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DEPARTMENT OF FOREIGN AFFAIRS AND TRADE

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Agreement relating to Scientific and Technical Co-operation between Australia and the European Community

(Canberra, 23 February 1994)

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AGREEMENT RELATING TO SCIENTIFIC AND TECHNICAL CO-OPERATION BETWEEN AUSTRALIA AND THE EUROPEAN COMMUNITY

AUSTRALIA AND THE EUROPEAN COMMUNITY, hereinafter referred to as the "Parties",

RECOGNIZING that the European Community, hereinafter called "the Community", and Australia are pursuing specific research programmes in areas of common interest;

NOTING the Arrangement between the Government of Australia and the Commission of the European Communities for Co-operation in Science and Technology, signed at Canberra on 12 November 1986, which provides for co-operation in fields of science and technology of mutual interest through the exchange of information arising from research in specific fields;

CONSIDERING the importance of scientific and technical research to Australia and the Community, and the mutual benefits that may be derived if the Parties facilitate further co-operation; and

DESIRING to establish a framework for the conduct of collaboration in scientific and technical research which will extend and strengthen collaboration in areas of common interest and encourage the application of results of such collaboration to the social and economic benefit of Australia and the Community,

HAVE AGREED AS FOLLOWS:

Article 1

Definitions

1. "Co-operative activity" means an activity carried on under this Agreement, and includes joint research.
2. "Information" means scientific or technical data, results or methods of research and development stemming from the joint research and any other information deemed necessary by the Parties and/or participants engaged in the joint research to be provided or exchanged under this Agreement or research pursuant thereto.
3. "Intellectual property" shall have the meaning defined in Article 2 of the Convention establishing the World Intellectual Property Organization, done at Stockholm, 14 July 1967.[\[1\]](#)
4. "Joint research" means research implemented and/or funded by the joint contributions of the Parties and with collaboration from participants of both Parties, where appropriate.
5. "Participant" means any person, legal entity, research institute or any other body participating in a research project under this Agreement, including the Parties themselves.

Article 2

Objectives

The Parties shall encourage and, within the terms of this Agreement, facilitate co-operation between Australia and the Community in fields of common interest where the Parties are supporting research and development activities to advance science and/or technology relevant to those fields of interest.

Article 3

Principles

Co-operation under this Agreement shall be conducted on the basis of the following principles:

- (a) mutual benefit;
- (b) timely exchange of information which may affect the actions of participants in co-operative activities;
- (c) within the framework of applicable laws and regulations relating to intellectual property, effective protection and equitable distribution of intellectual property, as set out in the Annex to this Agreement, which forms an integral part thereof; and
- (d) pursuit of economic and social benefits of co-operative activities to the Community and Australia in view of the contributions made to co-operative activities by the respective participants and Parties.

Article 4

Scope

1. Co-operation may include the following activities:

- (a) participation of persons and legal entities, research institutes, and other bodies, including the Parties themselves, in research projects conducted by Australia or the Community, in accordance with the procedures in force for each Party;
- (b) shared use of research facilities in pursuit of co-operation in research projects;
- (c) visits and exchanges of scientists, engineers and other appropriate personnel for the purposes of participating in seminars, symposia and workshops relevant to co-operation under this Agreement;
- (d) exchange of information such as practices, laws, regulations and programmes relevant to co-operation under this Agreement; and
- (e) other activities as may be mutually determined by the Joint Science and Technology Co-operation Committee in accordance with the applicable policies and programmes of the Parties.

2. For the purposes of this Agreement, co-operation shall be restricted to activities in the following areas:

- (a) biotechnology;
- (b) medical and health research;
- (c) marine science and technology;
- (d) environment;
- (e) information technologies; and
- (f) communication technologies.

3. Research projects shall not proceed under this Agreement until the Parties have endorsed a Technology Management Plan, as described in the Appendix to this Agreement, and which is agreed by the participants.

Article 5

Joint Science and Technology Co-operation Committee

1. Co-operative activities under this Agreement shall be administered by a Joint Science and Technology Co-operation Committee, hereinafter called "the Committee", comprising representatives of each Party.

2. The functions of the Committee shall be to:

- (a) promote and review the activities envisaged under this Agreement;
- (b) authorize activities falling under Article 4.1(e) of this Agreement as being co-operative activities to which this Agreement applies;

(c) advise the Parties on ways to enhance co-operation consistent with the objectives and principles set out in this Agreement; and

(d) provide a report annually to the Parties on the level, status and effectiveness of co-operative activities undertaken under this Agreement.

