

**AGREEMENT BETWEEN THE GOVERNMENT OF AUSTRALIA AND
THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA
ON THE TRANSFER OF NUCLEAR MATERIAL,
DONE AT CANBERRA ON 3 APRIL 2006
[2006] ATNIF 7**

and

**AGREEMENT BETWEEN THE GOVERNMENT OF AUSTRALIA AND
THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA
FOR COOPERATION IN THE PEACEFUL USES OF NUCLEAR ENERGY,
DONE AT CANBERRA ON 3 APRIL 2006
[2006] ATNIF 8**

Documents tabled on 8 August 2006:

National Interest Analysis for [2006] ATNIF 7 with consultation attachment [2006] ATNIA 29

National Interest Analysis for [2006] ATNIF 8 with consultation attachment [2006] ATNIA 30

Text of the proposed treaty action - [2006] ATNIF 7

Text of the proposed treaty action - [2006] ATNIF 8

Regulation Impact Statement for [2006] ATNIF 7 and [2006] ATNIF 8

Background Information:

Country political brief and country fact sheet

List of other treaties with China

List of treaties of the same type with other countries

NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY

SUMMARY PAGE

Agreement between the Government of Australia and the Government of the People's Republic of China for Cooperation in the Peaceful Uses of Nuclear Energy, done at Canberra on 3 April 2006 [2006] ATNIF 8

Nature and timing of proposed treaty action

1. It is proposed that Australia enter into a Nuclear Cooperation Agreement with the People's Republic of China. The Agreement does not replace any existing agreements. The Agreement was signed by the Hon Alexander Downer MP, Minister for Foreign Affairs, and China's Foreign Minister Mr Li Zhaoxing on 3 April 2006.
2. This Agreement is related to the Agreement with the Government of the People's Republic of China on the Transfer of Nuclear Material (Nuclear Material Transfer Agreement), also signed on 3 April 2006 by the Hon Alexander Downer MP, and China's Foreign Minister Mr Li Zhaoxing.
3. Pursuant to Article XVIII of the Agreement, the Agreement will enter into force thirty days after the date of the last notification by which Australia and China communicate to each other in writing that all domestic requirements for entry into force for this Agreement and the Nuclear Material Transfer Agreement have been completed. It is anticipated that Australia will advise China of this as soon as practicable after consideration by JSCOT of both this Agreement and the Nuclear Material Transfer Agreement.
4. Previous nuclear agreements have incorporated nuclear transfers (safeguards) and cooperation in a single agreement. China requested two agreements to reflect the allocation of responsibilities within the Chinese Government. This Agreement covers nuclear cooperation, including the transfer of nuclear-related material, equipment or technology. The other agreement covers transfer of nuclear material. The two agreements, read and applied together, have the same effect as previous Australian safeguards agreements, and would fully satisfy Australia's safeguards requirements. Some other safeguards agreements apply only to nuclear material transfers, with no specific provisions for cooperation. The Nuclear Material Transfer Agreement with China covers similar ground to these other transfer agreements.

Overview and national interest summary

5. The purpose of the proposed Agreement is to establish a broad framework for cooperation between Australia and China in relation to the peaceful uses of nuclear energy. The Agreement would allow for cooperation in peaceful uses of nuclear technology by establishing strict safeguards arrangements and conditions. The provisions of this Agreement are equivalent to those of Australia's bilateral nuclear agreements with the other nuclear-weapon states. The Agreement provides for collaboration across a broad range of peaceful applications of nuclear equipment and technology. Early areas of work may be in material science research at OPAL, the new research reactor at the Australian Nuclear Science and Technology Organisation (ANSTO) in Sydney. Other opportunities provided under the Agreement include collaborative projects in nuclear safeguards and security with the Australian Safeguards and Non-Proliferation Office (ASNO)

Reasons for Australia to take the proposed treaty action

6. The Government considers that the proposed Agreement with China would provide specific benefits to Australia, namely:

- creation of a formal framework for cooperation between Australia and China in relation to nuclear science and technology, enabling collaborative work in nuclear research; and
- provision for the transfer between Australia and China of material, equipment, components or technology, with requisite controls consistent with Australia's policies relevant to the prevention of proliferation of nuclear weapons.

7. More broadly, the proposed Agreement would contribute to strengthening Australia's ties with China. China is a growing major international market for Australian goods and services, and has a rapidly expanding nuclear energy sector.

