
Excess Defense Article Transfers: Problems and Necessary Actions

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PREFACE

Extensive Department of Defense (DoD) budget and personnel cuts over the last several years have increased the number of items that have become available for Foreign Military Sales (FMS) or as grants through U.S. legislative provisions for the management of excess defense articles (EDA). Two primary reasons for increased EDA transfers are increased base closures, and efforts to reduce excessive DoD on-hand inventories. While more items have become available, many of these items have not been transferred. The lack of procedural integration between DoD activities responsible for disposing of assets and the security assistance community have made timely visibility and processing actions extremely difficult. Additionally, there has been a general lack of awareness about the intent and significance of the FMS EDA sales/grant program among those responsible for identifying excesses to the security assistance activities for transfer action. The solutions to these problems lie in more effective communication, coordination, and policy/procedural changes by key logistics process managers. It is hoped this article will create a greater awareness of the problems associated with EDA transfers and be a catalyst for the implementation of solutions for the future.

THE PROCESS AND ITS INTENT

EDA are "defense articles (other than construction equipment . . .) owned by the United States Government (USG) and not procured in anticipation of military assistance or sales requirements, or pursuant to a military assistance or sales order, which are in excess of the Approved Force Acquisition Objective and Approved Force Retention Stock of all DoD components at the time such articles are dropped from inventory by the supplying agency for delivery to countries or international organizations."¹ In other words, EDA are items that the USG owns but no longer needs.

EDA transfers make items available to countries in an "as-is, where-is" condition to "afford materiel support to countries at reduced cost and in less than normal leadtime."² The Arms Export Control Act (AECA) as amended and the Foreign Assistance Act (FAA) of 1961 as amended, Sections 516, 517, 518, and 519 limit what articles and how many dollars worth can be made available, as well as to whom and when. While the AECA places a \$250 million per year acquisition value limit on EDA transfers, the various FAA sections specify exceptions.³

FAA Section 516 is also referred to as the Southern Region Amendment or SRA. This legislation authorizes grant (no charge) transfers to Turkey, Portugal, Greece, Israel, Egypt, Pakistan, Senegal, Morocco, Oman, Jordan, and Bahrain. These countries are authorized to receive priority delivery of excess defense articles on a grant basis. A 30-day notification to

¹FAA, Section 644(g).

²United States Department of Defense, DoD 5105.38-M, Chapter 8 Section 803, paragraph 80302.A, Washington DC, GPO, 10 May 1994, pp. 803-1-2.

³AECA, Section 31(d).

Congress is required before making a formal offer to qualified countries. FAA Section 517 authorizes grant transfers to Caribbean and Latin America military forces engaged in counter-narcotic activities in major drug producing and drug transiting countries and has a relatively low dollar ceiling authorization. Section 517 transfers require a 15-day notification. FAA Section 518 provides grant transfers to countries/organizations for the protection of endangered plants and wildlife. Section 518 transfers require a 30-day Congressional notification. FAA Section 519 authorizes grant transfers for countries that have a foreign assistance program justified for the fiscal year in which the transfer is authorized and requires 15 days versus 30 days Congressional notification.

The EDA transfer process begins when a foreign country or FMS customer, under the auspices of the AECA or FAA, submits a Letter of Request (LOR) to the USG for the transfer of U.S. property. These requests are forwarded to the appropriate Military Department, which if the material is available in excess, forwards the requirement to the Defense Security Assistance Agency (DSAA) for approval and coordination with the Department of State (DoS). After DoS coordination and approval, DSAA creates a Congressional Notification package. After the allotted Congressional notification period has passed, without disapproval or direction from Congress to suspend action, the Letter of Offer and Acceptance (LOA) is prepared and furnished to the FMS customer for acceptance. The entire process can take three to nine months or longer.

