

AGREEMENT BETWEEN
THE GOVERNMENT OF THE UNITED STATES OF AMERICA
AND THE GOVERNMENT OF JAPAN ON
COOPERATION IN RESEARCH AND DEVELOPMENT IN
SCIENCE AND TECHNOLOGY

The Government of the United States of America and the
Government of Japan (hereinafter referred to as "the Parties");

Recalling the purposes of the Agreement on Cooperation in
Research and Development in Science and Technology, which was
signed by the President of the United States of America and the
Prime Minister of Japan and entered into force on May 1, 1980
(hereinafter referred to as "the previous Agreement");

Recognizing that the two countries derive great benefits from their long and highly successful scientific and technological relationship;

Believing that the future prosperity and well-being of mankind depend upon the world's ability to generate new scientific knowledge and translate new discoveries into operational and applied technologies;

Affirming that the United States of America and Japan, sharing responsibilities in contributing to the world's future prosperity and well-being, should make further efforts to strengthen their respective national research and development policies;

Stressing the importance of sustaining long-term investments in basic research and creating dynamic research and development environments with a view to generating fundamental new knowledge, ensuring the protection of intellectual property rights so as to preserve the value of innovations derived from joint collaboration, providing for the smooth application of new technologies, and nurturing and expanding the next generation's human resources in science and technology;

Convinced that long-term mutually beneficial international science and technology collaboration is built upon long-lasting

partnerships between scientists of different nationalities, performance of joint research and development at each other's facilities, education and training of each other's promising students, and publication of joint research and development results in international journals;

Affirming their commitment to equitable contributions and to comparable access to each nation's research and development systems;

Determined to strengthen the overall science and technology relationship based on the principles of shared responsibilities and mutual and equitable contributions and benefits, commensurate with the two nations' respective scientific and technological strengths and resources;

Affirming their commitment to further enhance cooperation in science and technology; and

Desiring to set forth the policy framework for the conduct of the overall science and technology relationship between the Parties and to strengthen that relationship for peaceful purposes;

Have agreed as follows:

ARTICLE I

1. This Agreement establishes the policy framework for the overall science and technology relationship between the Parties, including collaboration in large-scale projects and major research and development initiatives. To strengthen that relationship, the Parties will conduct their science and technology relationship based on the principles of:

A. Shared responsibilities and mutual and equitable contributions and benefits, commensurate with the two nations' respective scientific and technological strengths and resources;

B. Comparable access to major government-sponsored or government-supported programs and facilities for visiting researchers, and comparable access to and exchange of information, in the field of scientific and technological research and development;

C. Adequate and effective protection and equitable distribution of intellectual property rights created in the course of collaboration and adequate and effective protection of intellectual property rights introduced in the course of collaboration;

D. Widest possible dissemination of information consistent with applicable national laws and regulations, including those related to security; and

E. Shared costs of collaboration taking into account their respective risks, benefits and management shares.

2. Under this policy framework, the Parties will discuss matters of importance in the field of science and technology, and policy issues related to the overall science and technology relationship between the two countries.

ARTICLE II

1. This Agreement also sets forth the principles and provisions for cooperative activities under this Agreement. Thereunder, the Parties will undertake cooperative activities for peaceful purposes in such areas of science and technology of national importance as may be mutually agreed.

2. The main areas and the forms of the cooperative activities under this Agreement are provided in Annex I, which is an integral part of this Agreement.

3. Implementing arrangements for the cooperative activities under this Agreement may be concluded between the Parties or their appropriate agencies to determine the specific terms of cooperation, in accordance with this Agreement.

4. A cooperative activity under this Agreement will be initiated by mutual agreement and should meet the following criteria:

A. Each party to that cooperative activity should possess strong complementary or counterbalancing research and development capabilities, adequate resource bases, and appropriate centers of excellence to engage in that cooperative activity;

B. The subject area of that cooperative activity should reflect an area of importance to both countries;

C. The results of that cooperative activity should be expected to contribute to an equitable distribution of benefits to each Party; and

D. That cooperative activity should have the potential to accelerate the rate of scientific and technological progress and to offer tangible contributions to the world's knowledge and technology base.

5. With regard to the cooperative activities under this Agreement, the Parties or their agencies, as appropriate, may allow the participation of researchers and organizations from all sectors of the research establishment, including universities, national laboratories, and the private sector.

6. The Parties or their agencies may include their respective major government-sponsored or government-supported research programs in the basic and applied research areas listed in Annex I as part of the cooperative activities under this Agreement when these programs and cooperative activities meet the criteria set forth in paragraph 4 of Article II.

