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P2.C17. PART 2, CHAPTER 17

INTERNATIONAL AGREEMENTS

P2.C17.1. GENERAL

The guidance provided herein sets forth policies for the evaluation of requirements, negotiation, and conclusion of international fuel support agreements worldwide. The Defense Energy Support Center (DESC), as delegated by the Department of Defense (DoD) through the Defense Logistics Agency, has overall responsibility for negotiating, concluding, and amending international agreements, a critical part of the worldwide fuel network required to support the DoD and other agencies. As a result of the DoD directed Integrated Material Management Phase II capitalization, the United States Military Service Components transferred the administration and management responsibilities of previously concluded and new international agreements to DESC. DESC-FG, in coordination with the DESC Counsel, Financial Operations, Commodity Business Units (CBUs), and DESC Regional Offices, is the primary office of responsibility (OPR) for all international agreement actions.

P2.C17.2. DEFINITIONS. For purposes of this chapter, the following definitions apply:

P2.C17.2.1. Parties. The terms used to refer to DESC, COCOM commanders, and foreign governments with whom DESC is engaged in an international agreement. Parties will be capitalized throughout this chapter to denote the relationship between DESC and a foreign government.

P2.C17.2.2. International Agreement

P2.C17.2.2.1. Any agreement that is concluded with a foreign government (including their agencies, instrumentalities, political subdivisions, or international organizations), signed or agreed to by any employee or military officer of DESC which signifies the intention of the Parties to be bound in international law or having any legal consequence to DESC. Such agreements are classified as international agreements whether denominated by a performance based agreement, contract, arrangement, statement of intent, letter of intent, statement of understanding, or any other name connoting a similar legal consequence that involves the authorized signature of the foreign government and DESC. Oral agreements that meet these criteria are also international agreements and must be reduced to writing by the DESC representative who enters into the agreement. Contracts awarded to commercial companies are not normally international agreements.

P2.C17.2.2.2. Foreign Military Sales (FMS) program agreements are not considered international agreements for purposes of this chapter. Acquisitions and orders placed under the North Atlantic Treaty Organization (NATO) Mutual Logistical Support Agreement, or under other Acquisition and Cross-Servicing Agreements, or Mutual Logistics Support Agreements, as well as standards arranged pursuant to standard agreements (Standardization Agreements (STANAGs) - NATO, Quadripartite Standardization Agreements Standards, and Air Standardization Coordinating Council) are not international agreements for the purpose of this chapter. When there are doubts as to whether an agreement is or may be an international agreement, the agreement should be treated as one until reviewed by Counsel (DESC-G).

P2.C17.2.3. Negotiation. Communication by any means, of a position or an offer, on behalf of DESC to an agent or representative of a foreign government or an international organization in such detail that the acceptance in substance of such position or offer may result in an inter-national agreement. Negotiation also includes any such communication conditioned on later approval by higher authority. Negotiation excludes preliminary and exploratory discussions or routine meetings where no draft documents are discussed, so long as such discussions are conducted with the understanding that the views communicated do not and shall not bind, create a contract or agreement, or commit any entity.

P2.C17.2.4. Conclusion. The act of signing, initialing, responding, or otherwise indicating the acceptance of an international agreement. The Director, DESC, or his designated representative, will usually conclude the agreement. Each representative of the Party concluding the agreement should be of relatively equal rank or grade.

P2.C17.3. AUTHORITY. Pursuant to DoD Directive 4140.25, DoD Management Policy for Energy Commodities and Related Services, and DoD Directive 5530.3, International Agreements, and applicable delegations, DESC is authorized to negotiate and conclude international agreements for energy commodities, additives, laboratory testing, facilities, pipelines, any related services, replacements-in-kind, and fuel exchanges.