Framework for cooperation

8. The Government expects that the proposed Agreement would lead to more substantive cooperation between Australia and China in nuclear science and technology, including possible uranium exploration. Any investments by Chinese corporations in mineral exploration and acquisitions in Australia would be subject to the normal requirements of Australia's Foreign Investment policies. Any uranium exploration venture would be subject to Australia's domestic requirements in relation to permission for such exploration. Areas of cooperation are likely to include research at ANSTO's OPAL reactor, which will provide a world class neutron beam science research capability. Such cooperation and the expansion of bilateral trade will contribute towards further enhancing Australia's relations with China.

Nuclear safeguards

9. This Agreement would ensure that safeguards obligations applicable to Australian Obligated Nuclear Material (AONM) are applied in accordance with the Nuclear Material Transfer Agreement. It would also ensure that appropriate safeguards are applied to material, equipment, components or technology transferred between the parties. Specifically, any nuclear material produced, processed or used in, or produced through the direct and major contribution of material, equipment, components or technology transferred between Australia and China (in accordance with this Agreement) would become nuclear material subject to the Nuclear Material Transfer Agreement.

Cooperating agencies

10. The proposed Agreement designates two authorities in Australia: ANSTO and ASNO, which would be responsible for the implementation of cooperation under the Agreement.

Obligations

11. The key obligations on both Parties are to cooperate in peaceful uses of nuclear energy and to ensure that no material, equipment, components or technology transferred under the proposed Agreement are ever used for, or diverted to, any military purpose including use in nuclear weapons, nuclear explosive devices or depleted uranium munitions.

12. Article I would require that any cooperation in the peaceful uses of nuclear energy would be undertaken under the terms of the Agreement. Such cooperation would include

collaboration in the transfer of nuclear material, which would be subject to the Nuclear Material Transfer Agreement, and the transfer of material, equipment, components or technology.

13. Article IV would oblige the Parties to apply the requirements of the Agreement to all nuclear material, equipment, components and technology transferred between Australia and China for peaceful non-explosive purposes, regardless of whether it is transferred directly or through a third country. Further, pursuant to Article IV, the terms of this Agreement as well as the Nuclear Material Transfer Agreement would be applied to any nuclear material produced, processed or used in, or produced through the direct and major contribution of material, equipment, components or technology transferred between Australia and China in accordance with this proposed Agreement.

14. Under Article V, the Parties would be obliged to develop cooperation in the peaceful uses of nuclear energy on the basis of equality and mutual benefit and in accordance with applicable laws in force in each country.

15. Article VII would oblige the Parties to conclude specific written instruments for each particular field of cooperation. In the absence of such an agreed specific written instrument, cooperation under the Agreement could not take place.

16. Under Article IX, material, equipment, components and technology would remain subject to the Agreement until certain specified conditions had been satisfied, namely, that the material, equipment, components or technology was no longer useable or had been transferred beyond the territorial jurisdiction of the Party, unless the Parties otherwise agree.

17. Article X would oblige the Parties to ensure that adequate physical protection measures, consistent with the current international standard, are applied to material, equipment, components and technology subject to the proposed Agreement within their jurisdiction, and while in transport until responsibility was properly transferred to another State, as appropriate.

18. Article XI would oblige each Party to prevent the transfer of material, equipment, components and technology subject to the proposed Agreement to a third party without first obtaining a peaceful use assurance and prior written consent from the other Party.

19. Article XIII would oblige each Party to respect the confidentiality requirements of the other Party.

20. Article XIV would oblige each Party to establish an Administrative Arrangement (AA) to ensure the maintenance of a system for control of material, equipment, components and technology subject to the proposed Agreement. A similar requirement exists in the proposed Nuclear Material Transfer Agreement and it is envisaged that there will be one AA covering the requirements of both Agreements. The AA would be of less than treaty status. It will utilise and mirror existing and well-established arrangements which we have in place with other bilateral transfer partners.

Implementation

21. The existing legislative framework in place in relation to nuclear transfer will be sufficient to provide for the terms of the proposed Agreement. However, it will be necessary to promulgate regulations pursuant to the *Nuclear Non-Proliferation (Safeguards) Act 1987* to

add the proposed Agreement to the list of ‘prescribed agreements’ under that Act, and to take similar action under the *Australian Radiation Protection and Nuclear Safety Act 1998*. No changes to the existing roles of the Commonwealth or the States and Territories will arise as a consequence of implementing the proposed Agreement.

