

MEMORANDUM OF UNDERSTANDING
on
RECIPROCAL DEFENSE PROCUREMENT

PREAMBLE

The Government of the United States of American and the Government of the Grand-Duchy of Luxembourg, hereinafter referred to as the "Governments":

Intending to increase their respective defense capabilities through more efficient cooperation in the areas of research and development, production, procurement and logistic support of defense equipment, in order to:

- Make the most cost-effective and rational use of the resources allocated to defense;
- Promote the widest possible use of standard or interoperable equipment; and,
- Develop and maintain an advanced technology capability for the North Atlantic Alliance, and particularly with respect to the Parties to this Agreement;

Noting the potential for increased purchases of defense items by the United States from Luxembourg and from the United States by Luxembourg, and recognizing the desirability of working toward a long term equitable balance in defense trade between the two countries;

Recognizing that suppliers in each country should be afforded the opportunity to compete, on a reciprocal basis, for the procurement of defense products, equipment, materials and services, hereinafter referred to as "defense items and services";

Have entered into this Memorandum of Understanding in order to achieve the above aims.

This Memorandum of Understanding sets out the guiding principles governing mutual cooperation in research, development, production, procurement and logistic support of conventional defense equipment. The conclusion of this MOU does not preclude other specific agreements for cooperation in developing, producing, or co-producing, as appropriate, items of defense equipment.

ARTICLE 1

Principles Governing Mutual Defense Cooperation

1.1.1. Both Governments intend to facilitate the mutual flow of defense procurement for their armed forces, aiming at a long term equitable balance in their exchanges, taking into consideration the relative technological level of such procurement, and consistent with their national

policies. A long term equitable balance will not imply an equitable monetary flow of defense procurement, but will take into account each country's financial, industrial, economic and commercial possibilities.

1.1.2. Both Governments will make their best efforts to facilitate defense R&D cooperation, coproduction of defense equipment and provision of opportunities to compete for procurement of defense items and services to include systems, subsystems, components, and spare parts at all technological levels.

1.1.3. In order to assess the mutual flow of defense procurement, the Governments have jointly determined counting procedures which are set down in Annex 1 to this Agreement, and which will apply to all defense items and services purchased by them directly or through their respective industries under this Agreement. Defense items and services are those items and services which may be procured utilizing appropriated funds of the United States Department of Defense or budgeted funds of the Ministry of Defense of Luxembourg.

1.2 The Governments will, consistent with their relevant laws and regulations, give full and prompt consideration to all requests for cooperative R&D, and to all requests for production and procurement which are intended to *enhance standardization and/or interoperability* within the Atlantic Alliance.

1.3. In the interests of standardization and the effective utilization of scarce resources, each Government shall, to the extent possible, adopt qualified defense items that have been developed or produced in the other country to meet the requirements of the Government of such country.

1.4. Each Government shall from time to time notify the other Government of defense items that may not be acquired by the notifying Government from other than domestic sources, as well as those defense items that may be particularly suitable for acquisition by the other Government.

1.5. Both Governments will provide appropriate policy guidance and administrative procedures within their respective defense acquisition organizations to achieve and maintain the equitable balance mentioned in Article 1.1.1. of this Agreement, as well as the other aims of this Agreement.

1.6. Competitive contracting procedures shall normally be used in acquiring items of defense equipment developed or produced in each country for use by the other country's defense establishment.

1.7. Both Governments agree that consistent with and to the extent permitted by national laws and regulations, mutually agreed implementing procedures will incorporate the following:

1.7.1. Offers or proposals of defense items produced in or defense services provided by each country will be evaluated without applying price differentials under "buy national" laws and regulations, and without applying the cost of applicable import duties. In the event that either party can no longer comply with the exemption from import duties, the parties hereto will consult with a view to amending this MOU;

1.7.2. Each country will give full consideration to all qualified sources in the other country. In addition, each country will give full consideration to all applications for qualification by sources in the other country;

1.7.3. Offers or proposals will be required to satisfy requirements of the purchasing Government concerning performance, quality, delivery and costs;

1.7.4. Provisions for duty-free certificates and related documentation;

1.7.5. Arrangements concerning quality control and audits of incurred costs and price proposals.

1.8. Both Governments will review defense items and services submitted as candidates for their respective requirements. They will indicate requirements and proposed purchases in a timely fashion, in accordance with national regulations, to ensure adequate time for their respective industries to qualify as eligible suppliers and to submit a bid or proposal.

1.9. Technical Data Packages (TDPs) shall not be transferred between the two countries without the written permission of those owning or controlling any associated proprietary rights. Each Government will ensure that any TDPs which it may receive from the other are not used for any purpose other than for the purpose of offering or bidding on or performing a prospective defense contract, without the prior written agreement of those owning or controlling proprietary rights, and that full protection shall be given to such proprietary rights, or to any privileged, protected, or classified data and information they contain.

