



DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

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MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Clarification of Recoupment of Special Nonrecurring Costs (NCs) on Sales of U.S. Items (DSCA Policy Memo 04-21)

REFERENCE: DoDD 2140.2, "Recoupment of Nonrecurring Costs (NCs) on Sales of U.S. Items," January 13, 1993

The referenced Directive provides policy requirements for calculating and assessing NC recoupment charges on sales of items that were developed for or by the United States Department of Defense. Recently, DSCA has become aware of confusion in the use of this Directive---specifically regarding the requirements for calculating/assessing nonrecurring costs on behalf of foreign customers. The purpose of this memorandum is to clarify these requirements to help ensure consistent application of the Directive.

When research, development, test, and evaluation, and nonrecurring production costs are incurred for the benefit of a foreign customer, these costs must be paid for by the foreign customer involved. The USG may not use any of its own funds to pay for this customer-unique development effort. When a subsequent purchaser requests the same specialized features, the USG may agree to collect a pro rata share of these customer-incurred investment costs from subsequent purchasers. The rates established to recover these costs on behalf of the foreign customer are known as "Special" NCs. Before a "Special" NC can be established for use in future sales, the following criteria must be met:

- a. The nonrecurring costs incurred by the customer must exceed \$50,000,000.
- b. The designated items must be Major Defense Equipment (MDE). Section 47 of the Arms Export Control Act (P.L. 90-629) defines MDE as any item of Significant Military Equipment (SME) on the United States Munitions List having a research and development cost of more than \$50,000,000 or a total production cost of more than \$200,000,000.

Once an item has been determined as eligible under the above criteria, a "Special" NC may be computed. The rate will be determined by dividing the nonrecurring costs incurred by the foreign customer by the total number of units anticipated to be produced (to include U.S. units). These charges are developed by the Military Departments and forwarded to DSCA for approval. All approved "Special" NC recoupment charges are published in DoD 5105.38-M, "Security Assistance Management Manual," 1 October 2003, in Appendix 1 (along with the standard NC recoupment charges). The current version of the SAMM, along with Appendix 1, is available at DSCA's website: www.dscamil.

Once a "Special" NC has been established, it will be applied to future Foreign Military Sales (FMS) cases under the following conditions:

a. "Special" NC recoupment charges will only be collected for a maximum of 10 years after acceptance of the Letter of Offer and Acceptance (LOA). If the investment costs are recovered prior to the 10 year period, collections will stop at that time. In no case will the collected amount exceed the amount invested.

b. "Special" NC recoupment charges will not be applied when FMS cases are fully financed with non-repayable Foreign Military Financing (FMF) or when equipment with such features is provided under a U.S. Grant Aid or similar program.

The U. S. Government shall not be charged any special nonrecurring cost recoupment charge if it adopts the specialized features for its own use. DoD agreements for co-production, co-development and cooperative development or cooperative production must be consistent with the Arms Export Control Act, the policies in the Code of Federal Regulations Part 165, DoDD 2140.2, and the Security Assistance Manual (DoD 5105.38-M).

The DSCA Policy and Plans Division of the Policy, Plans and Programs Directorate is the cognizant office within USDP for policy regarding NC recoupment charges. If you have any questions regarding this issue, please contact Ms. Kay Judkins, DSCA/P3-P2 (703) 601-3719 or Mr. Oz Sanborn, DSCA/P3-P2 (703) 601-3718.

A handwritten signature in cursive script that reads "Richard J. Millies".

Richard J. Millies
Acting Director