

No. 32674

**CANADA
and
UNITED STATES OF AMERICA**

**Exchange of notes constituting an agreement concerning
the reciprocal testing of weapons systems. Washington,
10 February 1993**

Authentic texts: English and French.

Registered by Canada on 27 February 1996.

**CANADA
et
ÉTATS-UNIS D'AMÉRIQUE**

**Échange de notes constituant un accord relatif à l'essai et
l'évaluation réciproques de systèmes d'armes. Washing-
ton, 10 février 1993**

Textes authentiques : anglais et français.

Enregistré par le Canada le 27 février 1996.

EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT¹ BETWEEN CANADA AND THE UNITED STATES OF AMERICA CONCERNING THE RECIPROCAL TESTING OF WEAPONS SYSTEMS

ÉCHANGE DE NOTES CONSTITUANT UN ACCORD¹ ENTRE LE CANADA ET LES ÉTATS-UNIS D'AMÉRIQUE RELATIF À L'ESSAI ET L'ÉVALUATION RÉCIPROQUE DE SYSTÈMES D'ARMES

I

CANADIAN EMBASSY

AMBASSADE DU CANADA

WASHINGTON, D.C.

February 10, 1993

Note No. 24

Sir,

I have the honour to refer to the Exchange of Notes constituting an Agreement between Canada and the United States of America concerning the test and evaluation of US weapons systems in Canada dated February 10, 1983,² and the Memorandum of Understanding entered into by the respective Departments of Defence to give effect to it.

As a result of further discussions, I have the honour of proposing a new Agreement to insert, inter alia, an element of reciprocity by permitting test and evaluation of Canadian Forces' weapons, weapons systems and other defence materiel in the United States. It is further agreed that:

1. The implementing arrangements for this Agreement, and the respective responsibilities of each Department, shall be set forth in a new Memorandum of Understanding relating to The Canada/US (CANUS) Test and Evaluation Program and in individual Project Arrangements. This Memorandum of Understanding (MOU) will be signed by the Assistant Deputy Minister (Materiel) of Canada and the Under Secretary of Defense, Acquisition, of the United States of America.

¹ Came into force on 10 February 1993, in accordance with the provisions of the said notes.

² United Nations, *Treaty Series*, vol. 1489, No. I-24905.

¹ Entré en vigueur le 10 février 1993, conformément aux dispositions desdites notes.

2. The undertakings pursuant to this Agreement shall be known as "The Canada/US (CANUS) Test and Evaluation Program". An undertaking under this Program shall be known as a Test and Evaluation (T&E) Project. A Project Arrangement providing implementing arrangements for each CANUS T&E Project shall be negotiated by the designated representatives of the Canadian Department of National Defence (DND) and the United States Department of Defense (DoD).

3. The CANUS T&E Program conducted under the provisions of this Agreement shall be governed by the terms of the Agreement between the Parties to the North Atlantic Treaty Regarding the Status of Their Forces (NATO SOFA) dated June 19, 1951.¹

4. This Agreement is applicable to T&E projects, agreed upon by DND and DoD, developed under the auspices of this Program. Either DND or DoD may refuse any T&E project proposed under this Agreement.

5. Nothing in this Agreement shall derogate from the application of Canadian law in Canada or United States law in the United States. If, in unusual circumstances, the application of Canadian or United States law may lead to delay or difficulty in the conduct of a T&E project, DND or DoD may request the assistance of the other in seeking appropriate relief.

6. The Canadian Forces shall exercise command and control over Canadian facilities used by the DoD for T&E, and Canadian safety regulations and orders shall apply. The United States Forces shall exercise command and control over United States facilities used by DND for T&E, and United States safety regulations and orders shall apply.

7. Specific T&E projects shall be confined to agreed test sites including the bases, training areas, and agreed airspace of Canada and the United States. Project Arrangements shall contain provisions for DND and DoD, subject to certain restrictions set out below, to use each other's facilities for testing and evaluating, inter alia, weapons, weapons systems, stores and equipment, and electronic warfare systems and may include associated training and tactics development activities.

8. In no case shall nuclear, biological or chemical warfare materials be brought into Canada or the United States under this Agreement. Cruise missiles shall be unarmed.

¹United Nations, *Treaty Series*, vol. 199, p. 67.

9. The Parties shall bear all their own costs and expenditures of their respective T&E projects. Project Arrangements made under the terms and conditions of this Agreement shall not be finalized until such time as it is confirmed that funds have been authorized, appropriated and allocated for this purpose. The United States and Canada shall pay or reimburse each other for all costs to be incurred or that are incurred on behalf of the other as a direct result of the T&E Program. DND and DoD charges for support shall only be for incremental T&E costs. Incremental costs shall be defined as the cost of providing a service or good which the Host Party would not have incurred if the T&E activity had not taken place. For example, such charges shall not include any amounts for military pay or normal operating and maintenance expenses that would be incurred whether or not the other Defence Department was using the facility.

10. DND and DoD shall have the right to participate in each other's T&E projects. The scope, character and financial obligations, if any, of such participation shall be determined for each project through consultation between the Parties and shall be specified in the associated Project Arrangement.

11. The security for each T&E project shall be the responsibility of the Host Party in whose country the testing or evaluation is done, but in special cases, such as unscheduled termination of a test flight or an accident in or adjacent to a military base or facility, the other Party may be requested to assume some or all of the security responsibility.

12. The use of a specified test area shall be dependent upon the availability of facilities and local resources. Every effort shall be made by the Parties to accommodate T&E projects in each other's plans, including obtaining clearances for the use of airspace associated with any test plans.