1.10.1. Transfers to third parties of defense articles or technical data made available under this Agreement, and of articles produced with such data, will be subject to the prior written agreement of the Government that made available the defense articles or technical data, except as otherwise provided in particular arrangements between the two Governments or in multilateral agreements to which both Governments are parties.

1.10.2. Each Government will base its decisions regarding requests by the other for agreement to third party transfers on its laws, regulations and policies. Each Government will use the same criteria for proposed transfers by the other as it uses for itself, and will not reject, solely in the pursuit of its own national commercial advantage, a request from the other for a third country transfer of such defense articles or technical data.

1.11. Both Governments will use their best efforts to assist in negotiating licenses, royalties and technical information exchanges with their respective industries or other owners of such rights. Consistent with its laws and regulations, each Government will make available to the other all information necessary to implement cooperative arrangements under this Agreement. To the extent feasible, both Governments will seek an understanding with their respective industries that, in the interest of standardization and defense industrial cooperation, proprietary rights in defense-relevant information and data can be transferred by appropriate arrangements between the industries of the two countries.

1.12. Arrangements and procedures will, at the request of the purchasing Government, be established concerning follow-on logistic support for items of defense equipment purchased pursuant to this Agreement. Each Government will make its defense logistic systems and resources available to the other for this purpose as required and mutually agreed.

ARTICLE 2

Implementing Procedures

2.1. Both Governments agree to create a Joint United States-Luxembourg Committee for Defense Industrial Cooperation.

2.2. The Under Secretary of Defense for Research and Engineering will be the responsible authority in the United States Department of Defense for the development of implementing procedures under this Agreement.

2.3. The Director of Foreign Trade, in cooperation with the appropriate bodies of the Ministry of Defense, will be the responsible authority of the Government of Luxembourg for the development of implementing procedures under this Agreement.

2.4. The United States-Luxembourg Committee for Defense Industrial Cooperation will be co-chaired by the authorities referred to in paragraphs 2.2 and 2.3, above, or their designated representatives. The Committee will meet as agreed at the request of either Government, but a minimum of once a year to review progress in implementing this Agreement. It will discuss the research, development, production, procurement and logistics support needs of each country and the likely areas of cooperation; agree to the basis of and keep under review the financial statement referred to in paragraph 2.6, below; and consider any other matters relevant to this Agreement.

2.5. Each Government will designate points of contact at the Ministry/Department of Defense level, in each purchasing Service/Agency under the Ministry/Department of Defense, and with other Government Departments and Agencies as appropriate.

2.6. An annual United States-Luxembourg statement of the current balance and long-term trends of R&D cooperation, production, and purchases between the two countries will be prepared on a basis to be mutually agreed.

ARTICLE 3

Industry Participation

3.1. Implementation of this Agreement will involve maximum industrial participation. Notwithstanding the governmental procedures to facilitate the implementation of this Agreement, it will be the basic responsibility of the industries in each country to identify and advise their Government of their respective capabilities for cooperation and to carry out the supporting actions to bring industrial participation to consummation.

3.2. Each Government will be responsible for calling to the attention of its relevant industries the basic understanding of this Agreement and the appropriate implementing guidance. Both Governments will take all necessary steps to ensure that their industries comply with the regulations pertaining to security and to safeguarding classified information.

3.3. The Governments will arrange that their respective defense acquisition organizations are made familiar with the principles and objectives of this Agreement, and will assist sources in the other country to obtain information concerning proposed purchases, necessary qualifications and appropriate documentation.

3.4. To encourage the exchange of information in accordance with the purpose of this Agreement, each Government will, pursuant to its national laws and regulations, take action to facilitate participation by properly cleared officials and representatives of the other country in informational symposia, program briefings and prebid conferences, as well as access to publications and visits to installations.

ARTICLE 4

Security

4.1. The General Security of Information Agreement dated 17 September 1981, between the two Governments, with particular reference to industrial security, apply to activities under this Memorandum of Understanding.

4.2. To the extent that any items, plans, specifications, or information furnished in connection with the implementation of this Agreement are classified by the furnishing Government for security purposes, the other Government shall maintain a similar classification and employ security measures equivalent to those employed by the classifying Government.

4.3. Information provided by either Government to the other on condition that it remain confidential shall either remain in its original classification or be assigned a classification that ensures protection against disclosure equivalent to that required by the other Government. To assist in

providing the desired protection, each Government will mark such information furnished with a legend indicating the origin of the information, that the information relates to this Agreement, and that the information is furnished in confidence.

ARTICLE 5

Duration

5.1. This Agreement will enter into force when signed, and will remain in force for a period of ten (10) years from the last date of signature.

