

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(94) 551 final
Brussels, 05.12.1994

Recommendation for a

COUNCIL DECISION

authorizing the Commission to sign an

**Agreement for scientific and technological cooperation between the European
Community and Canada**

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. Scientific and technological cooperation between the European Community and Canada began in 1959 with the signature of an agreement between the European Atomic Energy Community and the Canadian Government for cooperation in peaceful uses of atomic energy.

In September 1976 a Framework Agreement for commercial and economic cooperation between the European Communities and Canada was concluded. This Agreement provided also for and encouraged technological and scientific exchanges between both parties, leading to the signature of various specific agreements covering selected areas of mutual interest.

2. In 1989 Canada requested the opening of negotiations for the conclusion of a specific agreement on science and technology which would cover research areas falling under both the EEC and EURATOM Treaties. After further exploratory discussions with the Canadian authorities, and while waiting for negotiating directives for a cooperation agreement with Australia in the area of science and technology, the Commission asked Council on 18 December 1992 for negotiating directives for an agreement on scientific and technological cooperation between the European Economic Community, the European Atomic Energy Community and Canada (doc. SEC(92)2359).

During subsequent deliberations in the Council it was decided to limit the scope of the envisaged Agreement to activities falling under the EEC Treaty, and this for both legal and procedural reasons. On 19 April 1993 Council authorized the Commission to negotiate the agreement in question.

3. The negotiations resulted in the attached draft agreement, including its annex on the dissemination and utilization of information and management, allocation and exercise of intellectual property rights.

The draft Agreement provides for :

- the participation of persons and legal entities, including the Parties themselves, universities, research institutes, and other bodies or undertakings, in research projects conducted by Canada or the Community in a restricted number of research areas;
- the shared use of research facilities;
- visits and exchanges of scientists, engineers and other appropriate personnel;
- the exchange of information;

- other activities as may be jointly determined by the Joint Science and Technology Cooperation Committee in accordance with the applicable policies and programmes of the Parties;
- the endorsement by the Parties of Technology Management Plans as a condition for research projects to proceed, as described in the Annex to the draft Agreement;
- cooperative activities to be subject to the availability of funds and to the applicable laws and regulations, policies and programmes of Canada and the Community; no transfer of funds will take place.

As regards the management of the draft Agreement it is foreseen that participation in each other's research projects will take place in accordance with the procedures in force for each Party [Article 5.a.1], which implies on the Community's side the full part to be played by the committees of the specific programmes in the selection of projects which will be the subject of cooperation. It should also be underlined that the Commission has been able to have the Community's guiding principles on the dissemination and utilization of information and management, allocation and exercise of intellectual property rights accepted by the Canadian side.

In the light of the above mentioned considerations the Commission proposes that the Council

- decide that the Agreement be signed on behalf of the Community and
- authorize the President of the Council to appoint the persons duly empowered to sign on behalf of the Community.

After signature by the parties, the Commission will submit to the Council a proposal for the approval of the Agreement.

AGREEMENT
FOR SCIENTIFIC AND TECHNOLOGICAL COOPERATION
BETWEEN CANADA AND THE EUROPEAN COMMUNITY

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:

- a) "Cooperative activity" means any activity carried on under this Agreement, and includes joint research;
- b) "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;
- c) "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;
- d) "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;
- e) "Participant" means any person, legal entity, university, research institute or any other body or undertaking participating in a cooperative activity, including the Parties themselves.

ARTICLE 3

Principles

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

- a) mutual benefit;
- b) timely exchange of information which may affect the actions of participants in cooperative activities;
- c) 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;
- d) 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

a. Cooperation may be pursued in the following areas :

- 1) agriculture, including fisheries;**
- 2) medical and health research;**
- 3) non-nuclear energy;**
- 4) environment, including earth observation;**
- 5) forestry;**
- 6) information technologies;**
- 7) communication technologies;**
- 8) telematics for economic and social development;**
- 9) mineral processing;**

b. 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

a. Cooperation may include the following activities:

- 1) 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;**
- 2) shared use of research facilities;**
- 3) 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;**
- 4) exchange of information on practices, laws, regulations and programmes relevant to cooperation under this Agreement;**
- 5) 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.**

b. 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)

- a) This Agreement shall be administered by a Joint Science and Technology Cooperation Committee composed of representatives of each Party.
- b) The functions of the JSTCC shall be to:
 - 1) Promote and review the activities envisaged under the Agreement;
 - 2) Make recommendations pursuant to Article 4 (b);
 - 3) Authorise activities falling under Article 5 (a.5) as being cooperation to which this Agreement applies;
 - 4) Advise the Parties on ways to enhance cooperation consistent with the principles set out in this Agreement;
 - 5) Provide a report annually to the Parties on the level, status and effectiveness of cooperation undertaken under this Agreement;
 - 6) Review the efficient and effective functioning of the Agreement.
- c) 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.
- d) 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

