

✓

PROTOCOL ADDITIONAL TO THE AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE INTERNATIONAL ATOMIC ENERGY AGENCY FOR THE APPLICATION OF SAFEGUARDS IN THE UNITED STATES OF AMERICA

WHEREAS the United States of America (hereinafter referred to as "the United States") and the International Atomic Energy Agency (hereinafter referred to as the "Agency") are parties to an Agreement for the Application of Safeguards in the United States of America done at Vienna on November 18, 1977 (hereinafter referred to as the "Safeguards Agreement"), which entered into force on December 9, 1980;

AWARE OF the desire of the international community to further enhance nuclear non-proliferation by strengthening the effectiveness and improving the efficiency of the Agency's safeguards system;

RECALLING that the Agency must take into account in the implementation of safeguards the need to: avoid hampering the economic and technological development of the United States or international co-operation in the field of peaceful nuclear activities; respect health, safety, physical protection and other security provisions in force and the rights of individuals; and take every precaution to protect commercial, technological and industrial secrets as well as other confidential information coming to its knowledge;

WHEREAS the frequency and intensity of activities described in this Protocol shall be kept to the minimum consistent with the objective of strengthening the effectiveness and improving the efficiency of Agency safeguards;

NOW THEREFORE the United States and the Agency have agreed as follows:

RELATIONSHIP BETWEEN THE PROTOCOL AND THE SAFEGUARDS AGREEMENT

Article 1

- a. The provisions of the Safeguards Agreement shall apply to this Protocol to the extent that they are relevant to and compatible with the provisions of this Protocol. In case of conflict between the provisions of the Safeguards Agreement and those of this Protocol, the provisions of this Protocol shall apply.
- b. The United States shall apply, and permit the Agency to apply, this Protocol, excluding only instances where its application would result in access by the Agency to activities with direct national security significance to the United States or to locations or information associated with such activities.
- c. Without prejudice to paragraph b. above, the United States shall have the right to use managed access in connection with activities with direct national security significance to the United States or in connection with locations or information associated with such activities.

PROVISION OF INFORMATION

Article 2

- a. The United States shall provide the Agency with a declaration containing:
 - (i) A general description of and information specifying the location of nuclear fuel cycle-related research and development activities not involving nuclear material carried out anywhere that are funded, specifically authorized or controlled by, or carried out on behalf of, the United States.
 - (ii) Information identified by the Agency on the basis of expected gains in effectiveness or efficiency, and agreed to by the United States, on operational activities of safeguards relevance at facilities and locations outside facilities where nuclear material is customarily used.
 - (iii) A general description of each building on each site, including its use and, if not apparent from that description, its contents. The description shall include a map of the site.
 - (iv) A description of the scale of operations for each location engaged in the activities specified in Annex I to this Protocol.
 - (v) Information specifying the location, operational status and the estimated annual production capacity of uranium mines and concentration plants and thorium concentration plants, and the current annual production of such mines and concentration plants for the United States as a whole. The United States shall

provide, upon request by the Agency, the current annual production of an individual mine or concentration plant. The provision of this information does not require detailed nuclear material accountancy.

(vi) Information regarding source material which has not reached the composition and purity suitable for fuel fabrication or for being isotopically enriched, as follows:

(a) The quantities, the chemical composition, the use or intended use of such material, whether in nuclear or non-nuclear use, for each location in the United States at which the material is present in quantities exceeding ten metric tons of uranium and/or twenty metric tons of thorium, and for other locations with quantities of more than one metric ton, the aggregate for the United States as a whole if the aggregate exceeds ten metric tons of uranium or twenty metric tons of thorium. The provision of this information does not require detailed nuclear material accountancy;

(b) The quantities, the chemical composition and the destination of each export out of the United States, of such material for specifically non-nuclear purposes in quantities exceeding:

(1) Ten metric tons of uranium, or for successive exports of uranium from the United States to the same State, each of less than ten metric tons, but exceeding a total of ten metric tons for the year;

(2) Twenty metric tons of thorium, or for successive exports of thorium from the United States to the same State, each of less than twenty metric tons, but exceeding a total of twenty metric tons for the year;

(c) The quantities, chemical composition, current location and use or intended use of each import into the United States of such material for specifically non-nuclear purposes in quantities exceeding:

(1) Ten metric tons of uranium, or for successive imports of uranium into the United States each of less than ten metric tons, but exceeding a total of ten metric tons for the year;

(2) Twenty metric tons of thorium, or for successive imports of thorium into the United States each of less than twenty metric tons, but exceeding a total of twenty metric tons for the year;

it being understood that there is no requirement to provide information on such material intended for a non-nuclear use once it is in its non-nuclear end-use form.