Some rationales for transferring excess items to countries through the EDA process are to:

1. Strengthen selected allies by providing them with U.S. military materiel and equipment at reduced cost or no charge, before disposing of or selling the items.
2. Optimize the original intended use of the military materiel and equipment, by continuing to employ it in the defense of U.S., allied, and friend's interests to the maximum extent possible.
3. Avoid U.S. handling, transportation, or disposal costs for materiel that is excess to U.S. needs.
4. In general, serve the national interests of the U.S., while helping our allies.

PLAYERS/ROLES

There are basically three groups involved in the EDA transfer process:

Group One consists of those who want to get rid of the property. Examples of people in this group would be those at a base that is about to close, or those at an inventory management center who are trying to meet the Congressionally mandated directive to reduce the DoD inventory. The objective for this group of people is to dispose of or redistribute government property that they no longer have a need for as quickly as possible. Standard procedures and automated programs have been established to facilitate dispensing of this property, and thousands of items are redistributed or disposed of monthly. There are powerful, built-in, safeguards to keep the standard or automated system from being circumvented. It is correct, legal, easier, and faster to process in accordance with prescribed standards; when deviation from the standard is the desired course of action, accommodations for exception management are generally slow, cumbersome, and manual. The exception process will also often require approval several layers up the management chain and across functional lines. Additionally, there is usually a requirement for line item justification and approval which provides an audit trail. Managers naturally encourage use of the standard process, since the exception process takes an inordinate amount of their time. Attempts to circumvent this process could also result in criminal investigations or pecuniary liability for failing to positively control and safeguard U.S. property.

Group Two are those people that make the EDA transfer process work. They make qualified FMS customers aware of the items that are excess to U.S. needs; they determine FMS customer interest; and they obtain Congressional approval and let the FMS customer know when they can pick up their property. Activities that make up this group include the various Security Assistance Offices (SAOs), the Defense Security Assistance Agency (DSAA), Military Departments, Service International Logistics Centers [i.e., Air Force Security Assistance Center (AFSAC), U.S. Army Security Assistance Center (USASAC), Navy International Programs Office (Navy IPO), the Defense Logistics Agency (DLA), Department of State, and Congress].

Group Three consists of the FMS customers. When they are queried about their interest in specific items and respond in the affirmative, they expect to be advised to pick-up their material in a reasonable period of time.

PROBLEMS

Several problems have been encountered when attempting EDA property transfers. To help illustrate some of the problems, a bullet paper written by the Deputy Base Commander of a closing Air Base Group (ABG) is partially quoted below. The paper highlights problems from the base perspective, but also provides an opportunity to look at the problems and issues from other perspectives.

ABG DEACTIVATION AND FMS INITIATIVE

- Problem: The timetables for ABG deactivation and FMS processing are not linked.
- Background:
 - ABG not formally tasked to support FMS; therefore, data bases and transfer mechanisms not in place to support (the EDA process)
 - ABG deactivation timeline is linked to Defense Reutilization and Management Office (DRMO) and base supply closure dates, not FMS processing (up to 6 months per MAJCOM/LGX)
- Discussion:
 - Numbered Air Force guidance on asset redistribution states that after screening (by DoD activities in-country), untagged assets will go to DRMO
 - SAO does not want assets to go to DRMO
 - No mechanism (dummy holding account) in place to relieve ABG of asset responsibility
 - DRMO will not accept serviceable assets after 15 June 93
 - If (the EDA transfer) does not go through, ABG must pay to move assets to DRMO (300 miles away)
- Concerns:
 - Time remaining. As of 1 June there are 122 days until unit deactivation.
 - Manpower. As of 1 June there are +180 people assigned. By 20 July there will be half that number (95)
 - Base closure funds. Forecast by 1 Sep 93 to be broke with ABG monies, therefore MAJCOM must pay bills.
 - Facilities. Do not want to winterize buildings "full of equipment"

