

No. 24243

AUSTRALIA
and
UNITED STATES OF AMERICA

Exchanges of notes constituting an agreement regarding the application of the Agreement concerning peaceful uses of nuclear energy. Washington, 2 August 1985

Authentic text: English.

Registered by Australia on 7 July 1986.

AUSTRALIE
et
ÉTATS-UNIS D'AMÉRIQUE

Échanges de notes constituant un accord relatif à l'application de l'Accord concernant l'utilisation de l'énergie nucléaire à des fins pacifiques. Washington, 2 août 1985

Texte authentique : anglais.

Enregistré par l'Australie le 7 juillet 1986.

EXCHANGES OF NOTES CONSTITUTING AN AGREEMENT¹ BETWEEN AUSTRALIA AND THE UNITED STATES OF AMERICA REGARDING THE APPLICATION OF THE AGREEMENT CONCERNING PEACEFUL USES OF NUCLEAR ENERGY²

I

Note No. 336/85
113/3/1/1

The Embassy of Australia presents its compliments to the Department of State and has the honour to refer to the Agreement between Australia and the United States of America concerning Peaceful Uses of Nuclear Energy signed at Canberra on 5 July 1979² (hereinafter referred to as "the Agreement on Peaceful Uses") and in particular to paragraph 2 of Article 1 thereof.

The Embassy has further the honour to refer to consultations that have taken place concerning the application of paragraph 2 of Article 1 of the Agreement on Peaceful Uses. During the course of those consultations the following understandings were reached:

(a) The Government of Australia shall advise the Government of the United States on a case-by-case basis as to whether a person or persons under Australian jurisdiction is authorized to co-operate under the Agreement on Peaceful Uses.

(b) The Government of the United States shall provide the Government of Australia with a complete list of the names and mailing addresses of all persons within the United States that are authorized to receive source material or special nuclear material subject to the Agreement on Peaceful Uses. This list shall be updated and retransmitted annually. However, deletions of persons from the list shall be reported as they occur. Any person in the United States is an authorized recipient of equipment and components.

The Embassy has the honour to propose that if the foregoing is acceptable to the Government of the United States of America this Note and the Department's confirmatory reply shall constitute an agreement between the Government of Australia and the Government of the United States of America which shall enter into force on the date of the Department's reply and shall remain in force for as long as the Agreement on Peaceful Uses remains in force unless otherwise agreed by the two Governments.

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

Washington, D.C., 2 August 1985

¹ Came into force on 2 August 1985, the date of the note in reply, in accordance with the provisions of the said notes.

² United Nations, *Treaty Series*, vol. 1217, p. 211.

II

Note No. 337/85
113/3/1/1

The Embassy of Australia presents its compliments to the Department of State and has the honour to refer to the Agreement between Australia and the United States of America concerning Peaceful Uses of Nuclear Energy, signed at Canberra on 5 July 1979 (hereinafter referred to as "the Agreement on Peaceful Uses") and in particular to paragraph 3 of Article 1, Articles 5, 7 and 9 and the Agreed Minute.

The Embassy of Australia has further the honour to propose that when items are to be transferred between the Parties to the Agreement on Peaceful Uses such items shall become subject to the Agreement on Peaceful Uses upon arrival at the port of entry in the territory of the receiving Party, and responsibility in accordance with the Agreement on Peaceful Uses for physical security and safeguards with respect to such items will be assumed by the receiving Party at that time, unless the Parties jointly designate another point with respect to the transfer of a particular item or items.

The Embassy of Australia has further the honour to propose that when items subject to the Agreement on Peaceful Uses are to be retransferred by a Party to the Agreement on Peaceful Uses to a third state, the retransferring Party shall retain responsibility in accordance with the Agreement on Peaceful Uses for assuring physical security and safeguards with respect to such items until they arrive at the point of entry in the territory of the third state. Upon its entry into force for each Party the Convention on the Physical Protection of Nuclear Material, done at Vienna on 26 October 1979,¹ shall regulate for such Party physical protection on international nuclear transport, it being understood that the obligations in the Convention do not derogate from the physical security requirements under Article 7 of the Agreement on Peaceful Uses.

