

No. 33340

**AUSTRALIA
and
INDONESIA**

Agreement for cooperation in scientific research and technological development (with annex). Signed at Canberra on 24 August 1994

Authentic text: English.

Registered by Australia on 5 November 1996.

**AUSTRALIE
et
INDONÉSIE**

Accord de coopération dans les domaines de la recherche scientifique et du développement technologique (avec annexe). Signé à Canberra le 24 août 1994

Texte authentique : anglais.

Enregistré par l'Australie le 5 novembre 1996.

AGREEMENT¹ BETWEEN THE GOVERNMENT OF AUSTRALIA
AND THE GOVERNMENT OF THE REPUBLIC OF INDONESIA
FOR COOPERATION IN SCIENTIFIC RESEARCH AND TECH-
NOLOGICAL DEVELOPMENT

THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF THE
REPUBLIC OF INDONESIA (hereafter referred to as the "Parties"),

DESIRING to promote further the close and friendly relations existing between the
Parties;

CONSIDERING their common interest to promote and encourage their scientific
research and technical progress and of the reciprocal advantages resulting from
cooperation in the fields of mutual interest;

CONVINCED of the need for effective cooperation in the scientific research and
technical fields which will enhance the economic and social development of both
countries:

HAVE AGREED as follows:

Article 1

For the purposes of this Agreement:

1. "Territory":
 - (a) In respect of the Republic of Indonesia means the territory under the
sovereignty of the Republic of Indonesia and such parts of the continental
shelf and adjacent seas over which the Republic of Indonesia has sovereignty,
sovereign rights as well as other rights in accordance with the 1982 United
Nations Convention on the Law of the Sea.²
 - (b) In respect of Australia means the territory under the sovereignty of Australia
and the adjacent seas over which Australia exercises its sovereignty consistent
with the 1982 United Nations Convention on the Law of the Sea, and other
adjacent seas and the continental shelf over which Australia exercises
sovereign rights and other rights in accordance with that Convention.
2. "Intellectual Property" shall have the meaning provided for in Article 2 of the
Convention establishing the World Intellectual Property Organization, done at
Stockholm, 14 July 1967,³ and shall include all rights relating to plant varieties,

¹ Came into force on 21 August 1996 by notification, in accordance with article 11.

² United Nations, *Treaty Series*, vol. 1833, 1834 and 1835, No. I-31363.

³ *Ibid.* vol. 828, p. 3.

Confidential Information, circuit layouts and semi-conductor chip products, unregistered trade marks and service marks.

3. "Background Intellectual Property" means Intellectual Property that has been developed independently of a Cooperative Activity and that is made available by one of the Participants for use in a Cooperative Activity.
4. "Foreground Intellectual Property" means Intellectual Property created in, or as a direct result of, a Cooperative Activity.
5. "Participant" means any person, legal entity, research institute, government agency or any other body participating in a Cooperative Activity under this Agreement, including the Parties themselves.
6. "Cooperative Activity" means an activity carried on under this Agreement and undertaken jointly by Participants.
7. "Implementing Arrangements" means the Arrangements referred to in Article 5.
8. "Confidential Information" means all trade secrets and know-how, show-how, scientific or technical data, results or methods of research and development, commercial or financial information or other information of whatever description and in whatever form (whether written or oral, visible or invisible) that meets all of the following conditions:
 - (a) is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;
 - (b) has commercial value because it is secret; and
 - (c) has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret.

Article 2

1. The Parties shall, on the principle of equality and mutual benefit, promote scientific and technological cooperation between them.
2. Scientific and technological cooperation may be undertaken in the following areas:
 - (a) human resources development;
 - (b) global weather and environment;

- (c) marine scientific research and technology;
- (d) biotechnology;
- (e) agriculture;
- (f) aircraft and space;
- (g) telecommunications and information technology;
- (h) instrumentation;
- (i) energy; and
- (j) other areas of cooperation as may be mutually decided.

3. A Cooperative Activity, involving collaborative research, shall not proceed under this Agreement unless the Parties are satisfied that the Participants have agreed to an Implementing Arrangement or the Parties have decided that an Implementing Arrangement is not necessary.

Article 3

Forms of the Cooperative Activities under this Agreement may include:

- (a) exchange of information;
- (b) visits and exchanges of scientists and other experts or technical personnel;
- (c) meetings of various forms, such as joint seminars, workshops and exhibits on scientific research and technological development;
- (d) execution of joint or cooperation projects and programs;
- (e) provision of necessary materials and equipment;
- (f) education, training, and participation in on going programs; and
- (g) other forms of cooperation as may be mutually decided.

Article 4

1. Each Party shall designate an Executive Officer responsible for the coordination and facilitation of Cooperative Activities under this Agreement.

2. The Executive Officers shall discuss and review, from time to time in Indonesia or Australia, the implementation of this Agreement, matters of importance in the field of research and technology, and policy issues related to the overall research and technology relationship between the two countries. In particular, the Executive Officers shall work towards developing appropriate guidelines for Implementing Arrangements, including with respect to those matters dealt with in Article 5 and the Annex.

Article 5

1. Unless the Parties otherwise decide, Cooperative Activities shall be conducted in accordance with Implementing Arrangements, which address the matters in this Article and the Annex.

