

DELEGATION OF THE COMMISSION OF THE EUROPEAN COMMUNITIES

WASHINGTON DELEGATION

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Ref. No. : 6265

Cover page plus 15 page(s)

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TO : Mr. Kenneth Hodgkins, Office of Advanced Technology
U.S. Department of State, Washington DC 20520

FAX : 647-0776

FROM : R. Roy

REF. : RR/T637

DATE : December 21, 1988

ADDRESSEE PLEASE COPY TO :

SUBJECT : Renewal of the Memorandum of Agreement between the US Bureau of Mines and the Commission of the European Communities for sharing information in the field of mineral technology.

441,2(103)

Following our recent conversation, I send you the detailed dossier and some comments for your information.

This memorandum has been signed on 16 January 1984 for a five year period.

Consequently it expires on 15 January.

The Commission made its best efforts to renew in time this agreement which has given full satisfaction to both parties.

Both parties also agreed to add or make more precise a couple of points of particular interest for them. This modification is made only in the technical annex as indicated as the proposed exchange of letters. Mr. W. Miller, Director for Office of Regulatory Projects Coordination, Bureau of Mines let me know his approval by telephone. Some days later, he sent me an annex on intellectual property rights and national security obligations which are requested to be added at any (?) memorandum.

Given that this memorandum is an extension, by exchange of letters, of an existing memorandum, that there is no joint research but only exchange of information and that the cooperation is desired by both parties without discontinuity, the Commission is wondering if this kind of annex is really necessary and if it will be generalised in the future. Such provisions will have to be reviewed for a very long time by our Legal Service and might be the subject of high level negotiations between the Commission of the European Community and the government of the United States.

The Commission may understand the concerns of the United States and it might be desirable to continue the kind of discussions which have already started in various fora. However, in this particular case, such an annex will just impede the smooth continuation of an agreement in a very limited and mutually satisfactory field.

Please find herewith:

- 1) the text of the MOU of 1984
- 2) the letters sent to W. Miller
- 3) the supplementary annexes wanted by the US side.

Rigine Roy

U.S. D.O.I. JAN 24 1984

SOI.

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE UNITED STATES BUREAU OF MINES, DEPARTMENT OF THE INTERIOR

AND

THE COMMISSION OF THE EUROPEAN COMMUNITIES

CONCERNING

SHARING INFORMATION IN THE FIELD OF

MINERAL TECHNOLOGY

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MEMORANDUM OF UNDERSTANDING
BETWEEN
THE UNITED STATES BUREAU OF MINES, DEPARTMENT OF THE INTERIOR
AND
THE COMMISSION OF THE EUROPEAN COMMUNITIES
CONCERNING
SHARING INFORMATION IN THE FIELD OF MINERAL TECHNOLOGY

ARTICLE I

Scope and Objectives of the Memorandum

In order to provide a mechanism for sharing information on all research aspects of the mineral industry from mineral evaluation through recycling, the United States Bureau of Mines, Department of the Interior and the Commission of the European Communities have agreed to procedures for cooperation as defined in this Memorandum of Understanding.

Both parties have developed research programs in line with their own needs. Both programs have a number of similar activities. The purpose of this Memorandum is to establish a framework for the exchange of non-company-confidential technical information and augmentation of the technical capabilities of both parties in such research activities that both parties are similarly involved.

ARTICLE II

Scope and Depth of Cooperation

Cooperation will include mineral evaluation through recycling as specified in Annex 1. The scope of cooperation may be expanded by incorporating other mutually approved annexes to this Memorandum. The technical information to be covered by the topics listed in the annex would include basic information through applied research.

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ARTICLE III

Modalities of Cooperation

The objectives of this Memorandum will be carried out by exchange of publications and of other non-company-confidential research results, of experts, and by seminars, symposia and technical workshops, and when appropriate, visits to research laboratories and centers.

ARTICLE IV

Source of Funds

The activities carried out under this Memorandum will be subject to and dependent on funds and manpower available to each party. Each party will bear the costs of its own participation in cooperative activities under this Memorandum. No cofunding is envisaged. However, where research of the two parties is complementary, each party will have the option of making a contribution to the other party's research if the parties agree that substantial benefits shall result.

