

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 CON-
STITUTING AN AGREEMENT¹
BETWEEN CANADA AND
THE UNITED STATES OF
AMERICA CONCERNING
THE RECIPROCAL TESTING
OF WEAPONS SYSTEMS

ÉCHANGE DE NOTES CONSTI-
TUANT 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.

¹ United 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