

**Agreement between the European Atomic Energy Community and
the Government of the People's Republic of China
for R&D Cooperation in the Peaceful Uses of Nuclear Energy**

THE EUROPEAN ATOMIC ENERGY COMMUNITY (EURATOM),

hereinafter referred to as "the Community", on the one part, and

THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA,

hereinafter referred to as "China"

on the other part,

hereinafter referred to as the "Parties",

DESIRING to further develop a long-term, stable cooperation which may benefit to China, the Community and its Member States in the peaceful and non-explosive uses of nuclear energy on the basis of mutual benefit and reciprocity;

CONSIDERING the 1985 Agreement on Trade and Economic Cooperation between the European Economic Community and the People's Republic of China and noting that there has also been active cooperation and information exchange in a number of scientific and technological areas under the Agreement for Scientific and Technological Cooperation between the European Community and the Government of the People's Republic of China signed in 1998;

CONSIDERING the importance of science and technology for their economic and social development and desiring to establish a formal basis for cooperation in scientific and technological research which will extend and strengthen the conduct of cooperative activities in the fields of common interest in the peaceful uses of nuclear energy and encourage the application of the results of such cooperation to their economic and social benefit;

WHEREAS cooperation in the peaceful uses of nuclear energy between the Community and China should further enhance research in areas of common interests as well as economic cooperation;

CONSIDERING that the Community and China are currently pursuing research and development activities in the area of peaceful uses of nuclear energy and that participation in each other's research and development activities on a basis of reciprocity will provide mutual benefits;

CONSIDERING, in particular, the willingness of both the Community and China to strengthen their cooperation in the field of controlled thermonuclear fusion within the present Agreement and if appropriate within a dedicated agreement;

WHEREAS China as well as all Member States of the Community are Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, done on July 1, 1968 (hereinafter referred to as "the Non- Proliferation Treaty") and have adhered to the Guidelines for Nuclear Transfers (Nuclear Suppliers' Guidelines);

REAFFIRMING the strong commitment of the Government of China, the Community and the Governments of its Member States to nuclear non-proliferation including the strengthening and efficient application of the related safeguards and export control regimes under which cooperation in the peaceful uses of nuclear energy between China and the Community should be carried out;

REAFFIRMING the support of the Government of China, the Community and the Governments of its Member States for the objectives of the International Atomic Energy Agency (IAEA, hereinafter referred to as "the Agency"), in particular including its safeguards system including the Additional Protocols, and their desire to promote universal adherence to the Non-Proliferation Treaty;

NOTING that nuclear safeguards are applied in the Community both under Chapter VII of the Euratom Treaty and under safeguards agreements concluded between the Community, its Member States and the Agency;

WHEREAS it is appropriate to provide a legal framework for promoting R&D cooperation in the peaceful uses of nuclear energy, focusing particularly on present opportunities of mutual benefit;

RECOGNIZING that China, the Community and its Member States have attained a comparably advanced level in the peaceful uses of nuclear energy and in the security afforded

by their respective laws and regulations concerning health, safety, the peaceful uses of nuclear energy and the protection of the environment;

CONSIDERING that this Agreement will contribute to the global S&T cooperation between China and the EU;

WHEREAS the present Agreement replaces the "Agreement for R&D Cooperation in the Peaceful Uses of Nuclear Energy between the European Atomic Community (Euratom) and the Government of the People's Republic of China" that was done at the Hague on the eighth of December, 2004, but that did not enter into force,

HAVE AGREED AS FOLLOWS:

Article 1

Purpose

1. The overall purpose of this Agreement is to encourage and facilitate R&D cooperation, in the peaceful, non-explosive, non-military uses of nuclear energy with a view to strengthening the overall co-operative relationship between the Community and China.
2. The Agreement aims to foster R&D cooperation between the Community and China and, in particular to facilitate the participation of Chinese research entities in research projects carried out in the framework of the relevant Community research programmes and to ensure a reciprocal participation of research entities of the Community and its Member States in Chinese projects in similar areas of research.

