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Common ground in Security of Supply Agreements

Introduction

This document puts forth common ground between all Security of Supply Agreements signed by the US and its partners. Countries which have signed such an agreement are: Canada, The Netherlands, United Kingdom, Sweden, Norway, Latvia, Japan, Italy, Finland and Spain. The Republic of Korea is in the process of signing an SOSA.

Manners of support

In order to provide the priority support, the US uses the Defense Priorities and Allocations System (DPAS). The respective partners countries, are expected to institute a code of conduct, in which firms agree make every reasonable effort to deliver on the priority support. Countries which have published a code of conduct are: Finland, Italy, the Netherlands, Norwegian, Spain, Sweden and the United Kingdom. These specific codes of conduct differ significantly over the respective countries, both in wordings and in form. Yet, participation of companies in these codes of conducts is always voluntary.

Structure SOSA

All SOSAs generally have the same structure, except for the Dutch and Canadian ones, which are significantly older. Yet, it is only the Canadian which is differently embedded in the broader system legally wise and abbreviates in structure and wordings. The DoD refers to this as: *Although the DoD does not have a Security of Supply Arrangement with Canada, Canada is included below because the U.S. Department of Commerce has a Memorandum of Understanding with the Canadian Public Works and Government Services Canada to mutually provide priorities support. DoD program managers, contractors, and subcontractors can request priority assistance for U.S. defense purchases in Canada through the Department of Defense.* All other SOSA generally follow the same structure, on which the following paragraphs will elaborate.

Intentions, definitions

All SOSAs, except for the Canadian and Dutch, follow the same sequence of substance 1) Introduction, 2) Definitions, 3) Major Principles, 4) Actions.

The introductions reflect on the intentions beyond the SOSA. In this sense, the MoUs concerning RDP are mentioned as applying documents and should thus be seen as overarching Understandings. Subsequently, there are two major recognitions listed in each introduction (as well in the abbreviating structure of the Dutch SOSA), which reflect on the intentions and interests of both signing parties:

- *Recognizing the benefits of improving cooperation on security of supply for national defense requirements and that it is in the national interest of both Participants to extend existing cooperation by concluding an Arrangement on security of supply;*
- *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.

As for the definitions: there are no significant differences between the stated definitions. Some SOSAs do mention more definitions than others. Having said that, it is valuable to take note of the commonly applied definition of 'Security of Supply: ' *A nation's ability to ensure a supply of defense products, materials, and services sufficient to discharge its military commitments in accordance with its foreign and security policy requirements.* This definition lies at the heart of the *raison d'être* the SOSA.

Major principles

Among the major principles, two form the heart of the applicability and practical undertakings which are to be done by the parties; and are common for all SOSAs.

1. *... enable each participant to acquire the industrial resources needed to meet urgent and critical defense requirements in a timely, effective and efficient manner. Priority systems are not designed to rectify poor provisioning and should not be used as a substitute for the normal contracting process.*

As for the first sentence of this principle: the Agreements remain quiet as what certain words in these paragraphs mean. Words as 'urgent' and 'critical defense requirements' remain without elaboration or guidance. I suppose there are two legal ways of looking at it:

- a. The fact that "Security of supplies" has been articulated in the definitions of all SOSAs, provides the opportunity to weigh the words 'urgent' and 'critical requirements' against the background of that definition. This may provide a wider scope.
- b. In absence of guidance on 'urgent' and 'critical requirements', one may need look into the spirit of the agreements. Did the parties name examples of situations for which the SOSAs would prove itself useful in the future? This would require an examination of the intentions and expectations of both parties while concluding the agreements¹.

As for the second sentence of this principle: all SOSAs include this rule. Consequently, one may question the applicability of SOSAs on conventional requests for US industry.

2. *... to enable each Participant to:*
 - *assign or facilitate the assignment of priority, through its Priority Systems, to specified defense contracts that are issued by the other Participant or by contractors, subcontractors, or suppliers working on a defense program requirement approved by the other Participant, to suppliers located in its territory:*
 - *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:*

¹ With regard to this intentions: one could check the Press Releases after the conclusion of the SOSAs, for example the Danish one: [DoD and Danish Ministry of Defence Sign Security of Supply Arrangement > U.S. Department of Defense > Release](#). The release speaks of: "The Arrangement will enable both countries to acquire the industrial resources they need from one another to resolve unanticipated supply chain disruptions to meet national security needs".

- *provide assistance, when requested, to seek to resolve problems in order to ensure timely delivery of Industrial Resources under designated contracts: and*
- *endeavor as appropriate, as each Participant desires, to enter into Security of Supply arrangements, on a reciprocal basis, with the defense establishments of members of other alliances or organizations to which the Governments of the Participants are members.*

These four bullets constitute to the central undertakings which may be expected of a party under the agreement. The first three bullets are common for all SOSAs. The fourth bullet on *endeavoring* is not included of the SOSA of Sweden and Australia.

Actions

Under this section, which is included in all SOSAs, the principles are further expanded through a practical elaboration on the undertakings for the US DoD, the foreign institution (materiel organization or MoD, depending on the nation), or both.

There are no signification differences in the practical actions for the DoD or foreign institution between all SOSAs. Important to note is that all SOSAs do have a notion which states: *“In fulfilling their understandings under this arrangements, the participants recognize that Accredited [foreign nation] or US companies may have other contracts with other customers, including with their own government, which the provisions of this arrangement are not intended to undermine”*.