



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 26.10.1998
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Recommendation for a

COUNCIL DECISION

**authorizing the signature of an
Agreement for scientific and technological cooperation between the
European Community and China**

(presented by the Commission)

Subject : Recommendation for a Council Decision authorizing the signature of an Agreement for scientific and technological cooperation between the European Community and China

1. On 22 June 1998, the Council authorized the Commission to negotiate an Agreement for scientific and technological cooperation between the European Community and the People's Republic of China.

On that basis negotiations took place which resulted in the attached draft agreement, including its annex on intellectual property treatment, which was initialled in the course of September 1998.

2. The draft agreement, to be concluded for tacitly renewable five year periods, was negotiated against the background of an upgraded and intensifying comprehensive Partnership between China and the European Union, considering the importance of science and technology for economic and social development and the mutual wish to extend and strengthen the conduct of cooperative activities in areas of common interest.
3. The draft Agreement is based on the principles of mutual benefit, reciprocal opportunities for access to each other's programmes and activities relevant to the purpose of the draft Agreement, non-discrimination, and the effective protection of intellectual property and equitable sharing of intellectual property rights.

Cooperation shall be conducted subject to applicable laws and regulations in force on each side.

4. The draft Agreement provides for :
 - the participation of persons and legal entities, including the Parties themselves, universities, research institutions, and other bodies or undertakings, in each other's research projects;
 - pooling of RTD projects already implemented according to the procedures applicable in the RTD programmes of each Party;
 - exchange and sharing of equipment and materials;
 - exchange and provision of information and data;
 - visits and exchanges of scientists, engineers or other appropriate personnel for the purposes of participating in meetings, seminars, symposia, workshops and other research activities relevant to cooperation under this Agreement;

- exchange of information on practices, laws, regulations and programmes relevant to cooperation under the Agreement;
 - such 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;
 - 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;
 - cooperation activities to be subject to the availability of funds and to the applicable laws and regulations, policies and programmes of China and the Community; no transfer of funds will take place.
5. As far as the Annex on the dissemination and utilization of information and management, allocation and exercise of intellectual property rights is concerned, both sides have agreed that the allocation of intellectual property rights shall be in accordance with the applicable laws and regulations on each side.

The principle of non-discrimination agreed under Article 3 should protect Community participants in Chinese programmes and activities against any discriminatory treatment, also in respect of the dissemination and utilization of results, including intellectual property rights. The Joint Science and Technology Cooperation Committee shall, inter alia, review the efficient and effective functioning of the Agreement, including the non-discriminatory treatment of participants.

6. In the light of the above-mentioned considerations the Commission hereby proposes that the Council, without prejudice to the conclusion of the Agreement after consultation of the European Parliament :
- decide that the attached draft Agreement be signed on behalf of the European Community; and
 - authorize the President of the Council to appoint the person(s) duly empowered to sign it on behalf of the European Community.

**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 Trade and Economic Cooperation Agreement between the People's Republic of China and the European Economic Community;

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 the present 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.

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 organizations and agencies implementing the scientific 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 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 the present 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 as described in Article 130G of the Treaty and all similar RTD activities in China in the corresponding scientific and technological fields.

The present 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 organization 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 of the present 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 European Commission, 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 the present 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 of the present Agreement 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 para. b), first indent, among the potential sectors for RTD cooperation, those priority sectors or subsectors of mutual interest in which a cooperation is sought.
 - 3) proposing, pursuant to article 5 para. 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 para. 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 Trade and Economic Cooperation Agreement between the European Economic Community and the People's 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 Trade and Economic Cooperation Agreement 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 organized 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 accomodation 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 the 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 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 indentified 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, the diffusion and the 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 of this Agreement.

The research entities established in the Community which are involved in Chinese RTD projects have, as regards the ownership, the diffusion, and the 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 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 of the Parties.

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

Done at on, 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 in this Annex.

I. Application

This Annex is applicable to joint research undertaken pursuant to this 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 present 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 shall be determined by the laws and practices applicable to each Party.

3. The Parties shall 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 this Agreement of implementation arrangements and to 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 shall 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 IP shall also be addressed in the joint technology management plans.

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 IP, the TMP will normally address, among other things, ownership, protection, user rights for research and development purpose, 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 IP created in the course of joint research and not addressed in the technology management plan shall be allocated, with the approval of the Parties, according to the principles set out in the technology management plan. In case of disagreement, such information or IP shall be owned jointly by all the participants involved in the joint research from which the information or IP results. Each participant to whom this provision applies shall have the right to use such information or IP for his own commercial exploitation with no geographical limitation.