Article 2

Definitions

For the purpose of this Agreement:

- 1) "Parties" means the Government of China and the European Atomic Energy Community.
"Party" means one of the above "Parties";
- 2) "The Community" means both:

- (a) the legal person created by the Treaty establishing the European Atomic Energy Community (Euratom); and
- (b) the territories to which the Euratom Treaty applies;
- 3) "cooperative activity" means any activity which the Parties undertake or support, pursuant to this Agreement, and includes joint research;
- 4) "information" means scientific or technical data, results or methods of research and development stemming from joint research and any other data deemed necessary by the participants to cooperative activities; including, as necessary, by the Parties themselves;
- 5) "intellectual property" shall have the meaning defined in Article 2 of the Convention establishing the World Intellectual Property Organisation, done at Stockholm, 14 July 1967;
- 6) "joint research" means research or technological development that is implemented with or without financial support from one or both Parties and that involves collaboration by participants from both the Community and China and is designated as joint research in writing by the Parties or their scientific and technological organisations and agencies implementing the scientific research programmes. In the case where there is funding by only one Party the designation is made by that Party and the participant in that project;
- 7) "Participant" or "research entities" means any person moral or private, any research institute or any other legal entity or firm established in the Community or in China involved in cooperative activities including the Parties themselves;
- 8) "Results of intellectual activity" means information and/or intellectual property.

Article 3

Principles

Cooperative activities shall be conducted on the basis of the following principles:

- 1) mutual benefit based on an overall balance of advantages;
- 2) reciprocal access to the activities of research and technological development undertaken by each Party;

- 3) timely exchange of information which may affect the actions of participants in cooperative activities;
- 4) effective protection of intellectual property and equitable sharing of intellectual property rights.

Article 4

Areas of R&D cooperative activities

1. Cooperation under this Agreement may cover all the activities of research and technological development, hereinafter referred to as "R&D", included in the Framework Programme of the European Atomic Energy Community for nuclear research and training activities under Article 7 of the Treaty establishing the Community and all similar R&D activities in China in the corresponding scientific and technological fields.
2. Cooperation under this Agreement shall be carried out within the scope of the respective competences of each Party, and may include the following R&D areas:
 - (a) radiation protection and radiological monitoring;
 - (b) nuclear safeguards;
 - (c) nuclear safety and nuclear technology;
 - (d) innovative concepts;
 - (e) nuclear metrology and reference materials;
 - (f) nuclear medicine;
 - (g) decommissioning of nuclear installations;
 - (h) management of radioactive waste;
 - (i) controlled thermonuclear fusion;
 - (j) nuclear education and training;

- (k) other areas of cooperation as may be mutually agreed upon by the Parties insofar as they are covered by their respective programmes.

Article 5

Forms of cooperative activities

1. Subject to their applicable laws, regulations and policies, the Parties shall foster, to the fullest extent practicable, the involvement of participants under this Agreement with a view to providing comparable opportunities for participation in their respective scientific and technological research and development activities.
2. Cooperative activities may take the following forms:
 - (a) participation of Chinese research entities in R&D projects under the Framework Programmes of the European Atomic Energy Community for nuclear research and training activities and participation of research entities established in the Community in Chinese projects in similar sectors of R&D. Such a participation is subject to the rules and procedures applicable in the R&D programmes of each Party;
 - (b) pooling of R&D projects already implemented according to the procedures applicable in the R&D programmes of each Party;
 - (c) visits and exchanges of scientists and technical experts;
 - (d) joint organisation of scientific seminars, conferences, symposia and workshops, as well as participation of experts to those activities;
 - (e) exchanges, sharing and transfer of samples, materials, instruments and apparatus for experimental purposes;
 - (f) exchanges of information on practices, laws, regulations and programmes relevant to cooperation under this Agreement;
 - (g) any other modality recommended by the Steering Committee, established in accordance with Article 8 of this Agreement, and which is in conformity with the policies and procedures applicable in both Parties. The joint R&D projects shall be implemented when

the participants have developed a technology management plan, as indicated in the Annex B to this Agreement.

3. Any transfers of nuclear material carried out pursuant to the cooperation referred to this Article shall be made in accordance with the relevant international commitments of the Parties and of the Member States of the Community in relation to peaceful uses of nuclear energy.

Article 6

Peaceful use

Cooperation under this Agreement shall be carried out only for peaceful and non-explosive purposes.