P2.C17.4. TYPES OF AGREEMENTS. Agreements may include provisions for all types of fuel related supplies and services. Such agreements may benefit a single COCOM, Military Service, or multiple Services. Each agreement is unique and is tailored to the needs of DoD customers, DESC, and the foreign government. The following types of agreements shall be concluded by DESC:

P2.C17.4.1. Fuel Exchange Agreements (FEAs). FEAs are agreements between DESC and a foreign government, also known as the Parties, that provides for reciprocal refueling of military aircraft, ships, vehicles, and equipment on land, at sea, or air-to-air. Transactions are documented and periodically exchanged for validation by DESC or the foreign government. Periodically, the Parties' representatives meet to reconcile the accounts. The Party owed is normally reimbursed in fuel. However, the Parties may agree to settle the account in cash or carry the balances over until the next reconciliation period. FEAs work best with countries

where significant reciprocal refueling occurs. Former Air Force agreements were referred to as Replacement-In-Kind (RIK) agreements while former Navy agreements were referred to as FEAs. DESC has adopted the FEA as the single moniker for all agreements where fuel is the primary replacement medium.

P2.C17.4.2. Offset Billing Agreements (OBAs). OBAs are agreements between DESC and a foreign government that provide for reciprocal refueling of military aircraft, ships, vehicles, and equipment on land, at sea, or air-to-air. Transactions are documented and periodically exchanged for validation by the Parties' representatives. Periodically, the Parties' representatives meet to reconcile the accounts. The account balances owed by the Parties are offset to determine the net balance owed by one of the Parties. The Party owed is reimbursed in cash. The Parties may agree to carry the balances over until the next reconciliation period.

P2.C17.4.3. Direct Bill Agreements (DBAs). DBAs are agreements between DESC and a foreign government that provide for reciprocal refueling of military aircraft, ships, vehicles, and equipment on land, at sea, and air-to-air. Transactions are documented and billed individually or monthly at the discretion of the Parties. The Parties pay for all reciprocal fuel purchases in cash based on invoices submitted by the other Party. In general, DBAs are the preferred method for reimbursement, as opposed to FEAs and OBAs.

P2.C17.4.4. Storage. Storage agreements provide for storage of Defense Working Capital Fund (DWCF) product in a foreign government's storage facility. Such storage facilities are either operated by a foreign military or via a commercial contractor acting as an agent for the foreign government. Storage locations may be on-base, off-base storage depots, or an integral part of a petroleum distribution system. Product throughput fees may also be included in these agreements.

P2.C17.4.5. Pier Services. Pier service agreements provide for the use of a foreign government's pier required by DESC for loading or offloading MSC-chartered vessels, tankers, or a Military Service's ships. Pier service agreements are normally tied to storage and pipeline agreements.

P2.C17.4.6. Pipelines. Pipeline agreements provide for the use of a foreign government's pipelines to move DLA-owned product to military bases. These agreements often include storage services. Services are often provided by contractors acting as agents for foreign governments.

P2.C17.4.7. Quality Assurance (QA) and Quality Surveillance (QS). QA and QS arrangements are normally tied to other storage and movement contracts, but, as necessary, can be stand-alone agreements.

P2.C17.4.8. Additives. Arrangements for additives are normally included in other storage and movement agreements, but can be stand-alone agreements, as necessary.

P2.C17.4.9. Product. Product agreements are for the foreign government to provide fuel to DESC.

P2.C17.4.10. Fuel for Service. An Agreement which would provide for payment of services by either an equivalent value of fuel or by cash. Normally, this provision would be included as required or negotiated into any of the aforementioned agreements. This provision provides for flexibility in payment that would be most advantageous to DESC.

