

AGREEMENT

for scientific and technological cooperation between the European Community and the Government of the People's Republic of China

THE EUROPEAN COMMUNITY, hereinafter referred to as the 'Community',

on the one part, and

THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA,

on the other part,

hereinafter referred to as the 'Parties';

CONSIDERING the 1985 Agreement on trade and economic cooperation between the European Economic Community and the People's Republic of China;

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

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

CONSIDERING that the Community and China are currently pursuing research and technological activities, including demonstration activities, in a number of areas of common interest and that participation in each other's research and development activities on a basis of reciprocity will provide mutual benefits;

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;

CONSIDERING that this Agreement for scientific and technological cooperation is within the context of the global cooperation between China and the Community,

HAVE AGREED AS FOLLOWS:

Article 1

Purpose

The Parties shall encourage, develop and facilitate cooperative activities between the Community and China in fields of common interest where they are pursuing research and development activities in science and technology.

research programmes. In the case where there is funding by only one Party the designation is made by that Party and the participant in that project;

- (e) 'Participant' or 'research entities' means any person moral or private, any research institute or any other legal entity or firm established in the Community or in China involved in cooperative activities including the Parties themselves.

Article 2

Definition

For the purpose of this Agreement:

- (a) 'cooperative activity' means any activity which the Parties undertake or support, pursuant to this Agreement, and includes joint research;
- (b) 'information' means scientific or technical data, results or methods of research and development stemming from joint research and any other data deemed necessary by the participants to cooperative activities; including, as necessary, by the Parties themselves;
- (c) 'intellectual property' shall have the meaning defined in Article 2 of the Convention establishing the World Intellectual Property Organisation, done at Stockholm, 14 July 1967;
- (d) 'joint research' means research, technological development or demonstration that is implemented with or without financial support from one or both Parties and that involves collaboration by participants from both the Community and China and is designated as joint research in writing by the Parties or their scientific and technological organisations and agencies implementing the scientific

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;
- (c) timely exchange of information which may affect cooperative activities;
- (d) appropriate protection of intellectual property rights.

Article 4

Areas of cooperative activities

Cooperation under this Agreement may cover all the activities of research, technological development and demonstration, hereinafter referred to as 'RTD', included in the first activity of the framework programme under Article 130g of the Treaty establishing the European Community and all similar RTD activities in China in the corresponding scientific and technological fields.

This Agreement does not affect the participation of China, as a developing country, in Community activities in the field of research for development.

Article 5

Forms of cooperative activities

- (a) Subject to their applicable laws, regulations and policies, the Parties shall foster, to the fullest extent practicable, the involvement of participants in cooperative activities under this Agreement with a view to providing comparable opportunities for participation in their scientific and technological research and development activities.
- (b) Cooperative activities may take the following forms:
- participation of Chinese research entities to RTD projects under the first activity of the framework programme and reciprocal participation of research entities established in the Community to Chinese projects in similar sectors of RTD. Such a participation is subject to the rules and procedures applicable in each Party,
 - pooling of RTD projects already implemented according to the procedures applicable in the RTD programmes of each Party,
 - visits and exchanges of scientists and technical experts,
 - joint organisation of scientific seminars, conferences, symposia and workshops, as well as participation of experts to those activities,
 - concerted actions,
 - exchanges and sharing of equipment and materials,
 - exchanges of information on practices, laws, regulations and programmes relevant to cooperation under this Agreement,
 - any other modality that would be recommended by the Steering Committee and deemed in conformity with the policies and procedures applicable in both Parties.

The joint RTD projects shall be implemented when the participants have developed a technology management plan, as indicated in the Annex to this Agreement.

Article 6

Coordination and facilitation of cooperative activities

- (a) The coordination and facilitation of cooperative activities under this Agreement shall be accomplished on behalf of China, by the Ministry of Science and Technology and, on behalf of the Community, by the services of the Commission of the European Communities, acting as executive agents.
- (b) The executive agents shall establish a Steering RTD Cooperation Committee, hereinafter referred to as the 'Steering Committee' for the management of this Agreement; this Committee shall consist of an equal number of official representatives of each Party; it shall establish its own rules of procedure.
- (c) The functions of the Steering Committee shall include:

1. promoting and overseeing the different cooperative activities as mentioned in Article 4 as well as those that would be implemented in the framework of RTD cooperation for development;
 2. indicating, for the following year, pursuant to Article 5(b), first indent, among the potential sectors for RTD cooperation, those priority sectors or subsectors of mutual interest in which cooperation is sought;
 3. proposing, pursuant to Article 5(b), second indent, to the scientists of both Parties the pooling of their projects which would be of mutual benefit and complementary;
 4. making recommendations pursuant to Article 5 (b), seventh indent;
 5. advising the Parties on ways to enhance and improve cooperation consistent with the principles set out in this Agreement;
 6. reviewing the efficient functioning and implementation of this Agreement;
 7. annually providing a report to the Parties on the status, the level reached and the effectiveness of cooperation undertaken under this Agreement. This report will be transmitted to the Joint Committee established under the 1985 Agreement on trade and economic cooperation between the European Economic Community and the People' Republic of China.
- (d) The Steering Committee shall, as a general rule, meet annually, preferably before the meeting of the Joint Committee established under the 1985 Agreement on trade and economic cooperation between the European Economic Community and the People's Republic of China, and according to a jointly agreed schedule; the meetings should be held alternatively in the Community and in China. Extraordinary meetings may be organised at the request of either Party.
- (e) The costs incurred by the Steering Committee or in its name shall be borne by the Party to whom members relate. The costs other than those for travel and accommodation which are directly associated with meetings of the Steering Committee shall be borne by the host Party.