The Embassy has the honour to propose that if the foregoing is acceptable to the Government of the United States of America this Note and the Department's confirmatory reply shall constitute an agreement between the Government of Australia and the Government of the United States of America which shall enter into force on the date of the Department's reply and shall remain in force for as long as the Agreement on Peaceful Uses remains in force unless otherwise agreed by the two Governments.

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

Washington, D.C., 2 August 1985

¹ United Nations, *Treaty Series*, vol. 1456, No. I-24631.

III

Note No. 338/85
113/3/1/1

The Embassy of Australia presents its compliments to the Department of State and has the honour to refer to the Agreement between Australia and the United States of America concerning Peaceful Uses of Nuclear Energy, signed at Canberra on July 5, 1979 (hereinafter referred to as "the Agreement on Peaceful Uses").

With reference to discussions between the two Governments on Article 2 of the Agreement on Peaceful Uses the Embassy has the honour to propose that in making a designation pursuant to sub-paragraphs (b), (c) and (h) of Article 2 of the Agreement on Peaceful Uses, the Parties shall take into account International Atomic Energy Agency document INFCIRC/209, Memorandum B, as further clarified in the Annex to INFCIRC/209.

The Embassy has the honour to propose that if the foregoing is acceptable to the Government of the United States of America, this Note and the Department's confirmatory reply shall constitute an agreement between the Government of Australia and the Government of the United States of America which shall enter into force on the date of the Department's reply and shall remain in force for as long as the Agreement on Peaceful Uses remains in force unless otherwise agreed by the two Governments.

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

Washington, D.C., 2 August 1985

IV

Note No. 339/85
113/3/1/1

The Embassy of Australia presents its compliments to the Department of State and has the honour to refer to the Agreement between Australia and the United States of America concerning Peaceful Uses of Nuclear Energy signed at Canberra on 5 July 1979 (hereinafter referred to as "the Agreement on Peaceful Uses") and in particular to paragraph 2 of Article 5 thereof.

The Embassy has further the honour to refer to consultations that have taken place concerning the application of paragraph 2 of Article 5 of the Agreement on Peaceful Uses. During the course of those consultations the following understandings were reached.

(A) Retransfer from the United States of America of source material or special nuclear material subject to the Agreement on Peaceful Uses may take place to third countries which have an agreement in force with Australia concerning nuclear transfers in relation to which agreement the Government of Australia has not advised the United States Government that it has found it necessary to suspend, cancel or refrain from making nuclear transfers.

(B) The Government of Australia shall provide the United States Government with and keep updated the list of countries to which retransfers may be made in accordance with Australia's national laws and regulations, the preceding subparagraph and the agreement concerned.

(C) Notwithstanding the provisions of subparagraphs (A) and (B) above, the following material which is subject to the Agreement on Peaceful Uses, namely uranium 233, uranium enriched to 20 percent or greater in the isotope 235, plutonium and irradiated source or special nuclear material, shall be retransferred from the United States only in accordance with special conditions agreed upon in writing between the Parties to the Agreement on Peaceful Uses.

(D) The United States Government is prepared to give its advance consent to the retransfer from Australia to a third country of source material or special nuclear material subject to the Agreement on Peaceful Uses in the following manner:

When, based on the export license issued by the United States Nuclear Regulatory Commission and in accordance with the relevant paragraphs of the Administrative Arrangement established pursuant to paragraph 2 of Article 13 of the Agreement on Peaceful Uses, third country consignees are identified to the Government of Australia, such identification shall, unless the Government of Australia is otherwise notified by the United States Government, constitute advance consent of the United States Government to the retransfer of the designated material to that third country consignee.

(E) Each Party shall notify the other Party of any retransfer pursuant to subparagraphs (A) or (D) above, in accordance with the procedures set out in the aforementioned Administrative Arrangement.

The Embassy has the honour to propose that if the foregoing is acceptable to the Government of the United States of America this Note and the Department's confirmatory reply shall constitute an agreement between the Government of Australia and the Government of the United States of America which shall enter into force on the date of the Department's reply and shall remain in force for as long as the Agreement on Peaceful Uses remains in force unless otherwise agreed by the two Governments.

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

Washington, D.C., 2 August 1985

V

Note No. 340/85
113/3/1/1

The Embassy of Australia presents its compliments to the Department of State and has the honour to refer to the Agreement between Australia and the United States of America concerning Peaceful Uses of Nuclear Energy, signed at Canberra on 5 July 1979 (hereinafter referred to as "the Agreement on Peaceful Uses").