3. The Committee shall endeavour to meet once a year, with such annual meetings being held alternately in Europe and Australia. Other meetings may be held as mutually determined.

4. Decisions of the Committee shall be reached by consensus. Minutes, comprising a record of the decisions and principal points discussed, shall be taken at each meeting. These Minutes shall be agreed by those persons selected from each side to jointly chair the meeting, and shall, together with the annual report, be available to the next bilateral Ministerial meeting between Australia and the Community.

Article 6

Dissemination and utilization of information

The dissemination and utilization of information, and management, allocation and exercise of intellectual property rights, resulting from joint research under this Agreement, shall be subject to the principles set out in the Annex to this Agreement.

Article 7

Funding

1. Co-operative activities shall be subject to the availability of funds and to the applicable laws and regulations, policies and programmes of Australia and the Community.

2. Costs incurred by participants in co-operative activities subject to this Agreement shall not require any transfer of funds from one Party to the other.

3. Costs incurred by or on behalf of the Committee shall be met by the Party to whom the members are responsible. Costs, other than those of travel and accommodation, which are directly associated with meetings of the Committee, shall be met by the host Party.

Article 8

Entry of personnel and equipment

Each Party shall take all reasonable steps and use its best efforts to facilitate entry to and exit from its territory of personnel, material and equipment of the other Party engaged in or used in co-operative activities under this Agreement.

Article 9

Other Agreements

This Agreement is without prejudice to co-operation which may be undertaken pursuant to other Agreements or arrangements between the Parties.

Article 10

Territorial application of this Agreement

This Agreement shall apply, on the one hand, to the territories in which the Treaty establishing the European Community is applied and under the conditions laid down in that Treaty and, on the other hand, to the territory of Australia.

Article 11

Entry into force and termination

1. This Agreement shall enter into force on the date on which the Parties shall have notified each other in writing that their legal requirements for the entry into force of this Agreement have been fulfilled.[\[2\]](#)
2. This Agreement may be amended or extended by agreement of the Parties. Amendments or extensions shall enter into force on the date on which the Parties shall have notified each other in writing that their legal requirements have been fulfilled.
3. This Agreement may be terminated at any time by either Party upon twelve months' written notice. The expiration or termination of this Agreement shall not affect the validity or duration of any arrangements made under it, or the rights and obligations established pursuant to the Annex to this Agreement.

Article 12

This Agreement is drawn up in duplicate in the English, Danish, Dutch, French, German, Greek, Italian, Portuguese and Spanish languages, each of these texts being equally authentic.

IN WITNESS WHEREOF the undersigned have signed this Agreement.

DONE at Canberra on the twenty-third day of February in the year one thousand nine hundred and ninety-four.

FOR AUSTRALIA: FOR THE EUROPEAN COMMUNITY:

[Signed:] [Signed:]

PETER COOK LEON BRITTAN[\[3\]](#)

ANNEX

DISSEMINATION AND UTILIZATION OF INFORMATION, AND MANAGEMENT, ALLOCATION AND EXERCISE OF INTELLECTUAL PROPERTY RIGHTS

I. OWNERSHIP, ALLOCATION AND EXERCISE OF RIGHTS

1. All research carried out pursuant to this Agreement shall be "joint research". The participants shall jointly develop joint technology management plans (TMPs)[\[4\]](#) in respect of

the ownership and use, including publication, of information and intellectual property (IP) to be created in the course of joint research. Those plans shall be approved by the Parties before the conclusion of any specific research and development co-operation 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, the advantages and disadvantages of licensing by territory or for fields of use, requirements imposed by applicable laws, dispute settlement procedures, and other factors deemed appropriate by the participants. The rights and obligations concerning the research generated by visiting researchers in respect of IP shall also be addressed in the TMPs.

2. Information or IP 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, including dispute resolution. In case of disagreement which for sound reasons cannot be resolved by the agreed dispute settlement procedure, the dispute may be referred to the Joint Science and Technology Co-operation Committee which shall endeavour to mediate between the participants. If, having exhausted the procedures described above, the disagreement continues, such information or IP shall be owned jointly by all the participants involved in the joint research from which the information or IP results. Each participant to whom this provision applies shall have the right to use such information or IP for his own commercial exploitation with no geographical limitation.

3. Each Party shall ensure that the other Party and its participants may have the rights to IP allocated in accordance with the principles set out in Section I of this Annex.

4. While maintaining the conditions of competition in areas affected by the 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, or otherwise made available, under the Agreement; and

(ii) the adoption and implementation of international standards.