7. This Article will be implemented subject to the applicable laws and regulations of each country.

ARTICLE III

1. This Agreement supersedes the previous Agreement. Implementing arrangements and cooperative activities undertaken under the previous Agreement are hereby incorporated under this Agreement, except that the Parties may agree that those arrangements and activities under the previous Agreement that do not meet the criteria set forth in paragraph 4 of Article II will be placed under other bilateral agreements.

2. This Agreement does not otherwise legally modify existing bilateral science and technology arrangements between the Parties or their agencies. However, the Parties or their appropriate agencies may amend such arrangements, as may be agreed, in accordance with their relevant amendment procedures, to make them consistent with the policy framework of this Agreement.

ARTICLE IV

With a view to strengthening the overall science and technology relationship on the basis of the principles set forth in paragraph 1 of Article I, the Parties will take those steps listed in Annex II, which is an integral part of this Agreement, and such other steps as may be mutually agreed.

ARTICLE V

1. The Parties will establish a Joint High Level Committee. The Joint High Level Committee will be co-chaired by the appropriate high-level representatives of both Parties. The U.S. chair will be the Science Advisor to the President. The Japanese chair will be the Minister for Foreign Affairs or his designee.

2. Meeting alternately in the United States of America and Japan, the Joint High Level Committee will serve as the annual forum for the Parties to review and discuss, under the policy framework of this Agreement, matters of importance in the field of science and technology and policy issues related to the overall science and technology relationship between the two countries, and the cooperative activities under this Agreement.

3. In this context, the Joint High Level Committee will submit an annual report to the Parties. The report will review

the operation of this Agreement, including an assessment of major developments with respect to the factors listed in Annex III, which is an integral part of this Agreement. The report will also set forth steps and new initiatives for the Parties to adopt for the next year, and, as necessary, policy recommendations on matters of importance to the overall science and technology relationship between the two countries.

4. The Parties will establish a Joint Working Level Committee at the technical management level to support the work of the Joint High Level Committee. For this purpose, specific functions of the Joint Working Level Committee are provided in Annex III and include a review of the overall science and technology relationship between the two countries under the policy framework of this Agreement and of the cooperative activities under this Agreement, and preparation of the annual report for the consideration of the Joint High Level Committee.

5. The Joint Working Level Committee will be chaired by the U.S. Department of State and the Ministry of Foreign Affairs of Japan. Each Party will determine its own representatives, including at least one technical management official from each agency with lead responsibility for a cooperative activity under this Agreement.

6. The Joint Working Level Committee will meet at least annually, alternately in the United States of America and

Japan. Meetings of the Joint Working Level Committee will be scheduled with particular attention to its role in supporting the Joint High Level Committee.

7. The Parties will establish a Joint High Level Advisory Panel to conduct a joint review of the overall science and technology relationship between the two countries and to advise the Joint High Level Committee on issues concerning that relationship. Specific functions of the Joint High Level Advisory Panel are provided in Annex III.

8. The Parties will each designate members of the Joint High Level Advisory Panel, which will comprise eminent leaders from the science and technology communities of both countries representing academia, industry, and other areas.

9. The Joint High Level Advisory Panel will meet on an annual basis and may also be convened at its own initiative or at the request of either chair of the Joint High Level Committee in consultation with the other chair.

ARTICLE VI

1. Scientific and technological information of a non-proprietary nature arising from the cooperative activities under this Agreement may be made available to the public by either Party through customary channels and in accordance with the normal procedures of the participating agencies.

2. The Parties will ensure:

A. the adequate and effective protection and equitable distribution of intellectual property rights and other rights of a proprietary nature as provided in Annex IV created in the course of the cooperative activities under this Agreement; and

B. the adequate and effective protection of intellectual property rights and other rights of a proprietary nature as provided in Annex IV introduced in the course of the cooperative activities under this Agreement,

in accordance with the laws and regulations of the respective countries and with international agreements to which the United States of America and Japan are or will be parties. The Parties will consult for this purpose as necessary.

3. Details and procedures for the protection and distribution of intellectual property rights and other rights of a proprietary nature as referred to in paragraph 2 above are set forth in Annex IV, which is an integral part of this Agreement. Annex IV is applicable to any cooperative activities under this Agreement, except as otherwise specifically agreed by the parties to the cooperative activities concerned, in individual implementing arrangements or otherwise. Implementing arrangements may also elaborate the provisions of Annex IV.