2. Implementing Arrangements shall provide for the protection of Background Intellectual Property and Foreground Intellectual Property.

3. The Parties shall use their best endeavours to ensure that the Participants shall be entitled to any Foreground Intellectual Property in accordance with the provisions specified in the Implementing Arrangements which shall be developed taking into account:

- (a) the intellectual contributions of each Participant;
- (b) the financial contributions of each Participant;
- (c) the contributions of Background Intellectual Property, materials, research effort and preparatory work of each Participant;
- (d) the facilities provided by each Participant;
- (e) legal considerations; and
- (f) such other relevant considerations as the Participants may agree upon.

4. Implementing Arrangements shall include provision for checking for and protection against infringement of Intellectual Property rights of third parties.

5. Unless the Parties otherwise decide, Implementing Arrangements shall be legally binding documents.

6. The Parties shall use their best endeavours to ensure that prospective Participants in a Cooperative Activity enter into a confidentiality deed with each other before they exchange information about their Intellectual Property.

Article 6

The implementation of this Agreement shall take place in accordance with the prevailing laws and regulations of the Parties and the availability of appropriated funds in each country.

Article 7

Each Party shall facilitate entry to and exit from its territory of personnel, materials and equipment of the other Party engaged on, or used in, Cooperative Activities under this Agreement, in accordance with its prevailing laws and regulations.

Article 8

Nothing in this Agreement shall be construed to prejudice other arrangements for cooperation between the Parties, existing at the date of signature of this Agreement or concluded thereafter.

Article 9

The Parties shall endeavour to resolve any dispute between them connected with this Agreement by prompt and friendly consultations and negotiations.

Article 10

This Agreement shall apply to the Territory of Australia and the Territory of Indonesia.

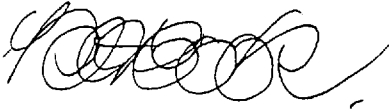
Article 11

1. This Agreement shall enter into force upon an exchange of notes confirming that all constitutional and other legal requirements for entry into force have been fulfilled by each Government. This Agreement shall remain in force for a period of five years. It may be amended or extended by written agreement of the Parties, which shall enter into force in the same manner as the Agreement.
2. Either Party may, by giving a written notice of six months to the other Government, terminate this Agreement.
3. If this Agreement is terminated, special arrangements concluded under it will, subject to the mutual determination of both Parties, remain effective until any program of activities has been carried out to its completion.

IN WITNESS WHEREOF, the undersigned, being duly authorised by their respective Governments, have signed this Agreement.

DONE at Canberra on this twenty-fourth day of August 1994, in duplicate in English.

For the Government
of Australia:



PETER COOK
Minister for Industry, Science
and Technology

For the Government
of the Republic of Indonesia:



ALI ALATAS
Minister for Foreign Affairs

ANNEX

PROTECTION, OWNERSHIP AND ALLOCATION OF INTELLECTUAL PROPERTY RIGHTS
BY PARTICIPANTS IN ACTIVITIES UNDER THIS AGREEMENT

1. This Annex provides an indication of the Intellectual Property issues that should be addressed by Participants in the Implementing Arrangement.
2. Notwithstanding anything stated or implied in this Annex, it is the sole responsibility of prospective and actual Participants to take all necessary steps, including obtaining expert professional advice, to ensure that their legal and commercial positions are adequately protected and to ensure adequate legal and physical protection for Background Intellectual Property, Foreground Intellectual Property and Confidential Information.
3. Implementing Arrangements should contain clauses that:
 - (a) specify appropriate procedures for checking -
 - (i) prior to the commencement of the Cooperative Activity; and
 - (ii) as appropriate during the Cooperative Activity;
for third party Intellectual Property that might:
 - be infringed by the Participants while carrying out Cooperative Activities; or
 - infringe Intellectual Property created under the Implementing Arrangement;
 - (b) identify each Participant's Background Intellectual Property and:
 - (i) the nature of the protection that has been, or needs to be, accorded to that Background Intellectual Property; and
 - (ii) the nature of any third party rights restricting the use of Background Intellectual Property;
 - (c) specify appropriate procedures for:
 - (i) identifying;
 - (ii) determining ownership of; and

(iii) protecting;

Foreground Intellectual Property;

- (d) specify appropriate procedures for approving the conditions on which each Participant may be licensed to use Foreground Intellectual Property for its own non-commercial purposes (which purposes exclude sub-licensing and commercial purposes such as manufacturing and having manufactured) and for commercial purposes;
 - (e) specify appropriate clauses allowing a Participant to be licensed to use another Participant's Background Intellectual Property when it is reasonably necessary for the commercial use of Foreground Intellectual Property;
 - (f) specify appropriate procedures for licensing third parties to use Foreground Intellectual Property, including where such use requires access to another Participant's Background Intellectual Property and the conditions upon which a licence to the Background Intellectual Property shall be granted;
 - (g) specify appropriate procedures for approval by all the Participants, prior to disclosure, of the public disclosure of information through publications, seminars or any other means;
 - (h) specify the rights and obligations of visiting researchers involved in the Cooperative Activity and particularly in relation to Intellectual Property created by them during their work in the Cooperative Activity;
 - (i) nominate the governing law of the Implementing Arrangement; and
 - (j) specify appropriate procedures for the resolution of disputes, including international commercial arbitration.
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