- a) Cooperative activities shall be subject to the availability of funds and to the applicable laws and regulations, policies and programs of Canada and the Community.
- b) 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

- a) 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.
- b) 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.
- c) 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 to the territory of Canada and to the territories in which the Treaty establishing the European Community is applied and under the conditions laid down in that Treaty. This shall not prevent the conduct of cooperative activities on the high seas, outer space, Antarctica, or the territory of third parties, if the participants so agree.

ARTICLE 12

Entry into Force and Termination

- a) 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.**
- b) 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.**
- c) 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.

IN WITNESS WHEREOF the undersigned have signed this Agreement.

DONE AT , this day of , One thousand nine
hundred and ninety four.

FOR THE GOVERNMENT OF CANADA

FOR THE EUROPEAN COMMUNITY

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

I. OWNERSHIP, ALLOCATION AND EXERCISE OF RIGHTS

1. 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*. 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 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.
2. Information or IP created in the course of joint research and not addressed in a JTMP shall be allocated following the procedures 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.
3. In accordance with applicable laws, 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.
4. 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:
 - (i) the dissemination and use of information created, disclosed, or otherwise made available, under the Agreement;
 - (ii) the adoption and implementation of international standards.

* The indicative features of such JTMPs are set out in Appendix

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:

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 shall be entitled, 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.
2. 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.
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 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

1. 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.

2. 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.
3. 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.
4. 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.
5. 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 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 Section IV 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 Paragraphs 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.

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.

FINANCIAL STATEMENT

1. Title of the operation

International scientific cooperation : cooperation agreement in science and technology with Canada.

2. Relevant budget headings

Travel costs for EC officials will be charged to the specific budget headings of the programmes within the Community RTD framework programme.

3. Legal basis

Article 130i and m and Article 228 of the EC Treaty

4. Description of the operation

4.1. Specific objectives of the operation

The essential objective is to stimulate RTD cooperation between the EC and Canada in terms of research projects covered by the framework programme and in the sectors covered by the Agreement.

4.2. Duration

Unspecified : ongoing annual budget entry (the cooperation agreement includes a clause by which either or both parties can give notice of terminating the agreement), but subject to annual budget disponibilities.

5. Classification of the expenditure

5.1. Non-compulsory expenditure

5.2. Differentiated appropriations

6. Type of expenditure

100 % subsidy

(Missions to Canada by Commission officials; organization of workshops, seminars and meetings in Europe and Canada).

7. Financial impact

Method of calculating the total annual cost of the operation (estimate)

- a. **Preparatory activities, review of the cooperation** : meeting of the Joint Science and Technology Cooperation Committee, exchange of information, visits of officials and experts in Canada 25.000 Ecus

b. **Scientific and technical workshops/meetings** 30.000 Ecus

Total : 55.000 Ecus/year

8. Planned anti-fraud measures

Controls by officials technically responsible for the operation (scientific and budgetary aspects).

9. Cost-effectiveness analysis

9.1. Specific objectives, target population

- The agreement is designed to enable the Community and Canada to profit on the basis of the principle of mutual benefit, from the scientific and technical progress achieved under their reciprocal research programmes, via the participation of the Canadian scientific community and industrial sector in the Community's research projects and via the independent and non-subsidized participation of bodies established in the Community in Canadian research projects;
- beneficiaries in the EC and Canada will be the scientific communities, the industrial sector and the general public, thanks to the direct and indirect effects of cooperation.

9.2. Justification of the operation

Community budget intervention is indispensable because the planned cooperation comes under the implementation of the framework programme, including the budgetary section : participation by Canada in certain specific programmes and administrative expenditure on the European side (missions by Community officials, organization of seminars in the Community and Canada.

9.3. Monitoring and evaluation of the operation

The cooperation agreement will be evaluated regularly by the Commission services concerned. The evaluation will comprise the following elements :

a. Collection of information :

On the basis of data from the specific programmes of the framework programme.

b. Overall evaluation of the operation :

An evaluation of all the cooperation activities in the context of this agreement will be made by the Commission's departments at the end of each year.

ISSN 0254-1475

COM(94) 551 final

DOCUMENTS

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Catalogue number : CB-CO-94-578-EN-C

ISBN 92-77-83070-0
