

No. 5395

UNITED STATES OF AMERICA
and
FEDERAL REPUBLIC OF GERMANY

**Exchange of notes (with related notes) constituting an
agreement relating to a weapons production program.
Bonn, 27 May 1960**

Official texts: English and German.

Registered by the United States of America on 22 October 1960.

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

**Échange de notes (avec notes connexes) constituant un accord
relatif à un programme de production d'armes. Bonn,
27 mai 1960**

Textes officiels anglais et allemand.

Enregistré par les États-Unis d'Amérique le 22 octobre 1960.

No. 5395. EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT¹ BETWEEN THE UNITED STATES OF AMERICA AND THE FEDERAL REPUBLIC OF GERMANY RELATING TO A WEAPONS PRODUCTION PROGRAM. BONN, 27 MAY 1960

I

The American Ambassador to the German Minister for Foreign Affairs

No. 346

Bonn, May 27, 1960

Excellency :

I have the honor to refer to recent discussions between representatives of our two Governments concerning a Weapons Production Program, the purpose of which is to increase the capacity of North Atlantic Treaty² Organization countries, jointly and severally, to produce, maintain, repair, and overhaul equipment and materials needed for their mutual defense.

As a result of these discussions, the following understandings were reached :

1. The Government of the United States of America will furnish under the Weapons Production Program to the Government of the Federal Republic of Germany such equipment, materials, services, and information as may be mutually arranged in accordance with paragraph 8 hereof, to assist in the production, maintenance, repair, and overhaul of equipment and materials needed for the common defense.

2. The assistance furnished by the Government of the United States of America under this program will be made available in accordance with the terms and conditions of the Mutual Defense Assistance Agreement between the United States of America and the Federal Republic of Germany signed on June 30, 1955,³ and agreements amendatory and supplementary thereto.

3. *a.* The Weapons Production Program shall be carried on through mutually agreed projects, which shall take account of the obligations of the Federal Republic of Germany under the Brussels Treaty, as adopted October 23, 1954, and the relevant protocols,⁴ including all amendments and revisions.

b. The program may include projects carried on solely by the Federal Republic of Germany as well as joint projects of coordinated production. Such joint projects may include those in which NATO countries carry out the project work through the North Atlantic Treaty Organization, including subsidiary bodies of the North Atlantic Council. Accordingly, assistance furnished by the Government of the United States of America under this agreement may, at the request of the Government of the Federal Republic of

¹ Came into force on 27 May 1960 by the exchange of the said notes.

² United Nations, *Treaty Series*, Vol. 34, p. 243 ; Vol. 126, p. 350, and Vol. 243, p. 308.

³ United Nations, *Treaty Series*, Vol. 240, p. 47.

⁴ United Nations, *Treaty Series*, Vol. 19, p. 51, and Vol. 211, pp. 342, 358, 364 and 376.

Germany, be furnished to the North Atlantic Treaty Organization or such a subsidiary body. The undertakings of the Government of the Federal Republic of Germany set forth in this agreement will extend to the participation of the Federal Republic of Germany in all joint projects, as well as to projects carried out exclusively by the Government of the Federal Republic of Germany.

4. *a.* The Government of the Federal Republic of Germany, in connection with assistance intended to create or expand facilities under this program, will :

- (1) Use its best efforts to maintain or cause to be maintained those facilities which the Government of the United States of America has assisted to establish or expand so that they will be in a condition properly to produce, maintain, repair, and overhaul equipment and materials, when they may be required. Pending such time, such additional facilities and equipment furnished by the Government of the United States of America may be used for other purposes to be agreed upon by appropriate representatives of the two Governments, provided that such use will not interfere with the ready availability of such facilities for use for the purpose for which they were established or expanded.
- (2) Subject to the provisions of paragraph 8 hereof, furnish all of the land, buildings, equipment, materials, and services required for such additional facilities, except for the equipment, materials, services, and information to be furnished either by private industry, the Government of the United States of America or by other governments participating in joint projects, and take whatever measures are required to establish or expand such facilities in good operating order.
- (3) Use its best efforts to maintain or cause to be maintained in usable condition a total capacity of facilities for the production or fabrication, for military purposes, of equipment and materials of the same type as those which may be produced or fabricated in a facility established or expanded with the assistance of the Government of the United States of America, which shall not be less than the aggregate of the capacity of such facilities already existing, those already programmed for construction in the Federal Republic of Germany under public or private ownership on the date of the conclusion of the project arrangements for such a corresponding facility, and those established or expanded with United States assistance.
- (4) Use its best efforts to maintain or cause to be maintained in usable condition a total capacity of facilities for the maintenance, repair, or overhaul of military equipment or material of the same type as those established or expanded with the assistance of the Government of the United States of America, which shall not be less than the aggregate of the capacity of such facilities already existing, those already programmed for construction in the Federal Republic of Germany under public ownership on the date of the conclusion of the project arrangement for such a corresponding facility, and those established or expanded with United States assistance.

b. The undertakings in this paragraph with respect to the maintenance of facilities are subject to the understanding that should changed conditions make continued compliance with these undertakings either unnecessary as a matter of defense, or impracticable, the Government of the Federal Republic of Germany may, after consultation with the Government of the United States of America, modify those undertakings to accord with these changed conditions.

