

AMENDMENT NUMBER 2
TO THE
MEMORANDUM OF UNDERSTANDING
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

INTRODUCTION

This Amendment Number 2 to the *Memorandum of Understanding 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* of 11 June and 16 July 1987 is made between the Government of the Kingdom of Sweden and the Government of the United States of America, hereinafter referred to as the "Governments".

The Governments recognize the benefits of improving co-operation on security of supply for national defense requirements. It is in the national interest of both Governments to extend existing cooperation by concluding an implementing arrangement on security of supply. Accordingly, the Governments have reached the following understandings.

AMENDMENT

The *Memorandum of Understanding 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* is hereby amended as authorized in Article VII to add the attached as Annex III entitled "Implementing Arrangement for Meeting National Defense Requirements - Security of Supply".

ENTRY INTO EFFECT

1. This Annex shall enter into force upon signature by authorized representatives of both governments.
2. This Annex may be terminated by either Government by notification to the other Government, and such termination will take effect six months after the date of the notification.

Done in Washington, D.C. and Stockholm in two original texts in the English language.

FOR THE GOVERNMENT OF THE
KINGDOM OF SWEDEN

FOR THE GOVERNMENT OF THE
UNITED STATES

Signature

Signature

Name

Name

Title

Acting Under Secretary of Defense (AT&L)

Title

Location

Washington, D.C.

Location

Date

June 26 2003

Date

JUN 11 2003

ANNEX III
IMPLEMENTING ARRANGEMENT FOR MEETING NATIONAL DEFENSE
REQUIREMENTS - SECURITY OF SUPPLY

The Government of the Kingdom of Sweden
and
the Government of the United States

This Annex is an implementing arrangement to the "Declaration of Principles for Enhanced Cooperation in Matters of Defense Equipment and Industry" dated 28 April and 14 May, 2003. It is intended as specific implementation of the "Meeting Security of Supply Requirements" section of that document. It sets forth the principles each Government intends to follow to provide reciprocal priorities support.

Noting that, among the consequences of globalization and industrial restructuring are the creation of transnational defense companies, possible loss of certain domestic industrial capabilities and capacities, and increasing acceptance of mutual interdependence of supplies needed for approved national defense requirements,

Recognizing, in this environment, the value of dialogue, consultation, and arrangements that facilitate the supply of defense articles and defense services,

Recognizing, as a consequence, that it is desirable that each Government develop and/or utilize a Priorities System that enables it to provide for preferential treatment of contracts and subcontracts that promote national defense and support to each other,

Have agreed as follows.

ARTICLE 1 DEFINITIONS

For the purposes of this Annex, the following definitions will be used:

- a. *Security of Supply* - a nation's ability to assure a supply of defense products, materials and services sufficient to discharge its military commitments in accordance with its foreign and security policy requirements.
- b. *Priorities System* - procedures under which a Government can assign priority to, and provide preferential acceptance and performance of, certain contracts (including subcontracts and purchase orders) over other contracts to meet approved defense requirements. As defined here, a Priorities System addresses only the Industrial Resources defined below.
- c. *Industrial Resources* - materials, services, and facilities, including construction materials, needed to meet approved defense requirements. This term includes any raw, in process, or manufactured material, article, commodity, supply, equipment,

component, accessory, part, assembly, or product of any kind, technical information, process, or service. However, *Industrial Resources*, for the purposes of this arrangement, do not include commercial end items commonly available in the country of the supplier.

ARTICLE 2 MAJOR PRINCIPLES

Security of Supply presupposes, where possible, cooperation 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 enable each to acquire the industrial resources needed to meet urgent and critical defense requirements 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 U.S. will provide priorities support by utilizing its existing Priorities System that is based on national law. Sweden will provide reciprocal priorities support by developing and utilizing a system based on a Government-Industry Code of Conduct.

If so requested, each Government will at all times, to the greatest extent practicable and with due regard to its international commitments, immediately consult in a spirit of cooperation with the other Government in order to enable each to:

- 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 an approved defense program requirement of 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 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.

ARTICLE 3 ACTIONS

US

In furtherance of the above principles, and when requested to do so by designated Swedish Ministry of Defence authorities, the US Department of Defense will arrange for the Swedish Ministry of Defence, or Swedish 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 Defense Priorities and Allocations System (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 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 Swedish Company's participation in the Swedish DPAS (see below) will be notified to the US defense procurement community. In those US source selection evaluations where security of supply is an important issue, membership in the system will be a positive consideration during the source selection deliberative process.