4. Issues that arise between the parties to a cooperative activity regarding the treatment of information, inventions, discoveries, writings, etc., under this Article or Annex IV will be settled, in principle, between those parties. Any such issues which cannot be resolved by those parties may be referred to the Joint Working Level Committee.

ARTICLE VII

1. Both Parties support the widest possible dissemination of the information or equipment created in the course of the cooperative activities under this Agreement, unless otherwise stipulated in this Article, Article VI, or Annex IV. In furtherance of the principle of maintaining an open basic research environment, both Parties confirm that no information or equipment classified for reasons of national defense will be utilized in the cooperative activities under this Agreement.

2. The transfer of export-controlled information or equipment between the countries in the course of the cooperative activities under this Agreement will be in accordance with the applicable national export control laws and regulations of each country. Each Party will take all necessary and appropriate measures, in accordance with applicable national laws and regulations, to prevent the diversion to unauthorized destinations of export-controlled information and equipment provided or produced in the course of the cooperative activities under this Agreement.

ARTICLE VIII

1. Implementation of this Agreement will be subject to the availability of appropriated funds and to the applicable laws and regulations of each country.
2. Costs of the cooperative activities under this Agreement will be borne by the Parties as mutually agreed, taking into account their respective risks, benefits and management shares.

ARTICLE IX

1. This Agreement will enter into force upon signature and remain in force for five years. Either Party may at any time give written notice to the other Party of its intention to terminate this Agreement, in which case this Agreement will terminate six months after such notice has been given.
2. This Agreement may be extended or amended by mutual agreement of the Parties.

ARTICLE X

The expiration of this Agreement will not affect the carrying out of any project or program undertaken under this Agreement and not fully executed at the time of the expiration of this Agreement.

DONE at Toronto, this twentieth day of June, 1988, in duplicate
in the English and Japanese languages, both texts being equally
authentic.

FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF JAPAN:

Ronald Reagan

Noboru Takehita

MAIN AREAS AND FORMS OF THE COOPERATIVE ACTIVITIES

1. The following may be included as main areas for the cooperative activities under this Agreement:

- A. Life sciences, including biotechnology;
- B. Information science and technology;
- C. Manufacturing technology;
- D. Automation and process control;
- E. Global geoscience and environment;
- F. Joint database development; and
- G. Advanced materials, including superconductors.

This list may be modified by mutual agreement.

2. Forms of the cooperative activities under this Agreement may include:

- A. Conduct of joint projects and programs and other cooperative projects and programs;

B. Meetings of various forms, such as those of experts, to discuss and exchange information on scientific and technological aspects of general or specific subjects, and to identify research and development projects and programs which may be usefully undertaken on a cooperative basis;

C. Exchange of information on activities, policies, practices, laws and regulations concerning research and development;

D. Visits and exchanges of scientists, engineers or other experts on general or specific subjects; and

E. Other forms of cooperative activities as may be mutually agreed.

STEPS TO STRENGTHEN THE OVERALL
SCIENCE AND TECHNOLOGY RELATIONSHIP

In accordance with Article IV, the Parties will, subject to the applicable laws and regulations of each country, take the following steps to strengthen the overall science and technology relationship:

- A. Continue their commitment to open research and development systems and international cooperation;
- B. Continue to improve foreign language training programs for scientists and engineers to facilitate their communication and participation in research and development and daily life activities;
- C. Provide comparable opportunities for scientists and engineers from the other country to engage in research and study in their respective facilities and major government-sponsored or government-supported research programs in basic and applied research areas;
- D. Provide substantial numbers of competitive government fellowships in science and engineering for foreign nationals at their respective centers of excellence, with adequate allowances to cover accommodations and other needs;

E. Promote dissemination of information on the government fellowships and the opportunities for research and study referred to in subparagraphs C and D above;

F. Exert comparable efforts to encourage scientists and engineers to take advantage of the government fellowships and the opportunities for research and study referred to in subparagraphs C and D above;

G. Ensure that scientific and technical reports produced by government agencies or through major government-sponsored or government-supported research programs that are not published in readily available professional literature will be made available to researchers of the other country, through central sources such as National Technical Information Service and Japanese equivalents, as well as through expansion of the National Technical Information Service - Japan Information Center of Science and Technology program.