5.2 If, however, either Government considers it necessary for compelling national reasons to terminate its participation under this MOU before the end of the ten-year period, or of any extension thereof, written notification of its intention will be given to the other Government six months in advance of the effective date of termination. Such notification of intent shall become a matter of immediate consultation with the other Government to enable the two Governments fully to evaluate the consequences of such termination and, in the spirit of cooperation, to agree upon such actions as are necessary to alleviate problems that may result from the termination.

5.3. Notwithstanding the expiration or termination of this Agreement, any contract entered into consistent with the terms of this Agreement will continue in effect, unless the contract is terminated in accordance with its own terms.

5.4. Articles 1.9, 1.10 and Article 4 of this Agreement will continue in full force and effect after, and notwithstanding the expiration or termination of this Agreement.

ARTICLE 6

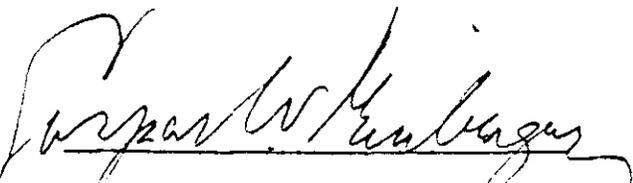
Annexes

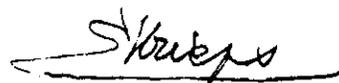
6.1. Annexes which may be negotiated by the responsible officials and approved by the appropriate Government authorities will be incorporated in this Agreement and made an integral part thereof.

Done in Luxembourg, this 2 day of December 1982, in duplicate.

FOR THE UNITED STATES
OF AMERICA

FOR THE GRAND-DUCHY OF LUXEMBOURG





2 December 1982

MEMORANDUM OF UNDERSTANDING
on
RECIPROCAL DEFENSE PROCUREMENT

ANNEX I

Principles Governing Implementation

ARTICLE 1

Introduction

This Annex sets forth the procedures agreed upon by the Governments of the United States and the Grand-Duchy of Luxembourg to implement the Memorandum of Understanding on Reciprocal Defense Procurement, hereinafter referred to as "The MOU".

ARTICLE 2

Major Principles

2.1 Each Government will consider for its defense requirements qualified defense items and services developed or produced in the other country.

2.2 The responsible Government authorities in each country will assist sources in the other country to obtain appropriate information concerning:

2.2.1 Plans and programs for research, development, production and acquisition of defense items and services.

2.2.2 Requirements for the qualification of sources.

2.2.3 Specifications and quality assurance standards.

Both Governments will respond promptly to requests for information that comply with their respective regulations and procedures. However, notwithstanding the governmental procedures established to facilitate the Agreement, it will be the responsibility of Government and/or industry representatives in each country to acquire information concerning the other country's research, development and procurement plans and to respond to solicitations in accordance with the prescribed acquisition regulations and procedures of the purchasing country.

ARTICLE 3

Actions

3.1 Both Governments will review and, where considered necessary, revise policies, procedures and regulations to ensure that the principles and

objectives of this Agreement, which are intended to be compatible with the broad aims of NATO Standardization and Interoperability, are taken into account. Recognizing that factors such as delivery date requirements for supplies, the interest of security, and the timely conduct of the contracting process must be considered, both Governments agree that the following measures will be taken to ensure free and full competition for the award of contracts:

3.1.1 Ensure that, as a minimum, the following entities are familiar with the principles, objectives and terms of the Agreement:

- Their respective defense planning, programming, and contracting offices.

- Their respective offices responsible for defense imports and exports.

- Their respective agencies and industries responsible for the research, development, and production of defense items and/or services.

3.1.2 Ensure that, consistent with national laws and regulations, offers of defense items developed and/or produced in the other country will be evaluated without applying to such offers either price differentials under "buy-national" laws and regulations, or the cost of import duties.

3.1.3 Consistent with national laws and regulations, provisions will be made for duty-free entry certificates and related documentation.

3.1.4 Assist industries in their respective countries to advise the other Government of their capabilities, and assist such industries in carrying out the supporting actions to maximize industrial participation in the implementation of the Agreement.

3.1.5 Consider defense items and services offered by the Government or industry of the other country as candidates for their respective requirements. Identify specific requirements and proposed purchases to the other country in a timely fashion to ensure that the industries of such country are afforded adequate time to be able to participate in the research, development, production and procurement processes.

3.1.6 Use their best efforts to assist in negotiating licenses, royalties, and technical information exchanges among their respective industries, and research and development institutes.

3.1.7 Permit the sale of defense equipment produced under license, coproduction agreements and/or joint development projects to allied countries and to appropriate third countries, subject to the policy outlined in Article 1.10 of the Agreement. Each agreement for a joint development or coproduction will address transfers of items or technology to allied or third countries.

