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Text of EC, Japan Accord on Nuclear Fusion Research

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Science & Technology Europe

Text of EC, Japan Accord on Nuclear Fusion Research

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NUCLEAR ENGINEERING

Text of EC, Japan Accord on Nuclear Fusion Research

36980139 Luxembourg OFFICIAL JOURNAL OF THE EUROPEAN COMMUNITIES in English Vol 32, No L57, 28 Feb 89 pp 62-76

[Text]

COMMISSION

COMMISSION DECISION

of 10 February 1989

concerning the conclusion of an Agreement for cooperation between the European Atomic Energy Community and the Government of Japan in the field of controlled thermonuclear fusion, by the Commission for and on behalf of the Community

(89/149/EURATOM)

THE COMMISSION OF THE EUROPEAN COMMUNITIES.

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular the second paragraph of Article 101 thereof.

Whereas the Council, in its Decision of 23 January 1989 approved the conclusion of the Agreement for cooperation between the European Atomic Energy Community and the Government of Japan in the field of controlled thermonuclear fusion.

HAS DECIDED AS FOLLOWS:

Article 1

The Agreement for cooperation between the European Atomic Energy Community and the Government of Japan in the field of controlled thermonuclear fusion, shall be concluded on behalf of the Community.

The text of the Agreement for cooperation is appended to this Decision.

Article 2

The President of the Commission is empowered to designate the person authorized to sign the Agreement for cooperation for the purpose of committing the European Atomic Energy Community.

Done at Brussels, 10 February 1989.

For the Commission,

Filippo M. PANDOLFI

Vice-President

AGREEMENT

for cooperation between the European Atomic Energy Community and the Government of Japan in the field of controlled thermonuclear fusion

THE EUROPEAN ATOMIC ENERGY COMMUNITY (hereinafter referred to as 'EURATOM'), and

THE GOVERNMENT OF JAPAN,

collectively referred to as 'the Parties',

NOTING the existing cooperation in the field of controlled thermonuclear fusion between the Parties, and wishing to maintain and strengthen cooperation in this field,

DESIRING to facilitate the achievement of fusion energy as a potentially environmentally acceptable, economically competitive, and virtually limitless source of energy.

RECOGNIZING the commonality and complementarity of the Parties' programs in fusion energy research and development,

TAKING INTO ACCOUNT the accomplishments of, and opportunities for, collaboration under the International Energy Agency of the Organisation for Economic Cooperation and Development.

HAVE AGREED AS FOLLOWS:

Article I

The objective of this Agreement is to maintain and intensify cooperation between the Parties in the areas covered by their respective fusion programs, on the basis of equality and mutual benefit, in order to develop the scientific understanding and technological capability underlying a fusion power system.

Article II

Cooperation under this Agreement may be undertaken in the following areas:

- (a) Tokamaks;
- (b) Alternative lines to tokamaks;
- (c) Fusion technology;
- (d) Plasma physics; and
- (e) Other areas as may be mutually agreed.

as specified in Annexes I, II and III which form an integral part of this Agreement.

Article III

Cooperation in the areas referred to in Article II may include the following activities:

- (a) Exchange and provision of information;
- (b) Exchange of personnel;
- (c) Meetings of various forms;
- (d) Exchange and provision of samples, materials, instruments, and components;
- (e) Execution of joint studies, projects or experiments; and
- (f) Other activities as may be mutually agreed,

as specified in Annexes I, II and III

Article IV

1. The cooperation shall be conducted in accordance with Annexes I, II and III, by EURATOM or any entity or organization associated with it within the framework of the EURATOM Fusion Program or the Joint European Torus (JET) Joint Undertaking, designated by EURATOM for this purpose, and on the Japanese side by the Monbusho, the Ministry of International Trade and Industry and the Science and Technology Agency or any entity or organization designated by them for this purpose.

- 2.(a) The Annexes shall continue in force as long as this Agreement remains in force, unless terminated earlier in accordance with subparagraph (b) below.
- (b) Each Annex may be terminated at any time at the discretion of either party, upon six months' advance notification in writing by the party seeking to terminate the Annex. Such termination shall be without prejudice to the rights that may have accrued under each Annex up to the date of its termination.
- (c) All activities not completed at the expiry of each Annex may be continued until their completion under the terms of the Annex concerned.
- (d) In the event that, during the period of the Agreement, the nature of either party's fusion program should change substantially, whether this be by substantial expansion, reduction or transformation, or by an amalgamation of major elements with the fusion program of a third party, either party shall have the right to request revisions in the scope and terms of the Annexes concerned.

Article V

1. The Parties shall establish a Coordinating Committee to facilitate the coordination and implementation of cooperative activities under this Agreement. Each Party shall appoint an equal number of members to the Coordinating Committee and nominate one of its appointed members as the head of its delegation.

2. The Coordinating Committee shall meet annually, alternately in Europe and in Japan, or at other agreed times and places. The head of the delegation of the host Party shall chair the meeting.