5. The Government of the Federal Republic of Germany also will :

- a. Sell or cause to be sold, the products and services resulting from this program to other NATO nations at fair and reasonable prices only, and shall not discriminate, or permit discrimination, among such nations in terms of the price charged for, or the quality of, such products or services, the time within which such products or services are delivered and performed, or in any other manner.
- b. Sell or permit the sale of the products and services resulting from this program to non-NATO nations only in such cases as may be mutually agreed upon.
- c. Insure that the savings in cost which have resulted from the materials, equipment or services supplied by the Government of the United States of America will subsequently be passed on in the prices to be charged to nations referred to in subparagraphs *a* and *b* above.
- d. Implement the provisions of subparagraphs *a*, *b*, and *c* above either directly or through its contractual relationships with private industry doing work in connection with this program.
- e. Accord tax relief to the importation and exportation of equipment, materials and installations within the framework of this agreement in accordance with the terms of the 'Agreement between the United States and the Federal Republic of Germany concerning Tax Relief to be Accorded by the Federal Republic to United States Expenditures for the Common Defense' of October 15, 1954¹ and in accordance with the terms of the Federal Republic turnover tax and customs regulations valid at the time of such importation or exportation.

6. Agreement of our two Governments shall be a prerequisite to the sale or transfer to any other nation by the Federal Republic of Germany of the following :

- a. Items produced under this program to which the Government of the United States of America has contributed, either directly or indirectly, classified information essential to their manufacture, use or maintenance ;
- b. Any classified information of United States origin furnished in connection with the production, maintenance, repair, overhaul, or use of items produced under this program.

7. The Government of the Federal Republic of Germany will furnish without cost to the Government of the United States of America for defense purposes technical information (proprietary or other) utilized or developed in the production, maintenance, repair, overhaul, or development of military items under this program, and will grant to the Government of the United States of America for defense purposes a royalty-free license on inventions, improvements, and discoveries made in connection with the work carried out under this program, to the extent to which, and subject to the conditions under which, the Government of the Federal Republic of Germany has the right so to do without the payment of royalties or other compensation to others. The Government of the Federal Republic of Germany undertakes that, in entering into contracts subsequent to the effective date of this agreement for the production, maintenance, repair, overhaul, or development of military items under this program, it will obtain for the Government of the United States of America for defense purposes only rights to technical

¹ United Nations, *Treaty Series*, Vol. 239, p. 135.

information (proprietary or other) and to inventions, improvements and discoveries equal to those obtained under such contracts by the Government of the Federal Republic of Germany for itself, and at charges, if any, no greater than those made to the Government of the Federal Republic of Germany for its own use.

8. In carrying out this program, our two Governments, acting through their appropriate contracting officers, will enter into supplementary arrangements covering the specific projects involved, which will set forth the nature and amounts of the contributions to be made by each Government, the description and purpose of the facilities to be established, appropriate security arrangements, and other appropriate details. Joint projects may be covered by supplementary arrangements entered into between the Government of the United States of America and the North Atlantic Treaty Organization, including subsidiary bodies of the North Atlantic Council. / It is recognized that this Agreement does not commit either Government to contribute any funds to any given project to be carried out hereunder ; any financial commitments of the two Governments will be made by the execution of the supplementary project arrangements referred to above.

I have the honor to propose that if these understandings meet with the approval of the Government of the Federal Republic of Germany, the present note and Your Excellency's note in reply concurring therein, of which both the English and German language texts are equally authentic,¹ shall constitute detailed arrangements pursuant to Article XI, paragraph 3 of the Mutual Defense Assistance Agreement between our two Governments, which shall enter into force on the date of Your Excellency's reply.

Accept, Excellency, the renewed assurances of my highest consideration.

Walter C. DOWLING

His Excellency Heinrich von Brentano
Minister for Foreign Affairs
Bonn

II

The German Minister for Foreign Affairs to the American Ambassador

[GERMAN TEXT — TEXTE ALLEMAND]

DER BUNDESMINISTER DES AUSWÄRTIGEN

Bonn, den 27. Mai 1960

Herr Botschafter,

ich beehre mich, den Empfang Ihrer Note vom 27. Mai 1960 zu bestätigen, deren Wortlaut wie folgt lautet :

¹ The German version of this note, signed by the Ambassador, is quoted in note II ; see below.