II COPYRIGHT WORKS

Copyright belonging to the Parties or to their participants shall be accorded treatment consistent with the Berne Convention (Paris Act 1971).

III SCIENTIFIC LITERARY WORKS

Subject to Section IV, 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 this general rule, the following procedures shall apply:

1. In the case of publication by a Party or public bodies of that Party of scientific and technical journals, articles, reports, books, including video and software, arising from joint research pursuant to this Agreement, the other Party shall be entitled to a worldwide, non-exclusive, irrevocable, royalty-free licence to translate, reproduce, adapt, transmit and publicly distribute such works.

2. 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.

3. All copies of a copyright work to be publicly distributed and prepared under this provision shall indicate the names of the author or authors of the work unless an author or authors expressly declines or decline to be named. Copies shall also bear a clearly visible acknowledgement of the co-operative support of the Parties.

IV. UNDISCLOSED INFORMATION

A. Documentary undisclosed information

1. 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 into account, among other things, the following criteria:

(i) 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;

(ii) the actual or potential commercial value of the information by virtue of its secrecy; and

(iii) 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 the participants may in certain cases agree that, unless otherwise indicated, parts or all of the information provided, exchanged or created in the course of joint research pursuant to this Agreement may not be disclosed.

2. Each Party shall ensure that undisclosed information under this Agreement and its privileged nature is readily recognizable 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.

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

4. 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 authorized for the specific purposes of the joint research under way, provided that any such undisclosed information shall be disseminated only on conditions of confidentiality and shall be readily recognizable as such, as set out above.

5. 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 4 above. The Parties shall co-operate in developing procedures for requesting and obtaining prior written consent for such wider dissemination,

and each Party shall grant such approval to the extent permitted by its domestic policies, regulations and laws.

B. 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 the Agreement, 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.

C. 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 Subsections A or B above, it shall immediately inform the other Party. The Parties shall thereafter consult to define an appropriate course of action.

APPENDIX

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 IP, the TMP will normally address, among other things, ownership, protection, user rights for research and development 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.

[Letter from the Australian Minister for Industry, Technology and Regional Development, Canberra, to the Commissioner for External Economic Affairs and Commercial Policy of the Commission for the European Communities.]

Minister for Industry, Technology and Regional Development

Parliament House

Canberra ACT 2600

23 February 1994

The Right Honourable Sir Leon Brittan QC

Member of the Commission of the European Communities

Commissioner for External Economic Affairs and Commercial Policy

Dear Sir Leon:

I have the honour to refer to the Agreement relating to Scientific and Technical Co-operation between Australia and the European Community, done at Canberra on today's date.

In signing this Agreement it is the understanding of the Government of Australia that:

1. The reference in Article 10 to "territory" means, in the case of Australia, the land territories as well as the territorial sea, the exclusive economic zone and the continental shelf.

2. In respect of the Annex on the Dissemination and Utilization of Information and Management, Allocation and Exercise of Intellectual Property Rights, which forms an integral part of the Agreement:

(a) Paragraph 3 of Section I of the Annex does not impose an obligation on the Parties to change their respective domestic laws, but rather envisages that the Parties will use their best endeavours to ensure that rights to intellectual property are allocated in accordance with the principles set out in Section I of the Annex.

(b) Paragraph 1 of Section III applies only to those works in respect of which the Party or the public bodies of that Party own the copyright or are licensed to authorise further publication. The reference to "public bodies" does not, in the case of Australia, include bodies which are capable of owning property in their own right and which control the use of their own intellectual property. Any licence under this paragraph will only be used for the dissemination of information arising from joint research and not for commercial advantage. As well, the Parties will not exercise the licence in such a way as to prejudice any intellectual property rights of the participants.

Accept, Sir, the assurances of my highest consideration.

[Signed:]

PETER COOK

[\[1\]ATS 1972 No. 15](#) UKTS 1970 No. 52 (Cmnd. 4408); UNTS 828 p. 3; SD 12 p. 78; ILM 6 p. 782; TIAS 6932.

[\[2\]](#) Notes to this effect were exchanged at Brussels on 25 July 1994. The Agreement entered into force 25 July 1994.

[\[3\]](#) On signature, Sir Leon Brittan stated verbally that the Agreement did not prevent Member States of the European Community entering into bilateral agreements with Australia in this subject area.

[\[4\]](#) The indicative features of such TMPs are set out in the Appendix. [Footnote appeared in original text.]