ANNEX III

THE JOINT HIGH LEVEL COMMITTEE,
THE JOINT WORKING LEVEL COMMITTEE,
AND THE JOINT HIGH LEVEL ADVISORY PANEL

1. Pursuant to paragraph 1 of Article I and Article V, the Joint High Level Committee will assess major developments with respect to the following factors:

A. Developments and trends in each Party's policies for the promotion and support of science and technology, with particular reference to research and development activities performed at universities and national research institutions, and in major government-sponsored or government-supported research and development programs;

B. Efforts by each Party to stimulate an equitable flow of scientific and technical information between the two countries, and its concrete actions to enable new scientific and technical information generated by their respective science and technology establishments to come to the notice of the world scientific community through publication in open, readily available professional literature;

C. Efforts in each country to promote advanced educational and training opportunities in science and engineering at universities and national research institutions;

D. Each Party's efforts to establish and enhance world-class research and development facilities at universities and national research institutions in its country to generate new knowledge and generic technologies;

E. Flows of scientists and engineers between the two countries to educational and research facilities, and efforts in each country to stimulate and encourage equitable flows;

F. Efforts by each Party to provide comparable access to universities and national research institutions and to major government-sponsored or government-supported research and development programs; and

G. Support in each country for visits and exchanges of, and joint projects for, scientists and engineers involving all types of facilities and all levels of seniority and financial assistance.

2. The functions of the Joint Working Level Committee will include:

A. Reviewing and discussing the overall science and technology relationship between the two countries under the policy framework of this Agreement, including an assessment of the factors listed in paragraph 1 above;

- B. Reviewing and discussing the overall progress of the cooperative activities under this Agreement and preparing recommendations, as necessary, for the consideration of the Joint High Level Committee to strengthen those activities;

- C. Preparing, as necessary, policy recommendations on matters of importance to the overall science and technology relationship between the two countries for submission to the Joint High Level Committee for its consideration;

- D. Preparing and submitting to the Joint High Level Committee for its consideration steps and new initiatives for the next year, including areas of cooperation under paragraph 1 of Annex I;

- E. Preparing an annual report for the consideration of the Joint High Level Committee incorporating the results of the functions enumerated above;

- F. Informing the Joint High Level Committee of the status of other bilateral science and technology arrangements in relation to the policy framework of this Agreement;

- G. Dealing with technical and management issues related to the cooperative activities under this Agreement, except that large-scale projects and major research and development initiatives with separate management mechanisms

will not fall under the technical and management review of the Joint Working Level Committee;

H. Establishing, as necessary, a task force to identify and monitor scientists' and engineers' access to and participation in major government-sponsored or government-supported research and development programs and to obtain annual statistical data on Japanese researchers' participation in the U.S. research and development system and U.S. researchers' participation in the Japanese research and development system; and

I. Establishing a task force to develop recommendations on improving access to scientific and technical information and to serve as a forum where scientific and technical information organizations may raise and resolve issues relating to open access to the results of scientific and technological research.

3. The functions of the Joint High Level Advisory Panel will include:

A. Identifying issues of importance to the overall science and technology relationship between the two countries and making appropriate recommendations to the Joint High Level Committee;

B. Reviewing major advances in research and development in the two countries and recommending to the Joint High Level Committee priority areas for bilateral collaboration, under either private or governmental auspices;

C. Reviewing mechanisms of science and technology cooperation for their effectiveness in strengthening the overall science and technology relationship, and making appropriate recommendations to the Joint High Level Committee; and

D. Identifying and recommending approaches to enhance comparable access to research and training opportunities, facilities, expertise, data, and results, taking into consideration each nation's research and development system, institutions, and policies.

ANNEX IV
PROTECTION AND DISTRIBUTION OF INTELLECTUAL PROPERTY
RIGHTS AND OTHER RIGHTS OF A PROPRIETARY NATURE

1. Business-Confidential Information

A. For the purpose of this Annex, "business-confidential information" means any know-how, technical data, or technical, commercial, or financial information that meets all of the following conditions:

(i) It is of a type customarily held in confidence for commercial reasons;

(ii) It is not generally known or publicly available from other sources;

(iii) It has not been previously made available by the owner to others without an obligation concerning its confidentiality; and

(iv) It is not already in the possession of the recipient without an obligation concerning its confidentiality.

B. Any business-confidential information will be furnished or, when created in the course of the cooperative activities under this Agreement, transferred only by mutual written agreement of the parties to the cooperative activity concerned and will be

given full protection in accordance with the laws and regulations of their respective countries.