Costs

22. For ASNO, the costs associated with the proposed Agreement would be limited to travel to China by ASNO officers to facilitate safeguards research and development. ASNO expects to be able to manage these costs within its Departmental (DFAT) allocation.

23. Cooperation by ANSTO would be funded from within that agency’s budget. The cost implications of any proposals for cooperation would be assessed before cooperation in any specific field was carried out pursuant to Article VII of the Agreement.

Regulation Impact Statement

24. The Office of Regulation Review (Productivity Commission) has reviewed the attached Regulation Impact Statement (RIS) and has advised that the RIS contains an adequate level of analysis and is suitable for tabling.

Future treaty action

25. Article XVII of the Agreement provides that the Agreement may be amended by agreement between the Parties. Such amendments would be subject to Australia’s domestic treaty processes before they entered into force. No future legally binding instruments connected with the proposed Agreement are envisaged at this stage.

26. No future legally binding instruments connected with the proposed Agreement are envisaged at this stage. As noted at paragraph 15 above, the Agreement contains provision for the conclusion of written instruments of less-than-treaty status regarding cooperation in particular areas. As noted at paragraph 20 above, the Agreement also provides for the conclusion of an Administrative Arrangement of less-than-treaty status, to address the details of implementing the controls on material, equipment, components and technology in the proposed Agreement. This provision, and the conclusion of such an Arrangement, is standard Australian practice where bilateral safeguards agreements are in place.

Withdrawal or denunciation

27. Article XVIII of this Agreement provides that it would remain in force for an initial period of thirty years. There is provision for either party to terminate the Agreement by written notification to the other party. This Agreement would terminate automatically if the Nuclear Material Transfer Agreement was terminated. Under Article XVIII, termination would not release either party from obligations in respect of material, equipment, components and technology transferred while the Agreement was in force. Any withdrawal by Australia would be subject to Australia’s domestic treaty processes.

Contact details

Nuclear Accounting and Control Section
Australian Safeguards and Non-Proliferation Office
Department of Foreign Affairs and Trade.

**Agreement between the Government of Australia and the Government of the People's
Republic of China for Cooperation in the Peaceful Uses of Nuclear Energy,
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CONSULTATION

1. The Agreement between the Government of Australia and the Government of the People's Republic of China for Cooperation in the Peaceful Uses of Nuclear Energy is unlikely to have any general impact on businesses or Government agencies in Australia.
2. States and Territories were consulted through the Standing Committee on Treaties at its meeting on 17 May 2006. No comments with respect to this treaty were registered by this committee.
3. Commonwealth agencies participated actively in the two rounds of negotiations (18-19 January and 28 February - 1 March), inter-departmental committee meetings on 10 and 22 February, and contributed to briefings to the Government. In particular, ANSTO chaired part of the negotiations on the Nuclear Cooperation Agreement. Other relevant Commonwealth agencies were briefed through the Nuclear Agencies Consultative Committee on 4 May 2006. No objections to the Agreements were raised in any of these fora.
4. There has been public consultation since consideration of a bilateral safeguards agreement with China was discussed in Senate Estimates on 17 February 2005. On 9 August 2005, Mr Downer issued a press release announcing that the Government had decided to proceed with negotiations. Immediately after the Agreement was signed (3 April 2006) it was published on the ASNO web site (www.asno.dfat.gov.au) along with comprehensive FAQs and answers. Public enquiries related to the Australian-China Nuclear Transfer Agreement and Nuclear Cooperation Agreement have been handled by ASNO, the North Asia Division (DFAT), and the Uranium Industry Section of the Department of Industry Tourism and Resources (DITR).
5. In the months following signature, some 90 enquiries have been received. These were primarily directed at the Nuclear Transfer Agreement (also signed on 3 April 2006), however as the application of the Nuclear Cooperation Agreement is linked to the Nuclear Transfer Agreement, the same statistics on feedback are quoted here. Approximately 10% of enquiries were positive or neutral. Relevant Government Departments replied to enquiries that sought information (approximately 50%). Rather than addressing the substance of the nuclear agreements, most correspondents raised concerns about human rights and freedom of expression in China. In responding, DFAT explained the Government's approach of pursuing human rights issues with China directly through frank discussion and practical cooperation. Where safeguards-related issues were raised, published materials were drawn on, including ASNO's annual reports, to explain the operation of the nuclear non-proliferation regime, the work of the International Atomic Energy Agency, and the practical application of nuclear safeguards in the transfer and use of nuclear material.

