

CANADA - EU S&T AGREEMENT

THE GOVERNMENT OF CANADA of the one part, and the Council of the European Union on behalf of the European Community, of the other part, hereinafter referred to as the "Parties"

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

RECOGNISING that Canada and the European Community, herein after "the Community", are pursuing research and technological programmes in a number of areas of common interest, and that mutual benefits may be derived if the Parties facilitate further cooperation;

NOTING that there has been active cooperation and information exchange in a number of scientific or technological areas under the Canada-European Communities Framework Agreement for Commercial and Economic Cooperation signed in 1976;

Having regard to the Declaration on European Community-Canada Relations adopted on November 22, 1990; and

DESIRING to establish a formal basis for cooperation in scientific and technological research which will extend and strengthen the conduct of cooperative activities in 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 purpose of this Agreement is to encourage and facilitate cooperation between Canada and the Community in fields of common interest where the Parties are supporting research and development activities to advance science and/or technology relevant to those fields of interest.

ARTICLE 2

Definitions

For the purposes of this Agreement:

"Cooperation activity" means any activity carried on under this Agreement, and includes joint research;

"Information " means scientific or technical data, results or methods of research and development stemming from the joint research, and any other information deemed necessary by the participants engaged in cooperative activity, including, where necessary, the Parties themselves;

"Intellectual Property" shall have the meaning defined in Article 2 of the Convention establishing the World Intellectual Property Organization, done at Stockholm, 14 July, 1967;

"Joint research" means research that is financially supported by either or by both Parties and that involves collaboration by participants from both Canada and the Community;

"Participant" means any person, legal entity, university, research institute or any other body and undertaking participating in a cooperative activity, including the Parties themselves.

ARTICLE 3

Principles

Cooperation shall be conducted on the basis of the following principles:

mutual benefit;

timely exchange of information which may affect the actions of participants in cooperative activities;

within the framework of applicable laws and regulations, effective protection of intellectual property and equitable sharing of intellectual property rights, as set out in the Annex, which forms an integral part of this Agreement;

balanced realisation of economic and social benefits by Canada and the Community in view of the contributions made to cooperative activities by the respective participants and/or Parties.

ARTICLE 4

Areas of Cooperation

Cooperation may be pursued in the following areas :

agriculture, including fisheries;

medical and health research;

non-nuclear energy ;

environment, including earth observation;

forestry;

information technologies;

communication technologies;

telematics for economic and social development;

mineral processing;

Other areas may be added to this list upon review and recommendation by the Joint Science and Technology Cooperation Committee and subject to decisions in accordance with procedures in force for each Party.

ARTICLE 5

Modalities of Cooperation

Cooperation may include the following activities:

participation of persons and legal entities, including the Parties themselves, universities, research institutions, and other bodies or undertakings, in research projects of Canada or the Community, in accordance with the procedures in force for each Party;

shared use of research facilities;

visits and exchanges of scientists, engineers or other appropriate personnel for the purposes of participating in seminars, symposia and workshops relevant to cooperation under this Agreement;

exchange of information on practices, laws, regulations and programmes relevant to cooperation under this Agreement;

other activities as may be mutually determined by the Joint Science and Technology Cooperation Committee in accordance with the applicable policies and programmes of the Parties.

Joint research projects shall proceed under this Agreement only after the participants in a project have concluded a Joint Technology Management Plan, as indicated in the Annex to this Agreement.

ARTICLE 6

Joint Science and Technology Cooperation Committee (JSTCC)

This Agreement shall be administered by a Joint Science and Technology Cooperation Committee composed of representatives of each Party.

The functions of the JSTCC shall be to:

Promote and review the activities envisaged under the Agreement;

Make recommendations pursuant to Article 4 (b);

Authorise activities falling under Article 5 (a.5) as being cooperation to which this Agreement applies;

Advise the Parties on ways to enhance cooperation consistent with the principles set out in this Agreement;

Provide a report annually to the Parties on the level, status and effectiveness of cooperation undertaken under this Agreement;

Review the efficient and effective functioning of the Agreement.

The JSTCC shall meet approximately once a year, meetings being held alternately in Canada and the Community. Other meetings may be held as mutually agreed.

Decisions of the JSTCC shall be reached by consensus. Minutes, comprising a record of the decisions and principal points discussed, shall be taken at each meeting. These minutes shall be agreed by those persons selected from each side to jointly chair the meetings. The JSTCC annual report shall be made available to the Joint Cooperation Committee established under the 1976 EC-Canada Framework Agreement for Commercial and Economic Cooperation and appropriate Ministers of each Party.