- (vii) (a) Information regarding the quantities, uses and locations of nuclear material exempted from safeguards pursuant to Article 37 of the Safeguards Agreement;
 - (b) Information regarding the quantities (which may be in the form of estimates) and uses at each location, of nuclear material exempted from safeguards pursuant to Article 36(b) of the Safeguards Agreement but not yet in a non-nuclear end-use form, in quantities exceeding those set out in Article 37 of the Safeguards Agreement. The provision of this information does not require detailed nuclear material accountancy.
 - (viii) Information regarding the location or further processing of intermediate or high-level waste containing plutonium, high enriched uranium or uranium-233 on which safeguards have been terminated pursuant to Article 11 of the Safeguards Agreement. For the purpose of this paragraph, "further processing" does not include repackaging of the waste or its further conditioning not involving the separation of elements, for storage or disposal.
 - (ix) The following information regarding specified equipment and non-nuclear material listed in Annex II:
 - (a) For each export out of the United States of such equipment and material: the identity, quantity, location of intended use in the receiving State and date or, as appropriate, expected date, of export;
 - (b) Upon specific request by the Agency, confirmation by the United States, as importing State, of information provided to the Agency by another State concerning the identity, quantity and location of intended use in the United States, and date of import, or, as appropriate, expected date of the import, of such equipment and material into the United States.
 - (x) General plans for the succeeding ten-year period relevant to the development of the nuclear fuel cycle (including planned nuclear fuel cycle-related research and development activities) when approved by the appropriate authorities in the United States.
- b. The United States shall make every reasonable effort to provide the Agency with the following information:
- (i) A general description of and information specifying the location of nuclear fuel cycle-related research and development activities not involving nuclear material which are specifically related to enrichment, reprocessing of nuclear fuel or the processing of intermediate or high-level waste containing plutonium, high enriched uranium or uranium-233 that are carried out anywhere in the United States but which are not funded, specifically authorized or controlled by, or carried out on behalf of, the United States. For the purpose of this paragraph, "processing" of intermediate or high-level waste does not include repackaging

of the waste or its conditioning not involving the separation of elements, for storage or disposal.

- (ii) A general description of activities and the identity of the person or entity carrying out such activities, at locations identified by the Agency outside a site which the Agency considers might be functionally related to the activities of that site. The provision of this information is subject to a specific request by the Agency. It shall be provided in consultation with the Agency and in a timely fashion.
- c. Upon request by the Agency, the United States shall provide amplifications or clarifications of any information it has provided under this Article, in so far as relevant for the purpose of safeguards.

Article 3

- a. The United States shall provide to the Agency the information identified in Article 2.a.(i), (iii), (iv), (v), (vi)(a), (vii) and (x) and Article 2.b.(i) within 180 days of the entry into force of this Protocol.
- b. The United States shall provide to the Agency, by 15 May of each year, updates of the information referred to in paragraph a. above for the period covering the previous calendar year. If there has been no change to the information previously provided, the United States shall so indicate.
- c. The United States shall provide to the Agency, by 15 May of each year, the information identified in Article 2.a.(vi)(b) and (c) for the period covering the previous calendar year.
- d. The United States shall provide to the Agency on a quarterly basis the information identified in Article 2.a.(ix)(a). This information shall be provided within sixty days of the end of each quarter.
- e. The United States shall provide to the Agency the information identified in Article 2.a.(viii) 180 days before further processing is carried out and, by 15 May of each year, information on changes in location for the period covering the previous calendar year.
- f. The United States and the Agency shall agree on the timing and frequency of the provision of the information identified in Article 2.a.(ii).
- g. The United States shall provide to the Agency the information in Article 2.a.(ix)(b) within sixty days of the Agency's request.

