

ANNEX IX

TO THE

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS

AND

THE GOVERNMENT OF THE UNITED STATES OF AMERICA

CONCERNING

THE PRINCIPLES GOVERNING MUTUAL COOPERATION IN THE

RESEARCH AND DEVELOPMENT, PRODUCTION AND PROCUREMENT

OF DEFENSE EQUIPMENT, SIGNED 24 AUGUST 1978

ANNEX IX

TO THE MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA CONCERNING THE PRINCIPLES GOVERNING MUTUAL COOPERATION IN THE RESEARCH AND DEVELOPMENT, PRODUCTION AND PROCUREMENT OF DEFENSE EQUIPMENT, SIGNED 24 AUGUST 1978

PRINCIPLES GOVERNING SECURITY OF SUPPLY

I. INTRODUCTION

Among the consequences of globalization, industrial restructuring and evolution of international industrial partnerships are the creation of transnational defense companies, possible loss of certain domestic industrial capability and capacities, and thus the recognition of mutual interdependence in the field of defense. In this environment, both Governments recognize the value of dialogue, consultation, and arrangements that facilitate the supply of defense articles and defense services. As a consequence, the Governments believe that it is desirable to develop and utilize a priorities system that provides for preferential treatment of contracts and orders that promotes national defense as well as support to allies.

This Annex intends to implement the "Declaration of Principles for Enhanced Co-operation in Matters of Defense Equipment and Industry" dated 10 and 17 April 2002. It is intended as specific implementation of the "Meeting National Defense Requirements" section of that document. It sets forth the principles each Government intends to follow to provide reciprocal priorities support.

II. DEFINITIONS

- a. *Security of Supply* - the ability of a nation to guarantee and to be guaranteed an appropriate supply of defense materials (including their related services) for its armed forces in order to discharge the nation's foreign and security responsibilities and fulfill its military commitments.
- b. *Priorities System* - procedures under which a government entity can assign priority to, and require preferential acceptance and performance of, certain contracts and orders over other contracts and orders to meet critical and urgent defense requirements. As defined here, a Priorities System addresses only the industrial resources defined below.
- c. *Industrial Resources* - materials, services, and facilities, needed to meet approved critical and urgent defense requirements. This term includes any in process or manufactured material, article, commodity, supply, equipment, component, accessory, part, assembly or product of any kind, and related technical information, process or service. Industrial Resources, for the purpose of this arrangement, do not include commercial end items commonly available in the country of the supplier.

III. MAJOR PRINCIPLES

Security of Supply presupposes bilateral, and where possible allied, co-operation and coordination, including the mutual acceptance and support of industrial resource priorities set by either Government.

Complementary, mutual priorities systems arrangements between the Governments are important to ensure that industrial resources needed to meet critical and urgent defense requirements are provided in a timely, effective and efficient manner. Such priorities systems are not designed to rectify poor provisioning and should not be used as a substitute for the normal contracting process.

Each Government will provide reciprocal priorities support. The US Government will provide priorities support by utilizing its existing Defense Priorities and Allocations System (DPAS) that is based on national law. The Netherlands Government will provide reciprocal priorities support by developing and utilizing a Netherlands priorities system based on a Government-Industry Code of Conduct (a system comparable to the US DPAS, the so called Netherlands DPAS), based on national law and regulations.

To the greatest extent practicable, each Government will at all times (including, but not limited to major crisis or war):

- a. assign or facilitate the assignment of priority designations to specified defense contracts that are issued by the other Government, or by contractors, subcontractors, or suppliers working on a defense program approved by the other Government, to suppliers located in its territory and participating in the relevant priorities system,
- b. facilitate the acceptance and priority performance by participating contractors, subcontractors, or suppliers located in its territory of designated defense contracts as necessary to meet urgent customer delivery requirements,
- c. when requested, provide assistance to seek to resolve conflicts among designated contracts in order to ensure timely delivery of industrial resources under these contracts and
- d. as appropriate, and on a reciprocal basis, endeavor to enter into Security of Supply arrangements with other Governments that are members of the North Atlantic Treaty Organization, the Western European Armaments Group, and other Allies.

IV. ACTIONS

US

In furtherance of the above principles, and when requested to do so by designated Netherlands Ministry of Defence authorities, the US Department of Defense will arrange for the Netherlands Ministry of Defence, or Netherlands contractors, subcontractors, or suppliers, to use priority ratings on defense contracts placed with US contractors, subcontractors and suppliers. Priority performance will be provided under the US DPAS. The US DPAS:

- a. establishes priority designations for contracts performed in the US, and provides preference in performance of those contracts,
- b. defines US industry's responsibilities, setting forth rules to ensure timely delivery of industrial products, materials, and related services to meet approved national defense program requirements,
- c. provides assistance procedures to cope with special circumstances caused by production related problems, and
- d. sets forth compliance procedures.

A Netherlands Company's participation in the Netherlands DPAS (see below) will be notified to the US defense procurement authority.

The Netherlands

In furtherance of the above principles the Netherlands Government will establish a Government-Industry Code of Conduct, under which accredited Netherlands Companies

will do all they reasonably can to provide preference to contracts supporting US Department of Defense programs, including:

- a. accepting that contracts they are entering into or are party to with the US Department of Defense or with a US company are contracts covered by the Code of Conduct when that contract would be rated under US DPAS if entered into with a US Company;
- b. inserting provisions into relevant subcontracts to ensure due performance of such subcontracts;
- c. responding in a timely manner to requests of the US Department of Defense for amendments to the timing of deliveries provided that the customer is willing to compensate them as required by the relevant contractual provisions, and
- d. bringing to the attention of the Governments conflicts between Netherlands DPAS contracts and other contracts.