Sweden

In furtherance of the above principles, the Swedish Ministry of Defence will establish, maintain, and support procedures under which Swedish companies will be invited to participate in a Code of Conduct. The Code of Conduct will describe a system known, in this context, as the Swedish Defense Priorities and Allocations System (Swedish DPAS). The Swedish Ministry of Defence will notify the US Department of Defense of the Swedish Companies participating in Swedish DPAS. The Code of Conduct with Swedish industry will require accredited Swedish Companies to do all they reasonably can in accordance with US contracts procedures to provide preference to contracts supporting US Department of Defense programs, including:

- a. accepting that a contract they are entering into or are party to with the US Department of Defense or with a US company will, after approval by the point-of-contact of the Swedish Government, be accepted as a contract falling under Swedish DPAS (Swedish DPAS contracts);
- b. inserting into any subcontract provisions designed to ensure due performance of such a contract;
- 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 Swedish DPAS contracts and other contracts.

In relation to Swedish DPAS contracts, the Swedish Ministry of Defence will liaise with accredited Swedish contractors, subcontractors, and suppliers as described below, when requested to do so by the US Deputy Under Secretary of Defense (Industrial Policy) and/or the involved Swedish Company. The Swedish Ministry of Defence will use its best efforts to facilitate US Department of Defense requests for priority performance.

In the event that a Swedish Company intends to refuse to provide priorities support requested by the US Department of Defense, the Swedish Government will, as detailed in the Code of Conduct, investigate the circumstances surrounding the case. The US Department of Defense will have the opportunity to provide the Swedish Ministry of Defence with details of the case. The Swedish Company will be entitled to respond either in writing or orally. The Swedish Ministry of Defence will take measures necessary to assess/evaluate the circumstances surrounding the case:

- a. If the Swedish Ministry of Defence considers that the Swedish Company has acted reasonably, the Swedish Ministry of Defence will, if requested to do so by the Swedish Company, notify the US Department of Defense. The US Department of Defense will act on that notification as it considers appropriate. The Swedish Ministry of Defence will use its good offices with the US Department of Defense to resolve any remaining difficulties. Participation of the Swedish Company in the Swedish DPAS and the benefits received under the system will not be affected.
- b. If the Swedish Company is considered to have acted unreasonably, the Swedish Ministry of Defence will request assurance that the Company will take such steps considered necessary to rectify the situation. Failure to comply with this request may result in the participation of the Swedish Company in the Swedish DPAS being suspended or terminated.

In the event that a Swedish Company cannot satisfy a request to amend a Swedish DPAS contract without incurring a financial loss, and the relevant customer is unwilling to reimburse it, the Company may reasonably decline the request. Under no circumstances shall a Swedish Company be required to suffer a loss without compensation in order to fulfil the obligations detailed in this Annex.

US and Sweden

Sweden and the US do not intend to place the financial responsibility of implementing this Annex in Sweden with Swedish industry.

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

When a US or Swedish Company brings a conflict relating to prioritization of supply between the Swedish and US Governments or any other customer to the attention of the

Governments, the Governments will endeavor to resolve the conflict by consultation. Each Government reserves the right to decide final prioritization requirements within its territory, and the other Government will give deference to such requirements.

ARTICLE 4 FINAL PROVISIONS

Point of contact

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 office serves as the focal point for the implementation and administration of this Annex and is the office to which all requests for priority designations, priorities assistance, and related issues should be directed for approval.

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 partner 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

Sweden

In Sweden, Försvarets materielverk – FMV (the Defence Materiel Administration) will administer this Annex. Priority assistance will be handled on an ad hoc basis between Government and Industry. The Ministry of Defence 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 Swedish industry.

- a. Requests for priorities assistance in Sweden under this MoU Annex should be directed to:

Försvarets materielverk – FMV
(Defence Materiel Administration)
SE- 115 88 Stockholm
Sweden

- b. Copies of correspondence should be provided to:

Ministry of Defense
Department for Military Affairs
SE-103 33 Stockholm
Sweden

US and Sweden

Review of Priorities Systems policy

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 comport with evolving national Priorities Systems and to provide Security of Supply. Industry will be consulted during any such review.