COMPLEMENTARY ACCESS

Article 4

The following shall apply in connection with the implementation of complementary access under Article 5 of this Protocol:

- a. The Agency shall not mechanically or systematically seek to verify the information referred to in Article 2; however, the Agency shall have access to:
 - (i) Any location referred to in Article 5.a.(i) or (ii) on a selective basis in order to assure the absence of undeclared nuclear material and activities;
 - (ii) Any location referred to in Article 5.b. or c. to resolve a question relating to the correctness and completeness of the information provided pursuant to Article 2 or to resolve an inconsistency relating to that information;
 - (iii) Any location referred to in Article 5.a.(iii) to the extent necessary for the Agency to confirm, for safeguards purposes, the United States' declaration of the decommissioned status of a facility or location outside facilities where nuclear material was customarily used.
- b.
 - (i) Except as provided in paragraph (ii) below, the Agency shall give the United States advance notice of access of at least 24 hours;
 - (ii) For access to any place on a site that is sought in conjunction with design information verification visits or ad hoc or routine inspections on that site, the period of advance notice shall, if the Agency so requests, be at least two hours but, in exceptional circumstances, it may be less than two hours.
- c. Advance notice shall be in writing and shall specify the reasons for access and the activities to be carried out during such access.
- d. In the case of a question or inconsistency, the Agency shall provide the United States with an opportunity to clarify and facilitate the resolution of the question or inconsistency. Such an opportunity will be provided before a request for access, unless the Agency considers that delay in access would prejudice the purpose for which the access is sought. In any event, the Agency shall not draw any conclusions about the question or inconsistency until the United States has been provided with such an opportunity.
- e. Unless otherwise agreed to by the United States, access shall only take place during regular working hours.
- f. The United States shall have the right to have Agency inspectors accompanied during their access by representatives of the United States, provided that the inspectors shall not thereby be delayed or otherwise impeded in the exercise of their functions.

Article 5

The United States shall provide the Agency with access to:

- a.
 - (i) Any place on a site;
 - (ii) Any location identified by the United States under Article 2.a(v)-(viii);
 - (iii) Any decommissioned facility or decommissioned location outside facilities where nuclear material was customarily used.
- b. Any location identified by the United States under Article 2.a(i), Article 2.a(iv), Article 2.a(ix)(b) or Article 2.b., other than those referred to in paragraph a.(i) above, provided that if the United States is unable to provide such access, the United States shall make every reasonable effort to satisfy Agency requirements, without delay, through other means.
- c. Any location specified by the Agency, other than locations referred to in paragraphs a. and b. above, to carry out location-specific environmental sampling; provided that if the United States is unable to provide such access, the United States shall make every reasonable effort to satisfy Agency requirements, without delay, at adjacent locations or through other means.

Article 6

When implementing Article 5, the Agency may carry out the following activities:

- a. For access in accordance with Article 5.a.(i) or (iii): visual observation; collection of environmental samples; utilization of radiation detection and measurement devices; application of seals and other identifying and tamper indicating devices specified in Subsidiary Arrangements; and other objective measures which have been demonstrated to be technically feasible and the use of which has been agreed by the Board of Governors (hereinafter referred to as the "Board") and following consultations between the Agency and the United States.
- b. For access in accordance with Article 5.a.(ii): visual observation; item counting of nuclear material; non-destructive measurements and sampling; utilization of radiation detection and measurement devices; examination of records relevant to the quantities, origin and disposition of the material; collection of environmental samples; and other objective measures which have been demonstrated to be technically feasible and the use of which has been agreed by the Board and following consultations between the Agency and the United States.
- c. For access in accordance with Article 5.b.: visual observation; collection of environmental samples; utilization of radiation detection and measurement devices; examination of safeguards relevant production and shipping records; and other objective measures which have been demonstrated to be technically feasible and the

use of which has been agreed by the Board and following consultations between the Agency and the United States.

- d. For access in accordance with Article 5.c.: collection of environmental samples and, in the event the results do not resolve the question or inconsistency at the location specified by the Agency pursuant to Article 5.c., utilization at that location of visual observation, radiation detection and measurement devices, and, as agreed by the United States and the Agency, other objective measures.

Article 7

- a. Upon request by the United States, the Agency and the United States shall make arrangements for managed access under this Protocol in order to prevent the dissemination of proliferation sensitive information, to meet safety or physical protection requirements, or to protect proprietary or commercially sensitive information. Such arrangements shall not preclude the Agency from conducting activities necessary to provide credible assurance of the absence of undeclared nuclear material and activities at the location in question, including the resolution of a question relating to the correctness and completeness of the information referred to in Article 2 or of an inconsistency relating to that information.
- b. The United States may, when providing the information referred to in Article 2, inform the Agency of the places at a site or location at which managed access may be applicable.
- c. Pending the entry into force of any necessary Subsidiary Arrangements, the United States may have recourse to managed access consistent with the provisions of paragraph a. above.