3.1.8 Ensure that those items and services excluded from consideration under this Agreement for reasons of protecting national

requirements, such as the maintenance of a defense mobilization base, are limited to a small percentage of total annual defense procurement spending. Such defense items and services, together with those items and services that must be excluded from consideration under this Agreement because of legally imposed restrictions on acquisition from non-national sources, will be identified as soon as possible by both Governments. Lists of these items and services will be prepared and kept under review at this level.

3.1.9 Pursuant to its national laws and regulations, facilitate arrangements for visits by properly cleared Government officials and industry representatives of the other country to explore and actively promote cooperation possibilities for research, development, production, procurement and logistic support of defense equipment.

3.2 Both Governments will ensure that their respective actions under the Agreement in working toward an equitable balance in defense trade, take into consideration the level of technology involved as well as the contractual value of the items being purchased.

ARTICLE 4

Counting Procedures

4.1 The purchases and other transactions to be counted against the goals of this Agreement will be identified jointly by the two Governments. In principle, all defense items and services purchased by one Government from the other country will be counted as long as such purchases meet the following criteria:

4.1.1 Direct purchases by the defense agencies, one from the other.

4.1.2 Purchases by defense agencies of either country from the industry of the other country.

4.1.3 Purchases by industry from the Government or industry of the other country in the framework of Government defense contracts.

4.1.4 Purchases by a third country government from the Government of the United States or the Government of Luxembourg or the industry of either country when either of the following circumstances occur:

- The sale requires the prior agreement of the non-vendor Government.

- The sale is a direct result of the promotional efforts by the Government or industry of the non-vendor country, which fact has been previously acknowledged and agreed by the vendor party.

4.1.5 Acquisitions by either country of defense items or services resulting from projects jointly funded by both countries.

4.1.6 License fees, royalties and other associated income resulting from orders placed by defense agencies of one country with a licensed company in the other country; or in Government-to-Government transactions.

4.1.7 Transfers of technology, and production, testing and quality control equipment required to achieve the goals of this Agreement.

4.1.8 Contributions by one country in research, development and demonstration programs in the other country that have been agreed by both Governments.

4.1.9 Purchases of non-defense items and services by the Government or industry of either country from the Government or industry of the other, provided that both Governments agree that any particular purchase is to be counted against the goals of this Agreement.

4.2 The following transactions will not be counted:

4.2.1 Maintenance and logistic support activities in either country under contracts in effect before the effective date of this Agreement.

4.2.2 Any transaction being carried out under contracts and agreements in effect before the effective date of this Agreement.

4.2.3 Operational expenses of either Government to achieve the goals of this Agreement.

4.3 Transactions listed in Article 4.1 of this Annex, and any others that both Governments agree, will be credited in the following manner:

4.3.1 At the value of the contract on its effective date.

4.3.2 Purchases by third countries of defense items or services from the United States Government or the Government of Luxembourg or the industry of either country as described in paragraph 4.1.4. of this Annex, will be credited as a sale by the non-vendor country, as follows:

- When authorization by the non-vendor Government is required; only the value of the item(s) directly related to the authorization will be credited.

- When the sale is the direct result of promotional efforts by the Government or industry of the non-vendor country; only the value of parts, subassemblies, assemblies, equipment and services supplied by either the Government of the United States or the Government of Luxembourg or their respective industries will be credited.

4.4 The following transactions will be credited in the manner and amounts agreed by both Governments:

- License fees, royalties, and any other income resulting from transfers of technology, and production, testing and quality control equipment between both countries.

- Orders placed by defense agencies in one country with a licensed company in the other country, or from Government-to-Government transactions.

- Contributions by one country in research, development and demonstration programs in the other country.

4.5 Transactions will be credited according to the exchange rate of the respective currencies on the effective date of the transaction.

4.6 Each Government will prepare an annual counting report. These reports will summarize the data counted pursuant to each of the categories above. Supporting data for each category included in the summary will indicate the item supplies, the parties to the transaction, transaction date, and credited value. Both Governments will exchange the summary reports and supporting data sufficiently in advance of the annual meeting to permit review and comment or agreement by the other at least two (2) weeks prior to the meeting. Any disagreement concerning the reports will be settled by the Committee established pursuant to Article 2.1 of the Agreement.

ARTICLE 5

Administration

5.1 Each Government will designate points of contact at their respective Ministry/Department of Defense levels, as well as within other relevant departments and agencies, for the purpose of carrying out those actions necessary to implement the Agreement.

5.2 The Committee for Defense Industrial Cooperation will be responsible for the general administration of the Agreement.

5.3 Quality assurance procedures outlined in STANAGS 4107 and 4108 will apply, unless other provisions are mutually agreed to on any specific contract. Reimbursement for services provided shall be afforded in accordance with the national laws and regulations of each country.