P2.C17.5. REQUESTS FOR FUEL SUPPORT FROM FOREIGN GOVERNMENT ALLIES

The Military Services, or other United States government agencies requiring fuel support and related services from foreign governments shall forward their requirements to DESC-FGI via the respective COCOM (Attn: COCOM J4 Joint Petroleum Office (JPO) with an informational copy to the respective Service Control Point. The COCOM JPO shall coordinate the processing of the request with the supporting DESC Regional Office for forwarding to DESC-FGI. The international agreement process may take up to twenty (20) months to complete, unless emergency conditions exist. Therefore, the Military Services, via the respective COCOM JPO via the supporting DESC Regional Office, shall provide their requirements in sufficient time to allow for processing and negotiation. In some cases, supply and service arrangements may be agreed to before an international agreement has been concluded. All requests shall include, as a minimum, the following information:

P2.C17.5.1. Country.

P2.C17.5.2. A statement of requirement (SOR) shall be provided. The SOR should include a detailed explanation of the type of fuel and quantity required, related fuel equipment and services, and the required storage, pipeline, or pier requirements.

P2.C17.5.3. The period covering the agreement. The period can be a specific period to accommodate an exercise, or it can be a recurring requirement.

P2.C17.5.4. The foreign government's point of contact.

P2.C17.5.5. The location in the foreign country where fuel, storage, or service is required.

P2.C17.5.6. The Military Service's point of contact and telephone number, e-mail address, and other pertinent information.

P2.C17.6. RESPONSIBILITIES

P2.C17.6.1. Facilities and Distribution Management Commodity Business Unit

P2.C17.6.1.1. The Chief of the Global Support Division (DESC-FG) shall be responsible

for the overall management of international agreements and processes applicable to DESC and provide oversight and management to individuals experienced in international agreements.

P2.C17.6.1.2. The International Logistics Branch, (DESC-FGI) Logistics Management Specialists shall:

P2.C17.6.1.2.1. Draft and refine agreements. Agreements drafted by logistics management specialists at the DESC Regional Offices must be provided to DESC-FGI for review and coordination. DESC-FGI shall coordinate agreements with the DESC Regional Offices, DESC CBUs, DESC-G, Military Service Components, and the Office of the Secretary of Defense prior to entering into formal negotiations.

P2.C17.6.1.2.2. Coordinate draft agreements among logistics management specialists, COCOMs, other DESC CBUs, and the Office of the Secretary of Defense.

P2.C17.6.1.2.3. Coordinate DESC's representation at all meetings where negotiations regarding an international agreement will be conducted.

P2.C17.6.1.2.4. Develop Terms of Reference (TOR), Letters of Authority (LOA), and Pre-Negotiation Briefing Memorandums (PNM) for use by personnel representing DESC in international agreement negotiations.

P2.C17.6.1.2.5. Prepare for negotiations with foreign governments and international organizations.

P2.C17.6.1.2.6. Lead the DESC negotiating team.

P2.C17.6.1.2.7. Prepare and coordinate all correspondence for the approval and signature of the Director, DESC. Any correspondence generated by DESC Regional Offices must be reviewed, coordinated, and approved by DESC-FGI.

P2.C17.6.1.2.8. Obtain international agreement funding from DESC-RB, as required.

P2.C17.6.1.2.9. Ensure that a certified translated copy is provided for all agreements with foreign governments when the agreements are required in dual languages.

P2.C17.6.1.3. The Chief of the Inventory Management Division (DESC-FI) shall provide individuals experienced in inventory accounting procedures to:

P2.C17.6.1.3.1. Assist in developing inventory accounting procedures for international agreements.

P2.C17.6.1.3.2. Review inventory accounting procedures developed by foreign governments.

P2.C17.6.1.3.3. Participate as a member of the DESC negotiating team, as required.

P2.C17.6.2. The DESC Regional Offices shall designate a focal point for each agreement within their area of responsibility to oversee regional efforts in an agreement development, negotiation, and management. The focal points shall coordinate all agreement issues with the DESC-FG counterpart. DESC-FG personnel, in turn, shall coordinate issues with other DESC CBUs. When coordinated with DESC, the DESC Regional Office's focal point may also draft and refine international agreements, as appropriate. In addition, the DESC Regional Offices shall coordinate agreement drafts provided by DESC-FGI with the COCOMs, and shall provide individuals experienced in inventory accounting, scheduling, and quality to:

P2.C17.6.2.1. Assist DESC-FG in the preparation for negotiations with foreign governments and international organizations.