ARTICLE 7

Funding

Cooperation activities shall be subject to the availability of funds and to the applicable laws and regulations, policies and programs of Canada and the Community.

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

ARTICLE 8

Entry of Personnel and Equipment

Each Party shall take all reasonable steps and use its best efforts, within existing laws and regulations, to facilitate entry to and exit from its territory of personnel, material and equipment of the participant(s) engaged in or used in cooperative activities under this Agreement.

ARTICLE 9

Dissemination and Utilization of Information

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

ARTICLE 10

Other Agreements and Transitional Provisions

This Agreement shall supersede and replace those provisions of the Canada-European Community Framework Agreement for Commercial and Economic Cooperation governing existing science and technology collaboration .

The Parties shall endeavour to bring under the terms of this Agreement those existing arrangements for scientific and technological cooperation between Canada and the Community that fall under the scope of Article 4.

Subject to paragraph 10 (a), this Agreement is without prejudice to other existing Agreements or arrangements between the Parties or any Agreement or arrangement between the Parties and third parties.

ARTICLE 11

Territorial Application

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

ARTICLE 12

Entry into Force and Termination

This Agreement shall enter into force on the date on which the Parties have notified each other in writing that their legal requirements for entry into force of this Agreement have been fulfilled.

This Agreement may be amended by agreement of the Parties. Amendments shall enter into force on the date on which the Parties have notified each other in writing that their legal requirements have been fulfilled.

This Agreement may be terminated at any time by either Party upon twelve months written notice. The expiration or termination of this Agreement shall not affect the validity or duration of any arrangements made under it, or any specific rights and obligations that have accrued in compliance with the Annex.

ARTICLE 13

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

Done at Halifax on the seventeenth day of June in the year one thousand nine hundred and ninety-five.

FOR THE GOVERNMENT OF CANADA

FOR THE EUROPEAN COMMUNITY

ANNEX

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

I. OWNERSHIP, ALLOCATION AND EXERCISE OF RIGHTS

All research carried out pursuant to this Agreement shall be "joint research". The participants performing the joint research shall develop Joint Technology Management Plans (JTMPs) which shall contain, as a minimum, principles in respect of the ownership and use, including publication, of information and Intellectual Property (IP) to be created in the course of the joint research(1) (1)The indicative features of such JTMPs are set out in Appendix The JTMPs may be reviewed by the Parties and shall be approved by the responsible funding agency or department of the party involved in financing the research, before the conclusion of any specific research and development cooperation contracts to which they refer. The JTMP shall be approved by the responsible funding agency or department of the Party or Parties. The JTMPs shall be developed taking into account the aims of the joint research, the relative contributions of the participants, the advantages and disadvantages of licensing by territory or for fields of use, requirements imposed by applicable laws, the need for dispute settlement procedures and other factors deemed appropriate by the participants. The rights and obligations concerning the research and information generated by visiting researchers in respect of IP shall also be addressed in the JTMPs.

Information or IP created in the course of joint research and not addressed in a JTMP shall be allocated according to the principles set out in I,1 according to the principles set out in that JTMP. In case of disagreement, which cannot be resolved by the agreed dispute resolution procedure, such unallocated information or IP shall be owned jointly by all the participants involved in the joint research from

which the information or IP results, and each participant to whom this provision applies shall have the right to use such information or IP for his/her own commercial exploitation with no geographical limitation.

In accordance with national law, each Party shall ensure that the other Party and its participants may have the rights to IP allocated to them in accordance with the principles set out in section I of this Annex.

While maintaining the conditions of competition in areas affected by the Agreement, each Party shall endeavour to ensure that rights acquired pursuant to the Agreement, and arrangements made under it, are exercised in such a way as to encourage in particular:

the dissemination and use of information created, disclosed, or otherwise made available, under the Agreement;

the adoption and implementation of international standards.

II. COPYRIGHT WORKS

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

III. SCIENTIFIC LITERARY WORKS

Without prejudice to Section IV, unless otherwise agreed in the JTMP, any publication of results of the joint research shall be made jointly by the participants. In addition to the foregoing general rule, the following procedure shall apply:

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

The Parties shall endeavour to disseminate literary works of a scientific character arising from joint research pursuant to the Agreement and published by independent publishers as widely as possible.

