

No. 3375

**UNITED STATES OF AMERICA
and
FEDERAL REPUBLIC OF GERMANY**

**Agreement (with annex and exchange of notes) concerning
tax relief to be accorded by the Federal Republic to
United States expenditures in the interest of the
common defense. Signed at Bonn, on 15 October 1954**

Official texts: English and German.

Registered by the United States of America on 9 May 1956.

**ÉTATS-UNIS D'AMÉRIQUE
et
RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE**

**Accord (avec annexe et échange de notes) relatif à l'exoné-
ration fiscale dont la République fédérale fera béné-
ficier les dépenses effectuées par les États-Unis dans
l'intérêt de la défense commune. Signé à Bonn, le
15 octobre 1954**

Textes officiels anglais et allemand.

Enregistré par les États-Unis d'Amérique le 9 mai 1956.

No. 3375. AGREEMENT¹ BETWEEN THE UNITED STATES OF AMERICA AND THE FEDERAL REPUBLIC OF GERMANY CONCERNING TAX RELIEF TO BE ACCORDED BY THE FEDERAL REPUBLIC TO UNITED STATES EXPENDITURES IN THE INTEREST OF THE COMMON DEFENSE. SIGNED AT BONN, ON 15 OCTOBER 1954

The United States of America and the Federal Republic of Germany wishing to promote the common defense effort have agreed as follows :

Article I

The Federal Republic of Germany, called hereinafter the Federal Republic, shall grant relief from Federal taxes and customs duties insofar as payments of such taxes and customs duties affect defense expenditures of the United States of America, called hereinafter the United States. The manner and form of such tax relief shall be in accordance with the Articles below.

Article II

Defense expenditures in the meaning of this Agreement are expenditures made by the United States, or in the case of experts, expenditures made by or on behalf of the United States, for equipment, materials, facilities and/or services for the common defense effort, including the expenditures of all foreign aid programs of the United States.

Article III

Relief from taxes and customs duties which affect United States defense expenditures as defined in Article II and in accordance with the terms of the Annex² shall be granted as follows :

(1) *Turnover Tax*

(a) Exemption from the turnover tax shall be granted for equipment, materials or facilities delivered to, or services rendered for, agencies of the

¹ Came into force on 8 November 1955, upon deposit of the instrument of ratification by the Federal Republic of Germany with the Government of the United States of America, in accordance with article XIV.

² See p. 144 of this volume.

United States or agencies of other governments designated by the United States, regardless of whether or not an export transaction takes place.

(b) Refunds of turnover tax shall, upon application, be granted, to the extent provided in the Annex, to the supplier of equipment, materials, facilities or services which are exempt from the turnover tax pursuant to Subparagraph (a) above, regardless of whether or not an export transaction takes place.

(c) The exemptions and refunds provided under Subparagraphs (a) and (b) above shall also be granted to a supplier who proves that supplies were exported to private persons or firms authorized by agencies of the United States or agencies of other governments designated by the United States.

(2) *Customs Duties and Excise Taxes Including Turnover Equalization Tax and Levies of the Fiscal Monopolies*

(a) Exemption from the collection of customs duties and excise taxes, including the turnover equalization tax, shall be granted for equipment, materials and facilities which are delivered to agencies of the United States or to agencies of other governments designated by the United States from customs-free areas, such as customs-free ports, or from installations under customs control, such as bonded warehouses. The same exemptions shall be granted if such supplies are duly exported.

(b) Other equipment, materials or facilities which are delivered to agencies of the United States or to agencies of other Governments designated by the United States shall be granted the most favorable exemptions, refunds or price discounts provided by German customs, excise, and fiscal monopoly legislation for exported supplies. The exemptions, refunds or price discounts provided by German customs, excise, and fiscal monopoly legislation for exported supplies shall also apply to supplies which are duly exported.

Article IV

Exemption from customs duties and excise taxes, including the turnover equalization tax, shall be granted for equipment, materials or facilities, as specified in Article II, which are imported from outside the German customs area and delivered to, or which are in transit through the territory of the Federal Republic for delivery to, agencies of the United States or to agencies of other governments designated by the United States.

Article V

Exemption from customs duties and excise taxes, including the turnover equalization tax, shall be granted for equipment, materials or facilities, as

specified in Article III (2) Subparagraph (a) and Article IV, which are processed in the German customs area under the German customs regulations applicable to such processing. A simplified procedure will be provided for the repair of military equipment.