P2.C17.6.2.2. Assist in developing TORs, LOAs, and PNMs for use by personnel representing DESC in international agreement negotiations.

P2.C17.6.2.3. Participate as a member of the DESC negotiating team, or act as lead negotiator as required.

P2.C17.6.2.4. Provide DESC-FGI annual budget forecasts for all applicable international agreements.

P2.C17.6.2.5. Ensure validation of services (performed as specified) and/or product as provided under the terms and conditions of the applicable international agreement.

P2.C17.6.2.6. Certify invoices for payment processing through the Defense Finance and Accounting Service.

P2.C17.6.3. The Director, Bulk Fuels Commodity Business Unit, shall provide individuals experienced in requirement determination, inventory management, distribution, product specification, product acquisition, quality surveillance and assurance, product measurement, and technical assistance to:

P2.C17.6.3.1. Assist DESC-FG in the formulation of requirement(s).

P2.C17.6.3.2. Assist DESC-FG in the determination of product acquisition options.

P2.C17.6.3.3. Serve as the functional expert and, as appropriate, lead negotiations on

issues concerning inventory management, distribution, quality, product measurement, product specification, product acquisition, and technical matters.

P2.C17.6.3.4. Participate as a member of the DESC negotiating team, as required. The Director, DESC-B, shall select the appropriate DESC-B representatives required based on the type of international agreement under discussion.

P2.C17.6.4. The Director, Financial Operations (DESC-R), shall provide individuals experienced in financial and accounting procedures to:

P2.C17.6.4.1. Assist DESC-FG in the preparation for negotiations with foreign governments and international organizations.

P2.C17.6.4.2. Assist in developing TORs, LOAs, and PNMs for use by personnel representing DESC in international agreement negotiations.

P2.C17.6.4.3. Participate as a member of the DESC negotiating team, as required.

P2.C17.6.4.4. Manage the financial aspects of the agreements to include reconciliation and cross-servicing of accounts, repayment and settlement, transaction processing, and validation of fuel invoices.

P2.C17.6.4.5. Coordinate reconciliation meetings with member countries to arrange for the financial settlement and cross-servicing of accounts.

P2.C17.6.4.6. Provide funding for international agreements, as required.

P2.C17.6.4.7. Review and sign the Legal and Fiscal (L&F) Memorandum that is prepared for each international agreement.

P2.C17.6.5. The Office of Counsel (DESC-G) shall:

P2.C17.6.5.1. Maintain the central repository for all international agreements that are coordinated, negotiated, concluded, and/or funded by DESC and transmit two copies of each international agreement, no later than 20 days after the agreement is entered into force (normally upon the signatures of both countries' representatives), to the General Counsel, DLA, or other DLA office, as may be required.

P2.C17.6.5.2. Provide an attorney to:

P2.C17.6.5.2.1. Assist DESC-FG in the preparation for negotiations with foreign governments and internal organizations.

P2.C17.6.5.2.2. Assist in developing TORs, LOAs, and PNMs for use by personnel representing DESC in international agreement negotiations.

P2.C17.6.5.2.3. Participate as a member of the DESC negotiating team, as required, and provide legal advice and review of agreement documents.

P2.C17.6.5.2.4. Prepare, process, and coordinate all legal and fiscal memoranda in compliance with the laws, directives, and memoranda from higher authority in regard to international agreements.

P2.C17.6.6. The Combatant Commands (J4) shall:

P2.C17.6.6.1. Consolidate and validate all DoD requirements for international fuel support requiring the establishment of an international agreement within their respective AOR.

P2.C17.6.6.2. Coordinate request for international fuel support agreement with the supporting DESC Regional Office for forwarding to DESC-FGI.