All copies of a copyright work to be publicly distributed and prepared under this provision shall indicate the names of the author(s) of the work unless an author or authors expressly declines or decline to be named. Copies shall also bear a clearly

visible acknowledgement of the cooperative support of the Parties.

IV. UNDISCLOSED INFORMATION

A. Documentary undisclosed information

Each Party or its participants shall identify at the earliest possible moment, and preferably in the JTMP, the information that it wishes to remain undisclosed in relation to this Agreement, taking into account, among other things, the following criteria:

- secrecy of the information in the sense that the information is not, as a body or in the precise configuration or assembly of its components, generally known among or readily accessible by lawful means to experts in the field;
- the actual or potential commercial value of the information by virtue of its secrecy;
- previous protection of the information in the sense that it has been subject to steps that were reasonable under the circumstances by the person lawfully in control, to maintain its secrecy.

Participants shall not normally be required to provide undisclosed information to the Parties. Should the Parties become aware of such information, they shall respect the privileged nature thereof, and it shall not be further disclosed by, within, or between the Parties, without the written consent of the participant(s) to whom the information belongs. These limitations shall automatically terminate when such information is disclosed by the owner, without restriction, to experts in the field.

Each Party shall ensure that undisclosed information, communicated between them under the Agreement, and its ensuing privileged nature is readily recognizable as such by the other Party, for example, by means of an appropriate marking or restrictive legend. This also applies to any reproduction of the said information, in whole or in part.

Undisclosed information communicated under the Agreement, and received from the other Party, may be disseminated by the receiving Party to persons within or employed by the receiving Party and other concerned departments or agencies of the receiving Party authorized for the specific purposes of the joint research underway, provided that any undisclosed information so disseminated shall be pursuant to a written agreement of confidentiality and shall be readily recognizable as such, as set out above.

With the prior written consent of the Party providing undisclosed information under the Agreement, the receiving Party may disseminate such undisclosed information more widely than otherwise permitted in Paragraph 3 above. The Parties shall cooperate in developing procedures for requesting and obtaining prior written consent for such wider dissemination, and each Party will grant such approval to the extent permitted by its domestic policies, regulations and laws.

B. Non-documentary undisclosed information

Non-documentary undisclosed or other confidential or privileged information Non-documentary undisclosed or other confidential or privileged information provided in seminars and other meetings arranged under the Agreement, or information arising from the attachment of staff, use of facilities, or joint projects, shall be treated by the Parties or their participants according to the principles specified in point A above, provided, however, that the recipient of such undisclosed or other confidential or privileged information has been made aware in advance and in written form of the confidential character of the information to be communicated.

C. Control

Each Party shall make its best efforts to ensure that undisclosed information received by it under the Agreement shall be controlled as provided therein. If one of the Parties becomes aware that it will be, or may reasonably be expected to become, unable to meet the non-dissemination provisions of points A and B above, it shall immediately inform the Party likely to be affected by the dissemination. The Parties involved shall thereafter consult to define an appropriate course of action.

APPENDIX

INDICATIVE FEATURES OF A JOINT TECHNOLOGY MANAGEMENT PLAN (JTMP)

The JTMP is a specific contract to be concluded between the participants in joint research defining their respective rights and obligations. With respect to Intellectual Property Rights, the JTMP will normally address, inter alia: ownership, protection, user rights for research and development purposes, exploitation and dissemination, including arrangements for joint publication, the rights and obligations of visiting researchers and dispute settlement procedures. The JTMP may also address foreground and background information the rules governing disclosure of undisclosed information, licensing and deliverables.

For the Government of Canada
 Pour le gouvernement du Canada
 Por el Gobierno de Canadá
 For Canadas regering
 Für die Regierung Kanadas
 Για την Κυβέρνηση του Καναδά
 Per il governo del Canada
 Voor de Regering van Canada
 Pelo Governo do Canadá
 Kanadan hallituksen puolesta
 På Canadas regerings vägnar



For the European Community
 Pour la Communauté européenne
 Por la Comunidad Europea
 For Det Europæiske Fællesskab
 Für die Europäische Gemeinschaft
 Για την Ευρωπαϊκή Κοινότητα
 Per la Comunità europea
 Voor de Europese Gemeenschap
 Pela Comunidade Europeia
 Euroopan yhteisön puolesta
 På Europeiska gemenskapens vägnar