Article VI

Relief from Federal taxes and customs duties shall be granted provided the responsible German agencies have been furnished by agencies of the United States with appropriate evidence that the transactions concerned are eligible for such relief under the provisions of this Agreement. The form of this evidence shall be established by mutual agreement between the two governments.

Article VII

(1) When dollar expenditures are involved, the United States shall make payments in the form of dollar instruments payable at specific banks to the credit of the supplier concerned.

(2) When payments from DM funds specified in the Annex under Point 2 are involved, the payments shall be made in accordance with arrangements between the two governments.

Article VIII

Supplies for which tax relief has been granted in accordance with the above provisions may be sold in the area to which this agreement applies to persons other than agencies of the United States or agencies of other governments designated by the United States only in accordance with terms to be agreed upon by the two governments.

Article IX

The relief provided in Articles III, IV and V shall also be granted for transactions which originated prior to the entry into force of this Agreement where the contracts involved in such transactions provide (a) that, pending the conclusion of arrangements embodied in this Agreement, not in excess of a certain percentage of total payments due under such contracts shall be paid by the United States, or (b) that prices shall be reduced by the amount of taxes reflected therein for which tax relief shall be granted by the Federal Republic to the other contracting party.

Article X

This Agreement does not affect relief from taxes the yield of which accrues entirely or partly to the *Laender* or the *Gemeinden* (*Gemeindeverbaende*). It does not provide relief from social insurance contributions.

Article XI

The Government of the Federal Republic shall inform the Government of the United States of regulations to be issued for the implementation of this Agreement.

Article XII

(1) The present Agreement shall also apply from the date specified in Article XIV to *Land* Berlin which for the purposes of this Agreement comprises those areas over which the Berlin Senate exercises jurisdiction.

(2) It is a condition to the application of this Agreement to *Land* Berlin, in accordance with the preceding Paragraph, that the Government of the Federal Republic shall previously have furnished to the Government of the United States a notification that all legal procedures in Berlin necessary for the application of this Agreement therein have been complied with.

Article XIII

(1) The two Governments shall, upon the request of either of them, consult regarding any question relating to the application of this Agreement or to the operations or arrangements carried out pursuant to this Agreement.

(2) Either Party to this Agreement may apply at any time for review of this Agreement. The two Governments shall enter into negotiations aiming at a mutually satisfactory solution based on the principles of this Agreement with respect to any problem that may arise.

(3) This Agreement may be amended at any time by agreement between the two contracting parties.

Article XIV

(1) This Agreement shall enter into force upon the deposit of an instrument of ratification by the Federal Republic with the Government of the United States.

(2) The Annex to this Agreement forms an integral part hereof.

IN WITNESS WHEREOF the respective representatives, duly authorized for the purpose, have signed this Agreement.

DONE at Bonn, in duplicate, in the English and German languages, both of which texts are authentic, this fifteenth day of October 1954.

For the United States of America :

James B. CONANT

For the Federal Republic of Germany :

ADENAUER

ANNEX TO THE AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE FEDERAL REPUBLIC OF GERMANY CONCERNING TAX RELIEF TO BE ACCORDED BY THE FEDERAL REPUBLIC TO UNITED STATES EXPENDITURES IN THE INTEREST OF THE COMMON DEFENSE

1. *Article I*

The relief from taxes and customs duties provided by the accompanying Agreement shall not apply to :

- (a) Purchases and imports by the Post Exchange System;
- (b) Purchases by individual members of the United States Forces in Germany.

2. *Articles II and VII*

(1) United States defense expenditures within the meaning of this Agreement shall be expenditures made from :

- (a) United States dollars,
- (b) Deutsche Marks purchased with United States dollars,
- (c) Deutsche Marks received by the United States in payment for recognized dollar claims of the United States against the Federal Republic,
- (d) Deutsche Marks received by the United States in connection with, or as a result of, United States dollar foreign aid expenditures in or for Germany,

(e) Deutsche Marks otherwise received by the United States relating to dollar expenditures insofar as they result from special transactions agreed to by the two governments.