C. Any business-confidential information will be appropriately identified before it is furnished in the course of the cooperative activities under this Agreement or, unless otherwise provided in the implementing arrangements, immediately upon being created. Responsibility for identifying such information will fall on the party which furnishes it or asserts that it is to be protected. Unidentified information will be assumed not to be information to be protected, except that a party to the cooperative activity may notify the other party in writing, within a reasonable period of time after furnishing or transferring such information, that such information is business-confidential information under the laws and regulations of its country. Such information will thereafter be protected in accordance with subparagraph B above.

2. Ownership of Intellectual Property Rights

Between each Party and nationals of its country, the ownership of intellectual property rights will be determined in accordance with its national laws, regulations and practices.

3. Inventions

A. For the purpose of this Annex, the "Invention" means any invention made in the course of the cooperative activities under this Agreement which is or may be patentable or otherwise protectable under the laws of the United States of America, Japan or any third country.

B. As to an Invention, the parties to the cooperative activity concerned will take appropriate steps, in accordance with the national laws and regulations of the respective countries, with a view to realizing the following:

(i) If an Invention is made as a result of a cooperative activity under this Agreement that involves only the transfer or exchange of information between the parties, such as by joint meetings, seminars, or the exchange of technical reports or papers, unless otherwise provided in an applicable implementing arrangement:

(a) the party whose personnel make the Invention (hereinafter referred to as "the Inventing Party") or the personnel who make the Invention (hereinafter referred to as "the Inventor") have the right to obtain all rights and interests in the Invention in all countries, and

(b) in any country where the Inventing Party or the Inventor decides not to obtain such rights and interests, the other party has the right to do so.

(ii) If the Invention is made by an Inventor of a party ("the Assigning Party") while assigned to another party ("the Receiving Party") in the course of programs of a cooperative activity that involve only the visit or exchange of scientists and engineers, and:

(a) in the case where the Receiving Party is expected to make a major and substantial contribution to the programs of the cooperative activity:

i. the Receiving Party has the right to obtain all rights and interests in the Invention in all countries, and

ii. in any country where the Receiving Party decides not to obtain such rights and interests, the Assigning Party or the Inventor has the right to do so;

(b) in the case where the provision in subparagraph (a) above is not satisfied:

- i. the Receiving Party has the right to obtain all rights and interests in the Invention in its own country and in third countries,
- ii. the Assigning Party or the Inventor has the right to obtain all rights and interests in the Invention in its own country, and
- iii. in any country where the Receiving Party decides not to obtain such rights and interests, the Assigning Party or the Inventor has the right to do so.

(iii) Specific arrangements involving other forms of the cooperative activities, such as joint research projects with an agreed research work scope, will provide for the mutually agreed upon disposition, on an equitable basis, of rights to the Invention made as a result of such activities.

(iv) The Inventing Party will disclose promptly the Invention to the other party and furnish any documentation or information necessary to enable the other party to establish rights to which it may be entitled. The Inventing Party may ask the other party in writing to delay publication or public disclosure of such documentation or information for the purpose of protecting its rights or the rights of the Inventor related to the Invention. Unless

otherwise agreed in writing, such restrictions will not exceed a period of six months from the date of communication of such documentation or information.

4. Copyrights

Disposition of rights to copyright-protected works created in the course of the cooperative activities under this Agreement will be determined in the relevant implementing arrangements. The parties to the cooperative activities concerned will take appropriate steps to secure copyright to works created in the course of the cooperative activities under this Agreement in accordance with the national laws and regulations of the respective countries.

5. Rights to Semiconductor Chip Layout Designs

Disposition of rights to semiconductor chip layout designs created in the course of the cooperative activities under this Agreement will be determined in the relevant implementing arrangements. The parties to the cooperative activities concerned will take appropriate steps to secure rights to semiconductor chip layout designs created in the course of the cooperative activities under this Agreement in accordance with the national laws and regulations of the respective countries.

6. Other Forms of Intellectual Property

For those other forms of intellectual property created in the course of the cooperative activities under this Agreement which are protected under the laws of either country, disposition of rights will be determined on an equitable basis, in accordance with the laws and regulations of the respective countries.

7. Cooperation

Each party to the cooperative activity concerned will take all necessary and appropriate steps, in accordance with the laws and regulations of its country, to provide for the cooperation of its authors and inventors which are required to carry out the provisions of this Annex. Each party to the cooperative activity concerned assumes the sole responsibility for any award or compensation that may be due its personnel in accordance with the laws and regulations of its country, provided, however, that this Annex creates no entitlement to any such award or compensation.