Article 7

Nuclear safety

The provisions of the "Convention on Nuclear Safety" (CNS-IAEA document INFCIRC/449) to which China, EURATOM and its Member States are parties shall apply. No additional obligations to those assumed under the CNS on the parties to the Agreement and the Member States shall arise.

Article 8

Coordination and facilitation of cooperative activities

1. The coordination and facilitation of cooperative activities under this Agreement shall be accomplished on behalf of China, by the Ministry of Science and Technology and, on behalf of the Community, by the services of the Commission of the European Communities, acting as executive agents.
2. The executive agents shall establish a Steering R&D Cooperation Committee, hereinafter referred to as the "Steering Committee" for the management of this Agreement; this

Committee shall consist of an equal number of official representatives of each Party; it shall establish its own rules of procedure.

3. The functions of the Steering Committee shall include:

- (a) promoting and overseeing the different R&D cooperative activities as mentioned in Article 4;
- (b) indicating, for the following year, pursuant to Article 5.2, first indent, among the potential sectors for R&D cooperation, those priority sectors or sub-sectors of mutual interest in which cooperation is sought;
- (c) proposing, pursuant to Article 5.2, second indent, to the scientists of both Parties the pooling of their projects which would be of mutual benefit and complementary;
- (d) making recommendations pursuant to Article 5.2, seventh indent;
- (e) advising the Parties on ways to enhance and improve cooperation consistent with the principles set out in this Agreement;
- (f) reviewing the efficient functioning and implementation of this Agreement;
- (g) providing, every three years, a report to the Parties on the status, the level reached and the effectiveness of cooperation undertaken under this Agreement.

4. The Steering Committee shall, as a general rule, meet annually, according to a jointly agreed schedule; the meetings should be held alternatively in the Community and in China. Extraordinary meetings may be organised at the request of either Party.

5. The costs other than those for travel and accommodation which are directly associated with meetings of the Steering Committee shall be borne by the host Party. Other costs incurred by the Steering Committee or in its name shall be borne by the Party to which members are affiliated.

Article 9

Funding

1. Cooperative activities shall be subject to the availability of appropriate funds and to the applicable laws and regulations, policies and programmes of the Parties. The costs incurred by the participants to cooperative activities will not lead to any transfer of funds from one Party to the other.
2. When specific cooperative schemes of one Party provide for financial support to participants from the other Party, any such grants, financial or other contributions from one Party to the participants of the other Party in support of those activities shall be granted tax and customs exemption in accordance with the laws and regulations applicable in the territories of each Party.

Article 10

Entry of personnel and experimental equipment

Each Party shall take all reasonable steps and use its best efforts, within the laws and regulations applicable in the territories of each Party, to facilitate entry to, sojourn and exit from its territory of persons, material, data, samples, instruments and apparatus for experimental purposes involved in or used in cooperative activities identified by the Parties under the provisions of this Agreement. In particular, goods imported into the territory of one of the parties for the purpose of the Agreement shall be exempted from customs duties and levies.

Article 11

Diffusion and utilisation of information

1. The research entities established in China which are involved in Community R&D projects shall follow, as regards the ownership, diffusion and utilisation of information and as regards the intellectual property stemming from this involvement, the rules of diffusion of research results stemming from the Community R&D specific programmes as well as the provisions of the Annex A to this Agreement, which is an integral part of this Agreement.

2. The research entities established in the Community which are involved in Chinese R&D projects have, as regards the ownership, diffusion and utilisation of information and as regards the intellectual property stemming from this involvement, the same rights and the same obligations as the Chinese research entities and are subject to the provisions of the Annex A to this Agreement.
3. The provisions of this Agreement shall not be used for the purpose of seeking commercial or industrial advantages, nor of interfering with the commercial or industrial interests, whether domestic or international, of either Party or authorised persons, nor of interfering with the nuclear policy of either Party or of the Governments of the Member States of the Community, nor of hindering the promotion of the peaceful and non-explosive uses of nuclear energy, nor of hindering the movement of items subject to or notified to be made subject to this Agreement either within the respective territorial jurisdiction of the Parties or between the Parties.

