

No. 26459

**INTERNATIONAL ATOMIC
ENERGY AGENCY
and
INDIA**

**Agreement for the application of safeguards in connection
with the supply of a nuclear power station from the
Union of Soviet Socialist Republics. Signed at Vienna on
27 September 1988**

Authentic text: English.

Registered by the International Atomic Energy Agency on 8 March 1989.

**AGENCE INTERNATIONALE
DE L'ÉNERGIE ATOMIQUE
et
INDE**

**Accord pour l'application de garanties relatives à la fourniture
d'une centrale nucléaire par l'Union des Républiques
socialistes soviétiques. Signé à Vienne le 27 septembre
1988**

Texte authentique : anglais.

Enregistré par l'Agence internationale de l'énergie atomique le 8 mars 1989.

AGREEMENT¹ BETWEEN THE INTERNATIONAL ATOMIC ENERGY AGENCY AND THE GOVERNMENT OF INDIA FOR THE APPLICATION OF SAGEGUARDS IN CONNECTION WITH THE SUPPLY OF A NUCLEAR POWER STATION FROM THE UNION OF SOVIET SOCIALIST REPUBLICS

Whereas the Government of India (hereinafter referred to as “India”) has made an arrangement (hereinafter referred to as the “arrangement”) for co-operation with the Union of Soviet Socialist Republics (hereinafter referred to as the “Soviet Union”) for the construction in India of a nuclear power station composed of two pressurized light water reactors, each of 1000 MW(e);

Whereas India has requested the International Atomic Energy Agency (hereinafter referred to as the “Agency”) to apply safeguards in connection with the supply of the reactor facilities by the Soviet Union to India and to the nuclear material to be used therein;

Whereas the Agency is authorized by its Statute² to apply safeguards, *inter alia*, at the request of the parties, to any bilateral arrangement;

Whereas the Board of Governors of the Agency (hereinafter referred to as the “Board”) acceded to that request of 14 September 1988;

Now therefore, India and the Agency have agreed as follows:

DEFINITIONS

Section 1. For the purpose of this Agreement:

(a) “Inspectors Document” shall mean the Annex to Agency document GC(V)/INF/39;

(b) “Facility” shall mean:

- (i) A principal nuclear facility as defined in paragraph 78 of the Safeguards Document, as well as a critical facility or a separate storage installation;
- (ii) Any location where nuclear material in amounts greater than one effective kilogram is customarily used;

(c) “Nuclear material” shall mean any source material or special fissionable material as defined in Article XX of the Statute of the Agency;

(d) “The reactor facilities” shall mean the reactor facilities (confined to nuclear reactors, reactor pressure vessels, reactor fuel charging and discharging machines and reactor control rods only) of the two 1000 MW(e) pressurized light water enriched uranium reactors supplied by the Soviet Union under the arrangement, and the reactor facilities (as detailed above) produced therefrom or as a result of their utilization;

¹ Came into force on 27 September 1988 by signature, in accordance with section 30.

² United Nations, *Treaty Series*, vol. 276, p. 3, and vol. 471, p. 334.

(e) “Produced, processed or used” shall mean any utilization or any alteration of the physical or chemical form or composition, including any change of the isotopic composition, of nuclear material;

(f) “Safeguards Document” shall mean Agency document INFCIRC/66/Rev.2.

UNDERTAKINGS BY INDIA AND BY THE AGENCY

Section 2. India undertakes that none of the following items shall be used for the manufacture of any nuclear weapon or to further any other military purpose and that such items shall be used exclusively for peaceful purposes and shall not be used for the manufacture of any nuclear explosive device:

(a) The reactor facilities supplied by the Soviet Union to India under the arrangement, and the reactor facilities produced therefrom or as a result of their utilization;

(b) Any nuclear material supplied by the Soviet Union to India for use in the reactor facilities;

(c) Any nuclear material, including subsequent generations of special fissionable material, produced, processed or used in or by the use of the reactor facilities or in or by the use of any other items referred to in this Section;

(d) Any other item required to be listed in the Inventory referred to in Section 6.