P2.C17.6.6.3. Collaborate with the supporting DESC Regional Office, DESC-FGI, Military Service Components, representatives from foreign governments, and other DoD and Federal agencies involved in the planning and, when authorized, the development of the requested international fuel agreement.

P2.C17.6.6.4. Validate request from foreign governments, COCOM Military Service Components, and DoD agencies for fuel support from existing fuel international agreements and forward the request to DESC-FGI via the supporting DESC Regional Office for coordination and action.

P2.C17.7. INTERNATIONAL AGREEMENT PROCESS

P2.C17.7.1. The Military Services, DESC Regional Offices, COCOMs, Joint Chiefs of Staff, and Federal Civil Agencies may submit requirements for international agreements. The requesting agency shall submit a requirement for an international fuel agreement to the respective COCOM J4 for the foreign country that is within the COCOM's AOR. The COCOM JPO shall coordinate the forwarding of the request to DESC-FGI via the supporting DESC Regional Office.

P2.C17.7.2. While DESC is obligated to meet all legally valid requirements for international agreements, in the interests of efficiency and effectiveness, DESC shall analyze each requirement and determine if support is more appropriate through one of the following:

P2.C17.7.2.1. Federal Acquisition Regulation contract with a commercial contractor.

P2.C17.7.2.2. International agreement with a foreign government.

P2.C17.7.3. DESC shall adhere to the procedural requirements of DoD Directive 5530.3 for international agreements.

P2.C17.7.4. DESC-FGI shall submit an Executive Summary to the Director, DESC, requesting approval to proceed with an international agreement. The Executive Summary shall include:

P2.C17.7.4.1. A Summary Statement of Intent (SSOI), summarizing the requirement, need for the agreement, and the authority for the agreement.

P2.C17.7.4.2. A L&F Memorandum citing the authority under which the agreement will be negotiated and verifying the availability of funds for the agreement. The L&F Memorandum shall be signed by Counsel and the Comptroller.

P2.C17.7.5. DESC-FGI in coordination with the requesting COCOM, DESC Regional Offices and CBUs shall develop a draft international agreement.

P2.C17.7.6. DESC-FGI shall request negotiation authority from OSD-AT&L via email. The request shall include:

P2.C17.7.6.1. The draft international agreement. The draft agreement is not complete at this time; however, the format shall be established to include normally required standard clauses and the requirements of the proposed agreement.

P2.C17.7.6.2. SSOI.

P2.C17.7.6.3. L&F Memorandum.

P2.C17.7.7. OSD (AT&L) approval of negotiation authority of an international agreement triggers DESC-FGI and DESC Regional Office initiatives to begin formal negotiations with a foreign government. During negotiations the draft may be coordinated internally within DESC numerous times until the draft is considered complete by DESC and the foreign country. DESC-FGI shall coordinate the draft agreement with the applicable DESC Regional Office, DESC-G, DESC-R, DESC CBUs, Military Service(s), and the applicable COCOM.

P2.C17.7.8. When negotiations are completed and the agreement is in final draft, DESC-FGI shall submit the draft agreement, a revised SSOI, and a revised L&F memorandum to OSD-AT&L for signature authority. OSD-AT&L will coordinate the agreement within OSD and the Joint Chiefs of Staff.

P2.C17.7.9. When signature authority is approved by OSD-AT&L, DESC-FGI shall prepare an Executive Summary for the Director, DESC, requesting the following: approval of the agreement, signature of the agreement, or delegation of authority for a DESC staff officer to sign the agreement.

P2.C17.7.10. When the agreement is signed, DESC-FGI shall provide copies to OSD (AT&L), OSD-OGC, the Department of State, DESC Regional Offices, DESC-RR, DFAS Columbus, and the foreign government. DESC Regional Offices shall distribute copies to the COCOM and others, as appropriate.

P2.C17.7.11. Implementation of the agreement will be conducted as agreed between DESC and the foreign government.