13. The use of the Host Party's civil airspace shall be approved and controlled by the appropriate national authority. Flight corridors in Canada to be used for the testing of cruise missiles shall be selected to ensure minimum disruption to civil aircraft operations and minimum disturbance to persons on the ground.

14. DND and DoD may review the types of T&E data that are expected to be acquired during the conduct of a particular project to determine the relevance to their own programs. Each may request that the data acquired during the conduct of a project by one be provided to the other. Data so provided shall be used for defence purposes only, and at no cost except as stated in paragraph 9 above. All

proprietary information and data exchanged under this program shall be in accordance with the NATO Agreement on the Communication of Technical Information for Defence Purposes signed in Brussels on October 19, 1970. All T&E Project Arrangements shall contain the appropriate Intellectual Property provisions, including any procedures necessary to identify proprietary technical information.

15. Any classified information and materiel exchanged under this Program shall be safeguarded in accordance with existing agreements between Canada and the United States in relation to the protection of classified information.

16. All tests and evaluations involving classified information and/or materiel used or acquired in a project shall be carried out under the security control of the defence department which proposes the project unless the specific Project Arrangement specifies otherwise. However, command and control of the facilities used will remain as described in paragraph 6 above.

17. Information provided by one Party to another in confidence and such information produced pursuant to this Agreement and the MOU between the respective defence departments, requiring confidentiality, shall either retain its original classification or be assigned a classification that will ensure a degree of protection against disclosure equivalent to that required by the other Party's government.

18. Each Party shall take all lawful steps available to keep free from disclosure under any legislative provision, without the written consent of the originating Party, information exchanged in confidence under this Agreement and the MOU between the representative defence departments.

19. To assist in providing the desired protection, each Party shall mark such recorded information furnished to the other in confidence with a legend indicating its origin, the security classification, the conditions of release, that the information is related to this Agreement and the MOU between the respective defence departments, and that it is furnished in confidence.

20. The Parties shall comply with each other's laws, regulations and orders respecting the protection of the environment. The Parties shall each respectively assume financial responsibility for their own compliance.

21. Claims arising from T&E projects shall be settled in accordance with Article VIII of NATO SOFA. Activities conducted under this Agreement are deemed to be in

connection with the operation of the North Atlantic Treaty¹ for the purposes of applying Article VIII, Paragraph I.

22. The Parties shall, upon request, provide each other on a reimbursable basis, all goods and services and facilities required during the period of this Agreement. The Parties may loan each other equipment at no cost when the results of a Project Arrangement will be of benefit to both Parties. Equipment provided by one Party to the other Party shall not be transferred to a third party, other than domestic contractors, for the purpose of executing a T&E Project, without the written consent of the Party providing such equipment.

23. Removal and disposal of United States Government property shall be governed by the Agreement between Canada and the United States of America regarding Disposal of United States Excess Property in Canada effected by the Exchange of Notes of August 28 and September 1, 1961.² No activities undertaken pursuant to this T&E Agreement shall be deemed "joint exercises for Canadian and United States forces" as that term is used in paragraph 6 of the Note dated August 28, 1961.

24. To the extent that existing laws, regulations and agreements permit, equipment or materiel imported into either country or purchased in either country for T&E projects shall not be subject to taxes, customs duties and similar charges or quantitative restrictions on imports and exports in connection with any T&E project under this Agreement.

25. In the event of discrepancy between this Agreement and the MOU or the Project Arrangements, this Agreement shall take precedence. Disputes on the interpretation or implementation of the Agreement shall be resolved in negotiations between the Parties, and shall not be referred to an international tribunal or a third party for settlement.

26. The respective responsibilities of the Parties concerning security of information and the protection of intellectual property and intellectual property rights shall continue irrespective of the termination or expiration of this Agreement.

27. This Agreement shall remain in force for a period of ten years, subject to the following provisions:

- a. This Agreement may be terminated upon twelve months notice in writing by either Party.

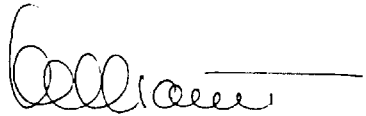
¹ United Nations, *Treaty Series*, vol. 800, p. 5.

² *Ibid.*, vol. 421, p. 199.

- b. In the event of the termination of this Agreement, the Parties shall negotiate the settlement of outstanding financial issues.
- c. This Agreement may be amended in writing by the mutual consent of the Parties.

If the foregoing is acceptable to the Government of the United States, I have the honour to propose that this Note, which is equally authentic in English and French, and your Note in reply to that effect, shall constitute an Agreement between our two Governments which shall enter into force on February 10, 1993.

Accept, Sir, the assurances of my highest consideration.



MARC BRAULT
Charge d'affaires a.i.

The Honourable Warren M. Christopher
Secretary of State
Department of State
Washington, D.C.

II

DEPARTMENT OF STATE
WASHINGTON

February 10, 1993

Sir:

I have the honor to acknowledge receipt of your note No. 24 dated February 10, 1993, concerning cooperative testing and evaluation of defense systems.

I am pleased to inform you that the Government of the United States of America accepts the proposals contained in your note and that your note and this note in reply shall constitute an Agreement regarding this matter which shall enter into force on the date of this note.

Accept, sir, the renewed assurances of my high consideration.

For the Secretary of State:

A handwritten signature in black ink, appearing to read "Thomas Niles", with a small superscript "1" above the final "s".

The Honorable Marc-André Brault
Chargé d'Affaires *ad interim*
Embassy of Canada

¹ Thomas Niles