Article 7

Funding

- (a) Cooperative activities shall be subject to the availability of appropriated funds and to the applicable laws and regulations, policies and programmes of the Parties. The costs incurred by the participants to cooperative activities will not lead to any transfer of funds from one Party to the other.
- (b) When specific cooperative schemes of one Party provide for financial support to participants from the other Party, any such grants, financial or other contributions from one Party to the participants of the other Party in support of those activities shall be granted tax and customs exemption in accordance with the laws and regulations applicable in the territories of each Party.

*Article 8***Entry of personnel and equipment**

Each Party shall take all reasonable steps and use its best efforts, within the laws and regulations applicable in the territories of each Party, to facilitate entry to, sojourn and exit from its territory of persons, material, data and equipment involved in or used in cooperative activities identified by the Parties under the provisions of this Agreement.

*Article 9***Diffusion and utilisation of information**

The research entities established in China which are involved in Community RTD projects shall follow, as regards the ownership, diffusion and utilisation of information and as regards the intellectual property stemming from this involvement, the rules of diffusion of research results stemming from the Community RTD specific programmes as well as the provisions of the Annex to this Agreement.

The research entities established in the Community which are involved in Chinese RTD projects have, as regards the ownership, diffusion and utilisation of information and as regards the intellectual property stemming from this involvement, the same rights and the same obligations as the Chinese research entities and are subject to the provisions of the Annex to this Agreement.

The Annex on intellectual property rights is an integral part of this Agreement.

*Article 10***Territorial application**

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

on the other hand to the territory of the People's Republic of China. This shall not prevent the conduct of cooperative activities on the high seas, outer space, or the territory of third countries, in accordance with international law.

*Article 11***Entry into force, termination and dispute settlement**

- (a) This Agreement shall enter into force on the date on which the Parties have notified each other in writing that their respective internal procedures necessary for its entry into force have been completed.
- (b) This Agreement shall be concluded for an initial period of five years and may be renewed by common agreement between the Parties (tacit renewal) after evaluation during the penultimate year of each successive period.
- (c) 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 respective internal procedures necessary for amending this Agreement have been completed.
- (d) This Agreement may be terminated at any time by either Party upon six 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.
- (e) All questions or disputes related to the interpretation or implementation of this Agreement shall be settled by mutual agreement between the Parties.

In witness whereof, the undersigned, being duly authorised thereto, have signed this Agreement.

Done at, Brussels on 22 december 1998, in two copies, in the Danish, Dutch, English, Finnish, French, German, Greek, Italian, Portuguese, Spanish, Swedish, and Chinese languages, with each text being equally authentic.

For the Council of the European Union

For the Government of the People's Republic of China

ANNEX

INTELLECTUAL PROPERTY RIGHTS

Rights to intellectual property created or furnished under the Agreement shall be allocated as provided for in this Annex.

I. Application

This Annex is applicable to joint research undertaken pursuant to the Agreement, except as otherwise agreed by the Parties.

II. Ownership, allocation and exercise of rights

1. For purposes of this Annex 'intellectual property' is defined in Article 2(c) of the Agreement.
2. This Annex addresses the allocation of rights and interests of the Parties and their participants. Each Party and its participants shall ensure that the other Party and its participants may obtain the rights to intellectual property allocated to it in accordance with this Annex. This Annex does not otherwise alter or prejudice the allocation of rights, interests and royalties between a Party and its nationals or participants, which will be determined by the laws and practices applicable to each Party.
3. The Parties will also be guided by, and contractual arrangements should provide for, the following principles:
 - (a) effective protection of intellectual property. The Parties shall ensure that they and/or their participants notify one another within a reasonable time of the creation of any intellectual property arising under the Agreement, of implementation arrangements and seek protection for such intellectual property in a timely fashion;
 - (b) effective exploitation of results, taking into account the contributions of the Parties and their participants;
 - (c) non-discriminatory treatment of participants from the other Party as compared with the treatment given to its own participants;
 - (d) protection of business-confidential information.
4. The participants shall jointly develop a technology management plan (TMP) in respect of the ownership and use, including publication of information and intellectual property to be created in the course of joint research. The TMP will be approved by the responsible funding agency, or department of the Party involved in financing the research before the conclusion of the specific research and development cooperation contracts to which they are attached. The TMP shall be developed within the rules and regulations in force at each Party taking into account the aims of the joint research, the relative financial or other contributions of the Parties and participants, the advantages and disadvantages of licensing by territory or for fields of use, the transfer of export-controlled data, goods or services, requirements imposed by the applicable laws and other factors deemed appropriate by the participants. The rights and obligations concerning the research generated by visiting researchers (i.e. researchers not coming from a Party or a participant) in respect of intellectual property will also be addressed in the joint TMP.