SIGNED 3 June 93

The following discussion examines the problems and issues addressed in the point paper. Insufficiently detailed procedures and guidance within DoD to integrate the EDA transfer process in support of U.S. laws created a number of problems. As indicated in the point paper, there was no formal tasking for the base to support an FMS transfer. For that reason the ABG leadership had been unwilling to discuss the closure plan with SAO personnel or identify what items were expected to be excess for the period six months prior to the base closure. The Numbered Air Force Headquarters guidance to dispose of excess items through DRMO as soon as redistribution efforts to DoD activities were complete reflected the typical Group One profile; without formal tasking to the contrary no allowances to accommodate an FMS transfer would be made. Another organization involved in this particular scenario was the Defense Logistics Agency (DLA) DRMO activity. In accordance with DoD 5105.38-M, "DLA is responsible for preparing FMS cases for the sale of DoD disposable defense articles."⁴ This DoD direction had not been appropriately integrated into DLA or DRMO policies. Consequently, the DRMO activities in-country received guidance from their regional headquarters not to get involved in any FMS EDA transfers. In the end, it took General Officer intervention with the MAJCOM and DLA Headquarters to get the base and DRMO to support the FMS transfer. ABG concerns about the lack of a dummy holding account to relieve their personnel of responsibility for property left in-place when they departed was legitimate. Although a holding account was eventually created and the Commander of the care-taker force assumed responsibility for it, applicable directives did not clearly specify this as the correct course of action. The Air Force Supply Manual states when closing custodial accounts before disposing of all items, "Supply will transfer all in-use property to the Base Civil Engineer (BCE) or residual contractor."⁵ Additionally, when base closure deactivation instructions are not specific enough (and in the case of FMS transfers they generally are not), "bases will request assistance from the major command."⁶ This same manual refers the researcher to a regulation which stipulates, "if installation realignment occurs in a foreign country, excess personal property must be disposed of according to agreements reached between the USG and the affected foreign government."⁷ With the appropriate major command and different governments having to be consulted for each base closure, interpretations and procedural guidance can easily vary.

The perception of incompatible time constraints also poses a serious problem. As stated before, Group One is typically working against a relatively short timeline using clearly prescribed guidance to dispose of unneeded materiel. The ABG scenario depicted in the bullet paper fit the Group One mold perfectly as they attempted to quickly dispose of all U.S. property to meet their timeline for base closure. During base closure, items could be disposed of as quickly as 45 days. The stage was set for a conflict of interest as Group Two (SAO personnel) attempted to get the ABG to manually intervene with their system and slow down or freeze the disposal process long enough for the item to be properly prepared for notification to Congress. As indicated earlier, that could have taken from three to nine months depending on the workloads at the Military Department, DSAA, State Department and the time needed to get Congressional approval.

As a final issue, the point paper expressed concern that unprogrammed funds might be needed to move the assets to another location if the EDA transfer was disapproved for some reason. As it turned out the U.S. Congress has programmed funds for all base closure activities

⁴United States Department of Defense, DoD 5105.38-M, Chapter 8 Section 300, paragraph 30002.C.9., Washington DC, GPO, 10 May 1994, p. 300-2.

⁵Air Force Manual 67-1, Volume II, Part Two, Chapter 21. Amendment 25A, paragraph 52.e.(3)(a), Washington DC, GPO, 1 January 1991, pages 21-63.

⁶Air Force Manual 67-1, Volume II, Part Two, Chapter 21. Amendment 25, paragraph 53.a.(4), Washington DC, GPO, 1 December 1990, pages 21-65.

⁷Air Force Regulation 67-91, paragraph 1.c., Washington DC, GPO, 18 December 1980, page 1.

and the major command would be reimbursed for the shipment of assets to a DRMO activity as long as property ownership remained with the closing unit. The fact that funds are available for disposal actions after base closure is an important consideration for future base closure plans.