POLITICAL BRIEF ON THE PEOPLE'S REPUBLIC OF CHINA

1. The Australian Government pursues constructive relations with China on the basis of mutual respect and recognition both of our shared interests and our differences. China's importance to Australia has grown with China's increasing economic, political and strategic weight in the Asia-Pacific region and the global economy. Close ties have been cemented recently by a series of high level visits, including by Prime Minister Howard to China in June 2006 and May 2005, Premier Wen Jiabao to Australia in April 2006 and President Hu Jintao to Australia in October 2003. Central to Australia's approach to the relationship with China is the set of bilateral dialogues which have been established to advance cooperation while managing differences. Our dialogues cover aid, trade and economic cooperation, resources, defence, regional security and disarmament, human rights and consular matters.
2. Sensitive issues which require careful management include Taiwan and human rights. Australia adheres to a one-China policy, which means we do not recognise Taiwan as a country. But we support unofficial contacts with Taiwan, to promote our legitimate economic, trade and cultural interests there. Australia has consistently said cross-straits differences should be managed peacefully through dialogue. Our approach to human rights in China is constructive and based on dialogue rather than public confrontation. The annual Australia-China Human Rights Dialogue is an important forum for frank exchanges on human rights and for identifying areas where Australia can help China implement international human rights standards.
3. Australia enjoys strong and wide-ranging economic complementarities with China. The Trade and Economic Framework (TEF) signed in October 2003 provides a basis for the further development of the trade and economic relationship over the next decade. The TEF included a commitment by both Governments to undertake a joint Free Trade Agreement (FTA) feasibility study, which was completed in March 2005. On 18 April 2005, Prime Minister Howard and Premier Wen Jiabao of China agreed that Australia and China would commence negotiations on a FTA. Five rounds of negotiations have been held so far, the latest one taking place in Beijing from 22 to 24 May 2006. There will be an exchange of offers on goods (including agriculture) at the next round, scheduled for 4 to 7 September 2006.
4. China is Australia's second-largest merchandise trading partner and second largest merchandise export market. Total trade (including services) grew to \$41 billion in 2005, up from \$32 billion in 2004. Total exports grew to \$18.4 billion in 2005 – 42 per cent higher than the previous year. Resources (minerals and fuels) exports account for just over 60 per cent of merchandise exports to China. Australia is a competitive and highly reliable supplier of a wide range of resources. The commencement of LNG shipments from the North West Shelf to the Dapeng terminal in Guangdong in May 2006 has added a new dimension to this partnership, and will boost export earnings by up to \$25 billion over 25 years.
5. The Chinese community in Australia plays an important part of our people-to-people links with China, and high growth in education and tourism has bolstered these links. The latest census (2001) recorded 142,720 China-born persons in Australia an increase of 29 per cent from the 1996 census. Chinese (including regional dialects) is now the second most widely spoken language in Australia.



CHINA

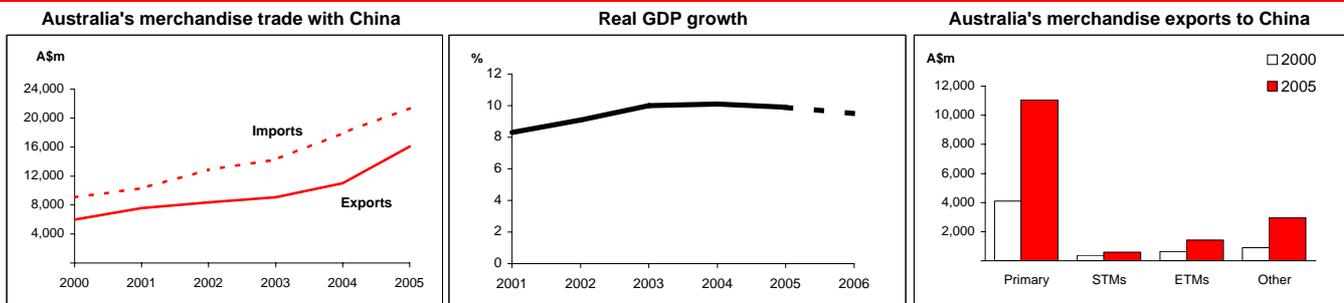
Fact Sheet

General information:

