
Excess Defense Articles

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Increased attention regarding the issue of excess defense articles (EDA) and their role in security assistance has accompanied the current downsizing of the U.S. military force structure—a phenomenon triggered by the remarkable political, economic, and military changes which have occurred in the former Warsaw Pact countries. Moreover, beginning in 1986, a series of legislative changes have broadened substantially the statutory authorities which govern the transfer of EDA to foreign governments. Accordingly, the forthcoming twelfth edition of DISAM's basic textbook, *The Management of Security Assistance* (to be available after 1 June 1992) will include an expanded discussion of EDA and the various programs through which EDA may be acquired. Given the widespread interest in this timely subject, the following material, extracted from Chapter 3 of the new textbook, is provided for the use of our readers and former students.

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Excess Defense Articles

The term Excess Defense Articles is applied collectively to U.S. defense articles which are no longer needed by the U.S. armed forces. Such defense articles may be made available for sale under the Foreign Military Sales (FMS) Program [Section 21, AECA] or as grant (no cost) transfers to eligible foreign countries under the various provisions of Sections 516, 517, 518, or 519 of the FAA which are described below.

The following formal definition of EDA is provided in Section 644(g), FAA, and it establishes the guidelines for determining which defense articles may be treated as excess materiel.

Excess defense articles means the quantity of defense articles owned by the United States Government, and not procured in anticipation of military assistance or sales requirements, or pursuant to a military assistance or sales order, which is in excess of the Approved Force Acquisition Objective and Approved Force Retention Stock of all Department of Defense Components at the time such articles are dropped from inventory by the supplying agency for delivery to countries or international organizations under this Act [FAA].

Section 502A, FAA, provides the following general guidance regarding the furnishing of defense articles to foreign governments: "Excess defense articles shall be provided whenever possible rather than providing such articles by the procurement of new items." As defense articles actually become excess, they are screened to determine whether they may be sold to eligible countries through FMS procedures or transferred as grant-provided items under the various provisions of the FAA. The ultimate responsibility for determining if an item should be identified as excess rests with the military department having cognizance over the item. Military department recommendations for the allocation of EDA to specific countries are reviewed and staffed by an EDA Coordinating Committee comprised of DOD and State Department representatives. Once a decision is made to furnish EDA to a particular country, DSAA prepares the required Congressional Notification.

EDA sold through FMS procedures are priced on the basis of their condition as described in DOD 7290.3-M. Prices range from a high of 50 percent of the original acquisition value for new equipment, to a low of 5 percent for equipment in need of repairs. Charges must be levied on such sales as well as on grant transfers (with certain exceptions under Sections 518 and 519, FAA) for the costs of packing, crating, handling, and transportation. Also, Section 31(d) of the AECA limits the annual value of EDA that may be acquired cumulatively by foreign governments through sales as well as grants under Sections 516 through 519 of the FAA; the current ceiling is \$250 million of original acquisition value. However, there are exceptions to this provision: the transfer of ships and their on board stores and supplies are excluded from the ceiling; and any sales of defense articles for which the President submits a certification to Congress under Section 36(b) of the AECA are also excluded. [§31(d) AECA]

The various provisions under the FAA which authorize grant EDA transfers differ in their objectives, as shown below, but are all subject to the following limitations:

1. The equipment may only be drawn from existing stocks of the Department of Defense;
2. No funds available to the Department of Defense for the procurement of defense equipment may be expended in connection with the transfer; and,
3. The President must determine and notify Congress that the transfer of the excess defense articles will not have an adverse impact on the military readiness of the United States.

The following is a discussion of the various methods of furnishing EDA as grant transfers under the FAA. A summary of the key features of each grant program (plus the features of transfers under FMS procedures) is provided in Figure 3-3.

EDA Transfers Under Section 516, FAA. Section 516, entitled "Modernization of Defense Capabilities of Countries of NATO's Southern Flank," was added to the AECA in 1986 as a means of providing, on a grant basis, "such excess defense articles as the President determines necessary to help modernize the defense capabilities" of "NATO countries on the southern flank of NATO." The legislation was quickly dubbed the "Southern Region Amendment." Section 516 identified five countries as comprising this region (Greece, Italy, Portugal, Turkey, and Spain), but the application of Section 516 was limited to Greece, Portugal, and Turkey. Nevertheless, in subsequent years Congress amended Section 516 to extend country eligibility: Egypt and Israel, as "major non-NATO allies on the southern and southeastern flank of NATO," became eligible beginning in FY 1988; and at the start of FY 1991, eligibility was further extended to include countries which received FMFP assistance in FY 1990 and which also, "as of October 1, 1990, contributed armed forces to deter Iraqi aggression in the Arabian Gulf. . . ."¹ This latter provision applied to three countries: Morocco, Pakistan, and Senegal, although all U.S. financed military assistance to Pakistan remained on suspension at the time due to that nation's development of a nuclear program. Congress has also stipulated that EDA transferred on a grant basis under Section 516 to NATO allies and major non-NATO allies (i.e., Australia, Japan, Egypt, Israel, and Korea), "be given priority to the maximum extent feasible over the delivery of such excess defense articles to other countries."²

