

No. 11375

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

**Agreement relating to safeguards provisions (with annex). Signed
at Vienna on 27 January 1971**

Authentic text: English.

Registered by the International Atomic Energy Agency on 28 October 1971:

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

**Accord concernant des dispositions relatives aux garanties (avec
annexe). Signé à Vienne le 27 janvier 1971**

Texte authentique: anglais.

Enregistré par l'Agence internationale de l'énergie atomique le 28 octobre 1971.

AGREEMENT¹ BETWEEN THE INTERNATIONAL ATOMIC ENERGY AGENCY, THE GOVERNMENT OF INDIA AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA RELATING TO SAFEGUARDS PROVISIONS

WHEREAS the Government of the United States of America and the Government of India have been co-operating on the construction and operation of a civil atomic power station near Tarapur in Maharashtra State under their Agreement for Co-operation of 8 August 1963,² which requires that materials, equipment and devices made available to India by the United States of America for use at the Tarapur Atomic Power Station, or in connection therewith, be used solely for peaceful purposes;

WHEREAS the Agreement for Co-operation reflects the mutual recognition by the two Governments of the desirability of making use of the facilities and services of the International Atomic Energy Agency;

WHEREAS the Agency is authorized, pursuant to its Statute,³ to apply safeguards at the request of the parties to any bilateral or multilateral arrangement;

WHEREAS Article VI of the Agreement for Co-operation contains provisions for safeguards;

WHEREAS the two Governments have requested the Agency to enter into a trilateral agreement;

WHEREAS the Board of Governors of the Agency approved that request on 25 February 1970;

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

UNDERTAKING BY THE GOVERNMENTS AND THE AGENCY

Section 1. The Government of India agrees not to use in such a way as to further any military purpose any material, equipment or device while subject to this Agreement.

¹ Came into force on 27 January 1971 by signature, in accordance with section 26.

² United Nations, *Treaty Series*, vol. 488, p. 21.

³ *Ibid.*, vol. 276, p. 3, and vol. 471, p. 334.

Section 2. The Government of the United States of America agrees not to use in such a way as to further any military purpose any special nuclear material, equipment or device while subject to this Agreement.

Section 3. The Agency agrees to implement in accordance with this Agreement the provisions of paragraphs B and C of Article VI of the Agreement for Co-operation and to apply the provisions *mutatis mutandis* in the United States of America in respect of special nuclear material produced in the Tarapur Atomic Power Station which may be received in the United States of America or to equivalent material substituted therefor.

Section 4. The rights of the Government of the United States of America under Article VI of the Agreement for Co-operation to implement the safeguards provisions will be suspended with respect to materials, equipment and devices while subject to this Agreement. It is understood that no other rights and obligations of the Government of India and the Government of the United States of America between themselves under Article VI and under other provisions of the Agreement for Co-operation, including those arising by reason of Article VII, will be affected by this Agreement.

Section 5. The Governments of India and the United States of America shall promptly notify the Agency of any amendment to the Agreement for Co-operation and any notice of termination given with respect to that Agreement.

SAFEGUARDS PROCEDURES

Section 6. This Agreement covers items listed in the Annex to this Agreement (which Annex includes those items already transferred under the Agreement for Co-operation and subject to Article VI thereof) and those subsequently notified to the Agency pursuant to Section 7.

Section 7. (a) The Governments of India and the United States of America shall jointly notify the Agency of:

- (i) Transfers to India of materials, equipment and devices under the Agreement for Co-operation and any return thereof to the United States of America; and
- (ii) Transfers to the United States of America of special nuclear material produced in India in or by the use of materials, equipment or devices transferred under the Agreement for Co-operation.

- (b) The Government concerned shall notify the Agency of:
- (i) Any facility while it is containing, using, fabricating, or processing, any special nuclear material transferred to the Government of India under the Agreement for Co-operation for, or special nuclear material produced at, the Tarapur Atomic Power Station; and
 - (ii) Any special nuclear material produced in India in, or by use of, materials, equipment or devices transferred under the Agreement for Co-operation. This notification is normally to be made by way of reports.

The notification required under (a) above shall normally be sent to the Agency not more than two weeks after the material, equipment or device arrives in India. All notifications under this Section shall include, to the extent relevant, the nuclear and chemical composition, the physical form, and the quantity of the material, the date of shipment, the date of receipt, the identity of the consignor and consignee, and any other relevant information. The two Governments also undertake to give to the Agency as much advance notice as possible of the transfer of large quantities of nuclear materials or major equipment or devices.