ARTICLE V

Reports, Documents, and Release of Information

Subject to the applicable laws and regulations of the two parties, nonproprietary information data and reports of cooperative activities undertaken under this Memorandum may only be released after mutually written consent.

ARTICLE VI

Program Review

It is anticipated that representatives of the two parties will, at mutually agreed intervals, but at least once a year, review the progress of activities conducted under this Memorandum and exchange plans for future programs and activities.

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ARTICLE VII

Disclaimer

Each party totally disclaims any warranty with regard to the accuracy, validity, or fitness for any particular purpose of the information it supplies under this agreement.

ARTICLE VIII

Limitation of Liability

Neither party to this Memorandum will assert a claim against the other for damages arising from activities under this Memorandum.

ARTICLE IX

Entry into Force and Termination

This Memorandum shall enter into force upon signature by both parties and remain in force for five (5) years, unless extended by agreement. This Memorandum may be terminated by either party upon ninety (90) days written notice of termination to the other party.

Done in duplicate at Brussels this 16th day of January 1984.

FOR THE COMMISSION OF
THE EUROPEAN COMMUNITIES

FOR THE UNITED STATES BUREAU OF MINES
DEPARTMENT OF THE INTERIOR

Luis Filadelfo

George S. Vest

SHARING INFORMATION
IN THE FIELD OF MINERAL TECHNOLOGY
BETWEEN
THE UNITED STATES BUREAU OF MINES
AND
THE COMMISSION OF THE EUROPEAN COMMUNITIES

Scientific Areas of Cooperation

Mining Research

- . Geostatistics
- . Mine design
- . Transportation in underground and open pit mines
- . Rock mechanics

Minerals and Materials Research

- . Beneficiation
- . Extractive metallurgy
- . Recovery of metal values by recycling
- . Substitution

QW.

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DELEGATION OF THE COMMISSION
OF THE EUROPEAN COMMUNITIES

Washington DC, November 15, 1988
RR/L554

Dr. William L. Miller
Director
Office of Regulatory Projects Coordination
Bureau of Mines
U.S. Department of the Interior
2401 E Street N.W.
Washington, DC 20241

Dear Dr. Miller,

Following our telephone conversation, I am pleased to send you a draft letter from the Commission of the European Communities and a draft of the kind of answer we would expect if agreed.

I would much appreciate to receive your final approval or your last comments in order to launch our administrative procedure and to have the letter signed by the Commission as soon as possible.

Régine Roy,
Second Secretary, Science & Technology

Enclosures: 2

LETTER FROM THE BUREAU OF MINES OF
THE U.S. DEPARTMENT OF THE INTERIOR

Sir,

I have the honour to acknowledge receipt of your letter of today's date and which reads as follows :

"Sir,

I have the honour to refer to the Memorandum of Understanding between the Bureau of Mines, U.S. Department of the Interior, and the Commission of the European Communities, for sharing information in the field of mineral technology. This Memorandum entered into force on 16 January 1984 and was signed for a five year period. Consequently, it expires on 15 January 1989.

Since both sides appear to be satisfied with the cooperation which has taken place under the Memorandum and since they want to continue cooperation in this area, I have the honour to propose that the duration of this Memorandum of Understanding be extended by another five year period and that it remain unchanged except for its Annex 1 to which shall be added :

- biohydrometallurgy, including any biological extraction of metals from solutions or ores and also some genetic works developing strains of bio-organisms for that purpose;
- minerals information and analysis (assessment) including
 - resources statistics
 - cost analysis
 - econometric models

If the foregoing is acceptable to the Bureau of Mines of the U.S. Department of the Interior, I have the honour to suggest that this letter, together with your reply to that effect, shall constitute the extension of the duration of the above mentioned Memorandum for another five year period starting on 16 January 1989.

Please accept, Sir, the assurance of my highest consideration."

I wish to inform you that the foregoing is acceptable to the Bureau of Mines of the U.S. Department of the Interior.

Please accept, Sir, the assurance of my highest consideration.

