

No. 27173

**INTERNATIONAL ATOMIC ENERGY AGENCY
and
INDIA**

**Agreement for the application of safeguards in connection
with the supply of nuclear material from France. Signed
at Vienna on 11 October 1989**

Authentic text: English.

Registered by the International Atomic Energy Agency on 23 March 1990.

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

Accord pour l'application de garanties relatives à la fourniture de matières nucléaires par la France. Signé à Vienne le 11 octobre 1989

Texte authentique : anglais.

Enregistré par l'Agence internationale de l'énergie atomique le 23 mars 1990.

AGREEMENT¹ BETWEEN THE INTERNATIONAL ATOMIC ENERGY AGENCY AND THE GOVERNMENT OF INDIA FOR THE APPLICATION OF SAFEGUARDS IN CONNECTION WITH THE SUPPLY OF NUCLEAR MATERIAL FROM FRANCE

Whereas the Government of India (hereinafter referred to as “India”) made an arrangement (hereinafter referred to as the “arrangement”) for the supply of nuclear material by the Government of the French Republic (hereinafter referred to as “France”) to India;

Whereas the nuclear material supplied by France to India under the arrangement is intended exclusively for peaceful purposes;

Whereas India has requested the International Atomic Energy Agency (hereinafter referred to as the “Agency”) to apply safeguards in connection with the supply of nuclear material from France to India under the arrangement;

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 on 20 September 1989;

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) “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;

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

UNDERTAKINGS BY INDIA AND 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

¹ Came into force on 11 October 1989 by signature, in accordance with section 24.

² United Nations, *Treaty Series*, vol. 276, p. 3; vol. 471, p. 334 and vol. 1082, p. 290.

that such items shall be used exclusively for peaceful purposes and shall not be used for the manufacture of any nuclear explosive device:

- (a) Nuclear material supplied by France to India under the arrangement;
- (b) Any nuclear material, including subsequent generations of special fissionable material, produced, processed or used in or by the use of the nuclear material supplied by France under the arrangement or in or by the use of any other item referred to in this Section; or
- (c) Any other item required to be listed in the Inventory referred to in Section 5.

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.

ESTABLISHMENT AND MAINTENANCE OF INVENTORY

Section 5. 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) Nuclear material supplied by France to India under the arrangement;
 - (ii) Any nuclear material, including subsequent generations of special fissionable material, produced, processed or used in or by the use of the nuclear material supplied by France to India under the arrangement or of any other item required to be listed in the Inventory;
 - (iii) Any nuclear material substituted in accordance with paragraph 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 of the nuclear material referred to in the Main Part of the Inventory.

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

- (i) The nuclear material is exempt from safeguards in accordance with the provisions of paragraph 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.

The Agency shall send a 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 disposition and use of the nuclear material to France, if so requested by France, and shall transmit a copy of any such communication to India.

NOTIFICATIONS

Section 6

(a) India shall notify the Agency of the receipt of any of the nuclear material from France within two weeks of its arrival in India. The notification of transfer may also be made by France, or by France jointly with India. The Agency may also request information from France in connection with transfers of nuclear material.

(b) Upon receipt of the notification from India, or upon confirmation by India of the receipt of nuclear material notified to the Agency by France, the Agency shall list the nuclear material in the Main Part of the Inventory and shall inform India and France accordingly.

(c) Each notification shall include the nuclear and chemical composition, physical form and the quantity of the supplied nuclear material as per shipper's data, the date of shipment, the date of receipt, the identity of the consignor and the consignee and any other relevant information as may be specified in the Subsidiary Arrangements referred to in Section 13 (b) below. This notification shall be followed by a confirmation of the exact quantity and composition of the supplied nuclear material as jointly determined by India and France. India shall inform the Agency in advance, so that it may be represented at the joint determination.

(d) Upon receipt of the confirmation referred to in (c) above, the Agency shall correct the Inventory accordingly and so inform India and France.

Section 7

(a) India shall notify the Agency of the use, disposition and any losses of the nuclear material supplied by France to India under the arrangement, by means of reports to be specified in the Subsidiary Arrangements.

(b) India shall notify the Agency by means of its reports pursuant to the Safeguards Document of any nuclear material produced, processed or used during the period covered by the report by the use of any of the items referred to in Section 5 (a) or (b), and accordingly required to be listed in the Main Part of the Inventory, provided that any material so produced, processed or used shall be deemed to be listed and therefore shall be subject to safeguards from the time it is produced, processed or used. Upon receipt by the Agency of the notification, such nuclear material shall be listed 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.

TRANSFERS

Section 8

(a) Whenever India intends to transfer nuclear material listed in the Main Part of the Inventory to a facility within its jurisdiction which is not yet listed in the Inventory, it shall so notify the Agency before the transfer is effected. India may make the transfer to the facility only after the Agency has confirmed that it has made arrangements to apply safeguards with respect to the facility in question.

(b) India shall notify the Agency of any transfer of nuclear material listed in the Main Part of the Inventory to a recipient which is not under the jurisdiction of India. Such nuclear material may be transferred and shall thereupon be deleted from the

Inventory only after the Agency has confirmed that it has made arrangements to apply safeguards in respect of the nuclear material in question after the transfer.

Section 9. The notifications referred to in Section 8 above 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 13 (b).

EXEMPTION AND SUSPENSION

Section 10

(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) Nuclear material which is 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 11

(a) Nuclear material shall be deleted from the Inventory and Agency safeguards thereon shall be terminated as provided in paragraphs 26 and 27 of the Safeguards Document.

(b) The Agency shall also terminate safeguards under the Agreement with respect to nuclear material deleted from the Inventory in accordance with Section 8 (b).

SAFEGUARDS PROCEDURES AND SUBSIDIARY ARRANGEMENTS

Section 12. In applying safeguards, the Agency shall observe the principles set forth in paragraphs 9 through 14 of the Safeguards Document.

Section 13

(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 subject to safeguards under this Agreement is to be transferred to a facility under construction, 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 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 within three months of the entry into force of this Agreement, but in any event before any of the nuclear material is transferred to India.

AGENCY INSPECTORS

Section 14. 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 nuclear facility or nuclear material is listed in the Inventory.

Section 15. India shall apply the relevant provisions of the Agreement on the Privileges and Immunities of the Agency¹ to the Agency, its inspectors performing functions under this Agreement and to any property of the Agency used by them for the performance of their functions under this Agreement.

PHYSICAL PROTECTION

Section 16. India shall take suitable measures for the physical protection of nuclear material subject to this Agreement, taking into account the recommendations made in the Agency document INFCIRC/225/Rev.1.

FINANCE

Section 17. 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 18. 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.

NON-COMPLIANCE

Section 19. If the Board determines 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 20. 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.

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

Section 21

(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 22. Decisions of the Board concerning the implementation of this Agreement, except such as relate only to Sections 17 and 18 shall, if they so provide, be given effect immediately by India and the Agency, pending the final settlement of any dispute.

FINAL CLAUSES

Section 23. 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 24. 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 25. 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 in Vienna, on the 11th day of October 1989, in duplicate, in the English language.

For the Government of India:

[Signed]

P. L. SINAI

For the International Atomic
Energy Agency:

[Signed]

HANS BLIX