3. The functions of the Coordinating Committee shall include:

- (a) reviewing and monitoring the progress of cooperative activities;
- (b) exchanging information and views on scientific and technological policy issues; and
- (c) discussing future cooperative activities.

Article VI

Treatment of information, industry property and copyright in connection with the cooperative activities under this Agreement is provided in Annexes I, II and III. These provisions are identical in all the Annexes.

Article VII

Nothing in this Agreement shall be construed to prejudice existing or future arrangements for cooperation between the Parties.

Article VIII

- 1. Performance of the Parties under this Agreement shall be subject to the availability of appropriated funds.
- 2. Cooperation under this Agreement shall be in accordance with the laws and regulations applicable in the respective countries and to EURATOM.
- 3. Each Party shall use its best endeavours, within the framework of the applicable laws, to facilitate the accomplishment of formalities involved in the movement of persons, the import of materials and equipment and the transfer of currency, which shall be required to conduct the cooperation.
- 4. Compensation for damages incurred during the implementation of this Agreement shall be in accordance with the laws applicable in the respective countries and to EURATOM.

Article IX

All questions related to this Agreement will be settled by mutual consultations of the Parties.

Article X

1. This Agreement shall enter into force on the date of signature thereof. It shall remain in force for three years and shall continue in force thereafter unless terminated by either Party at the end of the initial three-year period

or at any time thereafter by giving to the other Party at least six months' written advance notice of its intention to terminate this Agreement.

2. The termination of this Agreement shall not affect the carrying-out of any project or program undertaken under this Agreement and not fully executed at the time of termination of this Agreement.

3. The termination of this Agreement or its Annexes shall not affect rights and obligations under Article VI or any agreement made in accordance with Article VI.

Article XI

1. This Agreement shall apply, in so far as EURATOM is concerned, 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. Whenever in this Agreement the words 'country', 'entity', 'organization' or 'national' are used with reference to EURATOM, they shall be understood to mean or to refer to the Member States of EURATOM as well as to the Kingdom of Sweden and the Swiss Confederation which are both associated with the EURATOM Fusion Program and represented in the JET Joint Undertaking.

Done at Brussels on the twentieth day of February 1988, in duplicate in the English and Japanese languages, each version being equally authentic.

For the European Atomic Energy Community, Filippo M. PANDOLFI

For the Government of Japan, Munioki DATE, Ambassador of Japan in the European Communities

ANNEX I

Pursuant to Article IV of this Agreement, the Parties hereby establish the following arrangements for specific implementing procedures and details for a program of cooperation in the area of fusion research and development between EURATOM and the Monbusho of Japan (Monbusho) (hereinafter in this Annex referred to as 'the cooperation').

1. EURATOM and Monbusho (hereinafter jointly referred to as 'the implementing agencies') shall each appoint a contact person who is responsible for the coordination of the cooperation and for reporting to the Coordinating Committee referred to in Article V of this Agreement.

2. The implementing agencies may designate appropriate national universities and research institutions under their jurisdiction or associated with them (hereinafter referred to as 'designees'), with the consent of the designees, to cooperate in the implementation of the cooperation.

3. The cooperation may be undertaken in the following area:

3.1. Tokamaks;

3.2. Alternative lines to tokamaks including inertial confinement;

3.3. Fusion technology;

3.4. Plasma theory and applied plasma physics; and

3.5. Other areas as may be mutually agreed by the implementing agencies.

4.1. The cooperation may include the following activities (hereinafter referred to as 'cooperative activities'):

4.1.1. Exchange and provision of scientific and technical information;

4.1.2. Exchange of scientists for participation in research, development, analysis, design, planning and experimental activities;

4.1.3. Holding of seminars and other meetings;

4.1.4. Short-term visits by scientists;

4.1.5. Exchange and provision of equipment, instruments and materials for testing; and

4.1.6. Other activities as may be mutually agreed by the implementing agencies.

4.2. When necessary, any specific details and procedures to implement activities listed in subparagraphs 4.1.1. to 4.1.5. may be determined through consultations or auxiliary arrangements between the implementing agencies or the designees. Specific terms and conditions to implement activities listed in subparagraph 4.1.6. shall be determined through written agreement between the implementing agencies.

5. All costs from the cooperation shall be borne by the implementing agency or the designee which incurs them unless otherwise specifically agreed in writing by the implementing agencies.

6.1. The implementing agencies shall support the widest possible dissemination of information which they have the right to disclose and which is either in their possession or available to them, and is provided or

exchanged under the cooperation subject to the need to protect proprietary information, to copyright restrictions, and to the provisions of paragraph 8.

Upon publication of such information, it shall be made clear that the information was obtained under the cooperation.

6.2. Proprietary information shall be treated as follows:

6.2.1. Definitions

The term 'proprietary information' means scientific or technical data, results or methods of research and development, and any other information intended to be provided or exchanged under the cooperation, such as know-how, information directly related to inventions and discoveries as referred to in paragraph 8, technical, commercial or financial information, provided that it is appropriately marked or considered as such in accordance with subparagraph 6.2.2 and:

- (a) Is not generally known or publicly available from other sources;
- (b) Has not previously been made available by the owner to others without obligation concerning its confidentiality; and
- (c) Is not already in the possession of the receiving implementing agency or its designees without obligation concerning its confidentiality.

6.2.2. Procedures

- i) An implementing agency or its receiving proprietary information under the cooperation shall respect the privileged nature thereof. Any document which contains proprietary information shall be clearly marked by the disseminating implementing agency or its designees with the following (or substantially similar) restrictive provision;

This document contains proprietary information furnished in confidence under Annex I to the Agreement for Cooperation between the European Atomic Energy Community and the Government of Japan in the field of controlled thermonuclear fusion, dated 20 February 1989 and shall not be disseminated outside EURATOM and Monbusho, their contractors, licencees and the designees without the prior approval of...

This notice shall be marked on any reproduction of this document, in whole or in part. These limitations shall automatically terminate when this information is disclosed by the owner without restriction.'

- ii) Proprietary information received in confidence under the cooperation may be disseminated by the receiving implementing agency or its designees to:

- (a) Persons within or employed by the receiving implementing agency or by other concerned government departments and agencies or by the designees in the country of the receiving implementing agency;
- (b) Contractors or subcontractors of the receiving implementing agency or its designees in the country of the receiving implementing agency for use only within the framework of their contracts with the receiving implementing agency or its designees in work relating to the subject matter of the proprietary information;

provided that any proprietary information so disseminated shall be marked with a restrictive provision substantially identical to that appearing in point (i).

- iii) With the prior written consent of the implementing agency providing proprietary information under the cooperation, the receiving implementing agency may disseminate such proprietary information more widely than otherwise permitted in the foregoing point (ii). The implementing agencies shall cooperate with each other in developing procedures for requesting and obtaining prior written consent for such wider dissemination, and each implementing agency will grant such approval to the extent permitted by the laws and regulations applicable in the respective countries and to EURATOM and by policies of the Parties.

6.3. If one of the implementing agencies becomes aware that it or its designees will be, or may reasonably be expected to become, unable to meet the restrictions and conditions of dissemination in this paragraph, it shall immediately inform the other implementing agency. The implementing agencies shall thereafter consult to define as appropriate course of action.

6.4. Information arising from seminars, workshops, and other meetings, the assignment of staff, use of facilities and exchange of equipment arranged under the cooperation shall be treated by the implementing agencies and their designees according to the principles specified in this paragraph, provided that no proprietary information orally communicated shall be subject to the limited disclosure requirements of the cooperation unless the individual communicating such information places the recipient on notice as to the proprietary nature of the information communicated.

7. The transmitting implementing agency or its designees in its relation with the receiving implementing agency or its designees does not warrant the suitability of any information transmitted for any particular use or application.

- 8.1. With respect to any invention or discovery made or conceived in the execution of the cooperation, the implementing agencies will take all necessary steps within the framework of the applicable laws and regulations with a view to realizing the following.
- 8.1.1. Where the invention or discovery is made or conceived by personnel (the inventor) of either implementing agency (the assigning agency) or its designees or their contractors while assigned to the other implementing agency (the receiving agency) or its designees or their contractors in connection with exchanges of scientists, engineers and other specialists:
- i) The receiving agency or its designees shall acquire all rights, title and interest in and to any such invention or discovery in its own country and in third countries; and
 - ii) The assigning agency or its designees or the inventor shall acquire all rights, title and interest in and to any such invention or discovery in its own country.
- 8.1.2. In cases to which subparagraph 8.1.1. does not apply and where the invention or discovery is made or conceived by personnel (the inventor) of either implementing agency or its designees or their contractors as a direct result of employing information which has been communicated to them under the cooperation by the other implementing agency or its designees or their contractors or communicated during seminars or other joint meetings, the implementing agency or its designees or their contractors whose personnel make the invention or the inventor shall acquire all rights, title, and interest in and to such invention or discovery in all countries.
- 8.1.3. Either the implementing agency or its designees or their contractors or the inventor, whichever of them owns the invention referred to in subparagraphs 8.1.1. and 8.1.2. shall license such invention to the other implementing agency, its designees, its government and the nationals of its country designated by it, upon request of the other implementing agency or its designees on reasonable terms and conditions.
- 8.1.4. With regard to industrial property rights related to inventions or discoveries resulting from cooperative activities other than exchange of personnel or information, the implementing agencies or the designees shall, prior to commencing such cooperative activities, decide on an appropriate distribution of such rights taking into consideration the benefits, rights and contribution of the implementing agencies or the designees.
- 8.2. The provisions of subparagraph 8.1 shall apply *mutatis mutandis* to the protection of utility model and of design.
- 8.3. Each implementing agency or its designees shall assume the responsibility to pay awards or compensation required to be paid to its own employees or nationals of respective countries in accordance with the applicable laws. Each implementing agency or its designees shall, without prejudice to any rights of inventors under the applicable laws, take all necessary steps to provide the cooperation of its inventors required to implement the provisions of this paragraph.
9. Copyrights of the implementing agencies or the designees shall be accorded treatment consistent with the Universal Copyright Convention as revised at Paris on 24 July 1971. As to copyrights on materials within the scope of subparagraph 6.1. owned or controlled by either implementing agency or its designees, that implementing agency or its designees shall make efforts to grant to the other implementing agency or its designees a license to reproduce or translate copyrighted material.
10. With respect to the exchange of staff under the cooperation, the following provisions shall apply.
- 10.1. Whenever an exchange of staff is contemplated under the cooperation, each implementing agency or its designees shall ensure that qualified staff are selected for assignment to the other implementing agency or its designees.
 - 10.2. Each such assignment of staff shall be the subject of a separate assignment agreement between the implementing agencies or the designees.
 - 10.3. Each implementing agency or its designees shall be responsible for the salaries, insurance and allowances to be paid to its staff.
 - 10.4. Unless otherwise agreed, the sending implementing agency or its designees shall pay for the travel and living expenses of its staff while on assignment.
 - 10.5. The receiving implementing agency or its designees shall arrange for adequate accommodation for the assigned staff and their families on a mutually agreeable reciprocal basis.
 - 10.6. The receiving implementing agency or its designees shall provide all necessary assistance to the assigned staff and their families as regards administrative formalities (travel arrangements, etc).

- 10.7. The assigned staff of the sending implementing agency or its designees shall conform to the general and special rules of work and safety regulations in force at the host establishment, or as agreed in a separate assignment agreement.
11. In the event that equipment, instruments, materials or necessary spare parts (hereinafter jointly referred to as 'equipment, etc.') are to be exchanged or provided by one implementing agency or its designees to the other implementing agency or its designees, the following provisions shall apply covering the shipment and use of such equipment, etc.
 - 11.1. The sending implementing agency or its designees shall supply as soon as possible a detailed list of the equipment, etc. to be provided together with the relevant specifications and technical and informational documentation.
 - 11.2. Equipment, etc. provided by the sending implementing agency or its designees shall remain their property and shall be returned to the sending implementing agency or its designees upon completion of the mutually agreed activity unless otherwise agreed.
 - 11.3. Equipment, etc. shall be brought into operation at the host establishment only by mutual agreement between the implementing agencies or the designees.
 - 11.4. The receiving implementing agency or its designees shall provide the necessary premises for the equipment, etc. and shall provide for electrical power, water, gas, etc. in accordance with technical requirements which shall be mutually agreed by the implementing agencies or the designees.
 - 11.5. Unless otherwise agreed, responsibility for the transport of the equipment, etc. from the sending implementing agency or its designees to their ultimate destination in the country of the receiving implementing agency or its designees and return, and for their safekeeping and insurance *en route*, together with expenses relating thereto shall be undertaken by the sending implementing agency or its designees.
 - 11.6. The receiving implementing agency or its designees shall notify the customs authorities that it considers the equipment, etc. provided by the sending implementing agency or its designees for carrying out mutually agreed activities to be of a scientific character and not of a commercial character.

ANNEX II

Pursuant to Article IV of this Agreement, the Parties hereby establish the following arrangements for specific implementing procedures and details for a program of

cooperation in the area of fusion research and development between EURATOM and the Ministry of International Trade and Industry of Japan (MITI) (hereinafter in this Annex referred to as 'the cooperation').

1. EURATOM and MITI (hereinafter jointly referred to as 'the implementing agencies') shall each appoint a contact person who is responsible for the coordination of the cooperation and for reporting to the coordinating Committee referred to in Article V of this Agreement.
2. The implementing agencies may designate their attached or associated institutes (hereinafter referred to as 'designees'), with the consent of the designees, to cooperate in the implementation of the cooperation.
3. The cooperation may be undertaken in the following areas:
 - 3.1. Tokamaks, including the projects of present generation and activities related to those of the next generation;
 - 3.2. Alternative lines to tokamaks including inertial confinement and reversed field pinch;
 - 3.3. Fusion technology including plasma engineering;
 - 3.4. Plasma theory and applied plasma physics; and
 - 3.5. Other areas as may be mutually agreed by the implementing agencies.
4. The cooperation may include the following activities (hereinafter referred to as 'cooperative activities'):
 - 4.1.1. Exchange and provision of information and data on scientific and technical activities, developments, practices and results, and on program policies and plans;
 - 4.1.2. Exchange of scientists, engineers and other specialists for agreed periods of time in order to participate in experiments, analysis, design and other research and development activities;
 - 4.1.3. Meetings of various forms to discuss and exchange information on scientific and technological aspects of general or specific subjects and to identify cooperative actions;
 - 4.1.4. Exchange and provision of samples, materials, instruments and components for experiments, testing and evaluation;
 - 4.1.5. Conduct of joint studies, projects or experiments including their joint design, construction and operation; and

4.1.6. Other activities as may be mutually agreed by the implementing agencies.

4.2. When necessary, any specific details and procedures to implement activities listed in subparagraphs 4.1.1. to 4.1.5. may be determined through consultations or auxiliary arrangements between the implementing agencies or the designees. Specific terms and conditions necessary to implement activities listed in subparagraph 4.1.6. shall be determined through written agreement between the implementing agencies.

5. All costs resulting from the cooperation shall be borne by the implementing agency or the designee which incurs them unless otherwise specifically agreed in writing by the implementing agencies.

6.1. The implementing agencies shall support the widest possible dissemination of information which they have the right to disclose and which is either in their possession or available to them, and is provided or exchanged under the cooperation subject to the need to protect proprietary information, to copyright restrictions, and to the provisions of paragraph 8.

Upon publication of such information, it shall be made clear that the information was obtained under the cooperation.

6.2. Proprietary information shall be treated as follows:

6.2.1. Definitions

The term 'proprietary information' means scientific or technical data, results or methods of research and development, and any other information intended to be provided or exchanged under the cooperation, such as know-how, information directly related to inventions and discoveries as referred to in paragraph 8, technical, commercial or financial information, provided that it is appropriately marked or considered as such in accordance with subparagraph 6.2.2. and;

- a) Is not generally known or publicly available from other sources;
- b) Has not previously been made available by the owner to others without obligation concerning its confidentiality; and
- c) Is not already in the possession of the receiving implementing agency or its designees without obligation concerning its confidentiality.

6.2.2. Procedures

- i) An implementing agency or its designees receiving proprietary information under the cooperation shall respect the privileged nature thereof. Any document which contains proprietary information shall be

clearly marked by the disseminating implementing agency or its designees with the following (or substantially similar) restrictive provision:

'This document contains proprietary information furnished in confidence under Annex II to the Agreement for Cooperation between the European Atomic Energy Community and the Government of Japan in the field of controlled thermonuclear fusion, dated 20 February 1989 and shall not be disseminated outside EURATOM and MITI, their contractors, licensees and the designees without the prior approval of...

This notice shall be marked on any reproduction of this document, in whole or in part. These limitations shall automatically terminate when this information is disclosed by the owner without restriction.'

ii) Proprietary information received in confidence under the cooperation may be disseminated by the receiving implementing agency or its designees to:

a) Persons within or employed by the receiving implementing agency or by other concerned government departments and agencies or by the designees in the country of the receiving implementing agency;

b) Contractors or subcontractors of the receiving implementing agency or its designees in the country of the receiving implementing agency for use only within the framework of their contracts with the receiving implementing agency or its designees in work relating to the subject matter of the proprietary information;

provided that any proprietary information so disseminated shall be marked with a restrictive provision substantially identical to that appearing in point (i).

iii) With the prior written consent of the implementing agency providing proprietary information under the cooperation, the receiving implementing agency may disseminate such proprietary information more widely than otherwise permitted in the foregoing point (ii). The implementing agencies shall cooperate with each other in developing procedures for requesting and obtaining prior written consent for such wider dissemination, and each implementing agency will grant such approval to the extent permitted by the laws and regulations applicable in the respective countries and to EURATOM and by policies of the Parties.

6.2.3. If one of the implementing agencies becomes aware that it or its designees will be, or may reasonably be expected to become, unable to meet the restrictions and conditions of dissemination in this paragraph, it shall immediately inform the other implementing agency. The implementing agencies shall thereafter consult to define an appropriate course of action.

- 6.2.4. Information arising from seminars, workshops, and other meetings, the assignment of staff, use of facilities and exchange of equipment arranged under the cooperation shall be treated by the implementing agencies and their designees according to the principles specified in this paragraph provided that no proprietary information orally communicated shall be subject to the limited disclosure requirements of the cooperation unless the individual communicating such information places the recipient on notice as to the proprietary nature of the information communicated.
7. The transmitting implementing agency or its designees in its relation with the receiving implementing agency or its designees does not warrant the suitability of any information transmitted for any particular use or application.
- 8.1. With respect to any invention or discovery made or conceived in the execution of the cooperation, the implementing agencies will take all necessary steps within the framework of the applicable laws and regulations with a view to realizing the following.
- 8.1.1. Where the invention or discovery is made or conceived by personnel (the inventor) of either implementing agency (the assigning agency) or its designees or their contractors while assigned to the other implementing agency (the receiving agency) or its designees or their contractors in connection with exchanges of scientists, engineers and other specialists:
- i) The receiving agency or its designees shall acquire all rights, title and interest in and to any such invention or discovery in its own country and in third countries; and
 - ii) The assigning agency or its designees or the inventor shall acquire all rights, title and interest in and to any such invention or discovery in its own country.
- 8.1.2. In cases to which subparagraph 8.1.1. does not apply and where the invention or discovery is made or conceived by personnel (the inventor) of either implementing agency or its designees or their contractors as a direct result of employing information which has been communicated to them under the cooperation by the other implementing agency or its designees or their contractors or communicated during seminars or other joint meetings, the implementing agency or its designees or their contractors whose personnel make the invention or the inventor shall acquire all rights, title and interest in and to such invention or discovery in all countries.
- 8.1.3. Either the implementing agency or its designees or their contractors or the inventor, whichever of them owns the invention referred to in subparagraphs 8.1.1. and 8.1.2. shall license such invention to the other implementing agency, its designees, its government and the nationals of its country designated by it, upon request of the other implementing agency or its designees on reasonable terms and conditions.
- 8.1.4. With regard to industrial property rights related to inventions or discoveries resulting from cooperative activities other than exchange of personnel or information, the implementing agencies or the designees shall, prior to commencing such cooperative activities, decide on an appropriate distribution of such rights taking into consideration the benefits, rights and contribution of the implementing agencies or the designees.
- 8.2. The provisions of the subparagraph 8.1. shall apply *mutatis mutandis* to the protection of utility model and of design.
- 8.3. Each implementing agency or its designees shall assume the responsibility to pay awards or compensation required to be paid to its own employees or nationals of respective countries in accordance with the applicable laws. Each implementing agency or its designees shall, without prejudice to any rights of inventors under the applicable laws, take all necessary steps to provide the cooperation of its inventors required to implement the provisions of this paragraph.
9. Copyrights of the implementing agencies or the designees shall be accorded treatment consistent with the Universal Copyright Convention as revised at Paris on 24 July 1971. As to copyrights on materials within the scope of subparagraph 6.1. owned or controlled by either implementing agency or its designees, that implementing agency or its designees shall make efforts to grant to the other implementing agency or its designees a license to reproduce or translate copyrighted material.
10. With respect to the exchange of staff under the cooperation, the following provisions shall apply.
- 10.1. Whenever an exchange of staff is contemplated under the cooperation, each implementing agency or its designees shall ensure that qualified staff are selected for assignment to the other implementing agency or its designees.
- 10.2. Each such assignment of staff shall be the subject of a separate assignment agreement between the implementing agencies or the designees.

- 10.3. Each implementing agency or its designees shall be responsible for the salaries, insurance and allowances to be paid to its staff.
- 10.4. Unless otherwise agreed, the sending implementing agency or its designees shall pay for the travel and living expenses of its staff while on assignment.
- 10.5. The receiving implementing agency or its designees shall arrange for adequate accommodation for the assigned staff and their families on a mutually agreeable reciprocal basis.
- 10.6. The receiving implementing agency or its designees shall provide all necessary assistance to the assigned staff and their families as regards administrative formalities (travel arrangement, etc).
- 10.7. The assigned staff of the sending implementing agency or its designees shall conform to the general and special rules of work and safety regulations in force at the host establishment, or as agreed in a separate assignment agreement.
11. In the event that equipment, instruments, materials or necessary spare parts (hereinafter jointly referred to as 'equipment, etc') are to be exchanged or provided by one implementing agency or its designees, the following provisions shall apply covering the shipment and use of such equipment, etc.
 - 11.1. The sending implementing agency or its designees shall supply as soon as possible a detailed list of equipment, etc, to be provided together with the relevant specification and technical and informational documentation.
 - 11.2. Equipment, etc, provided by the sending implementing agency or its designees shall remain their property and shall be returned to the sending implementing agency or its designees upon completion of the mutually agreed activity unless otherwise agreed.
 - 11.3. Equipment, etc, shall be brought into operation at the host establishment only by mutual agreement between the implementing agencies or the designees.
 - 11.4. The receiving implementing agency or its designees shall provide the necessary premises for the equipment, etc, and shall provide for electrical power, water, gas, etc, in accordance with technical requirements which shall be mutually agreed by the implementing agencies or the designees.
 - 11.5. Unless otherwise agreed, responsibility for the transport of the equipment, etc, from the sending implementing agency or its designees to their ultimate destination in the country of the receiving

implementing agency or its designees and return and for their safekeeping and insurance *en route*, together with expenses relating thereto shall be undertaken by the sending implementing agency or its designees.

- 11.6. The receiving implementing agency or its designees shall notify the customs authorities that it considers the equipment, etc, provided by the sending implementing agency or its designees for carrying out mutually agreed activities to be of a scientific and not of a commercial character.

ANNEX III

Pursuant to Article IV of this Agreement, the Parties hereby establish the following arrangements for specific implementing procedures and details for a program of cooperation in the area of fusion research and development between EURATOM and the Science and Technology Agency of Japan (STA) (hereinafter in this Annex referred to as 'the cooperation').

1. EURATOM and STA (hereinafter jointly referred to as 'the implementing agencies') shall each appoint a contact person who is responsible for the coordination of the cooperation and for reporting to the Coordinating Committee referred to in Article V of this Agreement.
2. The implementing agencies may designate official institutions whose annual budgets and operating plans are approved by the head of the implementing agency respectively or its attached or associated institutes (hereinafter referred to as 'Designees') with the consent of the designees, to cooperate in the implementation of the cooperation.
3. The cooperation may be undertaken in the following areas:
 - 3.1. Tokamaks, including the large projects of the present generation (including JET and JT-60) and activities related to those of the next generation;
 - 3.2. Alternative lines to tokamaks;
 - 3.3. Fusion technology;
 - 3.4. Plasma theory and applied plasma physics; and
 - 3.5. Other areas as may be mutually agreed by the implementing agencies.
- 4.1. The cooperation may include the following activities (hereinafter referred to as 'cooperative activities'):
 - 4.1.1. Exchange and provision of information and data on scientific and technical activities, development, practices and results, and on program policies and plans;

- 4.1.2. Exchange of scientists, engineers and other specialists for agreed periods of time in order to participate in experiments, analysis, design and other research and development actions;
 - 4.1.3. Meetings of various forms to discuss and exchange information on scientific and technological aspects of general or specific subjects and to identify cooperative actions;
 - 4.1.4. Exchange and provision of samples, materials, instruments and components for experiments, testing and evaluation;
 - 4.1.5. Conduct of joint studies, projects or experiments including their joint design, construction and operation; and
 - 4.1.6. Other activities as may be mutually agreed by the implementing agencies.
- 4.2. When necessary, any specific details and procedures to implement activities listed in subparagraphs 4.1.1. to 4.1.5. may be determined through consultations or auxiliary arrangements between the implementing agencies or the designees. Specific terms and conditions necessary to implement activities listed in subparagraph 4.1.6. shall be determined through written agreement between the implementing agencies.
5. All costs resulting from cooperation shall be borne by the implementing agency or the designees which incurs them unless otherwise specifically agreed in writing by the implementing agencies.
- 6.1. The implementing agencies shall support the widest possible dissemination of information which they have the right to disclose and which is either in their possession or available to them, and is provided or exchanged under the cooperation subject to the need to protect proprietary information, to copyright restrictions, and to the provisions of paragraph 8.

Upon publication of such information, it shall be made clear that the information was obtained under the cooperation.

6.2. Proprietary information shall be treated as follows:

6.2.1. Definitions

The term 'proprietary information' means scientific or technical data, results or methods of research and development, and any other information intended to be provided or exchanged under the cooperation, such as know-how, information directly related to inventions and discoveries as referred to in paragraph 8, technical, commercial or financial information, provided that it is appropriately marked or considered as such in accordance with subparagraph 6.2.2. and;

- a) Is not generally known or publicly available from other sources;
- b) Has not previously been made available by the owner to others without obligation concerning its confidentiality; and
- c) Is not already in the possession of the receiving implementing agency or its designees without obligation concerning its confidentiality.

6.2.2. Procedures

- i) An implementing agency or its designees proprietary information under the cooperation shall respect the privileged nature thereof. Any document which contains proprietary information shall be clearly marked by the disseminating implementing agency or its designees with the following (or substantially similar) restrictive provision:

'This document contains proprietary information furnished in confidence under Annex III to the Agreement for Cooperation between the European Atomic Energy Community and the Government of Japan in the field of controlled thermonuclear fusion, dated 20 February 1989 and shall not be disseminated outside EURATOM and STA, their contractors, licensees and the designees without the prior approval of ...

This notice shall be marked on any reproduction of this document, in whole or in part. These limitations shall automatically terminate when this information is disclosed by the owner without restriction.'

- ii) Proprietary information received in confidence under the cooperation may be disseminated by the receiving implementing agency or its designees to:
 - a) Persons within or employed by the receiving implementing agency or by other concerned government departments and agencies or by the designees in the country of the receiving implementing agency;
 - b) Contractors or subcontractors of the receiving implementing agency or its designees in the country of the receiving implementing agency for use only within the framework of their contracts with the receiving implementing agency or its designees in work relating to the subject matter of the proprietary information;

Provided that any proprietary information so disseminated shall be marked with a restrictive provision substantially identical to that appearing in point (i).

- iii) With the prior written consent of the implementing agency providing proprietary information under the cooperation, the receiving implementing agency may disseminate such proprietary information more widely than otherwise permitted in the foregoing point (ii). The implementing agencies shall cooperate

with each other in developing procedures for requesting and obtaining prior written consent for such wider dissemination, and each implementing agency will grant such approval to the extent permitted by the laws and regulations applicable in the respective countries and to EURATOM and by policies of the parties.

- 6.2.3. If one of the implementing agencies becomes aware that it or its designees will be, or may reasonably be expected to become unable to meet the restrictions and conditions of dissemination in this paragraph, it shall immediately inform the other implementing agency. The implementing agencies shall thereafter consult to define an appropriate course of action.
- 6.2.4. Information arising from seminars, workshops, and other meetings, the assignment of staff, use of facilities and exchange of equipment arranged under the cooperation shall be treated by the implementing agencies and their designees according to the principles specified in this paragraph, provided that no proprietary information orally communicated shall be subject to the limited disclosure requirements of the cooperation unless the individual communicating such information places the recipient on notice as to the proprietary nature of the information communicated.
7. The transmitting implementing agency or its designees in its relation with the receiving implementing agency or its designees does not warrant the suitability of any information transmitted for any particular use or application.
- 8.1. With respect to any invention or discovery made or conceived in the execution of the cooperation, the implementing agencies will take all necessary steps within the framework of the applicable laws and regulations with a view to realizing the following.
 - 8.1.1. Where the invention or discovery is made or conceived by personnel (the inventor) of either implementing agency (the assigning agency) or its designees or their contractors while assigned to the other implementing agency (the receiving agency) or its designees or their contractors in connection with exchanges of scientists, engineers and other specialists:
 - i) The receiving agency or its designees shall acquire all rights, title and interest in and to any such invention or discovery in its own country and in third countries; and
 - ii) The assigning agency or its designees or the inventor shall acquire all rights, title and interest in and to any such invention or discovery in its own country.
 - 8.1.2. In cases to which subparagraph 8.1.1. does not apply and where the invention or discovery is made or conceived by personnel (the inventor) of either implementing agency or its designees or their contractors as a direct result of employing information which has been communicated to them under the cooperation by the other implementing agency or its designees or their contractors or communicated during seminars or other joint meetings, the implementing agency or its designees or their contractors whose personnel make the invention or the inventor shall acquire all rights, title, and interest in and to such invention or discovery in all countries.
 - 8.1.3. Either the implementing agency or its designees or their contractors or the inventor, whichever of them owns the invention referred to in subparagraphs 8.1.1. and 8.1.2. shall license such invention to the other implementing agency, its designees, its government and the nationals of its country designated by it, upon request of the other implementing agency or its designees on reasonable terms and conditions.
 - 8.1.4. With regard to industrial property rights related to inventions or discoveries resulting from cooperative activities other than exchange of personnel or information, the implementing agencies or the designees shall, prior to commencing such cooperative activities, decide on an appropriate distribution of such rights taking into consideration the benefits, rights and contribution of the implementing agencies or the designees.
- 8.2. The provisions of subparagraph 8.1. shall apply *mutatis mutandis* to the protection of utility model and of design.
- 8.3. Each implementing agency or its designees shall assume the responsibility to pay awards or compensation required to be paid to its own employees or nationals of respective countries in accordance with the applicable laws. Each implementing agency or its designees shall, without prejudice to any rights of inventors under the applicable laws, take all necessary steps to provide the cooperation of its inventors required to implement the provisions of this paragraph.
9. Copyrights of the implementing agencies or the designees shall be accorded treatment consistent with the Universal Copyright Convention as revised at Paris on 24 July 1971. As to copyrights on materials within the scope of subparagraph 6.1. owned or controlled by either implementing agency or its designees, that implementing agency or its designees shall make efforts to grant to the other implementing agency or its designees a license to reproduce or translate copyrighted material.
10. With respect to the exchange of staff under the cooperation, the following provisions shall apply.

- 10.1. Whenever an exchange of staff is contemplated under the cooperation, each implementing agency or its designees shall ensure that qualified staff are selected for assignment to the other implementing agency or its designees.
- 10.2. Each such assignment of staff shall be the subject of a separate assignment agreement between the implementing agencies or the designees.
- 10.3. Each implementing agency or its designees shall be responsible for the salaries, insurance and allowances to be paid to its staff.
- 10.4. Unless otherwise agreed, the sending implementing agency or its designees shall pay for the travel and living expenses of its staff while on assignment.
- 10.5. The receiving implementing agency or its designees shall arrange for adequate accommodation for the assigned staff and their families on a mutually reciprocal basis.
- 10.6. The receiving implementing agency or its designees shall provide all necessary assistance to the assigned staff and their families as regards administrative formalities (travel arrangements, etc).
- 10.7. The assigned staff of the sending implementing agency or its designees shall conform to the general and special rules of work and safety regulations in force at the host establishment, or as agreed in a separate assignment agreement.
11. In the event that equipment, instruments, materials or necessary spare parts (hereinafter jointly referred to as 'equipment, etc') are to be exchanged or provided by one implementing agency or its designees to the other implementing agency or its designees, the following provisions shall apply covering the shipment and use of such equipment, etc.
 - 11.1. The sending implementing agency or its designees shall supply as soon as possible a detailed list of the equipment, etc. to be provided together with the relevant specifications and technical and informational documentation.
 - 11.2. Equipment, etc. provided by the sending implementing agency or its designees shall remain their property and shall be returned to the sending implementing agency or its designees upon completion of the mutually agreed activities unless otherwise agreed.
 - 11.3. Equipment, etc. shall be brought into operation at the host establishment only by mutual agreement between the implementing agencies or the designees.
 - 11.4. The receiving implementing agency or its designees shall provide the necessary premises for the equipment, etc. and shall provide for electrical power, water, gas, etc. in accordance with technical requirements which shall be mutually agreed by the implementing agencies or the designees.
 - 11.5. Unless otherwise agreed, responsibility for the transport of the equipment, etc. from the sending implementing agency or its designees to their ultimate destination in the country of the receiving implementing agency or its designees and return, and for their safekeeping and insurance *en route*, together with expenses relating thereto shall be undertaken by the sending implementing agency or its designees.
 - 11.6. The receiving implementing agency or its designees shall notify the customs authorities that it considers the equipment, etc. provided by the sending implementing agency or its designees for carrying out mutually agreed activities to be of a scientific character and not of a commercial character.

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