Fact sheets are updated biannually; May and September

Capital:	Beijing	Head of State:	
Surface area:	9,561 thousand sq km	Head of Government:	H.E. President Mr Hu Jintao
Official language:	Mandarin		
Population:	1,307.4 million (2005)		
Exchange rate:	A\$1 = 6.0427 Yuan (Jan 2006)		

Recent economic indicators:	2001	2002	2003	2004	2005(a)	2006(b)
GDP (US\$bn) (current prices):	1,324.8	1,453.8	1,641.0	1,931.6	2,224.8	2,529.6
GDP PPP (US\$bn) (c):	5,933.4	6,586.4	7,392.2	8,352.8	9,412.4	10,518.2
GDP per capita (US\$):	1,038	1,132	1,270	1,486	1,703	1,926
GDP per capita (US\$) (c):	4,649	5,127	5,720	6,425	7,204	8,010
Real GDP growth (% change YOY):	8.3	9.1	10.0	10.1	9.9	9.5
Current account balance (US\$m):	17,405	35,422	45,875	68,659	158,616	173,296
Current account balance (% GDP):	1.3	2.4	2.8	3.6	7.1	6.9
Goods & services exports (% GDP):	22.6	25.1	29.6	34.0	36.8	40.3
Inflation (% change YOY):	0.7	-0.8	1.2	3.9	1.8	2.0



Australia's trade relationship with China:

Australian merchandise trade with China, 2005:		Total share:	Rank:	Growth (yoy):
Exports to China (A\$m):	16,054	11.6%	2nd	45.8%
Imports from China (A\$m):	21,347	13.7%	2nd	19.1%
Total trade (exports + imports) (A\$m):	37,401	12.7%	2nd	29.3%

Major Australian merch. exports, 2005 (A\$m):		Major Australian merch. imports, 2005 (A\$m):	
Iron ore	5,721	Clothing	3,055
Wool	1,327	Computers	2,406
Copper ores	628	Toys, games & sporting goods	1,095
Coal	531	Telecommunications equipment	1,073

Australia's trade in services with China, 2004-05:		Total share:
Exports of services to China (A\$m):	2,311	6.3%
Imports of services from China (A\$m):	1,218	3.2%

Major Australian service exports, 2004-05 (A\$m):		Major Australian service imports, 2004-05 (A\$m):	
Education-related travel	1,506	Transportation	492
Personal travel excl. education	289	Personal travel excl. education	341

China's global merchandise trade relationships:

China's principal export destinations, 2005:			China's principal import sources, 2005:		
1	United States	21.4%	1	Japan	15.2%
2	Hong Kong	16.3%	2	Republic of Korea	11.6%
3	Japan	11.0%	3	Taiwan	11.3%
14	Australia	1.5%	9	Australia	2.5%

Compiled by the Market Information and Analysis Section, DFAT, using the latest data from the ABS, the IMF and various international sources.

(a) All recent data subject to revision; (b) IMF/EIU forecast figures; (c) PPP is purchasing power parity.

Bilateral treaties between Australia and China

Treaties in force

- Exchange of Notes constituting an Agreement between the United Kingdom and China annexed to a Treaty relating to Chinese Customs, Tariff etc
[1929] ATS 2
- Trade Agreement between the Government of Australia and the Government of the People's Republic of China
[1973] ATS 21
- Exchange of Notes constituting an Agreement between the Government of Australia and the Government of the People's Republic of China concerning the Registration of Trademarks
[1974] ATS 24
- Agreement (with Annexes) between the Government of Australia and the Government of the People's Republic of China concerning "The Exhibition of Archaeological Finds of the People's Republic of China"
[1976] ATS 13
- Exchange of Notes constituting an Agreement amending the Agreement concerning the Exhibition of Archaeological Finds of the People's Republic of China of 23 June 1976 ([1976] ATS 13)
[1977] ATS 32
- Exchange of Notes between Australia and the People's Republic of China constituting an Agreement concerning the Establishment of Consulates-General
[1978] ATS 18
- Agreement between the Government of Australia and the Government of the People's Republic of China on Cooperation in Science and Technology
[1980] ATS 14
- Agreement on Cultural Cooperation between the Government of Australia and the Government of the People's Republic of China
[1981] ATS 11
- Protocol on Economic Cooperation with the Government of the People's Republic of China
[1981] ATS 20
- Agreement between the Government of Australia and the government of the People's Republic of China on a Program of Technical Co-operation for Development
[1981] ATS 21
- Agreement between Australia and the People's Republic of China on the Reciprocal Exchange of Sites for Construction of Diplomatic Compounds
[1982] ATS 12
- Agreement between the Government of Australia and the Government of the People's Republic of China on Agricultural Co-operation
[1984] ATS 14

