

No. 27078

**SWEDEN
and
UNITED STATES OF AMERICA**

Memorandum of Understanding relating to the principles governing mutual cooperation in the defense procurement area (with exchange of letters). Signed at Washington 11 June 1987, and at Stockholm on 16 July 1987.

Authentic texts: Swedish and English.

Registered by Sweden on 29 January 1990.

**SUÈDE
et
ÉTATS-UNIS D'AMÉRIQUE**

Mémorandum d'accord concernant les principes régissant la coopération mutuelle dans le domaine des achats pour la défense (avec échange de lettres). Signé à Washington le 11 juin 1987, et à Stockholm le 16 juillet 1987.

Textes authentiques : suédois et anglais.

Enregistré par la Suède le 29 janvier 1990.

MEMORANDUM OF UNDERSTANDING¹ BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE KINGDOM OF SWEDEN RELATING TO THE PRINCIPLES GOVERNING MUTUAL COOPERATION IN THE DEFENSE PROCUREMENT AREA

Preamble

The Government of the United States of America and the Government of the Kingdom of Sweden, hereinafter referred to as the Governments:

- Bearing in mind the traditional policy of neutrality on the part of Sweden and the membership of the United States in the North Atlantic Treaty Organization² and
- Having regard to the friendly relations existing between them and in order to:
 - Assure a long-term and equitable balance in reciprocal purchasing of commodities and services for defense purpose items; and
 - Make the most cost-effective and rational use of the funds allocated to defense; and
 - Remove barriers to reciprocal defense trade to the extent mutually beneficial; and
 - Promote the exchange of defense technology to the extent consistent with their respective national policies.
- Have entered into this Memorandum of Understanding (MOU).

This MOU sets out the guiding principles governing mutual cooperation in defense procurement.

Article I

Principles Governing Cooperation

1. Both Governments intend to achieve and maintain a long-term, equitable balance in their exchanges of defense equipment, in terms of the value of contracts and technological levels, to the maximum practicable extent consistent with their national policies.

2. The two Governments will, consistent with the laws, regulations, and practices having the force of law of each Government, give favorable consideration to all requests for cooperation in defense equipment research and development, production, procurement, and logistical support.

3. Both Governments will provide appropriate policy guidance and administrative procedures with their respective defense procurement organizations to facilitate achievement of the aims of this MOU.

4. Barriers to procurement or coproduction at the prime and subcontract levels of an item of defense equipment that has been produced in the other country shall be removed, insofar as laws and regulations permit. When a firm of the other party submits a bid or offer which could be the low responsive and responsible offer but for the application of any buy-national requirements, both parties agree to process waiver requests of any buy-national requirement or restrictive procurement regulations insofar as national laws and regulations permit.

5. Customs duties shall be waived to the extent authorized by law.

6. Competitive contracting procedures as required by law or regulation shall be used in acquiring defense equipment.

7. Favorable consideration will be given to all qualified industrial and Government sources in each other's country consistent with the national procurement policy and criteria. It is therefore understood that items offered shall satisfy requirements for performance, quality, delivery, and cost. Both Governments will use their best efforts to facilitate the qualification for eligibility.

¹ Came into force on 16 July 1987 by signature, in accordance with article VIII (2).

² United Nations, *Treaty Series*, vol. 34, p. 243.

8. Each Government will provide information regarding requirements and proposed purchases in a timely fashion to ensure adequate time for industries of the other country to qualify for eligibility and submit a bid or proposal.

9. Each Government will ensure that the technical data packages (TDPs) made available under this MOU are not used for any purpose other than for the purpose of bidding on and performing a prospective defense contract without the prior agreement with those owning or controlling proprietary rights, or to any privileged, protected, or classified data and information they contain. In no event shall the TDPs be transferred to any third country or any other transferee without the prior written consent of the originating Government.

10. Arrangements and procedures will be established concerning follow-on logistic support for items of defense equipment covered by this MOU. Both Governments will make their defense logistic systems and resources available for this purpose as required and mutually agreed.

Article II

Implementing Procedures

1. Representatives of the two Governments will be appointed to determine in detail the procedures for implementing this MOU. Terms of reference will be proposed for a Swedish-American Committee for Reciprocal Procurement, including rules governing its work. The implementing procedures under this MOU shall be an integral part thereof.

2. The Under Secretary of Defense for Acquisition, in coordination with the appropriate Department of Defense officials, will be the responsible authority in the United States Government for the development of implementing procedures under this MOU.

3. The Assistant Under Secretary of Defense for Procurement in the Ministry of Defense will be the responsible authority of the Government of Sweden for any matter relating to the procedures for implementing this MOU.

Article III

Industry Participation

1. Each Government will be responsible for calling to the attention of the relevant industries within its country the basic understanding of this MOU, together with appropriate implementing guidance. Both Governments will take all necessary steps so that the industries comply with the regulations pertaining to security and to safeguarding classified information.

2. Implementation of this MOU will involve full industrial participation. Accordingly, the Governments will arrange to inform their respective procurement and requirements offices concerning the principles and objectives of this MOU. However, primary responsibility for finding business opportunities in areas of research and development and production shall rest with the industrial participants of each country.

Article IV

Security

Any classified information furnished by either Government in connection with the implementation of this MOU shall be protected by the receiving Government in compliance with the U.S.-Sweden General Security of Military Information Agreement of 23 December 1981,¹ and the Security Procedures for Industrial Operations between the Supreme Commander of the Swedish Armed Forces and the Department of Defense of the United States (Security Protocol), effective 16 February 1982.

