfer to the United States pursuant to Section 6 (b) and that any requisite approvals by the Agency will be forthcoming. It is also understood, therefore, that with respect to access of Agency inspectors within

the United States, the requirements of paragraph 9 of the Inspectors Document shall be satisfied by affording Agency inspectors access at all times to the locations or equipment or devices at which equivalent materials are located.

Section 16. Japan shall apply the provisions of the Agreement on the Privileges and Immunities of the Agency<sup>1</sup> to the Agency inspectors performing functions consequent upon this Agreement and to any property of the Agency used by them.

Section 17. The provisions of the International Organizations Immunities Act of the United States shall apply to Agency inspectors performing functions in the United States.

#### *Article IV*

##### USE OF INFORMATION BY THE AGENCY

Section 18. The Agency shall not publish nor communicate to any State, organization or person not on its staff any information obtained by it under this Agreement, except with the consent of the Government of the State to which the information relates.

#### *Article V*

##### FINANCE

Section 19. In connection with the implementation of this Agreement all expenses incurred by, or at the request or direction of, the Agency, its inspectors or other officials will be borne by the Agency and neither Japan nor the United States shall be required to bear any expense for equipment, accommodation, or transport furnished pursuant to provisions of paragraph 6 of the Inspectors Document.

#### *Article VI*

##### SETTLEMENT OF DISPUTES

Section 20. Any dispute arising out of the interpretation or application of this Agreement which is not settled by negotiation or as may otherwise be agreed by the Parties concerned, shall on the request of any Party be submitted to an arbitral tribunal composed as follows :

(a) If the dispute involves only two of the Parties to this Agreement, all three Parties agreeing that the third is not concerned, the two Parties involved shall each designate one arbitrator, and the two arbitrators designated shall appoint a third, who shall be the Chairman. If within thirty 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 thirty days of the designation or appointment of two arbitrators, the third arbitrator has not been appointed ;

<sup>1</sup> United Nations, *Treaty Series*, Vol. 374, p. 147 ; Vol. 369, p. 352 ; Vol. 399, p. 296 ; Vol. 412, p. 353 ; Vol. 456, p. 502, and Vol. 463, p. 362.

(b) If the dispute involves all three Parties to this Agreement, each Party shall designate one arbitrator, and the three arbitrators so designated shall by unanimous decision appoint a fourth arbitrator who shall be the Chairman, and a fifth arbitrator. If within thirty days of the request for arbitration any Party has not designated an arbitrator, any Party may request the President of the International Court of Justice to appoint the necessary number of arbitrators. The same procedure shall apply if, within thirty days of the designation or appointment of all three arbitrators, the Chairman or the fifth arbitrator has not been appointed.

A majority of the members of the arbitral tribunal shall constitute a quorum, and all decisions shall be made by majority vote. The procedure of the arbitration shall be fixed by the tribunal. Upon application of any Party, and if necessary to insure that this Agreement continues to function effectively, the arbitral tribunal shall be empowered to make interim decisions and to issue interim orders pending a final decision on any dispute, except with respect to matters covered by Section 21. The final decision and interim orders and decisions of the tribunal, including all rulings concerning procedures, jurisdiction and the division of the expenses of arbitration between the Parties, shall be binding on all Parties and shall be implemented by them in accordance with their respective constitutional procedures. The remuneration of the arbitrators shall be determined on the same basis as that of *ad hoc* judges of the International Court of Justice under Article 32, paragraph 4, of the Statute of the Court.

Section 21. Decisions of the Board concerning the inability of the Agency to apply safeguards or concerning any non-compliance with this Agreement, taken pursuant to Section 6 or 14, shall, if they so provide, immediately be given effect by the Parties, pending the conclusion of any consultation, negotiation or arbitration that may be or may have been invoked with regard to the dispute.

### Article VII

#### AGENCY SAFEGUARDS SYSTEM AND DEFINITIONS

Section 22. Should the Agency make any changes in its safeguards system, as set forth in the Safeguards Document (INFCIRC/26, approved by the Board on 31 January 1961) the Parties may, if they agree, apply such changes. The Parties may similarly agree with respect to any changes in the Agency's Inspectors Document (GC(V)/INF/39, Annex, placed in effect by the Board on 29 June 1961), referred to in Section 15 above.