Article 8

Nothing in this Protocol shall preclude the United States from offering the Agency access to locations in addition to those referred to in Articles 5 and 9 or from requesting the Agency to conduct verification activities at a particular location. The Agency shall, without delay, make every reasonable effort to act upon such a request.

Article 9

The United States shall provide the Agency with access to locations specified by the Agency to carry out wide-area environmental sampling, provided that if the United States is unable to provide such access it shall make every reasonable effort to satisfy Agency requirements at alternative locations. The Agency shall not seek such access until the use of wide-area environmental sampling and the procedural arrangements therefor have been approved by the Board and following consultations between the Agency and the United States.

Article 10

The Agency shall inform the United States of:

- a. The activities carried out under this Protocol, including those in respect of any questions or inconsistencies the Agency had brought to the attention of the United States, within sixty days of the activities being carried out by the Agency.
- b. The results of activities in respect of any questions or inconsistencies the Agency had brought to the attention of the United States, as soon as possible but in any case within thirty days of the results being established by the Agency.
- c. The conclusions it has drawn from its activities under this Protocol. The conclusions shall be provided annually.

DESIGNATION OF AGENCY INSPECTORS

Article 11

- a.
 - (i) The Director General shall notify the United States of the Board's approval of any Agency official as a safeguards inspector. Unless the United States advises the Director General of its rejection of such an official as an inspector for the United States within three months of receipt of notification of the Board's approval, the inspector so notified to the United States shall be considered designated to the United States.
 - (ii) The Director General, acting in response to a request by the United States or on his own initiative, shall immediately inform the United States of the withdrawal of the designation of any official as an inspector for the United States.
- b. A notification referred to in paragraph a. above shall be deemed to be received by the United States seven days after the date of the transmission by registered mail of the notification by the Agency to the United States.

VISAS

Article 12

The United States shall, within one month of the receipt of a request therefor, provide the designated inspector specified in the request with appropriate multiple entry/exit and/or transit visas, where required, to enable the inspector to enter and remain on the territory of the United States for the purpose of carrying out his/her functions. Any visas required shall be valid for at least one year and shall be renewed, as required, to cover the duration of the inspector's designation to the United States.

SUBSIDIARY ARRANGEMENTS

Article 13

- a. Where the United States or the Agency indicates that it is necessary to specify in Subsidiary Arrangements how measures laid down in this Protocol are to be applied, the United States and the Agency shall agree on such Subsidiary Arrangements within ninety days of the entry into force of this Protocol or, where the indication of the need for such Subsidiary Arrangements is made after the entry into force of this Protocol, within ninety days of the date of such indication.
- b. Pending the entry into force of any necessary Subsidiary Arrangements, the Agency shall be entitled to apply the measures laid down in this Protocol.

COMMUNICATIONS SYSTEMS

Article 14

- a. The United States shall permit and protect free communications by the Agency for official purposes between Agency inspectors in the United States and Agency Headquarters and/or Regional Offices, including attended and unattended transmission of information generated by Agency containment and/or surveillance or measurement devices. The Agency shall have, in consultation with the United States, the right to make use of internationally established systems of direct communications, including satellite systems and other forms of telecommunication, not in use in the United States. At the request of the United States or the Agency, details of the implementation of this paragraph with respect to the attended or unattended transmission of information generated by Agency containment and/or surveillance or measurement devices shall be specified in the Subsidiary Arrangements.
- b. Communication and transmission of information as provided for in paragraph a. above shall take due account of the need to protect proprietary or commercially sensitive information or design information which the United States regards as being of particular sensitivity.

PROTECTION OF CONFIDENTIAL INFORMATION

Article 15

- a. The Agency shall maintain a stringent regime to ensure effective protection against disclosure of commercial, technological and industrial secrets and other confidential information coming to its knowledge, including such information coming to the Agency's knowledge in the implementation of this Protocol.
- b. The regime referred to in paragraph a. above shall include, among others, provisions relating to:

- (i) General principles and associated measures for the handling of confidential information;
 - (ii) Conditions of staff employment relating to the protection of confidential information;
 - (iii) Procedures in cases of breaches or alleged breaches of confidentiality.
- c. The regime referred to in paragraph a. above shall be approved and periodically reviewed by the Board.