- Agreement between the Government of Australia and the Government of the People's Republic of China Relating to Civil Air Transport
[1984] ATS 20
THIS TREATY WILL BE SUPERCEDED WHEN THE NEW TREATY
[2004] ATNIF 2 ENTERS INTO FORCE
- Protocol between the Government of Australia and the Government of the People's Republic of China on a Program of Cooperation in Agricultural Research for Development
[1984] ATS 23
- Agreement on Economic and Technical Co-operation in the Iron and Steel Industry between the Government of Australia and the Government of the People's Republic of China
[1984] ATS 28
- Exchange of Notes constituting an Agreement between the Government of Australia and the Government of the People's Republic of China on the Establishment of additional Consulates-General in their Respective Countries
[1985] ATS 9
- Agreement between the Government of Australia and the Government of the Republic of the People's Republic of China for the Avoidance of Double Taxation of Income and Revenues Derived by Air Transport Enterprises and International Air Transport
[1986] ATS 31
- Exchange of Notes constituting an Agreement between the Government of Australia and the Government of the People's Republic of China. to amend the Trade Agreement of 24 July 1973
[1986] ATS 33
- Agreement between Australia and the People's Republic of China on the Reciprocal Encouragement and Protection of Investments
[1988] ATS 14
- Agreement between the Government of Australia and the Government of the People's Republic of China for the Protection of Migratory Birds and their Environment
[1988] ATS 22
- Agreement between the Government of Australia and the Government of the People's Republic of China for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income
[1990] ATS 45
- Exchange of Notes constituting an agreement to amend article 3 of the Agreement between the Government of Australia and the Government of the People's Republic of China on a Program of Technical Co-operation for Development of 2 October 1981
[1990] ATS 47
- Agreement concerning the Maintenance of the Consulate-General of Australia in the Hong Kong Special Administrative Region of the People's Republic of China
[1997] ATS 7

- Agreement between the Government of Australia and the Government of The People's Republic of China concerning the Continuation of Consular Functions by Australia in the Macau Special administrative Region of the People's Republic of China
[1999] ATS 33
- Agreement on Consular Relations between Australia and the People's Republic of China
[2000] ATS 26

Treaties not yet in force

- Agreement between the Government of Australia and the Government of the People's Republic of China relating to Air Services
[2004] ATNIF 2
- Agreement Between the Government of Australia and the Government of the People's Republic of China on the Transfer of Nuclear Material
[2006] ATNIF 7
- Agreement Between the Government of Australia and the Government of the People's Republic of China for Cooperation in the Peaceful Uses of Nuclear Energy
[2006] ATNIF 8
- Agreement with the People's Republic of China on Mutual Legal Assistance in Criminal Matters
[2006] ATNIF 9

**LIST OF AUSTRALIA'S BILATERAL NUCLEAR SAFEGUARDS AGREEMENTS,
WITH DATE OF ENTRY INTO FORCE**

Republic of Korea – [1979] ATS 5	2 May 1979
United Kingdom – [1979] ATS 11	24 July 1979
Finland – [1980] ATS 4	9 February 1980
United States – [1981] ATS 4	16 January 1981
Canada – [1981] ATS 8	9 March 1981
Sweden – [1981] ATS 13	22 May 1981
France – [1981] ATS 23	12 September 1981
Euratom – [1982] ATS 26	15 January 1982
Philippines – [1982] ATS 25	11 May 1982
Japan – [1982] ATS 22	17 August 1982
Switzerland – [1988] ATS 15	27 July 1988
Egypt – [1989] ATS 14	2 June 1989
Russia – [1990] ATS 43	24 December 1990
Mexico – [1992] ATS 32	17 July 1992
New Zealand – [2000] ATS 16	1 May 2000
Czech Republic – [2002] ATS 8	17 May 2002
United States (covering supply to Taiwan) – [1989] ATS 31	17 May 2002
Hungary – [2002] ATS 10	15 June 2002
Argentina – [2005] ATS 5	12 January 2005