6. Each Party shall ensure that the other Party and its participants may have the rights to IP allocated to them in accordance with these principles.

7. While maintaining the condition of competition in areas affected by the Agreement, each Party shall endeavour to ensure that rights acquired pursuant to this 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. Termination or expiry of this Agreement shall not affect rights or obligations under this Annex.

III. Copyright Works and Scientific Literary Works

Copyright belonging to the Parties or to their participants shall be accorded treatment consistent with the Berne Convention (Paris Act 1971). Copyright protection shall 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 this Agreement, the other Party shall be entitled to a worldwide, non-exclusive, irrevocable, royalty-free licence to translate, reproduce, adapt, transmit and publicly distribute such works.

2. The Parties shall ensure that literary works of a scientific character arising from joint research pursuant to this Agreement and published by independent publishers shall 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 S & T achievements

Inventions, discoveries and other S & T achievements created under cooperative activities between the Parties themselves shall 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, shall identify at the earliest possible moment and preferably in the technology management plan the information that they wish to remain undisclosed in relation to this 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 this 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 this Agreement shall respect the privileged nature thereof. These limitations shall automatically terminate when this information is disclosed by the owner into the public domain.

3. Undisclosed information communicated under this 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 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 information provided in seminars and other meetings arranged under this 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 this Agreement shall 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 above, it shall immediately inform the other Party. The Parties shall be thereafter consult to define an appropriate course of action.

FINANCIAL STATEMENT

1. Title of the operation

International scientific cooperation: Draft agreement for scientific and technological cooperation with the People's Republic of China.

2. Relevant budget headings

Travel costs for EC officials and EC experts will be charged to the specific budget headings for the programmes within the Community's RTD framework programme (Chapters B6-71 and B6-72 of the budget in 1998 and B6-61/62/63/64 after 1999).

3. Legal basis

Articles 130i and 130m in conjunction with 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 European Community and the People's Republic of China in research projects covered by the framework programmes.

4.2. Duration

The agreement will 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. It may be terminated at any time by either party upon six months' written notice.

5. Classification of the expenditure

5.1. Non-compulsory expenditure

5.2. Differentiated appropriations

6. Type of expenditure

100% financing

(missions to China by Commission officials; organisation of workshops, seminars and meetings in Europe and China).

7. Financial impact

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

(a) **Preparatory activities and review of cooperation activities:** meetings of the Steering RTD Cooperation Committee, exchanges of information, visits to China by officials and experts: ECU 50 000

(b) **Scientific and technical workshops/meeting** ECU 60 000

Total: ECU 110 000/year

Indicative schedule

	1998	1999	2000+
Commitments	110 000	110 000	110 000
Payments	110 000	110 000	110 000

8. Anti-fraud measures

There are many administrative and financial controls at each stage of the signature and implementation of research contracts. Among these controls are the following :

After signature of the contract

- Examination of expenditure at a number of levels (financial officer, scientific officer) before payment.
- Internal audit performed by the Financial Controller.
- On the spot inspections made by the Financial Controller of the Commission and by the Court of Auditors of the European Union.

9. Cost-effectiveness analysis

9.1. Specific objectives, target population

- the agreement is designed to enable the European Community and China to profit, on the basis of the principle of mutual benefit, from the scientific and technical progress achieved under their research programmes, by means of participation by the Chinese scientific community and Chinese industry in Community research projects and independent participation, without funding, by bodies established in the Community in Chinese projects;
- beneficiaries in the European Community and China will be the scientific communities, industry and the general public, thanks to the direct and indirect effects of cooperation.

9.2. Justification of the operation

A contribution from the Community budget is indispensable because the planned cooperation comes under implementation of the framework programmes, including the budgetary section: participation by China in certain specific programmes and operating expenditure on the European side (missions by Community officials, organisation of seminars in the Community and China).

9.3. Monitoring and evaluation of the operation

The cooperation agreement will be regularly evaluated by the Commission departments concerned. This evaluation will cover the following points:

(a) Compilation of information

Based on the data emerging from the specific programmes under the framework programmes.

(b) General evaluation of the operation

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

10. Implications for administrative expenditure

- The Commission is not requesting any additional posts for the management of the Agreement.
- No officials are being specifically assigned to manage the Agreement. Cooperation activities and the implementation of the Agreement will be managed by the staff authorised for the specific programmes under the present Framework Programme and possible subsequent Framework Programmes.