La version allemande de cette note, signée par l'Ambassadeur, est reproduite dans la note II ; voir ci-dessous.

Genehmigen Sie, Exzellenz, den Ausdruck meiner ausgezeichnetsten Hochachtung.

V. BRENTANO

Seiner Exzellenz dem Botschafter
der Vereinigten Staaten von Amerika
Herrn Walter C. Dowling

[*English version of note II — Version anglaise de la note II*]

DER BUNDESMINISTER DES AUSWÄRTIGEN¹

Bonn, May 27, 1960,

Excellency,

I have the honour to acknowledge the receipt of your note of May 27, 1960, which reads as follows :

[*See note I*]

I have the honour to inform you that these arrangements meet with the approval of the Government of the Federal Republic of Germany, which agrees that your note and this note in reply should constitute detailed arrangements pursuant to paragraph 3 of Article XI of the Mutual Defense Assistance Agreement concluded between our two Governments, these arrangements to enter into force on the date of this note in reply.

Accept, Excellency, the renewed assurances of my highest consideration.

V. BRENTANO

His Excellency the Ambassador
of the United States of America
Mr. Walter C. Dowling

RELATED NOTES

I

The American Ambassador to the German Minister for Foreign Affairs

No. 347

Bonn, May 27, 1960

Excellency :

I have the honor to refer to the agreement between our two Governments effected by an exchange of notes signed on 27 May, 1960, and relating to the Weapons

¹ The Federal Minister of Foreign Affairs.

Production Program.¹ With particular reference to paragraph 5 (e) of that agreement, it is the understanding of my Government that the Government of the Federal Republic of Germany will use such authorities as it has or may hereafter be provided to extend relief from taxes and customs on imports and exports under the Weapons Production Program to all nations participating in coordinated production under the program.

I would appreciate your Excellency's confirmation that this is also the understanding of the Government of the Federal Republic of Germany.

Accept, Excellency, the renewed assurances of my highest consideration.

Walter C. DOWLING

His Excellency Heinrich von Brentano
Minister for Foreign Affairs
Bonn

II

The German Minister for Foreign Affairs to the American Ambassador

[GERMAN TEXT — TEXTE ALLEMAND]

DER BUNDESMINISTER DES AUSWÄRTIGEN

Bonn, den 27. Mai 1960

Herr Botschafter,

ich beehre mich, den Empfang Ihrer Note vom 27. Mai 1960 zu bestätigen, deren Wortlaut in vereinbarter Übersetzung wie folgt lautet :

„Ich beehre mich, auf das zwischen unseren beiden Regierungen durch Notenwechsel getroffene und am 27. Mai 1960 unterzeichnete Abkommen betreffend das Waffenherstellungsprogramm Bezug zu nehmen. Mit besonderem Hinweis auf Absatz 5 (e) dieses Abkommens geht meine Regierung davon aus, daß die Regierung der Bundesrepublik Deutschland von den ihr erteilten oder etwa späterhin erteilten Ermächtigungen Gebrauch machen wird, Befreiung von Abgaben und Zöllen auf Ein- und Ausfuhr, die im Rahmen des Waffenherstellungsprogramms erfolgt, allen Nationen zu gewähren, die an der koordinierten Fertigung aufgrund des Programms beteiligt sind.

Ich wäre für eine Bestätigung Eurer Exzellenz dankbar, daß dies auch die Auffassung der Regierung der Bundesrepublik Deutschland ist.“

Ich beehre mich Ihnen mitzuteilen, daß dies auch die Auffassung der Regierung der Bundesrepublik Deutschland ist.

¹ See p. 46 of this volume.

Genehmigen Sie, Herr Botschafter, die Versicherung meiner ausgezeichnetsten Hochachtung.

V. BRENTANO

Seiner Exzellenz dem Botschafter
der Vereinigten Staaten von Amerika
Herrn Walter C. Dowling

[TRANSLATION¹ — TRADUCTION²]

THE FEDERAL MINISTER OF FOREIGN AFFAIRS

Bonn, May 27, 1960

Mr. Ambassador :

I have the honor to acknowledge receipt of your note of May 27, 1960, the text of which reads as follows in the agreed translation :

[*See note I*]

I have the honor to inform you that this is also the understanding of the Government of the Federal Republic of Germany.

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

V. BRENTANO

His Excellency Walter C. Dowling
Ambassador of the United States of America

¹ Translation by the Government of the United States of America.

² Traduction du Gouvernement des États-Unis d'Amérique.