Section 3. The Agency undertakes to apply safeguards, in accordance with the terms of this Agreement, to the items referred to in Section 2 so as to ensure as far as it is able that no such item is used for the manufacture of any nuclear weapon or to further any other military purpose and that such items are used exclusively for peaceful purposes and not for the manufacture of any nuclear explosive device.

Section 4. India undertakes to co-operate with the Agency in the application of the safeguards provided for in this Agreement.

Section 5. In the event that India should construct or operate reactor facilities, as defined in Section 1(d) above, it shall arrange to submit such reactor facilities to Agency safeguards before such construction or operation commences.

ESTABLISHMENT AND MAINTENANCE OF INVENTORY

Section 6. The Agency shall establish and maintain an Inventory which shall be divided into three parts:

(a) The Main Part of the Inventory shall list:

- (i) The reactor facilities, as defined under Section 1(d) above;
- (ii) Any nuclear material supplied by the Soviet Union to India for use in the reactor facilities;
- (iii) Any nuclear material, including subsequent generations of special fissionable material, produced, processed or used in or by the use of the reactor facilities or in or by the use of any other item required to be listed in the Inventory;
- (iv) Any nuclear material substituted in accordance with paragraphs 25 or 26(d) of the Safeguards Document for nuclear material listed in the Main Part of the Inventory;

(b) The Subsidiary Part of the Inventory shall list: any facility while containing, using, processing or fabricating any nuclear material referred to in the Main Part of the Inventory;

(c) The Inactive Part of the Inventory shall list any nuclear material and any parts of the reactor facilities which would normally be listed in the Main Part of the Inventory but which are not so listed because:

- (i) The nuclear material is exempt from safeguards in accordance with the provisions of paragraphs 21, 22 or 23 of the Safeguards Document; or
- (ii) Safeguards on the nuclear material are suspended in accordance with the provisions of paragraph 24 or 25 of the Safeguards Document; or
- (iii) Safeguards on the parts of the reactor facilities are suspended in accordance with Section 15 of this Agreement.

Section 7. The Agency shall send an up-to-date copy of the Inventory to India every 12 months and also at any other times specified by India in a request communicated to the Agency at least two weeks in advance. The Agency may communicate information with respect to the Inventory to the Soviet Union, if so requested by the Soviet Union, and shall transmit a copy of any such communication to India.

NOTIFICATIONS

Section 8. India shall notify the Agency of:

(a) Any arrival in India of the reactor facilities supplied by the Soviet Union, or nuclear material supplied by the Soviet Union for use in the reactor facilities; and

(b) The commencement of construction or operation in India of any reactor facility produced therefrom or as a result of their utilization.

Such notification shall be made within thirty days of the arrival of the reactor facilities or nuclear material in India, and of the construction or operation of the reactor facilities in India, respectively.

Section 9. India shall notify the Agency by means of reports in accordance with the Safeguards Document, and with the Subsidiary Arrangements provided for in Section 19(b) of the Agreement, of any nuclear material referred to in Section 6(a)(iii) of the Agreement. Upon receipt of the reports the Agency shall list such material in the Main Part of the Inventory. The Agency may verify the calculations of the amounts of such material and appropriate adjustments in the Inventory shall be made by agreement between India and the Agency.

Section 10. Notifications made pursuant to Section 8(a) and 13 shall specify, *inter alia*, to the extent relevant, the nuclear and chemical composition, physical form and the quantity of the nuclear material or the type and capacity of the reactor facilities, the date of shipment, the date of receipt, the identity of the consignor and the consignee and any other relevant information. In the case of a facility to be listed in the Subsidiary Part of the Inventory, the type and capacity of that facility and any other relevant information shall be notified.

Section 11. India shall promptly notify the Agency of any facility which is required to be listed in the Subsidiary Part of the Inventory.

Section 12. The notification of transfers referred to in Section 8 may also be made by the Soviet Union. The Agency shall, within thirty days of receiving a noti-

fication from India pursuant to Sections 8 to 11 of this Agreement, inform India that the items covered by the notification are listed in the Inventory.

