

Leases and Loans to Foreign Governments and International Organizations

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The Fiscal Year 1982 amendment (PL 97-113, Section 109a) to the Arms Export Control Act of 1976, as amended (22 USC 2751 et seq) provides that defense articles in the stocks of the Military Departments may be leased or loaned to a foreign country or international organization only under the authority of the newly enacted Chapter 6 of the Act or under Chapter 2 of Part II of the Foreign Assistance Act of 1961, as amended (22 USC 2311 et seq). A purpose of the FY 82 amendment is to repeal, as regards leases to a foreign government or international organization, the authority of 10 USC 2667. This purpose is clearly stated in the new section 61(c) of the Arms Export Control Act. Another purpose is to repeal authority to loan Department of Defense property to foreign governments or international organizations under the revocable license or loan authority which was based upon a 1924 opinion of the U.S. Attorney General (Volume 34, page 320, dated 28 October 1924) and which was based on implied authority of the Secretaries of the Military Departments as found in 10 USC 8012b, 9831, and 9832. Section 61(c) provides that Chapter 6 of the Arms Export Control act of 1976, as amended, is the only authority for both the lease or loan of defense articles to foreign governments and international organizations.

As provided further in section 61, the President may lease defense articles in the stocks of the Department of Defense to eligible foreign countries and international organizations if he determines that:

- First, there exists a compelling foreign policy and national security reason for providing such articles on a lease rather than a sales basis;
- Second, the articles are not, for the time, needed for a public use; and
- Third, the country or international organization agrees to pay, in United States dollars, all costs incurred by the United States in leasing such articles, to include reimbursement for depreciation and the cost of restoration or replacement if the articles are damaged, lost, or destroyed. Section 61(a)3 deleted this third requirement if leases are entered into for purposes of cooperative research and

development, military exercises, or communications or electronic interface projects, or for any defense article which has passed three-quarters of its normal service life.

Section 61(b) requires leases for a fixed duration of not more than five years. Also, leases must provide that at any time during their duration, the President may terminate the lease and obtain the immediate return of the leased article(s).

If the duration of the lease or loan will be for a period of one year or longer, Section 62 requires the President, at least 30 days before concluding such a lease or loan agreement, to report the following to Congress:

- First, the country or international organization to which the defense article is to be leased or loaned,
- Second, the type, quantity, and value in terms of replacement cost of the defense article to be leased or loaned,
- Third, the terms and duration of the lease or loan, and
- Fourth, a justification for the lease or loan, including an explanation of why the defense article is being leased or loaned rather than sold.

The President may waive this reporting requirement if he determines and immediately reports to the Congress that an emergency exists which requires the lease or loan in the interests of U.S. national security.

Section 63 provides further that if the lease or loan is for a period of more than one year and either it involves major defense equipment valued in terms of replacement cost at \$14 million or more, or the defense articles are valued in terms of their replacement cost less depreciation at \$50 million or more, then the agreement may not be entered into or renewed if the Congress, within 30 calendar days after receiving the certification with respect to the proposed agreements, adopts a concurring resolution stating that it objects to the proposed lease or loan. Again, the President may waive this requirement if he determines and immediately reports to the Congress that an emergency exists which requires the lease or loan in the interests of U.S. national security. By its own terms, Section 63 is inapplicable to the North Atlantic Treaty Organization and member countries of NATO, as well as Japan, Australia, and New Zealand.

In summary, the lease or loan authority to foreign governments and international organizations is now limited to Chapter 6 of the Arms Export Control Act of 1976, as amended.