A further legislative requirement affecting the Southern Region Amendment is included in the annual foreign operations appropriations acts. This provision requires that the value of excess defense articles made available to Greece and Turkey, "closely approximate the ratio of military

¹§516(a), FAA

²§599, Foreign Operations, Export Financing, And Related Programs Appropriations Act, 1991, P.L. 101-513; 104 Stat 2063.

financing provided for” the two countries. Since 1980, Congress has maintained a 7 to 10 ratio on such military financing assistance (i.e., FMFP) for Greece and Turkey. The EDA provision (which was first enacted for FY 1988 and renewed annually thereafter) extends that same requirement to Section 516 EDA grant assistance. Also, since FY 1990 the Administration has been given a three-year period to meet the stipulated ratio.³ The authority of Section 516 was extended through FY 1996 by Section 1049 of the National Defense Authorization Act, FY 1992 and 1993, P.L. 102-190.

EDA Transfers Under Section 517, FAA. Section 517 is entitled “Modernization of Military Capabilities of Certain Major Illicit Drug Producing Countries,” and it became effective at the start of FY 1990.⁴ Under Section 517(a), excess defense articles may be furnished on a grant basis to an eligible major illicit drug producing country located in Latin America or the Caribbean. Such transfers are authorized:

only for the purpose of encouraging the military forces of an eligible country in Latin America and the Caribbean to participate with local law enforcement agencies in a comprehensive national antinarcotics program, conceived and developed by the government of that country, by conducting activities within that country and on the high seas to prevent the production, processing, trafficking, transportation, and consumption of illicit narcotic or psychotropic drugs or other controlled substances. . . .⁵

By definition, a major illicit drug producing country is one which during a fiscal year illicitly produces:

1. 5 metric tons or more of opium; or,
2. 500 metric tons or more of coca; or,
3. 500 metric tons or more of marijuana.⁶

Additionally, further eligibility requirements for Section 517 grant EDA stipulate that a participant country must have “a democratic government . . . whose armed forces do not engage in a consistent pattern of gross violations of internationally recognized human rights. . . .”⁷ Also, EDA may be furnished to a country under Section 517, “only if that country ensures that those defense articles will be used primarily in support of antinarcotics activities.”⁸

Section 517(d) charges the Secretary of State with determining the eligibility of countries to receive EDA under Section 517, and the Secretary must also ensure that such transfers are “coordinated with other antinarcotics enforcement programs assisted by the United States Government.” The following countries were qualified under Section 517 as of March, 1992, when this text was finalized: Colombia, Peru, Bolivia, Mexico, Jamaica, and Guatemala. Finally, this program has a dollar limitation: under Section 517(e), an eligible recipient country may receive EDA valued at no more than \$10 million in any single fiscal year.

³§596(d), Foreign Operations, Export Financing and Related Programs Appropriations Act, 1991, P.L. 101-513; 104 Stat 2062.

⁴Section 5 of the International Narcotics Control Act of 1989 (P.L.101-231; 103 Stat 1957) added Section 517 to the FAA.

⁵§517(b), FAA

⁶§481(i)(2), FAA.

⁷§§517(a)(2) and (3), FAA

⁸§517(c), FAA

EDA Transfers Under Section 518, FAA. Entitled, "National Resources and Wildlife Management," Section 518 became effective at the start of FY 1991. The provisions of Section 518 authorize the transfer on a grant basis of *nonlethal* EDA [e.g., medicine, food, tents, clothing, trucks, etc.] and *small arms* to friendly countries and to international organizations and private and voluntary organizations for the purposes outlined in Section 119, FAA, "Endangered Species." Those purposes, which are often expressed in terms of the protection of "biological diversity," focus on "the preservation of animal and plant species through the regulation of the hunting and trade in endangered species, through limitations on the pollution of natural ecosystems, and through the protection of wildlife habitats. . . ."⁹ In short, the nonlethal EDA and small arms which may be transferred under Section 518 would generally be provided to game wardens, forest rangers, and other law enforcement personnel charged with providing protection and control over wildlife parks, animal refuges, and the like.