ANNEXES

Article 16

- a. The Annexes to this Protocol shall be an integral part thereof. Except for the purposes of amendment of the Annexes, the term "Protocol" as used in this instrument means the Protocol and the Annexes together.
- b. The list of activities specified in Annex I, and the list of equipment and material specified in Annex II, may be amended by the Board upon the advice of an open-ended working group of experts established by the Board. Any such amendment shall take effect four months after its adoption by the Board.

ENTRY INTO FORCE

Article 17

- a. This Protocol shall enter into force on the date on which the Agency receives from the United States written notification that the United States' statutory and constitutional requirements for entry into force have been met.
- b. The United States may, at any date before this Protocol enters into force, declare that it will apply this Protocol provisionally.
- c. The Director General shall promptly inform all Member States of the Agency of any declaration of provisional application of, and of the entry into force of, this Protocol.

DEFINITIONS

Article 18

For the purpose of this Protocol:

- a. Nuclear fuel cycle-related research and development activities means those activities which are specifically related to any process or system development aspect of any of the following:

- conversion of nuclear material,
- enrichment of nuclear material,
- nuclear fuel fabrication,
- reactors,
- critical facilities,
- reprocessing of nuclear fuel,
- processing (not including repackaging or conditioning not involving the separation of elements, for storage or disposal) of intermediate or high-level waste containing plutonium, high enriched uranium or uranium-233,


but do not include activities related to theoretical or basic scientific research or to research and development on industrial radioisotope applications, medical, hydrological and agricultural applications, health and environmental effects and improved maintenance.

- b. Site means that area delimited by the United States in the relevant design information for a facility, including a closed-down facility, and in the relevant information on a location outside facilities where nuclear material is customarily used, including a closed-down location outside facilities where nuclear material was customarily used (this is limited to locations with hot cells or where activities related to conversion, enrichment, fuel fabrication or reprocessing were carried out). It shall also include all installations, co-located with the facility or location, for the provision or use of essential services, including: hot cells for processing irradiated materials not containing nuclear material; installations for the treatment, storage and disposal of waste; and buildings associated with specified activities identified by the United States under Article 2.a.(iv) above.
- c. Decommissioned facility or decommissioned location outside facilities means an installation or location at which residual structures and equipment essential for its use have been removed or rendered inoperable so that it is not used to store and can no longer be used to handle, process or utilize nuclear material.
- d. Closed-down facility or closed-down location outside facilities means an installation or location where operations have been stopped and the nuclear material removed but which has not been decommissioned.
- e. High enriched uranium means uranium containing 20 percent or more of the isotope uranium-235.
- f. Location-specific environmental sampling means the collection of environmental samples (e.g., air, water, vegetation, soil, smears) at, and in the immediate vicinity of, a location specified by the Agency for the purpose of assisting the Agency to draw

conclusions about the absence of undeclared nuclear material or nuclear activities at the specified location.

- g. Wide-area environmental sampling means the collection of environmental samples (e.g., air, water, vegetation, soil, smears) at a set of locations specified by the Agency for the purpose of assisting the Agency to draw conclusions about the absence of undeclared nuclear material or nuclear activities over a wide area.
- h. Nuclear material means any source or any special fissionable material as defined in Article XX of the Statute. The term source material shall not be interpreted as applying to ore or ore residue. Any determination by the Board under Article XX of the Statute of the Agency after the entry into force of this Protocol which adds to the materials considered to be source material or special fissionable material shall have effect under this Protocol only upon acceptance by the United States.
- i. Facility means:
 - (i) A reactor, a critical facility, a conversion plant, a fabrication plant, a reprocessing plant, an isotope separation plant or a separate storage installation;
or
 - (ii) Any location where nuclear material in amounts greater than one effective kilogram is customarily used.
- j. Location outside facilities means any installation or location, which is not a facility, where nuclear material is customarily used in amounts of one effective kilogram or less.

DONE at Vienna on the 12th day of June 1998 in duplicate in the English language.


FOR THE UNITED STATES
OF AMERICA:


FOR THE INTERNATIONAL ATOMIC
ENERGY AGENCY: