

Agreement for Scientific and Technological Cooperation Between the Government of Canada and the Government of the People's Republic of China

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THE GOVERNMENT OF CANADA and THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA, hereinafter together referred to as the "Parties";

ACTING in the spirit of the Joint Communiqué on the Establishment of Diplomatic Relations between the People's Republic of China and Canada, signed on Oct. 13, 1970;

CONSIDERING the importance of science and technology for their economic and social development;

CONSIDERING the ongoing scientific and technological cooperation between China and Canada;

RECALLING the Parties' rights and obligations pursuant to the Berne Convention for the Protection of Literary and Artistic Works (Paris Act, 1971), the Paris Convention for the Protection of Industrial Property (Stockholm Act, 1967) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS);

CONSIDERING that China and Canada are currently pursuing research and technological activities, in a number of areas of common interest and that participation in research and development activities on the basis of reciprocity will provide mutual benefits;

DESIRING to establish a framework for cooperation in scientific and technological research, which will extend and strengthen the conduct of cooperative activities in areas of common interest and encourage the application of the results of such cooperation to their economic and social benefit;

HAVE agreed as follows:

Article 1 - Purpose

The Parties shall encourage, develop and facilitate Cooperative Activities in science and technology for peaceful purposes, in fields of common interest and on the basis of equality and mutual benefit.

Article 2 - Definitions

For the purpose of this Agreement:

“Cooperative Activity” means any activity carried out pursuant to this Agreement;

“Implementing Arrangement” means an arrangement in written form between the Parties or between two or more Participants, for the conduct of a Cooperative Activity, but excluding an arrangement between two Participants from the same Party;

“Information” means scientific or technical data, including design procedures and techniques, product formulas, manufacturing methods, processes and treatments, the chemical composition of materials, computer programs, data compilations and employee know-how such as specialized

skills and experience; business information, including strategic and marketing plans, financial information and credit or pricing policies; client-related information, including customer lists, customer preferences and contracts; and any other data as may be jointly decided in writing by the Parties;

“Intellectual Property” shall have the meaning set out in Article 2 of the Convention establishing the World Intellectual Property Organization, done at Stockholm on 14 July 1967;

“Joint Research Activity” means a Cooperative Activity in research, technological development or demonstration that involves collaboration by Participants from both Parties and is designated as a Joint Research Activity in writing by the Participants;

“Participant” means any individual or legal entity established pursuant to the legislation of either Party and includes, but is not limited to, academies of science, governmental and non-governmental organizations, universities and colleges, institutes of technology, science and research centres and institutes, private sector enterprises and firms.

“Technology Management Plan” means a contract in written form between two or more Participants concerning the ownership and use of Intellectual Property rights that may be developed or created in the course of a specific Joint Research Activity, but excluding a contract between two Participants from the same Party.

Article 3 - Principles

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

- a. mutual benefit based on an overall balance of advantages;
- b. reciprocal access to the activities of research and technological development undertaken by each Party or its Participants, where practicable;
- c. timely exchange of Information, which may affect Cooperative Activities;
- d. effective protection of Intellectual Property rights;
- e. peaceful, non-military uses; and
- f. respect for the applicable legislation of the Parties.

Article 4 - Areas of Cooperative Activities

Areas of Cooperative Activities shall be jointly decided in writing from time to time by the Parties.

Article 5 - Forms of Cooperative Activities

1. Subject to their applicable legislation, the Parties shall foster, to the fullest extent practicable, Cooperative Activities under this Agreement. The Parties and their Participants shall conduct such Cooperative Activities through the conclusion of specific Implementing Arrangements or contracts.
2. Cooperative Activities may take the following forms:
 - a. joint research and development activities;
 - b. pooling of research and development projects, already underway in each Party, into Joint Research Activities;
 - c. facilitation of commercially viable research and development;
 - d. organization of scientific seminars, conferences, symposia and workshops, as well as participation of experts in those activities;
 - e. exchanges and loans of equipment and materials;

- f. exchanges of information on practices, laws, regulations and programs relevant to the Cooperative Activities undertaken pursuant to this Agreement;
 - g. funding of Cooperative Activities on the basis of equal contributions from each Party;
 - h. demonstrations of technologies and applications development;
 - i. visits and exchanges of scientists, technical experts and academics; and
 - j. any other mode of cooperation jointly decided in writing by the Parties.
3. Joint Research Activities shall be implemented when the Participants concerned have developed a Technology Management Plan pursuant to the Annex to this Agreement.
 4. In case of any inconsistency between this Agreement and an Implementing Arrangement or contract entered into pursuant to this Article, the Agreement shall prevail.

Article 6 - Coordination and Facilitation of Cooperative Activities

1. The coordination and facilitation of Cooperative Activities under this Agreement shall be effected on behalf of China, by the Ministry of Science and Technology and, on behalf of Canada, by the Department of Foreign Affairs and International Trade, acting as Executive Agents. Each Party may designate another Executive Agent should its Executive Agent identified in this paragraph cease to be responsible for the subject-matter of this Agreement. The Party designating another Executive Agent shall notify the other Party in writing of the name of its new Executive Agent.
2. The Executive Agents shall establish a Joint Committee on Science and Technology Cooperation, hereinafter referred to as the "Joint Committee". The Parties shall each designate a co-chairperson and an equal number of representatives to sit on the Joint Committee. The Joint Committee shall operate on the basis of consensus. It shall establish its own rules of procedure.
3. The functions of the Joint Committee shall be to:
 - a. promote and oversee the different areas of Cooperative Activities as decided by the Parties pursuant to Article 4 of this Agreement;
 - b. identify among the forms of Cooperative Activities, listed in Article 5 of this Agreement, priority forms of Cooperative Activities for each calendar year;
 - c. propose, pursuant to Article 5 of this Agreement, the pooling of certain research and development projects which would be of mutual benefit and complementary;
 - d. advise the Parties on ways to enhance and improve cooperation consistent with the principles set out in this Agreement;
 - e. review the functioning and implementation of this Agreement;
4. The Joint Committee shall meet every two years according to a jointly determined schedule. The meetings should be held alternately in China and in Canada. Extraordinary meetings may be organized at the request of either Party.
5. The costs incurred by members of the Joint Committee in the exercise of their functions shall be borne by the Party who has designated them. The costs, other than those for travel and accommodation, which are directly associated with meetings of the Joint Committee shall be borne by the host Party.
6. To carry out its functions, the Executive Agent of each Party shall designate an Executive Secretary. The Executive Secretaries shall act as points of contact for communications between the Parties relating to matters covered by this Agreement. The Executive Secretaries shall meet at least once a year. The Executive Secretaries shall provide to the Parties a joint annual summary report on the status, the level reached and the effectiveness of Cooperative Activities undertaken pursuant to this Agreement.

Article 7 - Availability of Resources

Cooperative Activities shall be subject to the availability of appropriated funds, personnel and other resources.

Article 8 - Persons, Material, Information and Equipment

Each Party, subject to its legislation, shall take all reasonable steps and use its best efforts, to facilitate entry to, sojourn and exit from its territory of persons, material, Information and equipment involved in or used in Cooperative Activities undertaken pursuant to this Agreement.

Article 9 - Peaceful Non-Military Uses

Each Party shall ensure that all funds, material, Information, equipment, services, technology and expertise provided to it or its Participants in connection with the implementation of this Agreement shall be used solely for peaceful, non-military purposes and in a manner consistent with this Agreement.

Article 10 - Use and Dissemination of Information

1. Each Party shall ensure that Information that is transmitted under this Agreement or created as a result of its implementation and that it considers to be confidential is clearly defined and identified as such, through appropriate marking or otherwise.
2. Information covered by this Article shall be protected in accordance with the legislation applicable to the Party or Participant receiving the Information. Subject to the legislation applicable to the Party or Participant receiving the Information, such Information shall not be divulged or transmitted to a third party not directly involved in the implementation of this Agreement without the written permission of the Party or Participant that provided the Information.
3. Parties shall take all reasonable measures, in accordance with this Agreement, their respective legislation and international law, to protect Information covered by this Article against unauthorized use or disclosure.

Article 11 - Intellectual Property

1. Nothing in this Agreement shall be construed as granting to the other Party or its Participants any rights in Intellectual Property belonging to a Party or its Participants that came into existence prior to or outside the scope of this Agreement.
2. All rights in Intellectual Property developed exclusively by one Party or a Participant in the context of a Cooperative Activity undertaken pursuant to this Agreement shall vest in that Party or Participant.
3. Each Party shall ensure that any Intellectual Property it holds and that is necessary for the effective conduct of a Cooperative Activity by the other Party or its Participants, shall be made available to such Party or its Participants prior to the commencement of the Cooperative Activity. Each Party shall take reasonable measures to ensure that its Participants provide the Intellectual Property they hold, and that is necessary for the effective conduct of a Cooperative Activity, in the same manner. In any event, a Party or its Participants shall not be required to grant more than a licence to use such Intellectual Property for the conduct of the Cooperative Activity concerned. The Intellectual Property that is necessary for the conduct of a Cooperative Activity shall be specifically identified in the Implementing Arrangement or contract relating to such Cooperative Activity.
4. Intellectual property rights related to inventions, discoveries and other science and technology achievements jointly developed solely by the Parties within the context of Cooperative Activities shall be allocated to each Party in accordance with the proportions jointly decided by the Parties in writing.
5. Unless the Parties agree otherwise in writing in accordance with their domestic procedures, any Intellectual Property arising from the results of a Joint Research Activity shall be governed by the Annex on Intellectual Property Arising from the Results of Joint Research Activities, which forms an integral part of this Agreement.

Article 12 - Claims

1. For the purposes of this Article, the following terms shall be defined as follows:
 - a. "Damage" includes personal injury, loss of life, direct, indirect and consequential damage to property, economic loss or infringement of rights;
 - b. "Claim" includes demands, loss, costs, actions, suits or other proceedings of any kind;
 - c. "Party" includes a Party and its officers, servants, employees or agents.
2. Each Party shall waive all Claims it may have against the other Party based on Damage arising out of the implementation of this Agreement, with the exception of the Claims related to the enforcement of the express provisions of a contract or Intellectual Property Claims governed by Article 14(2) of this Agreement.
3. Notwithstanding paragraph 2 of this Article, each Party shall indemnify and hold harmless the other Party from and against any Claim for Damages, to the extent that the Damage arises from omissions or acts of the former Party's officers, servants, employees or agents, done with the intent to cause Damage or resulting from negligence, and carried out in the course of the implementation of this Agreement.

Article 13 - Existing Rights and Obligations

This Agreement shall not affect the rights and obligations of a Party resulting from other international agreements to which it is party.

Article 14 - Dispute Settlement

1. The Parties shall endeavour, in good faith, to resolve any dispute between them arising from the interpretation or implementation of this Agreement amicably, through consultations. Consultations shall take place as soon as reasonably practicable under the circumstances.
2. In particular, the Parties shall endeavour to resolve any dispute arising from the implementation of Article 11 or the Annex to this Agreement through consultations. Should such a dispute not be resolved within a reasonable time, the Parties may mutually decide to refer it to arbitration. Arbitration shall be subject to the Arbitration Rules of the United Nations Commission on Trade Law (UNCITRAL).