Article 12

Confidentiality

Without prejudice to application of Article 11, each Party undertakes to keep secret, even after the termination or end of this Agreement, any information, facts or events concerning the other Party and not directly related to the subject of the Agreement that they may have become acquainted with in the course of its execution.

Article 13

Bilateral nuclear cooperation agreements

This Agreement shall be without prejudice to existing bilateral agreements or agreements to be concluded in the future between China and individual Member States of the Community.

Article 14

Entry into force, termination and dispute settlement

1. This Agreement shall apply to both parties, in particular to the territories in which the Treaty establishing the European Atomic Energy Community is applied and under the conditions laid down in that Treaty.
2. Both Parties shall notify each other of the completion of their respective internal procedures necessary for this Agreement's entry into force. This Agreement shall enter into force on the date of the receiving of the latter notification.
3. This Agreement shall remain in force for a period of thirty years and shall continue in force thereafter for additional periods of five years each.
4. This Agreement may be amended by agreement of the Parties. Amendments shall enter into force on the date on which the Parties have notified each other in writing that their respective internal procedures necessary for amending this Agreement have been completed.
5. Either Party may, by giving six months' written notice to the other Party, terminate this Agreement at the end of the initial thirty-year period or at the end of any subsequent five-year period. The expiry or termination of this Agreement shall not affect the validity or duration of any arrangements made under it, or any specific rights and obligations that have accrued in compliance with the Annex A.
6. If either Party or a Member State of the Community at any time following the entry into force of this Agreement takes action of any kind which results in a material violation of its obligations under this Agreement, the other Party shall have the right to cease further cooperation under this Agreement or to suspend or terminate, in whole or in part, this Agreement.
7. All questions or disputes related to the interpretation or implementation of this Agreement shall be settled by mutual agreement between the Parties in the framework of the Steering Committee established in Article 8.
8. Notwithstanding cessation of further cooperation under this Agreement in whole or in part, the termination of this Agreement for any reason, the provisions of Articles 11 and 12 of this Agreement shall continue to apply.

9. This Agreement shall be drawn up in duplicate in the Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish, Swedish and Chinese languages. English and Chinese shall be the authentic languages.

In witness whereof, the undersigned, being duly authorised thereto, have signed this Agreement.

Done in Beijing on the 24 of April, 2008, two copies, in the English and Chinese languages.



For the European Atomic Energy
Community



For the Government of
The People's Republic of China

ANNEX A

Guiding principles on the allocation of intellectual property rights resulting from joint research activities under the Agreement

I. OWNERSHIP, ALLOCATION AND EXERCISE OF RIGHTS

1. This Annex shall apply to joint research activities under this Agreement except as otherwise agreed by the Parties. The participants shall jointly develop technology management plans (TMPs) in respect of the ownership and use, including publication, of information and intellectual property, hereinafter referred to as results of intellectual activities (RIA), to be created in the course of joint research. The TMPs shall be approved by the Parties before the conclusion of any specific R&D cooperation contracts to which they refer. The TMPs shall be developed taking into account the aims of the joint research, the relative contributions of the participants, peculiarities of licensing by territory or for a specific field of use, requirements imposed by laws applicable and other factors deemed appropriate by the participants. The rights and obligations concerning the research generated by visiting researchers under this Agreement in respect of RIA shall also be addressed in the joint TMPs.
2. RIA created in the course of joint research and not addressed in the TMP shall be allocated, with the approval of the Parties, according to the principles set out in the TMP. In case of disagreement, such RIA shall be owned jointly by all the participants involved in the joint research from which the RIA results. Each participant to whom this provision applies shall have the right to use such RIA for his own commercial exploitation with no geographical limitation.
3. Each Party shall ensure that the other Party and its participants shall have the rights to RIA allocated to them in accordance with these principles.
4. While maintaining the conditions of competition in areas affected by this Agreement each Party shall endeavour to ensure that rights acquired pursuant to this Agreement and arrangements made under it are exercised in such a way as to encourage in particular:
 - (i) the dissemination and use of information created, disclosed legally, or otherwise legally made available, under the Agreement;
 - (ii) the adoption and implementation of international technical standards.