The Government-Industry Code of Conduct will provide for arrangements in case of non-compliance. To this end, the Netherlands Government will incorporate in the Government-Industry Code of Conduct clauses that provide for liaison with accredited Netherlands contractors, subcontractors, and suppliers, when requested to do so by the US Deputy Under Secretary of Defense (Industrial Policy) and/or the involved Netherlands Company. In relation to Netherlands DPAS contracts, the Netherlands Government entities concerned will use their best efforts to facilitate US Department of Defense requests for priority performance. Under no circumstances will a Netherlands Company be required, however, to suffer a loss without compensation from the US Government entity or US Company in order to comply with the Government-Industry Code of Conduct. At all times the legal mechanism for prioritization of supply will be the contract between the Netherlands Company and the US Government entity or US Company.

US and the Netherlands

The US and the Netherlands do not intend to place the financial responsibility of implementing this Annex with their respective industries.

All responsibilities of the Governments under this Annex will be subject to the availability of funds for such purposes and subject to national law and regulations.

In fulfilling their responsibilities under this Annex, the Governments recognize that US and Netherlands Companies may have contracts with other customers, which the Governments do not wish to undermine.

When a US or a Netherlands Company brings a conflict relating to prioritization of supply between the Governments or any other customer to the attention of the Governments, the Governments will endeavor to resolve the conflict by consultation. Each Government may decide final prioritization requirements within its territory and the other Government will give deference to such requirements.

Participation in the Netherlands DPAS may be offered by Dutch companies as an indication of their reliability in supplying industrial resources to the US Department of Defense and the contractors supplying it. Likewise, US companies may offer being subject to the US DPAS as an indication of their reliability in supplying industrial resources to the Netherlands Ministry of Defence and the contractors supplying it.

V. PROCEDURES

Essential to the implementation of this Annex and the ability of the Governments to provide priorities support to each other when needed, is the designation of a

point of contact within each Government. This person serves as the focal point for the implementation and administration of this annex and is the person to whom all requests for priority designations, priorities assistance, and related issues should be directed.

US

In the US, the Department of Commerce oversees and administers the US DPAS. The Department of Commerce has delegated to the Department of Defense authority under the US DPAS to apply priority designations to contracts supporting approved national defense programs. The Department of Defense conducts daily US DPAS operations and sponsors allied nation requests for priorities support in the US to the Department of Commerce for approval.

- a. Requests for priorities authorization and/or assistance in the US should be directed to:

The Deputy Under Secretary of Defense (Industrial Policy)
3330 Defense Pentagon
Washington, DC 20301

- b. Copies of correspondence should be provided to:

Office of Strategic Industries and Economic Security,
Attention: DPAS
Room 3876
US Department of Commerce,
Washington, DC 20230

The Netherlands

In the Netherlands, the Commissioner for Military Production will administer the Government-Industry Code of Conduct. Priority assistance will be handled on an ad hoc basis between Government and Industry. The Ministry of Economic Affairs will keep under review this assistance on the basis of information it receives with a view to understanding and responding to issues that affect the interests of Netherlands industry.

Requests to apply priority designations and/or assistance to contracts supporting Netherlands defense projects may be sent directly from procurement Departments of the Netherlands Armed Forces to the Commissioner for Military Production.

- a. Requests for priorities assistance in the Netherlands under this MoU annex should be directed to:

The Commissioner for Military Production
Ministry of Economic Affairs
Bezuidenhoutseweg 30 / P.O. Box 20101
2500 EC the Hague
The Netherlands

- b. Copies of correspondence should be provided to:

Defence Materiel Organisation
Directorate for Policy
Resort Materiel Policy
Kalvermarkt 32 / P.O. Box 20701
2500 ES the Hague

The Netherlands

US and the Netherlands

Representatives of the Governments will review their established or developing priorities systems policies and procedures at the request of either Government; and will adjust them and the provisions of this Annex as feasible and necessary to comply with evolving national priorities systems and to provide Security of Supply. Industry will be consulted during any such review.

VI. ENTRY INTO EFFECT

This Annex will become effective upon signature by authorized representatives of both Governments.

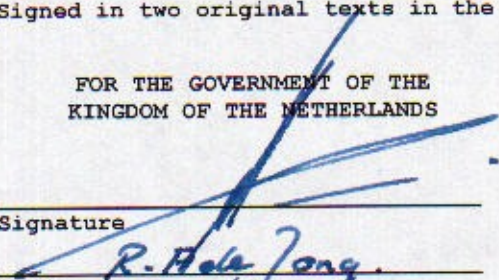
VII. DURATION AND TERMINATION

This Annex will remain in force for a period as set forth in Article VII of the MOU unless terminated by either Government as set forth below.

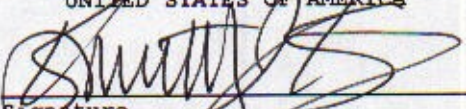
If either Government considers it necessary to discontinue its participation under this Annex, it will notify the other Government in writing of its intent to withdraw from the Annex. The two Governments will immediately consult to evaluate the consequences of such withdrawal and the possibility of avoiding it by, inter alia, continuing the cooperation under the Annex on a changed basis. If agreement cannot be reached on the way forward, this Annex will be terminated six months after the date of notification.

Signed in two original texts in the English language.

FOR THE GOVERNMENT OF THE
KINGDOM OF THE NETHERLANDS

Signature 
Name R. Hele Jong
Title Dep H&D
Location Brussels
Date 26.10.05

FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA

Signature 
Name KENNETH J. KLUGE
Title Under Secretary Acquisition, Technology Logistics
Location BRUSSELS
Date 10/26/05