Section 8. The Agency shall, within 30 days of its receipt of a joint notification pursuant to Section 7 advise both Governments that it is able to implement provisions of Article VI of the Agreement for Co-operation or that it is unable to do so, in which case, however, it may indicate at what future time or under which conditions and to what extent it would be able to do so, if the Governments so desire. Produced material for which notification is to be made under Section 7 (b) (ii) shall be subject to this Agreement from the time it is produced.

Section 9. The two Governments shall jointly notify the Agency of any transfer of materials, equipment or devices subject to this Agreement to a recipient which is not under the jurisdiction of either of the two Governments. Such materials, equipment or devices may be transferred and shall thereupon cease to be subject to this Agreement, provided that:

- (a) Such materials, equipment or devices are subject to Agency safeguards; or
- (b) The materials, equipment or devices are subject to safeguards other than those applied by the Agency under this Agreement, but generally consistent with such safeguards and accepted by the Agency.

Section 10. Whenever either Government intends to transfer special nuclear material subject to this Agreement to a facility within its jurisdiction which the Agency has not previously accepted for applying safeguards, any notification that will be required pursuant to Section 7 (b) should be made to the Agency before such transfer is effected. The Agency shall also be given the opportunity as early as possible in advance of the transfer to review the design of the facility for the sole purpose of determining that the arrangements provided for in this Agreement can be effectively applied. For purposes of such review, the Agency shall require only a minimum amount of information and data consistent with carrying out such a review. It shall complete the review promptly on receipt of such information.

Section 11. The notifications provided for in Sections 9 and 10 shall be sent to the Agency at least two weeks before each such transfer. The contents of these notifications shall conform, so far as appropriate, to the requirements of Section 7.

Section 12. For the purposes of this Agreement it is agreed that the Agency shall have the rights and obligations of the United States of America under paragraphs B and C of Article VI of the Agreement for Co-operation. It is also agreed that the Agency shall apply these provisions *mutatis mutandis* in the United States of America in respect of special nuclear material produced in the Tarapur Atomic Power Station which may be received in the United States of America or to equivalent material substituted therefor.

Section 13. Notwithstanding anything contained in this Agreement, the Government of India shall have the right, upon prior notice to the Agency, to remove from the scope of this Agreement quantities of special nuclear material provided it has, pursuant to mutually acceptable measurement arrangements, placed agreed equivalent quantities of the same type of special nuclear material under the scope of this Agreement. The Government of the United States of America shall have the same right with respect to special nuclear material produced at the Tarapur Atomic Power Station and acquired by it.

Section 14. In the event of unusual incidents, special reports may be requested, including such amplifications and elucidations as each party considers relevant to the achievement of the objectives of this Agreement.

Section 15. The provisions of this Agreement shall be terminated with respect to:

- (a) Items, other than produced special nuclear material, transferred from India to the United States of America under the Agreement for Co-operation;

- (b) Produced nuclear material when such material is removed from the scope of this Agreement as provided in Section 13;
- (c) Any items transferred pursuant to Section 9;
- (d) Material with respect to which the Agency has determined that it has been consumed, or has been diluted in such a way that it is no longer usable for any nuclear activity relevant from the point of view of safeguards, or has become practically irrecoverable.

Section 16. The conditions for exemption, suspension, or termination of the provisions of this Agreement on items not covered by Section 15 above shall be decided by mutual agreement.

Section 17. The Agency shall not publish or communicate to any State, organization or person any information obtained by it under this Agreement except with the consent of the Government of the State to which the information relates; provided, however, that specific information relating to implementation of its responsibilities in a State may be given to the Board and to such Agency staff members as require such knowledge by reason of their official duties in connection with the Agreement, but only to the extent necessary for the Agency to fulfil its responsibilities.

Section 18. If the Board determines that there has been any non-compliance with this Agreement, the Board shall call upon the Government concerned to remedy such non-compliance forthwith, and shall make such reports as it deems appropriate. If such Government fails to take fully corrective action within a reasonable time:

- (a) The Agency shall be relieved of its undertaking under Section 3 for such time as the Board determines; and
- (b) The Board may take any measures provided for in Article XII, C of the Statute.

The Agency shall promptly notify both Governments in the event of any determination by the Board pursuant to this Section.

Section 19. Personnel designated by the Agency in accordance with Section 12 above, performing functions under this Agreement, shall be governed by paragraphs 1 to 3, 5 to 9, 10, 12 and 14 of the Inspectors Document.