Article V

Duration

1. This agreement will remain in effect for 10 years following its signing, unless otherwise agreed by both Governments. It will be automatically extended for further 10-year periods, unless 6 months' advance notice of termination is given by either Government concerned.

2. If, however, either Government considers it necessary for compelling national rea-

¹ United Nations, *Treaty Series*, vol. 1409, No. I-23592.

sons to discontinue its participation under this MOU before the end of the 10-year period, written notification of its intention will be given to the other Government 6 months in advance of the effective date of discontinuance. Such notification of intent would be a matter of immediate consultation with the other Government to enable the Governments to evaluate fully the consequences of such termination and, in the spirit of cooperation, to take such actions as necessary to alleviate problems that may result from the termination. In this connection, although the MOU may be terminated by the parties, any contract entered into consistent with the terms of this agreement shall continue in effect, unless the contract is terminated in accordance with its own terms.

Article VI

Administration

1. Each Government will designate points of contact at the Ministry of Defense level and in each purchasing service or agency.

2. Government representatives will meet as agreed or at the request of either Government to review progress in implementing the

MOU. They will discuss development, production, and procurement needs of each country and the likely areas of cooperation, and will consider any other matters relevant to the MOU.

Article VII

Annexes

Annexes negotiated by the responsible offices and approved by the appropriate Government authorities will be incorporated in this MOU and made an integral part thereof.

Article VIII

Implementation

1. The arrangements contained in this MOU represent the understanding reached between the Government of the United States of America and the Government of the Kingdom of Sweden upon the matters referred to herein. Each Government must mutually agree to any amendment of this MOU.

2. This agreement, in two original texts in the Swedish and English languages, both texts being equally authentic, will come into effect on the date of the last signature.

For the Government
of the Kingdom of Sweden:

Date: 16 July 1987

ROINE CARLSSON

For the United States Government:

Date: 11 June 1987

CASPAR WEINBERGER

EXCHANGE OF LETTERS

I

*The Assistant Secretary of Defense of the United States of America
to Ambassador Ulf Dinkelspiel, Department of Foreign Affairs*

Washington, 16 January 1987

Dear Ulf:

Before our two governments enter into the Memorandum of Understanding "Relating to the Principles Governing Mutual Cooperation in the Defense Procurement Area", I believe it advisable to clarify the purpose of certain language in the MOU.

First, you will note that the Preamble to the MOU states it to be our intention to "assure a long-term and equitable balance in reciprocal purchasing of defense equipment." Moreover, Article I, Paragraph 1, of the MOU also states that "Both Governments intend to achieve and maintain a long-term equitable balance in their exchanges of defense equipment . . ."

This language is employed solely for the purpose of enabling the Department of Defense (DoD) to waive Congressionally-imposed restrictions against procurement of foreign specialty metals, in the interest of fulfilling the intent of the MOU. The prohibition in question is currently found in Section 9011 of the Continuing Resolution on Appropriations, 1987, which provides, *inter alia*, that "No part of any appropriation contained in this Act . . . shall be available for the procurement of . . . specialty metals . . ." The same section, however, contains a proviso "that nothing herein shall preclude the procurement of specialty metals . . . when such procurement is necessary to comply with agreements with foreign governments requiring the United States to purchase supplies from foreign sources for the purpose of offsetting sales made by the United States Government or United States firms under approved programs serving defense requirements . . ."

The language of the MOU quoted in the second paragraph above, taken in the context of the MOU as a whole, is employed for the purpose of making it possible for DoD to waive restrictions which would otherwise hinder the implementation of the MOU. With reference to the language quoted, however, the reference to "long-term equitable balance" does not mean it to be our purpose to assure that a purchase by one must be balanced by a purchase by the other of equivalent value. Nor does it mean the cumulative value of purchases on one side will necessarily equal the cumulative value of purchases on the other. Rather, the MOU seeks to assure that each side removes barriers to reciprocal defense trade on a fair and equitable basis. Thus no commitment on the part of the United States to establish any particular ratio in defense trade is intended.

Second, with reference to Article I, Paragraph 5, of the MOU, the provision for waiving customs duties is intended to be reciprocal.

If your understanding of these two points regarding the MOU is in agreement with mine, please inform me so our letters may be attached to the Memorandum of Understanding as an appendix.

Sincerely yours,

RICHARD PERLE

II

*Ambassador Ulf Dinkelspiel, Department of Foreign Affairs
to the Assistant Secretary of Defense of the United States of America*

Stockholm, February 3, 1987

Dear Richard:

I refer to your letter of January 16, 1987 concerning our discussion on a Memorandum of Understanding "Relating to the Principles Governing Mutual Cooperation in the Defense Procurement Area".

I wish to confirm that I am in full agreement with the contents of your letter. Thus I quite agree that the reference to "long-term equitable balance" in the present text of the MOU is not to be seen as an assurance that a purchase by one must be balanced by a purchase by the other of equitable value, but rather that the MOU seeks to assure that each side removes barriers to reciprocal defense trade on a fair and equitable basis. I also agree that the provision for waiving customs duties in Article I, Paragraph 5. of the MOU is intended to be reciprocal.

I share your view that our letters should be attached to the Memorandum of Understanding as an appendix.

Sincerely yours,

ULF DINKELSPIEL