Article 15 - Entry into Force, Amendment and Termination

1. This Agreement shall enter into force on the date of the latter written notification that domestic procedures necessary for its entry into force have been completed by the Parties.
2. This Agreement shall remain in force for an initial period of five years. It shall automatically be renewed for subsequent periods of five years, unless either Party notifies the other Party in writing of its intention not to renew the Agreement, at least ninety days prior to its expiry date.
3. This Agreement may be amended by mutual written agreement of the Parties. An amendment shall enter into force on the date of the latter written notification that domestic procedures necessary for its entry into force have been completed by the Parties.
4. This Agreement may be terminated at any time by either Party upon six months' written notice to the other Party. Notwithstanding any termination of this Agreement, the obligations hereunder shall continue to apply to any Implementing Arrangement for its duration. Obligations under Articles 9 (Peaceful Uses), 10 (Use and Dissemination of Information), 11 (Intellectual Property) and 12 (Claims), as well as the Annex to this Agreement, shall remain in effect, regardless of the expiry or termination of this Agreement, unless otherwise agreed to in writing by the Parties in accordance with their domestic procedures.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, have signed this Agreement.

DONE at Beijing on the 16th day of January 2007, in duplicate, in the English, French and Chinese languages, each version being equally authentic.

David Emerson
For the Government of Canada

Xu Guanhua
For the Government of the People's Republic of China

Annex on Intellectual Property Rights Arising from the Results of Joint Research Activities

Article 1 - Application

1. Each Party shall ensure that the other Party and its Participants are given the opportunity to obtain the rights to Intellectual Property allocated to them by or in accordance with this Annex.
2. This Annex does not alter or prejudice the allocation of Intellectual Property rights between a Party and its nationals or Participants, which shall be determined by the laws and practices of that Party.

Article 2 - Intellectual Property Rights Arising from Joint Research Activities

1. Terms used in this Annex shall have the same meaning as those defined in Article 2 of the Agreement.
2. The Parties shall:
 - a. notify one another within a reasonable time of the creation of new Intellectual Property rights arising from a Joint Research Activity undertaken pursuant to this Agreement and shall, as appropriate, seek protection for such Intellectual Property rights, within their respective jurisdictions and pursuant to their domestic legislation; and
 - b. ensure that the Participants from the other Party receive treatment no less favorable than that afforded under applicable international law in respect of Intellectual Property.
3. The Parties shall ensure that, for each Joint Research Activity, the Participants shall jointly develop a Technology Management Plan (hereinafter referred to as the "TMP") in respect of the ownership and use of Intellectual Property rights that may be developed or created in the course of the Joint Research Activity. The TMP shall be developed by the Participants taking into account the applicable legislation of the Parties, including legislation relating to the transfer or export of controlled Information, goods or services; the aims of the Joint Research Activity; and the relative financial or other contribution of each Party and its Participants.
4. With respect to Intellectual Property, the TMP shall address: ownership; protection; user rights and obligations for research and development; exploitation and dissemination, including arrangements for joint publication; the rights and obligations of visiting researchers (*i.e.*, researchers not coming from either Party or one of its Participants), including the allocation to and acquisition by Participants of rights and obligations in respect of Intellectual Property generated by visiting researchers; and dispute settlement procedures, including arbitration where appropriate.
5. Intellectual Property rights generated by a Joint Research Activity, the allocation and acquisition of which has not been addressed in the TMP, shall be allocated, to the largest

extent possible on the basis of the principles set out in the relevant TMP, as jointly decided in writing by the Participants.

6. Each Party shall take all reasonable measures to ensure that, in its territory, the other Party and its Participants shall be able to exercise the Intellectual Property rights allocated to them in accordance with this Annex and the Agreement.

Article 3 - Publication of Research Results of a Joint Research Activity

1. Without prejudice to Article 2 of this Annex, and unless otherwise agreed in the TMP concerned, publication of results of a Joint Research Activity shall be effected jointly by the Parties or Participants in a Joint Research Activity.
2. Subject to Paragraph 1 of this Article, the following procedures shall apply:
 - a. The Parties shall take reasonable measures to encourage the publication of literary works of a scientific character arising from a Joint Research Activity undertaken pursuant to this Agreement; and
 - b. The Parties shall ensure that all copies of a work that embodies the results of a Joint Research Activity, that is subject to copyright and that is distributed to the public, shall contain the names of the author(s) of the work unless an author explicitly declines to be named, as well as a clearly visible acknowledgement of the cooperative support of the Parties.