Unlike Sections 516 and 517 which require the recipient countries to pay for all packing, crating, handling, and transportation charges, Section 518(c) provides authority for the Department of Defense to transport "without charge on a space available basis" any such nonlethal EDA and small arms made available under Section 518.

EDA Transfers Under Section 519, FAA. Section 519, which like Section 518 became effective at the start of FY 1991, is entitled, "Additional Authorities Relating to Modernization of Military Capabilities." Also like Section 518, Section 519 involves the furnishing of *nonlethal* EDA on a grant basis; but under the Section 519 authority, such EDA is to be made available for general military modernization purposes. Moreover, such equipment may only be furnished "to countries for whom a foreign military financing program was justified for the fiscal year in which the transfer [of nonlethal EDA] is authorized," and for such nonlethal EDA "as the President determines [are] necessary to help modernize the defense capabilities of such countries."¹⁰

A special provision is attached to the general requirements for Presidential determinations regarding Section 519 EDA transfers; this provision requires the President to determine that transferring the articles under Section 519, "is preferable to selling them, after taking into account the potential proceeds from, and likelihood of, such sales, and the comparative foreign policy benefits that may accrue to the United States as the result of either a transfer or sale."¹¹ This requirement does not apply to any of the other EDA transfers authorized under Sections 516, 517, and 518.

It should also be noted that while *eligibility* for FMFP must have been justified for the fiscal year in which the nonlethal EDA is to be delivered, *it is not necessary* that such financing assistance actually be provided in order to transfer the nonlethal EDA. Thus, it is quite possible that a country may have been justified in the annual *Congressional Presentation Document* to receive FMFP, but that such financing assistance subsequently failed to be allocated for that country; nevertheless, that country could still receive shipments of nonlethal EDA under the

⁹§119(a), FAA

¹⁰§519(a), FAA

¹¹§519(b), FAA

FIGURE 3-3

Methods of Transferring Excess Defense Articles (EDA)

PROGRAM	PURPOSE	RECIPIENTS	EQUIPMENT	CONDITION	TRANSPORTATION
FMS Sec. 502A, FAA, and Sec. 21, AECA (Sale)	Defense Modernization	Any eligible country	Lethal & nonlethal EDA	As is/where is, reduced price	Countries pay
Southern Region Amendment Sec. 516, FAA (Grant)	Defense Modernization	Greece, Portugal, Turkey, Israel, Egypt, Morocco, Pakistan, Senegal	Lethal & nonlethal EDA	As is/where is	Countries pay
Antinarcotics Capabilities Sec. 517, FAA (Grant)	Modernizing Antinarcotics Capabilities	Colombia, Peru, Bolivia, Mexico, Jamaica, and Guatemala	Lethal & nonlethal EDA (Maximum: \$10 million per country, per year)	As is/where is	Countries pay
Natural Resources & Wildlife Mgmt. Sec. 518, FAA (Grant)	Biological Diversity and Conservation	Eligible countries and international organizations	Nonlethal EDA and small arms	As is/where is	DOD space available
Additional Authorities Sec. 519, FAA (Grant)	Defense Modernization	Countries eligible for FMF for year in which EDA transfer is to be made	Nonlethal EDA	As is/where is	Countries pay (DOD may pay PCH&T for the Philippines)

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Section 519 authority. Furthermore, the crating, packing, handling and transportation of such Section 519 articles may be authorized by the President to be furnished without charge to the recipient country if "that country has an agreement providing the United States with base rights in that country," and if "that country is eligible for assistance from the International Development Association. . . ." At present, only the Philippines has been determined to qualify for such assistance.¹²

Finally, transfers of nonlethal EDA to Greece and Turkey under the authority of Section 519 must "closely approximate" the 7 to 10 ratio applied in the provision of military financing assistance to the two countries.¹³ This is identical to the requirement for maintaining the military financing assistance ratio when furnishing EDA to Greece and Turkey under the authority of Section 516, as discussed above.

¹²§§519(F)(2)

¹³§596(d), Foreign Operations, Export Financing and Related Programs Appropriations Act, 1991, P.L. 101-513; 104 Stat 2062