(2) It is understood that the use of the Deutsche Marks referred to above in Paragraph (1), Subparagraphs (c), (d) and (e) for the purposes defined in Article II of this Agreement shall depend upon agreements hereon between the two governments.

3. Articles III, IV, V and VIII

In the event of the establishment of a European defense organization responsible for the procurement and distribution of equipment, agencies of such an organization may be regarded as agencies of a government for the purposes of this Agreement.

4. Article III (1)

(1) A supplier within the meaning of Article III (1) Subparagraph (b) of the attached Agreement shall be granted, upon application, refunds of the turnover tax in accordance with the provisions of Section 16, Subparagraphs (1) and (2) of the Turnover Tax Law and the applicable implementing regulations, regardless of whether or not an export transaction takes place.

(2) A supplier within the meaning of Article III (1) Subparagraph (c) of the attached Agreement shall be granted, upon application, refunds of the turnover tax in accordance with the provisions of Section 16 Subparagraphs (1) and (2) of the Turnover Tax Law and the applicable implementing regulations.

(3) The English phrase "for equipment, materials or facilities delivered to or services rendered for agencies" as used in Article III (1) (a) of this Agreement bears the same meaning as the German term "*fuer Lieferungen von Waren einschliesslich Werklieferungen und fuer sonstige Leistungen an Stellen*" (literally, for deliveries of supplies, including work deliveries, and for other services for agencies). The English phrase "equipment, materials, facilities or services" as used in Article III (1) (b) of this Agreement bears the same meaning as the German term "*Lieferungen von Waren einschliesslich Werklieferungen*" (literally, deliveries of supplies, including work deliveries).

(4) The meaning of the term "*Werklieferungen*" (work deliveries) shall in principle be as stated in the German Turnover Tax Law. Construction of buildings and other contract services for the United States shall invariably be considered to be "*Werklieferungen*" (work deliveries) in every case, when the contractor supplies material in the performance of the services which are valued at more than 50 percent of the total cost of the services. Payments made to sub-contractors for services rendered under the contract are to be included in the costs of materials. The refund shall be calculated on the total amount of the bill for the entire contract.

(5) For construction other than of buildings the contractor shall be granted the highest turnover tax refund provided under Point 4 Subparagraph (1) for the materials shown separately on the bill regardless of whether the construction is a "*Werklieferung*" (work delivery) or a "*Werkleistung*" (work service).

(6) It is agreed that, in connection with procurement contracts concluded between the United States and the Federal Republic, direct deliveries to, and other services rendered for, the Federal Republic shall be treated in the same manner as direct deliveries to, and other services rendered for, agencies of the United States or to agencies of other governments designated by the United States. The same understanding shall apply where construction contracts are placed with a German building administration.

5. *Article V*

A simplified customs procedure is provided for the repair of military equipment within the framework of the attached Agreement. Upon application, authorization to operate under such simplified procedure shall be granted by the main customs offices (*Hauptzollämter*) to firms to which the agencies of the United States give such orders for repair. Authorization shall not be granted to firms which are untrustworthy in tax matters or which do not maintain proper bookkeeping. With respect to such goods to be repaired, or materials provided therefor by agencies of the United States, the authorized firms shall be relieved from the usual requirements of presenting to a customs office, and obtaining customs clearance for, each individual consignment of such goods or materials when they are taken over and when they are returned. The firms, however, shall report to the competent customs office only those goods which were received for repair and those which were returned after repair. The reports shall also include materials received by the firm for executing the order and any resulting scrap. Scrap of low value left in the hands of the firm shall be exempt from taxes and duties. Other scrap shall be subject to taxes and duties unless returned by the firm to the contracting agency.

6. *Article VIII*

The United States has declared and the Federal Republic has noted that certain goods are sold through agencies of the United States Forces, particularly the Quartermaster Corps, to members of the Forces for their personal use or consumption. Such sales shall not fall under the provisions of Article VIII of the attached Agreement. In this connection, the United States and the Federal Republic shall each within the spheres of their authority take appropriate measures in order to prevent violations of German customs, tax and foreign exchange regulations, particularly with respect to goods such as tobacco, tobacco products, coffee, tea and alcoholic beverages.