Section 23. Except as otherwise provided in this Agreement, the definitions of the terms "Agency", "Statute", "Board", "Director General", "nuclear material", "depleted uranium", "application of safeguards", and "PN material" in the Safeguards Document apply to the use of those terms in this Agreement. The term "special fissionable material" as used in this Agreement is defined as in Article XX of the



Statute. The term "Agency safeguards" as used in this Agreement means the measures prescribed in this Agreement, including those incorporated by reference, to prevent diversion of the equipment, devices and materials listed in the inventory provided for in Annex A. "Party" shall mean any party to this Agreement.

*Article VIII*

AMENDMENT, ENTRY INTO FORCE AND DURATION

Section 24. Upon the request of any Party there shall be consultations among them concerning the amendment of this Agreement, and any amendments agreed upon shall enter into force upon signature by or for the Director General and the duly authorized representatives of Japan and of the United States.

Section 25. This Agreement shall enter into force, after signature by or for the Director General and by the duly authorized representatives of Japan and of the United States, on 1 November 1963.

Section 26. This Agreement shall remain in force for a period of four years unless sooner terminated by any Party upon six months' notice to the other Parties or as may otherwise be agreed.

DONE in Vienna, this 23<sup>rd</sup> day of September 1963, in triplicate in the English language.

For the International Atomic Energy Agency :

Sigvard EKLUND

For the Government of Japan :

Fujio UCHIDA

For the Government of the United States of America :

Henry De Wolf SMYTH

[SEAL]

## ANNEX A

## EQUIPMENT, DEVICES AND MATERIALS SUBJECT TO AGENCY SAFEGUARDS

An inventory of the equipment, devices and materials which are subject to this Agreement shall be maintained on a current basis by the Agency. This inventory will be considered an integral part of this Agreement, and the Agency will communicate it to Japan and the United States every three months and also within two weeks of the receipt of a special request therefor from one of the Governments.

1. This inventory will consist of at least the following categories :

- (a) Equipment and devices transferred to Japan ;
- (b) Materials transferred to Japan ;
- (c) Fissionable materials produced in Japan, as provided in Section 8 of this Agreement ; and
- (d) Produced fissionable materials transferred to the United States.

2. In addition to the specific equipment, devices and materials listed in the inventory as provided for in paragraph 1 of this Annex, the following will also be considered as a part of the inventory on the basis of the routine reports submitted in accordance with Annex B :

- (a) Except as provided in Section 8 of this Agreement, any nuclear material utilized in, recovered from or produced as a result of the use of any listed materials, equipment or devices ; and
- (b) Any equipment or device while it is using, fabricating or processing any of the listed materials.

## ANNEX B

## PROCEDURES FOR THE APPLICATION OF AGENCY SAFEGUARDS

Agency safeguards will be applied to the equipment, devices and materials listed in the inventory provided for in Annex A pursuant to this Agreement as follows :

1. Pursuant to Article XII.A.1 of the Statute, the Agency shall be entitled to review the design of equipment and devices which the two Governments propose to place under Agency safeguards in accordance with this Agreement with a view to satisfying itself that it could effectively apply safeguards and that such equipment and devices will not further any military purpose. Japan will advise the Agency of any proposed substantial changes in the design of equipment and devices listed in the inventory provided for in Annex A so that the Agency may likewise satisfy itself that such change will not preclude the Agency from effectively applying safeguards thereto and that the equipment or device involved will not further any military purpose.

2. Japan and the United States shall each keep records concerning the equipment, devices and materials under their respective jurisdictions in accordance with paragraphs 45 and 46 of the Safeguards Document and with the system established in accordance with paragraph 44 of the Safeguards Document.

3. Japan and the United States shall each submit routine and special reports concerning the equipment, devices and materials under their respective jurisdictions in accordance with paragraphs 48 through 51, 52 (a) insofar as it is not inconsistent with Sections 7, 9 and 11 of this Agreement, 52 (b), 53 and 62 of the Safeguards Document and with the system established in accordance with paragraph 47 of the Safeguards Document. The first routine reports shall be submitted at the time this Agreement enters into force.

4. Routine inspections, in accordance with paragraphs 54 through 57 and paragraphs 63 through 65 of the Safeguards Document, may be made of the equipment, devices and materials from the time this Agreement enters into force with a maximum frequency as determined by the Agency consistent with the Safeguards Document.

5. Special inspections may be made as necessary in accordance with paragraphs 58 and 59 of the Safeguards Document.

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