LETTER FROM THE COMMISSION

Sir,

I have the honour to refer to the Memorandum of Understanding between the Bureau of Mines, U.S. Department of the Interior, and the Commission of the European Communities, for sharing information in the field of mineral technology. This Memorandum entered into force on 16 January 1984 and was signed for a five year period. Consequently, it expires on 15 January 1989.

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Please accept, Sir, the assurance of my highest consideration.

2 annexes, to be added to any
MOU (12/5/88)

ANNEX I

INTELLECTUAL PROPERTY

I. GENERAL

A. For purposes of this Agreement, "intellectual property" shall have the meaning found in Article 2 of the Convention establishing the World Intellectual Property Organization, done at Stockholm July 14, 1967.

B. The Parties shall ensure adequate and effective protection for intellectual property created or furnished in the course of cooperation under this Agreement and relevant implementing arrangements thereunder.

II. COPYRIGHTS

A. The Parties shall take all steps in accordance with their national laws appropriate to secure copyright to works created in the course of scientific and technological cooperation under this Agreement.

B. Between a Party and its nationals, the ownership of rights and interests in copyrights shall be determined in accordance with that Party's national laws and practices.

C. In the case of scientific and technical articles, reports, and books created under this Agreement, each Party shall enjoy in its own territory a non-exclusive, irrevocable, royalty-free license to translate, reproduce and publicly distribute copies of such works and to authorize others to do so in that Party's own territory. Each Party is entitled to a similar license in third countries upon request. All publicly distributed copies of a copyrighted work prepared under this provision shall indicate the names of the authors of the work, unless an author explicitly declines to be named.

D. With respect to other copyrighted works, including computer programs or software, the following provisions shall apply to the allocation of rights under this Agreement, except as may otherwise be provided in implementing arrangements:

1. If a work is created by the personnel of one Party while assigned to the other Party (the Receiving Party) in the course of cooperative activity that involves only the visit or exchange of such personnel, the Receiving Party shall enjoy in the territory of each Party and in third countries a royalty-free, irrevocable, exclusive license to all rights in such work created during the course of such cooperation.

2. If a work is created during the course of a joint research project with an agreed scope of work, each Party shall enjoy in its own territory a royalty-free, irrevocable, exclusive license to all rights in such work, and the Party in whose territory the work was created has the first option to sublicense such rights in third countries.

E. A Party receiving rights under this Agreement to copyrighted works which contain business-confidential information shall also protect such information in accordance with Article IV of this Annex.

III. INVENTIONS

A. For purposes of this Annex, "Invention" means any invention made in the course of a program of cooperative activity under this Agreement or implementing arrangements thereunder which is or may be patentable or otherwise protectable under the laws of the United States of America, Ireland, or any third country. An invention "made" means one conceived or for which an application for patent or other title of protection has been filed or which has otherwise been reduced to practice.

B. Between a Party and its nationals, the ownership of rights and interests in inventions shall be determined in accordance with that Party's national laws and practices.

C. As between the Parties, unless otherwise specifically provided in an applicable implementing arrangement, the Parties shall take appropriate steps to implement the following:

1. If the invention is made in the course of a program of cooperative activity that involves only the transfer or exchange of information between the Parties, such as by joint meetings, seminars or the exchange of technical reports or papers:

a. the Party whose personnel makes the invention ("the Inventing Party") has the right to obtain all rights and interests in the invention in all countries in accordance with applicable national laws of such countries; and

b. in any country where the Inventing Party decides not to obtain such rights and interests, the other Party has the right to do so.

2. If the invention is made by personnel of one Party ("the Assigning Party") while assigned to the other Party ("the Receiving Party") in the course of a program of cooperative activity that involves only the visit or exchange of scientific and technical personnel:

- a. the Receiving Party has the right to obtain all rights and interests in the invention in all countries in accordance with applicable national laws of such countries; and
- b. in any country where the Receiving Party decides not to obtain such rights and interests, the Assigning Party has the right to do so.

3. For other forms of cooperative activity, such as joint research projects with an agreed scope of work, each Party in its own country has the right to obtain all rights and interests in any invention made as a result of such cooperation, whereas the Party in whose country the invention was made has first option to secure legal protection of that invention in third countries, as well as the right to license or transfer such rights and interests in third countries.