Section 20. The Government of India shall apply the relevant provisions of the Agreement on the Privileges and Immunities of the Agency¹ to Agency

¹ United Nations, *Treaty Series*, vol. 374, p. 147.

personnel performing functions under this Agreement and to any property of the Agency used by them.

Section 21. The Government of the United States of America shall apply the provisions of the International Organizations Immunities Act of the United States of America to Agency inspectors performing functions in the United States of America under this Agreement and to any property of the Agency used by them.

Section 22. Each party shall bear any expense incurred in the implementation of its responsibilities under this Agreement. The Agency shall reimburse each Government for any special expenses, including those referred to in paragraph 6 of the Inspectors Document, incurred by the Government or persons under its jurisdiction at the written request of the Agency, if the Government notified the Agency before the expense was incurred that reimbursement would be required. These provisions shall not prejudice the allocation of expenses attributable to a failure by a party to comply with this Agreement.

Section 23. (a) In carrying out its functions under this Agreement within the United States of America, the Agency and its personnel shall be covered to the same extent as United States of America nationals by any protection against third party liability provided under the Price-Anderson Act, including insurance or other indemnity coverage that may be required by the Price-Anderson Act with respect to nuclear incidents within the United States of America.

(b) The Government of India shall ensure that any protection against third party liability, including any insurance or other financial security, in respect of a nuclear incident occurring in a nuclear installation under its jurisdiction shall apply to the Agency and its inspectors when carrying out their functions under this Agreement as that protection applies to nationals of India.

Section 24. Decisions of the Board concerning the implementation of this Agreement, except such as relate only to Sections 22 and 23, shall, if they so provide, be given effect immediately by the parties, pending the final settlement of any dispute.

AMENDMENT, MODIFICATION, ENTRY INTO FORCE AND DURATION

Section 25. If the Board modifies the Safeguards System as contained in Agency document INFCIRC/66/Rev. 2, or the Inspectors Document, or

modifies the general nature of its safeguards agreements, this Agreement shall be amended, if the Governments so request, to take account of any or all such modifications. The parties shall, at the request of any one of them, consult about amending this Agreement. Additionally, the parties shall, after this Agreement has been in effect for a period of three years, and every five years thereafter, undertake a review of its provisions and implementation with a view to determining whether it should be amended.

Section 26. This Agreement shall enter into force upon signature by or for the Director General of the Agency and by the authorized representative of each Government.

Section 27. This Agreement shall remain in force during the term of the Agreement for Co-operation, as it may be extended from time to time, unless terminated sooner by any party upon six months' notice to the other parties or as may otherwise be agreed.

DEFINITIONS

Section 28. For the purposes of this Agreement:

- (a) " Agency " means the International Atomic Energy Agency;
- (b) " Board " means the Board of Governors of the Agency;
- (c) " Agreement for Co-operation " means the Agreement for Co-operation between the Government of the United States of America and the Government of India concerning the Civil Uses of Atomic Energy, signed on 8 August 1963;
- (d) " Inspectors Document " means the Annex to Agency document GC(V)/INF/39, which was placed in effect by the Board on 29 June 1961;
- (e) " Nuclear material " means any source material or special nuclear material as they are defined in Article IX of the Agreement for Co-operation.

DONE in Vienna, this twenty-seventh day of January 1971, in triplicate in the English language.

For the International Atomic Energy Agency:

SIGVARD EKLUND

For the Government of India:

V. C. TRIVEDI

For the Government of the United States of America:

T. KEITH GLENNAN

ANNEX

The following constitutes the initial list of items transferred to India under the Agreement for Co-operation:

I. *Materials*

<i>Type</i>	<i>Per cent enriched</i>	<i>Quantity (rounded to nearest gram)</i>	
		<i>Total U</i>	<i>²³⁵U</i>
1. 598 fuel elements containing rods with varying enrichments and quantities of uranium and ²³⁵ U as indicated.	2.4965%	27 608 812	689 254
	1.8019%	12 711 381	229 046
	1.4088%	1 145 510	16 138
	2.4800%	27 616 593	685 524
	1.8100%	12 649 381	228 457
	1.4000%	1 154 644	16 104
	TOTAL	82 886 321	1 864 523
2. 68 in-core detector assemblies	93%	4	4

II. *Equipment and Devices*

Two boiling-water nuclear power reactors for the Tarapur Atomic Power Station located at Tarapur, Maharashtra State, India, manufactured by the General Electric Company with a combined net electrical output rating of approximately 380 megawatts electrical.