7. *Articles III, IV, V and VIII*

It is agreed that the relief from Federal taxes and customs duties provided by this Agreement will not be altered by the entry into force of agreements on the rights and obligations of foreign forces and their members in the Federal Republic of Germany, pursuant to the decision of the Foreign Ministers of the Federal Republic of Germany, France, the United Kingdom and the United States taken at London on October 3, 1954.

8. *Articles III and V*

In the event the German legislation or implementing regulations existing on the date of the signing of this Agreement and governing (a) the granting of turnover tax refunds on export transactions; (b) exemptions, refunds or price discounts for exported goods from

customs duties and excise taxes, including the turnover equalization tax, and levies of the fiscal monopolies; and (c) the processing of goods in the German customs area; shall be modified, superseded, or repealed, the parties to this Agreement shall enter into immediate consultations to establish procedures to ensure the granting of relief for United States defense expenditures from German taxes, customs duties and levies of fiscal monopolies no less favorable than that herewith established by this Agreement.

EXCHANGE OF NOTES

I

The Chancellor of the Federal Republic of Germany to the United States High Commissioner

[GERMAN TEXT — TEXTE ALLEMAND]

DER BUNDESKANZLER UND
BUNDESMINISTER DES AUSWARTIGEN

Bonn, den 15 Oktober 1954

Seiner Exzellenz dem Hohen Kom-
missar der Vereinigten Staaten von
Amerika Herrn Botschafter Dr.
James B. Conant

Godesberg-Mehlem

Herr Botschafter !

Mit Beziehung auf das heute in
Bonn unterzeichnete Abkommen
zwischen der Bundesrepublik Deutsch-
land und den Vereinigten Staaten von
Amerika über die von der Bundesre-
publik zu gewährenden Abgabenver-
günstigungen für die von den Vereinig-
ten Staaten im Interesse der gemeinsa-
men Verteidigung geleisteten Ausga-
ben (Steuerbegünstigungsabkommen),
habe ich die Ehre, folgendes zu be-
stätigen :

Im Hinblick auf Nr. 2 Absatz 2 des
Anhangs zu dem genannten Abkom-
men besteht Einverständnis darüber,
daß zur Zeit seiner Unterzeichnung
nur die nachstehend genannten Ver-
einbarungen in Betracht kommen :

a) Das am 27. Februar 1953 in Lon-
don unterzeichnete Abkommen
zwischen der Bundesrepublik und

DER BUNDESKANZLER UND
BUNDESMINISTER DES AUSWARTIGEN¹

October 15, 1954

His Excellency the United States High
Commissioner Ambassador Dr.
James B. Conant

Godesberg-Mehlem

Mr. Ambassador,

With reference to the Agreement
between the Federal Republic of Ger-
many and the United States of America
Concerning Tax Relief to be Accorded
by the Federal Republic to United
States Expenditures in the Interest of
the Common Defense (Tax Relief
Agreement), signed at Bonn on this
day,² I have the honor to confirm the
following :

With respect to Point 2, Paragraph
2, of the Annex to the said Agreement,
it is understood that the only agree-
ments to be considered at the time of
the signing of the Agreement are the
following :

a) The Agreement between the Feder-
al Republic of Germany and the
United States of America Regarding

¹ The Federal Chancellor and Minister of Foreign Affairs.

² See p. 136 of this volume.

den Vereinigten Staaten über die Regelung der Verbindlichkeiten der Bundesrepublik gegenüber den Vereinigten Staaten aus der Lieferung von Überschußgütern an Deutschland. In diesem Zusammenhang bestätige ich, daß Einverständnis darüber besteht, daß Beträge in der Währung der Bundesrepublik Deutschland, welche die Vereinigten Staaten gemäß Artikel IV dieses Abkommens erhalten, von den Vereinigten Staaten zu Ausgaben für die Zwecke verwendet werden können, die in Artikel II des Steuerbegünstigungsabkommens bezeichnet sind.

b) Das am 15. Dezember 1949 in Bonn unterzeichnete und insbesondere durch Briefwechsel zwischen dem Bundeskanzler der Bundesrepublik Deutschland und dem ECA-Sonderbevollmächtigten der Vereinigten Staaten vom 19. und 28. Dezember 1951 geänderte Abkommen über wirtschaftliche Zusammenarbeit zwischen der Bundesrepublik Deutschland und den Vereinigten Staaten von Amerika. In diesem Zusammenhang bestätige ich, daß Einverständnis darüber besteht, daß die 10% Deutsche Mark-Gegenwertmittel, die den Vereinigten Staaten gemäß Artikel IV Absatz 4 dieses Abkommens in seiner abgeänderten Fassung zustehen, für die in Artikel II des Steuerbegünstigungsabkommens bezeichneten Zwecke verwendet werden können.