TRANSFERS

Section 13. (a) India shall notify the Agency of its intention to transfer any item listed in the Main Part of the Inventory to a facility within its jurisdiction which is not yet listed in the Inventory, and shall provide to the Agency, before such transfer is effected, the necessary information to enable it to arrange to apply safeguards to the items after transfer to such a facility. India may make such transfer only after the Agency has confirmed that it has concluded arrangements to apply safeguards with respect to the facility in question.

(b) India shall notify the Agency of any intended transfer of any item listed in the Main Part of the Inventory to a recipient which is not under the jurisdiction of India. Except for those items transferred to the Soviet Union which were originally supplied by the Soviet Union to India under the arrangement, and except for spent fuel produced therefrom and transferred to the Soviet Union, such items shall be so transferred only after the Agency has informed India that it has satisfied itself that the Agency safeguards will apply with respect to such items. Upon receipt by the Agency of the notification of transfer from India and the confirmation of receipt by the recipient country, such items shall be deleted from the Main Part of the Inventory.

Section 14. The notifications referred to in Section 13 shall be made to the Agency sufficiently in advance to enable it to make the arrangements required by that Section before the transfer is effected. The Agency shall promptly take any necessary action. The time limits for and the contents of these notifications shall be laid down in the Subsidiary Arrangements referred to in Section 19(b).

EXEMPTION AND SUSPENSION

Section 15. (a) The Agency shall exempt from safeguards nuclear material listed in the Main Part of the Inventory under the conditions specified in paragraph 21, 22 or 23 of the Safeguards Document and shall suspend safeguards with respect to nuclear material under the conditions specified in paragraph 24 or 25 of the Safeguards Document.

(b) Under conditions specified in the Subsidiary Arrangements, the Agency shall suspend safeguards with respect to any parts of the reactor facilities listed in the Main Part of the Inventory which are removed for maintenance or repair.

(c) Nuclear material or any parts of the reactor facilities which are exempted from safeguards or on which safeguards have been suspended shall be deleted from the Main Part of the Inventory and shall be listed in the Inactive Part of the Inventory.

TERMINATION

Section 16. The safeguards applied pursuant to this Agreement shall be terminated by the Agency under the following conditions:

(a) On nuclear material and reactor facilities listed in the Main Part of the Inventory, upon transfer in accordance with Section 13(b);

(b) On nuclear material, under the conditions specified in paragraphs 26 and 27 of the Safeguards Document;

(c) On the reactor facilities, as and when India, the Soviet Union and the Agency have jointly determined that the item in question is no longer usable for any nuclear activity relevant from the point of view of safeguards.

Section 17. Upon termination of safeguards on any item pursuant to Section 16, the item in question shall be deleted from the Inventory. The Agency shall, within thirty days of deleting the item from the Inventory pursuant to Section 16, inform India that such a deletion has been made.

SAFEGUARDS PROCEDURES AND SUBSIDIARY ARRANGEMENTS

Section 18. In applying safeguards, the Agency shall observe the principles set forth in paragraphs 9 to 14 of the Safeguards Document.

Section 19. (a) The safeguards procedures to be applied by the Agency are those specified in the Safeguards Document, as well as such additional procedures as result from technological developments and as may be agreed to between the Agency and India. If nuclear material or any other item subject to safeguards under this Agreement is to be transferred to a facility within the jurisdiction of India, the Agency shall have the right to obtain in respect of that facility the information referred to in paragraph 41 of the Safeguards Document and to make the inspection referred to in paragraphs 51 and 52 of the Safeguards Document.

(b) The Agency shall make Subsidiary Arrangements with India concerning the implementation of the safeguards procedures referred to in (a) above. The Subsidiary Arrangements shall also include any necessary arrangements for the application of safeguards to the reactor facilities, nuclear material and other items subject to this Agreement, and for such containment and surveillance measures as are required for the effective implementation of safeguards. The Subsidiary Arrangements shall enter into force no later than six months before any transfer to India of nuclear material or the reactor facilities takes place.

AGENCY INSPECTORS

Section 20. The provisions of paragraphs 1 to 10 and 12 to 14, inclusive, of the Inspectors Document shall apply to Agency inspectors performing functions pursuant to this Agreement. However, paragraph 4 of the Inspectors Document shall not apply with regard to any facility or to nuclear material to which the Agency has access at all times. The actual procedures to implement paragraph 50 of the Safeguards Document shall be agreed to between the Agency and India before such a facility or nuclear material is listed in the Inventory.