D. Notwithstanding the foregoing, if an invention is of a type for which exclusive rights are available under the laws of one Party but not of the other Party, the Party whose laws provide for such rights shall be entitled to all such rights worldwide.

E. The Parties shall disclose to one another inventions made in the course of a program of cooperative activity, and furnish to one another any documentation and information necessary to enable them to secure any rights to which they may be entitled. The Parties may ask one another in writing to delay publication or public disclosure of such documentation or information for the purpose of protecting their respective rights related to inventions. Unless otherwise agreed in writing, such restriction shall not exceed a period of six months from the date of communication of such information. Communication shall be through the Parties to the applicable implementing arrangements.

IV. BUSINESS-CONFIDENTIAL INFORMATION

A. In the event that business-confidential information is furnished or created in the course of cooperative activity under this Memorandum of Understanding, the Parties shall give full protection to such information in accordance with their laws, regulations, and administrative practices.

B. For purposes of this Annex, "business-confidential information" means information of a confidential nature which meets all of the following conditions:

1. it is of a type customarily held in confidence for commercial reasons;
2. it is not generally known or publicly available from other sources;
3. it has not been previously made available by the owner to others without an obligation concerning its confidentiality; and
4. it is not already in the possession of the recipient Party without an obligation concerning its confidentiality.

C. Any information to be protected as "business-confidential information" shall be appropriately identified by the Party furnishing such information or asserting that it is to be protected, except as otherwise provided in the Parties' laws, regulations, and administrative practices. Subject to the aforesaid laws, regulations, and administrative practices, information not identified as business-confidential need not be protected, except that a Party may notify the other Party in writing, within a reasonable period of time after furnishing or transferring such information, that such information is business-confidential under the laws, regulations, and administrative practices of its country. Such information will thereafter be protected in accordance with paragraph A above.

V. OTHER FORMS OF INTELLECTUAL PROPERTY

"Other forms of intellectual property" means any intellectual property other than those forms described in Articles II, III and IV above and includes, for example, mask works. Rights to other forms of intellectual property shall be determined in the same manner as for inventions. If an intellectual property created in the course of cooperative activity under this Agreement is of a type for which protection is available under the laws of one Party but not of the other Party, the Party whose laws provide for such protection shall be entitled to an assignment of all such rights worldwide.

VI. MISCELLANEOUS

A. Each Party shall take all necessary and appropriate steps to provide for the cooperation of its authors, inventors, and discoverers which is required to carry out the provisions of this Annex.

B. Each Party shall assume the responsibility to pay to its nationals such awards or compensation as may be in accordance with its laws and regulations. This Annex does not create any entitlement or prejudice any right or interest of the author or inventor to an award or compensation for his or her work or invention.

C. Intellectual property disputes arising under this Agreement should be resolved, if possible, through discussions between the concerned participants. If the participants cannot resolve such disputes, they shall be settled through consultations between the Parties or their designees.

VII. EFFECT OF TERMINATION OR EXPIRATION

Termination or expiration of this Memorandum of Understanding shall not affect rights or obligations under this Annex.

VIII. APPLICABILITY

This Annex is applicable to any implementing arrangements or cooperative activities under this Agreement, except as otherwise specifically provided for in individual implementing arrangements.

ANNEX II

SECURITY OBLIGATIONS

I. PROTECTION OF INFORMATION

Both Parties agree that no information or equipment requiring protection in the interests of national defense or foreign relations of either Party and classified in accordance with the applicable national laws and regulations shall be provided under this Agreement. In the event that information or equipment which is known or believed to require such protection is identified in the course of cooperative activities undertaken pursuant to this Agreement, it shall be brought immediately to the attention of the appropriate officials and the Parties shall consult concerning the need for and level of appropriate protection to be accorded such information or equipment.

II. TECHNOLOGY TRANSFER

The transfer of unclassified export-controlled information or equipment between the Parties shall be in accordance with the relevant laws and regulations of each Party to prevent the unauthorized transfer or retransfer of such information or equipment provided or produced under this Agreement. If either Party deems necessary, detailed provisions for the prevention of unauthorized transfer or retransfer of such information or equipment shall be incorporated into the contracts or implementing arrangements.