The TMP is a specific agreement to be concluded between the participants about the implementation of joint research and the respective rights and obligations of the participants.

With respect to intellectual property, the TMP will normally address, among other things, ownership, protection, user rights for research and development purposes, exploitation and dissemination, including arrangements for joint publication, the rights and obligations of visiting researchers and dispute settlement procedures. The TMP may also address foreground and background information, licensing and deliverables.

5. Information or intellectual property created in the course of joint research and not addressed in the TMP will be allocated, with the approval of the Parties, according to the principles set out in the TMP. In case of disagreement, such information or intellectual property will be owned jointly by all the participants involved in the joint research from which the information or intellectual property results. Each participant to whom this provision applies will have the right to use such information or intellectual property for his own commercial exploitation with no geographical limitation.
6. Each Party will ensure that the other Party and its participants may have the rights to intellectual property allocated to them in accordance with these principles.

7. While maintaining the condition of competition in areas affected by the Agreement, each Party will 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 (i) the dissemination and use of information created, disclosed or otherwise made available, under the Agreement, and (ii) the adoption and implementation of international standards.
8. The termination or expiry of the Agreement will not affect rights or obligations under this Annex.

III. Copyright works and scientific literary works

Copyright belonging to the Parties or to their participants will be accorded treatment consistent with the Berne Convention (Paris Act 1971). Copyright protection will extend to expressions and not to ideas, procedures, methods of operation or mathematical concepts as such. Limitations or exceptions to exclusive rights will be confined to certain special cases which do not conflict with a normal exploitation of the work and do not reasonably prejudice the legitimate interests of the right holder.

Without prejudice to Section II, and unless otherwise agreed in the TMP, publication of results of research shall be made jointly by the Parties or participants to that joint research. Subject to the foregoing general rule, the following procedures shall apply

1. In the case of publication by a Party, or public bodies of that Party of scientific and technical journals, articles, reports, books, including video and software arising from joint research pursuant to the Agreement, the other Party will be entitled to a worldwide, non-exclusive, irrevocable, royalty-free licence to translate, reproduce, adapt, transmit and publicly distribute such works.
2. The Parties will ensure that literary works of a scientific character arising from joint research pursuant to the Agreement and published by independent publishers will be disseminated as widely as possible.
3. All copies of a copyright work to be publicly distributed and prepared under this provision shall indicate the names of the author(s) of the work unless an author explicitly declines to be named. They shall also bear a clearly visible acknowledgement of the cooperative support of the Parties.

IV. Inventions, discoveries and other science and technology achievements

Inventions, discoveries and other science and technology achievements created under cooperative activities between the Parties themselves will be owned by the Parties unless otherwise agreed by the Parties.

V. Undisclosed information

A. Documentary undisclosed information

1. Each Party, its agencies or its participants, as appropriate, will identify at the earliest possible moment and preferably in the TMP the information that they wish to remain undisclosed in relation to the Agreement, taking into account *inter alia* the following criteria:
 - (a) secrecy of the information in the sense that it 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 fields;
 - (b) the actual or potential commercial value of the information by virtue of its secrecy;
 - (c) previous protection of the information in the sense that it has been subject to steps that were reasonable under the circumstances by the person lawfully in control, to maintain its secrecy.

The Parties and their participants may in certain cases agree that, unless otherwise indicated, parts or all of the information provided, exchanged or created in the course of joint research pursuant to the Agreement may not be disclosed.

2. Each Party shall ensure that it and its participants clearly identify undisclosed information, 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.

A Party receiving undisclosed information pursuant to the Agreement will respect the privileged nature thereof. These limitations will automatically terminate when this information is disclosed by the owner into the public domain.

3. Undisclosed information communicated under the Agreement may be disseminated by the receiving Party to persons within or employed by the receiving Party and other concerned departments or agencies in the receiving Party authorised for the specific purposes of the joint research under way, provided that any undisclosed information so disseminated shall be pursuant to an agreement of confidentiality and shall be readily recognisable as such, as set out above.

4. With the prior written consent of the Party providing undisclosed information, the receiving Party may disseminate such undisclosed information more widely than otherwise permitted in point 3. 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 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 for documentary information in the Agreement; provided, however, that the recipient of such undisclosed or other confidential or privileged information has been made aware of the confidential character of the information communicated at the time such communication is made.

C. *Control*

Each Party shall endeavour to ensure that undisclosed information received by it under the Agreement will be controlled as provided herein. If one of the Parties becomes aware that it will be, or may be reasonably expected to become, unable to meet the non-dissemination provisions of Sections A and B, it shall immediately inform the other Party. The Parties will thereafter consult to define an appropriate course of action.