II. COPYRIGHT WORKS

1. Copyright belonging to the Parties or to their participants shall be accorded treatment consistent with the Berne Convention for the protection of literary and artistic work (Paris Act 1971).
2. Without prejudice to section III of this Annex, unless otherwise agreed in the TMP, publication of results of research shall be made jointly by the Parties or participants to that joint research. Subject to the foregoing general rule, the following procedures shall apply:
 - (a) in the case of publication by a Party or its other participants, of scientific and technical journals, articles, reports, books, including video and software, of the results arising from joint research pursuant to this Agreement, the other Party or its other participants shall be entitled to a worldwide, non-exclusive, irrevocable, royalty-free license to translate, reproduce, adapt, transmit and publicly distribute such works;
 - (b) the Parties shall ensure that literary works of a scientific character arising from joint research pursuant to this Agreement and published by independent publishers shall be disseminated as widely as possible;
 - (c) all copies of a copyright work to be publicly distributed and prepared under the provisions of this Agreement shall indicate the names or pseudonyms of the author(s) of the work unless an author or authors expressly declines or decline to be named. The copies shall also bear a clearly visible acknowledgement of the cooperative support of the Parties and/or their representatives and/or organisations.

III. UNDISCLOSED INFORMATION

1. Documentary undisclosed information

- (a) Each Party or its participants, as appropriate, shall identify at the earliest possible moment and preferably in the TMP, the information that it wishes to remain undisclosed in relation to this Agreement, taking account, inter alia, of the following criteria:

secrecy of the information in the sense that the information is not, as a body or in the precise configuration or assembly of its components, generally known among or readily accessible by lawful means to experts in the field, the actual or potential commercial value of the information by virtue of its secrecy for the third party, previous protection of the information in the sense that it

has been subject to steps that were reasonable under the circumstances by the person lawfully in control, to maintain its secrecy; The Parties and their participants may, in certain cases, agree, that, unless otherwise indicated, parts of or all the information provided, exchanged or created in the course of joint research pursuant to the Agreement shall not be disclosed;

(b) each Party shall ensure that undisclosed information under this Agreement and its ensuing privileged nature is readily recognisable as such by the other Party, for example by means of an appropriate marking or restrictive legend. This also applies to any reproduction of the said information, in whole or in part;

a Party receiving undisclosed information pursuant to this Agreement shall respect the privileged nature thereof. These limitations shall automatically terminate when this information is disclosed by the owner without restriction to experts in the field;

(c) undisclosed information communicated under this Agreement may be disseminated by the receiving Party to persons within or employed by the receiving Party, and other concerned departments or agencies in the receiving Party authorised for the specific purposes of the joint research under way, provided that any undisclosed information so disseminated shall be pursuant to a specific agreement on confidentiality and shall be readily recognisable as such, as set out above;

(d) with the prior written consent of the Party providing undisclosed information under this Agreement, the receiving Party may disseminate such undisclosed information more widely than otherwise permitted in paragraph (c). The Parties shall cooperate in developing procedures for requesting and obtaining prior written consent for such wider dissemination, and each Party will grant such approval to the extent permitted by its domestic policies, regulations and laws.

2. Non-documentary undisclosed information

Non-documentary undisclosed or other confidential or privileged information provided in seminars and other meetings arranged under this Agreement, or information arising from the attachment of staff, use of facilities, or joint projects, shall be treated by the Parties or their participants according to the principles specified for documentary information in this Annex, provided, however, that the recipient of such undisclosed or other confidential or privileged information has been made aware of the confidential character of the information communicated at the time such communication is made.

3. Control

Each Party shall endeavour to ensure that undisclosed information received by it under this Agreement shall be controlled as provided therein. If one of the Parties becomes aware that it will be, or may reasonably be, expected to become unable to meet the non-dissemination provisions of paragraphs 1 and 2, it shall immediately inform the other Party. The Parties shall thereafter consult to define an appropriate course of action.

ANNEX B

Indicative features of a technology management plan (TMP)

The TMP is a specific agreement to be concluded between the participants, about the implementation of joint research and the respective rights and obligations of the participants. With respect to RIA, the TMP will normally address, inter alia: ownership, protection, user rights for R&D purposes, exploitation and dissemination, including arrangements for joint publication, the rights and obligations of visiting researchers and dispute settlement procedures. The TMP may also address foreground and background information, licensing and deliverables.