Section 21. The relevant provisions of the Agreement on the Privileges and Immunities of the Agency*¹ shall apply to the Agency, its inspectors performing functions under this Agreement and to any property of the Agency used by them in the performance of their functions under this Agreement.

* INFCIRC/9/Rev.2.

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

PHYSICAL PROTECTION

Section 22. India shall take all suitable measures necessary for the physical protection of the items supplied by the Soviet Union to India under the arrangement. India shall also take suitable measures for the physical protection of nuclear material subject to this Agreement, taking into account the recommendations made in Agency's document INFCIRC/225/Rev.1.

FINANCE

Section 23. India and the Agency shall each bear any expense incurred in the implementation of their responsibilities under this Agreement. The Agency shall reimburse India for any special expenses, including those referred to in paragraph 6 of the Inspectors Document, incurred by India or persons under its jurisdiction at the written request of the Agency, if India 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 either India or the Agency to comply with this Agreement.

Section 24. 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 facility 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.

NON-COMPLIANCE

Section 25. If the Board determines in accordance with Article XII.C of the Statute of the Agency that there has been any non-compliance by India with this Agreement, the Board shall call upon India to remedy such non-compliance forthwith, and shall make such reports as it deems appropriate. In the event of failure by India to take fully corrective action within a reasonable time, the Board may take any other measures provided for in Article XII.C of the Statute. The Agency shall promptly notify India in the event of any determination by the Board pursuant to this Section.

INTERPRETATION AND APPLICATION OF THE AGREEMENT AND SETTLEMENT OF DISPUTES

Section 26. At the request of either India or the Agency there shall be consultations about any question arising out of the interpretation or application of this Agreement.

Section 27. (a) India and the Agency shall endeavour to settle by negotiation any dispute arising from the interpretation or application of this Agreement.

(b) Any dispute arising out of the interpretation or application of this Agreement which is not settled by negotiation or as may otherwise be agreed to by India and the Agency shall on the request of either India or the Agency be submitted to an arbitral tribunal composed of three persons as follows:

India and the Agency shall each designate one arbitrator and the two arbitrators so designated shall elect a third, who shall be the Chairman. If within thirty days of the request for arbitration either party has not designated an arbitrator, the other

party may request the President of the International Court of Justice to appoint such an arbitrator. The same procedure shall apply if within thirty days of the designation or appointment of the second arbitrator, the third arbitrator has not been elected.

(c) Two members of the arbitral tribunal shall constitute a quorum, and all decisions shall require the concurrence of at least two members. The arbitral procedure shall be fixed by the tribunal. The decisions of the tribunal, including all rulings concerning its constitution, procedure, jurisdiction and the division of the expenses of arbitration between India and the Agency, shall be binding on India and the Agency. The remuneration of the arbitrators shall be determined on the same basis as that for *ad hoc* judges of the International Court of Justice.

Section 28. Decisions of the Board concerning the implementation of this Agreement, except such as relate only to Sections 23 and 24 shall, if they so provide, be given effect immediately by India and the Agency, pending the final settlement of any dispute.

FINAL CLAUSES

Section 29. India and the Agency shall, at the request of either of them, consult about amending this Agreement. If the Board modifies the Safeguards Document or the scope of the safeguards system, this Agreement shall be amended if India so requests to take account of such modifications. If the Board modifies the Inspectors Document, this Agreement shall be amended if India so requests to take account of such modifications.

Section 30. This Agreement shall enter into force upon signature by or for the Director General of the Agency and by the authorized representative of India.

Section 31. This Agreement shall remain in force until, in accordance with its provisions, safeguards have been terminated on all items referred to in Section 2, or until terminated by mutual agreement of the parties to this Agreement.

DONE at Vienna, on the twenty-seventh day of September 1988, in duplicate, in the English language.

For the Government
of India:

SHRI JAGDISH RUDRAYA HIREMATH

For the International Atomic
Energy Agency:

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