the Settlement of the Obligation of the Federal Republic to the United States for Surplus Property Furnished Germany, signed at London on February 27, 1953.¹ In this connection, I confirm that it is understood that the currency of the Federal Republic received by the United States in accordance with Article IV of that Agreement may be used by the United States for expenditures for the purposes defined in Article II of the Tax Relief Agreement.

b) The Economic Cooperation Agreement between the Federal Republic of Germany and the United States of America, signed at Bonn on December 15, 1949, as amended² particularly by the exchange of letters between the United States ECA Special Representative and the Chancellor of the Federal Republic of Germany, dated December 19 and December 28, 1951,³ respectively. In this connection, I confirm that it is understood that the 10 percent Deutsche Mark counterpart funds available to the United States in accordance with Article IV, Paragraph 4 of that Agreement, as amended, may be used for the purposes defined in Article II of the Tax Relief Agreement.

¹ United Nations, *Treaty Series*, Vol. 205, p. 103.

² United Nations, *Treaty Series*, Vol. 92, p. 269; Vol. 141, p. 390, and Vol. 212, p. 329.

³ United Nations, *Treaty Series*, Vol. 181, p. 45.

Genehmigen Sie, Herr Botschafter, den Ausdruck meiner ausgezeichneten Hochachtung.

ADENAUER

Accept, Mr. Ambassador, the renewed assurance of my highest consideration.

ADENAUER

II

The United States High Commissioner to the Chancellor of the Federal Republic of Germany

[GERMAN TEXT — TEXTE ALLEMAND]

UNITED STATES HIGH COMMISSIONER FOR
GERMANY

BAD GODESBERG, GERMANY

October 15, 1954

Excellency :

I have the honor to acknowledge the receipt of your letter dated today regarding (a) the use of currency of the Federal Republic received by the United States in accordance with Article IV of the Agreement between the United States of America and the Federal Republic of Germany regarding the Settlement of the Obligation of the Federal Republic to the United States for Surplus Property Furnished Germany, signed at London, February 27, 1953, and (b) the use of the 10 percent Deutsche Mark counterpart funds available to the United States in accordance with Article IV, Paragraph 4 of the Economic Cooperation Agreement between the Federal Republic of Germany and the United States of America, signed at Bonn on December 15, 1949, as amended, and to confirm that I agree with its contents.

UNITED STATES HIGH COMMISSIONER FOR
GERMANY

BAD GODESBERG, GERMANY

October 15, 1954

Exzellenz !

Ich beehre mich, den Eingang Ihres heutigen Schreibens zu bestaetigen, das betrifft a) die Verwendung von Betraegen in der Waehrung der Bundesrepublik Deutschland, die die Vereinigten Staaten von Amerika gemaess Artikel IV des am 27. Februar 1953 in London unterzeichneten Abkommens zwischen der Bundesrepublik und den Vereinigten Staaten ueber die Regelung der Verbindlichkeiten der Bundesrepublik gegenueber den Vereinigten Staaten aus der Lieferung von Ueberschussguetern an Deutschland erhalten, und b) die Verwendung der 10% Deutsche Mark-Gegenwertmittel, die den Vereinigten Staaten gemaess Artikel IV Absatz 4 des am 15. Dezember 1949 in Bonn unterzeichneten Abkommens ueber wirtschaftliche Zusammenarbeit zwischen der Bundesrepublik Deutschland und den Vereinigten Staaten von Amerika in seiner abgeaenderten Fassung zustehen, und erklare mich mit seinem Inhalt einverstanden.

Accept, Excellency, the renewed assurance of my most distinguished consideration.

James B. CONANT

His Excellency, Chancellor of the
Federal Republic of Germany
Palais Schaumburg
Bonn

Genehmigen Sie, Exzellenz, den Ausdruck meiner ausgezeichneten Hochachtung.

James B. CONANT

Seiner Exzellenz Bundeskanzler der
Bundesrepublik Deutschland
Palais Schaumburg
Bonn