With reference to discussions between the two Governments on the duration of safeguards the Embassy has the honour to propose the following:

1. Material, equipment or components transferred pursuant to the Agreement on Peaceful Uses and material used in or produced through the use of material, equipment or components so transferred shall no longer be subject to the Agreement on Peaceful Uses if:

- (A) Such material, equipment or components have been transferred beyond the jurisdiction of the recipient Party in accordance with paragraph 2 of Article 5;
- (B) The Parties jointly determine that such material, equipment or components are no longer usable for any nuclear activity relevant from the point of view of safeguards;
- (C) With respect to source or special nuclear material, the Parties jointly determine that such material is no longer practicably recoverable for processing into a form in which it is usable for any nuclear activity relevant from the point of view of safeguards; or
- (D) Otherwise jointly determined by the Parties.

2. In making the judgement whether material is no longer usable for (or is no longer practicably recoverable for processing into a form which is usable for) any nuclear activity relevant from the point of view of safeguards, a determination made by the International Atomic Energy Agency (hereinafter referred to as the "IAEA") in accordance with the provisions for the termination of safeguards contained in the relevant safeguards agreement between the Party concerned and the IAEA shall be accepted unless the other Party disagrees with the IAEA determination. In the latter case, the material shall remain subject to the Agreement on Peaceful Uses until the disagreement is resolved.

The Embassy of Australia has the honour to propose that if the foregoing is acceptable to the Department, this Note and the Department's confirmatory 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 of the Department's reply and shall remain in force for as long as the Agreement on Peaceful Uses remains in force unless otherwise agreed by the two Governments.

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

Washington, D.C., 2 August 1985

VI

Note No. 341/85
113/3/1/1

The Embassy of Australia presents its compliments to the Department of State and has the honour to refer to the Agreement between Australia and the United States of America concerning Peaceful Uses of Nuclear Energy, signed at Canberra on 5 July 1979 (hereinafter referred to as "the Agreement on Peaceful Uses") and in particular to paragraph 3 of Article 4 and paragraph 1 of Article 6 thereof.

1. In accordance with discussions on the subject of reprocessing of certain spent fuels in the United States, the Embassy has the honour to propose that spent fuel from the Australian HIFAR Reactor which is either United States origin material transferred to Australia from the United States subject to the Agreement on Peaceful Uses or United States origin material used in or produced through the use of any material, equipment or components subject to the Agreement on Peaceful Uses may be transferred pursuant to the Agreement on Peaceful Uses from Australia to the United States and may be reprocessed there in accordance with the obligations of the United States to the International Atomic Energy Agency and subject to the following conditions:

- (A) The material recovered as a result of reprocessing or a quantity equivalent in terms of the U-235 content derived from the spent fuel shall, as mutually arranged between the two Parties, be made available for peaceful uses designated by the Government of Australia; and
- (B) Administrative arrangements in accordance with paragraph 2 of Article 13 of the Agreement on Peaceful Uses shall be established to provide for the implementation of this agreement.

2. The Embassy further notes that appropriate contractual arrangements shall be established prior to the commencement of the reprocessing.

The Embassy has the honour to propose that if the foregoing is acceptable to the Government of the United States of America this Note and the Department's confirmatory reply shall constitute an agreement between the Government of Australia and the Government of the United States of America which shall enter into force on the date of the Department's reply and shall remain in force for as long as the Agreement on Peaceful Uses remains in force unless otherwise agreed by the two Governments.

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

Washington, D.C., 2 August 1985

VII

The Department of State refers to the Embassy of Australia's Notes number 336, 337, 338, 339, 340 and 341 of August 2, 1985, concerning implementation of the Agreement Between the United States of America and Australia Concerning Peaceful Uses of Nuclear Energy, signed at Canberra on July 5, 1979.

The Department confirms that the proposals and understandings set forth in these Notes are acceptable to the Government of the United States of America and that the Embassy's Notes and this reply shall constitute agreements between the Government of the United States of America and the Government of Australia, which shall enter into force on today's date and shall remain in force for as long as the Agreement for Peaceful Uses remains in force, unless otherwise agreed by the two Governments.

Department of State

Washington, August 2, 1985