A problem which seems to permeate the process at nearly every step by a number of activities is one of resistance. Sometimes the resistance is overt like the DRMO refusal to get involved initially. In other instances the resistance is subtle as was the ABG's initial delay in providing inventory information to the SAO about potential excess property. The source of this resistance is the mindset that has been cultivated in most U.S. personnel to protect and retain U.S. property. The idea of turning U.S. property over to foreign countries goes against the grain of years of internalized training and conditioning. In contrast, minimal awareness regarding the laws related to security assistance and the benefits to U.S. interests does little to reduce resistance and eliminate barriers to security assistance EDA transfers.

In Fiscal Year 1990, the DoD Inventory Reduction Plan in conjunction with the Defense Management Review Directives 901 and 987 increased inventory management efforts to identify and dispose of items excess to DoD requirements. These items should be identified to the SAO activities through survey messages to determine if there is a requirement for these items by FMS customers. The problems encountered with these items have been related to timing. Specifically, after foreign customer requirements have been identified, the required items have been disposed of by the item manager before the EDA transfer process could be completed. This occurrence has been embarrassing and created unnecessary friction in relationships with our allies.

SOLUTIONS

One of the toughest problems to overcome relative to EDA is the mindset that creates resistance to the process by delaying action or actively seeking to short-circuit or circumvent the EDA process. The most practical solution is an awareness/education campaign. We should make our people in the operational and logistics commands aware of this anomaly and the benefits of redistributing these assets through security assistance. Recommendations for establishing an effective campaign are: 1) Publish articles similar to this one in the Service logistics journal to get the word out quickly. 2) Establish blocks of instruction in the Joint Senior Service Schools and appropriate logistics courses that outline the security assistance process/players, and address the significance of security assistance to U.S. national security interests.

The clarification of policy and procedural guidance for EDA transfers can alleviate the timeline conflict of interest issues identified previously, but will require action by a number of activities. Some particulars to facilitate EDA transfers during base closures are indicated below:

1. DoD or JCS directives should be published more clearly directing Military Departments and logistics commands to support U.S. laws concerning security assistance transfers.
2. Major commands should coordinate security assistance activity with the appropriate theater command to ensure base closure plans are coordinated early with the security assistance community. This coordination should occur early enough to allow sufficient information to be obtained to complete the EDA transfer process before base closure.
3. Early in the base closure process, military department and DRMO personnel should identify the date that EDA transfer data will be required and the format to be used by personnel at closing installations. For potential security assistance transfers, this should include acquisition value and current value. The DRMO should be a major partner in the base closure process. It can provide a degree of continuity and standardization that other activities are unable to furnish.

DRMOs are generally involved in some respect with almost all base closures; and they provide a means for a clean audit trail on the disposition of U.S. property. Another reason to keep DRMO as a key player in this process is that they can be prepared to expeditiously dispose of the assets, if the EDA transfer gets disapproved for any reason by DoS or Congress.

4. Military Departments should also provide guidance to closing installations which stipulate the lists (and suitable formats) of excess items which must be prepared after cost effective DoD redistribution efforts have been made. The lists should be provided to the appropriate DSAA and DRMO activities to initiate and streamline the EDA transfer process.

The recommendations to this point address actions that might be taken within DoD. There are however actions that should be taken at the other end of the spectrum, outside of the DoD arena, to reduce the time required to complete the EDA transfer process. This is probably the most challenging problem to be tackled, but DSAA should continue concerted efforts to get DoS and Congress to shorten the EDA approval process. Possible options to be considered are provisions for Congressionally approved "blanket order" LOAs; or waiver of Congressional approval for several years for certain categories of items.

CONCLUSION

The problem experienced with EDA transfers boil down to two basic shortcomings: 1) Failure to create general awareness of applicable U.S. laws in the DoD community; and 2) Failure to publish the necessary directives to provide adequate procedural guidance to the DoD community on how to support those laws. Right now a lot of the same unnecessary obstacles are encountered, time is lost, and lessons relearned at each new base closure. By working both ends of the solution spectrum (inside and outside DoD), we could actually make our inventory reduction objectives compliment our security assistance goals.